

**STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI**

Re: *In the Matter of Preserving the Open Internet*, GN Docket No. 09-191; *Broadband Industry Practices*, WC Docket No. 07-52

I'd like to begin by thanking my colleagues on the Commission. We are still getting to know each other. Some might have expected that the issue we consider today—with its long and fraught history—might have driven us apart. That has not happened. We've had healthy and productive collaboration. And while there are some areas of unsurprising disagreement, the more significant fact is that there are substantial areas of agreement that are growing by the day.

Today's Notice focuses on the Internet, the most significant technological breakthrough of our time. What started as an arcane lab experiment has developed into an unparalleled platform for innovation and investment, an engine for job creation and economic growth, and a vibrant forum for civic engagement. This development is due in large part to a single element of the Internet's design: Its openness. The Internet is and has been an open platform and it is that openness—and the extraordinary benefits it has brought for our country—that we seek to preserve through the proceeding we launch today.

The Internet's openness has allowed entrepreneurs and innovators, small and large, to create countless applications and services without having to seek permission from anyone. As a result, Internet pioneers with little more than a good idea and a no-frills Internet connection have built hundreds of thousands of small businesses as well as web giants. More and more Americans depend on the Internet every day—at home, at work, in school—at our desks, and on the move. The Internet connects us to our family and friends, to the universe of knowledge, and to the working of our nation's democracy.

The Internet has provided enormous benefits to consumers in the form of new and previously unimaginable services, competition, and choice. We wouldn't have these services without a strong network infrastructure and the billions of dollars of private capital invested to build it. And ever-growing consumer demand is driving billions of dollars of additional investment to increase broadband capacity and improve the intelligence of networks.

And so we have a virtuous cycle of investment, innovation, jobs, and consumer benefits. According to one study, the Internet supports more than three million American jobs. A core goal of the FCC's efforts is to preserve and promote this virtuous cycle driven by a free and open Internet. That's how we'll ensure that the Internet becomes an *enduring* engine for opportunity and prosperity for all Americans.

Given the importance of the Internet, it should come as no surprise that over the past years, the Commission has considered the question of how to safeguard the free and open Internet in more than 10 different proceedings, building a record of over 100,000 pages of comments, submitted by approximately 40,000 companies, organizations, and members of the public. In 2005, a unanimous Commission issued the *Internet Policy Statement*, affirming the agency's "duty to preserve and promote the vibrant and open character of the Internet." In the intervening years, the Commission has enforced these principles, adopted openness conditions in a number of significant mergers, and placed openness requirements on certain spectrum licenses. Two years ago, the Commission issued a broad-ranging *Notice of Inquiry* that sought comment on many of the issues addressed in today's Notice, including the topics of nondiscrimination and transparency.

Now it's time to take the next step growing out of the record and the Commission's experience—launching a process to craft reasonable and enforceable rules of the road to preserve a free and open

internet. Because, let's be honest, the Commission's actions, laudable in so many respects, have left the protection of the free and open Internet unnecessarily vulnerable and uncertain.

The problem is not merely that we've seen some significant situations where broadband providers have degraded the data streams of popular lawful services and blocked consumer access to lawful applications, even after the Commission adopted its openness principles.

Nor is the problem merely that, when the policies summarized in the *Internet Policy Statement* and its initial four principles have been enforced by the Commission, they have been attacked, including in pending litigation, precisely because they are not rules developed through the kind of notice-and-public-comment process that we should commence today.

Nor is the problem merely that the initial four principles failed to address explicitly some important concepts, such as the need for transparency when it comes to network management practices.

Nor is the problem merely that broadband providers have understandable economic incentives to favor their own content, applications, or services or to otherwise disfavor competition in ways that may not be entirely consistent with our long-term national interest in promoting consumer choice and preserving a free and open Internet for everyone.

The heart of the problem is that, taken together, we face the dangerous combination of an uncertain legal framework with ongoing as well as emerging challenges to a free and open Internet. Given the potentially huge consequences of having the open Internet diminished through inaction, the time is now to move forward with consideration of fair and reasonable rules of the road, rules that would be enforceable and implemented on a case-by-case basis. Indeed, it would be a serious failure of responsibility not to consider such rules, for that would be gambling with the most important technological innovation of our time.

An open Internet deserves an open process. Accordingly, I fully support this Notice, which will launch a fact-based, transparent, and participatory process to develop rules to preserve an open Internet. The Notice seeks to identify the hard questions the Commission must address as part of this rulemaking, and that the Commission must ultimately address based on the facts and the record before it. And the Notice contains draft rules so that all interested parties and the public can have something specific to comment upon. This is a procedural reform that has been called for by legislators and my fellow Commissioners on a bipartisan basis.

