

**CONCURRING STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

Re: Broadband Industry Practices, Notice of Inquiry, WC Docket No. 07-52

We live in a world where a very few concentrated broadband providers exercise powerful and not always consumer-friendly control over the pipes that come into our homes and businesses. While we welcome telephone companies and cable providers competing to sell high-speed services, FCC statistics show that together these duopoly operators control some 96 percent of the residential broadband market, with too many consumers lacking a choice even between those two providers. Wireless and broadband over powerline are exciting prospects, but the reality is we are nowhere near seeing the kind of ubiquitous third or fourth player necessary to turn broadband into a vibrantly competitive market.

If eventually we develop a truly competitive marketplace with consumers enjoying broadband speeds like those available to our counterparts in other industrial countries, we can step back and rely on the genius of that marketplace. But in the meantime, the concentrated providers out there increasingly have the ability—and some think the business incentive—to build networks with traffic management policies that could restrict how we use the Internet. I haven't taught history for many years, but I remember enough of it to know that if someone has both the technical capacity and the commercial incentive to control something, it's going to get tried.

Don't take my word for it. It was the *Wall Street Journal* that said large carriers "are starting to make it harder for consumers to use the Internet for phone calls or swapping video files." The more powerful and concentrated our facilities providers grow, the greater their motivation will be to close off Internet lanes and block IP byways. After all, some have already touted their support for segregating Internet traffic by charging premium tolls for passage for favored websites, while consigning everyone else's websites and applications to bumpy travels in steerage.

This brings us to the item before us. It really puts the Commission at a crossroads and the path we choose has the potential to recast and shape the Internet for years to come. At issue is whether a few broadband behemoths will be ceded gatekeeper control over the public's access to the full bounty of the Internet. We have a choice to make.

Down one road lies a FCC committed to honor and preserve the fundamental openness that made the Internet so great—a place of freedom and choice where anyone with a good idea and a little tech-savvy can create an idea or business with global reach. On this road the FCC would adopt policies to ensure that the Internet remains a dynamic technology for creating economic and educational opportunity, a fierce economic engine for innovation and entrepreneurship, and a tool for the sustenance and growth of democracy across the land.

Down the other road lies a FCC that, while it celebrates the Internet, sits idly by as broadband providers amass the power and technical ability to dictate where you can go and what you can do on the Internet. This FCC would see no public interest harms when providers set up gated communities and toll booths on the Internet, altering the openness that has characterized this medium from the very start and endangering the principles of packet equality and non-discrimination. Make no mistake—the practical effect of what is being proposed by some network operators is to invert the democratic genius of the Internet. The original idea was to have neutral dumb networks with intelligence invested at the edges, with you and me and millions of other users. Now some seem bent on making the pipe intelligent and all-controlling even while they make all of us users at the edges dumb. Maybe the Internet entrepreneurs of the future will have to seek permission to innovate from the owner of the broadband pipe. That would be really hard to square with what I think should be our responsibility at the FCC, and that is to do

everything we can to preserve the openness that made the Internet so great. You know what? I have enough confidence in this technology and enough confidence in American innovation and creativity to believe we can get to the promised land without that kind of discrimination.

I know what I want. I want an FCC that unconditionally states its preference for non-discrimination on the Internet. I think consumers want that, too. Polls from Consumers Union and the Consumer Federation tell us that two-thirds of Internet users have serious concerns about practices by network owners to block or impair their access to information and services over the Internet. My own informal poll, taken by listening to Americans in dozens of forums around the country, confirms those findings.

How did we get to this unfortunate junction? Let's review a little history. Back in 2003, in a speech at the New America Foundation, I suggested the Internet as we know it could be dying. Some thought that was a rather controversial claim at the time, I know, but let's look at what has happened since. In 2005, the Commission decided to reclassify broadband transmission facilities as Title I "information services" rather than Title II "telecommunications services." To the uninitiated this sounds like semantics. But it had real consequences. That's because the nondiscrimination obligations that attach to telecommunications traffic and which were vital to keeping the Internet open in the dial-up era no longer apply to broadband services.

So when the Commission set off on this course, I asked my colleagues to at least adopt an Internet Policy Statement. They did, and I appreciate that, and as a result, today the Commission has a public document that summarizes the basic rights of Internet end-users. The Internet policy statement states that consumers are entitled to: access content; run applications and services; connect devices to the network; and enjoy competition among network providers, application and service providers and content providers. So far, so good.

But time has taught us that something is missing from this document and another step is needed. In a world where big and concentrated broadband providers are searching for new business models and suggesting that web sites may have to pay additional tolls for the traffic they generate, we need to keep our policies current. It is time for us to go beyond the original four principles and commit industry and the FCC unequivocally to a specific principle of enforceable non-discrimination, one that allows for reasonable network management but makes clear that broadband network providers will not be allowed to shackle the promise of the Internet in its adolescence.

We proceed too leisurely here. Rather than strike out and unflinchingly proclaim this agency's commitment to an open and non-discriminatory Internet, we satisfy ourselves with one tiny, timid step. Let's be frank. Putting out a Notice of Inquiry is not the way to sail boldly forth. History shows that Notices of Inquiry like this have a way of disappearing into the regulatory dustbin, putting off decisions that need to be made now. These are no longer new and novel questions. We adopted our Four Principles of Internet Freedom nearly two years ago. And these issues come back to us in just about every major merger that comes before us—and there have been a lot of those!

We should be building on what we have already approved and going with at least a Notice of Proposed Rulemaking with a commitment to move to an Order within a time certain. These are not esoteric, inside-the-Beltway issues—they go to the very core of what kinds of opportunities are going to be available to all of us in this digital age. We're being left behind in broadband globally, the country is paying a steep cost, and we face the stark challenge to decide if we are going to do something about it or not. We're talking here about the greatest small "d" democratic technology platform that has ever

existed. Taking another year or two to decide if we want to keep it that way shortchanges the technology, shortchanges consumers and shortchanges our future. I will not dissent from the one small step forward we take today, but I do lament our not making a Neil Armstrong giant leap for mankind.