

**CONCURRING STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

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

The Inventor of the World Wide Web, Sir Tim Berners Lee, has said: “The Internet is increasingly becoming the dominant medium binding us. The neutral communications medium is essential to our society. It is the basis of a fair competitive market economy. It is the basis of democracy, by which a community should decide what to do. It is the basis of science, by which human kind should decide what it true.”¹

His eloquent observation highlights precisely why it is so critical that we maintain the potential and promise that the Internet holds for enriching our economic and social well-being. I support this effort to open a proceeding because it is critical that the Commission focus a spotlight on this issue. Nevertheless, given the importance of Internet freedom, I would have preferred a more pro-active approach, including the adoption of a Notice of Proposed Rulemaking. This Commission must not send a signal that preserving the open character of the Internet is anything less than a top priority.

The open nature of the Internet has enabled those with unique interests and needs, or with unique cultural heritage, to meet and form virtual communities like no tool before it. It also means that consumers are being empowered as citizens and as entrepreneurs, and they are increasingly creative in the way that they use these new technologies. The Internet has been a source of remarkable innovation and an engine for extraordinary economic growth and productivity. It has fostered democracy and opened a new world of opportunities for those who have access. It is such a transformative tool precisely because of its openness and diversity.

Yet, there are increasing pressures that have the potential to alter dramatically consumers’ on-line experiences. We now face important questions about whether we can preserve those unique characteristics of the Internet, particularly given the Commission’s recent efforts to reshape the legal framework that we have operated under since the dawn of the Internet. By largely deregulating broadband Internet access, the Commission is moving outside of the scope of the traditional protections afforded under the Act.

As a counter-balance to this decision, the FCC adopted a set of Internet Policy principles to encourage broadband deployment and preserve and promote the open and interconnected nature of the Internet. While the Internet Policy Statement was an important step, the debate over what consumers and companies can expect from the Internet has taken on a new dimension as network providers discuss new plans that suggest a fundamental shift in the character of the Internet. Some may suggest that there is a lack of hard evidence of a problem, but we miss important signals if we do not take these leading broadband providers at their word. Providers may be on their best behavior for now with the spotlight turned on net neutrality. But decisions being made today about the architecture of the Internet could affect its character for years to come, so it is important that we make our expectations clear.

Although this is a complex issue – one made more so by continually-evolving technologies -- I share the growing concern that the leading broadband providers which control the last mile connections to the home may have the ability and incentive to discriminate, and to limit the choices available over the Internet. While we all have high hopes for the development of alternate technologies to promote greater competition in the broadband access market, right now, we see a broadband market in which, according

¹ Tim Berners-Lee “Neutrality of the Net”, Decentralized Information Group (May 2, 2006).

to FCC statistics, telephone and cable operators control over a 95 percent share. For many consumers, there is no meaningful choice of providers.

Since the FCC's deregulation of broadband services, we have also witnessed a dramatic consolidation among the nation's leading providers. We've seen the formation of the largest broadband provider in the nation, last mile providers have purchased backbone providers, providers are clustering their service territories, and we've seen new combinations of content and services. In major mergers between both cable and telephone companies, I have urged my colleagues to condition approval on compliance with the Commission's Internet Policy Statement. Notwithstanding AT&T's significant commitment to abide by the four principles of the FCC Internet Policy Statement and to maintain a neutral network and neutral routing in its wireline broadband Internet access service, it is critical that we remain vigilant and continue to explore comprehensive approaches to this issue.

Policymakers both here at the FCC and in Congress are faced with important choices about what the future of Internet access will look like in a broadband world. Will our policies continue to foster an open and diverse Internet? Will our policies create incentives for network providers to build capacity to respond to consumer demand or to foster scarcity? What will it mean for the consumer experience if network providers play a greater role in selecting which Internet applications and services work best? What does it mean if an innovator has to ask permission before deploying an Internet application?

Even as we launch this proceeding, we should be looking to add a new principle to our Policy Statement to address incentives for anti-competitive discrimination and to ensure the continued vibrancy of the Internet. It is clear that Americans view the Internet differently than they do other mediums. Consumers want to be able to choose an independent VoIP provider, or to be able to access video clips, and not just video programming from the largest media companies. Consumers don't want the Internet to become another version of TV, controlled by corporate giants.

Some have questioned whether policies that promote an open Internet are compatible with giving network providers the incentive to build out their facilities. I firmly believe that preserving the vibrant quality of the Internet and promoting high speed access to the Internet are goals that go hand-in-hand. Yet, the U.S. faces critical challenges in achieving these goals. Compared to the global leaders, broadband connections in the U.S. are "slow, expensive, and not available to everyone," as described by a recent report from a coalition of consumer advocates.² This report found that U.S. consumers pay nearly twice as much as Japanese customers for connections that are 20 times as slow. For millions of low income consumers, that means that broadband connections remain out of reach. And the situation is far from ideal for residents and businesses in many rural communities as well. The GAO recently confirmed again that rural residents are less likely to have broadband than their urban counterparts. One thing is clear in the Internet Age: access translates to opportunity. Leaving millions of our citizens without access to affordable and high performance broadband Internet access disadvantages them and fails to draw on all the resources our country can bring to bear in a global economy. This is not a public relations problem, it's a productivity problem.

Whether this Notice will appreciably further efforts to preserve an open Internet and promote high speed Internet access remains to be seen. Soliciting a clear understanding of facts and developing rigorous analyses are integral to the FCC mission. Yet, this Notice is short on analysis and could do far more to draw out discussion about the plans of our increasingly large and concentrated network providers and the implications for consumers.

² See *Broadband Reality Check II*, Free Press, Consumers Union, Consumer Federation of America (rel. Aug. 2006).

Of particular concern is the decision to cast this item as a Notice of Inquiry. Unfortunately, some parties may be tempted to read this decision itself as sending a message about how low it ranks on the Commission's list of priorities. Given the importance of this issue, and the fact that the Commission has acted on it repeatedly, including issuing a seminal statement of principles, and including increasingly comprehensive versions of it in a number of major mergers, the time is ripe for an NPRM. Fairly or not, NOIs are often perceived as the Commission's way delaying and downgrading an issue. But we cannot stick our head in the sand on this. The future of the Internet is simply too important. We will need to keep this issue at the fore and move quickly if we are serious about addressing Internet freedom. For these reasons, I can only concur in this item.