Now in the run-up to today's meeting, there has been a deluge of rumors, and no shortage of myths and half-truths. There have also been some reasonable concerns about what the draft rules might look like. My goal has been for us to listen, to pull out and address the fair points and good ideas, regardless of source. And our staff has worked hard to do so.

That said, do any of us think that the draft rules proposed today perfect? Are they set in stone? No—we are at the beginning of a rulemaking process, with draft rules offered in the context of a Notice that seeks to spot the issues, ask the hard questions, and seek broad public input. We're addressing a topic of great importance, where parties have strong views based on differing perspectives and experiences, and where the choice of a single word can lead to vigorous, complex, and highly technical debates. I come to this issue with a keen recognition that we do not yet have all the answers, and that we have a lot of hard work to do. But again, that is precisely the reason to begin this chapter of the process in a way that sets the table for an informed, fruitful discussion about issues of real importance to the future of the Internet and our country.

In that spirit, we are announcing today that we will be developing a Technical Advisory Process, so that the difficult engineering questions we face are fully informed by a broad range of engineers based on sound engineering principles and not on politics. I have asked Julie Knapp, Chief of our Office of Engineering and Technology, to launch this effort, working with Sharon Gillett, Ruth Milkman, and other key senior staff leading in this process.

This will be just one part of what will be a fully participatory effort. OpenInternet.gov is open for business. We will have public workshops modeled on the success of our Broadband team's efforts. I will continue to push our staff to develop and experiment with new participatory mechanisms for a 21st century Commission, looking for the best ways to build a fact-based process for record-building and decision-making.

While today's proposal recognizes that there are still open questions and hard work to be done, the Notice and draft rules also reflect a set of conceptual commitments that I fully endorse.

First, the goal is and must remain without compromise preserving a free and open internet. Any rules we adopt must preserve our freedom to connect, to communicate, and to create that is the wonder of the open Internet. Each and every user of the Internet must have access to an unlimited online universe of ideas and commerce. Internet users should always have the final say about their online experience, whether it's the software, applications or services they choose, or the networks and hardware they use to connect to the Internet.

Many people have fought long and hard for this concept of a free and open Internet, inside and outside the Commission, making sure that we keep our eye on this powerful aspiration for our country and the world. They deserve our gratitude, and today's action owes very much to their efforts.

Second, we must promote investment and innovation broadly. The idea that we must choose between innovation and investment on the "edge" of the network, where content and applications are developed, or innovation and investment in the "core" of the network, where broadband providers operate, is a false choice. Our rules can and must promote investment and innovation throughout the Internet ecosystem. I know from my own experience, and we all recognize what our Broadband team reported to the Commission at our last meeting: that very substantial investment is required for network providers to build out broadband networks for the entire country, and increase the capacity of those networks. The full potential of the Internet cannot be unleashed without robust and healthy broadband networks, and broadband providers need room to experiment with new technologies and business models in order to earn a return on their investment and deploy high-speed broadband to all Americans.

At the same time, the view that 'anything goes' is not a serious argument. And I reject the notion that we must choose between open Internet rules and investment by service providers in their networks. This argument is somewhat routinely made when the FCC considers rules on any variety of topics. History tells us that this, too, is a false choice. FCC rules over the years have been a powerful spur to investment and innovation—especially when the agency focuses on promoting competition and choice. And in the context of net neutrality, notwithstanding the issuance in 2005 and enforcement in 2008 of the Commission's openness principles, as well as the adoption of openness conditions in important mergers during that period, Internet service providers have continued to invest heavily in their networks. As an increasing numbers of stakeholders agree, investment in advanced *and* open networks is essential to our broadband future.

Third, there must be flexibility. Broadband providers must be allowed meaningful latitude to solve the difficult challenges of managing their networks and providing their customers with a high-quality Internet experience. We recognize that there are real congestion and other network-management

issues, especially with respect to wireless broadband. We also recognize of course that Internet technology is developing rapidly. We understand the risk of unintended consequences. Openness rules should be sufficiently general and flexible enough to account for, and invite, technological change and progress.

Fourth, the government's role in preserving openness is important but also modest. It should be no greater than necessary to achieve the core goal of preserving a free and open Internet. Open Internet rules should be high-level, not heavy handed. And in fact, the draft rules in the Notice are less than two pages long. The goal is to provide a fair framework in which all participants in the Internet ecosystem can operate, ultimately minimizing the need for government involvement. That is why I have emphasized the new Sixth Principle—the idea that broadband providers must be transparent about their network management practices, which should foster private resolution of disputes and reduce the need for government enforcement. That, in fact, is the overall goal of an open Internet framework.

That is also why I have been clear that government should not be in the business of running or regulating the Internet. Government should promote competition. It should protect consumers' right to access the lawful content, applications, and services of their choosing. It should ensure that there is no central authority preventing people or businesses from communicating over the Internet. It should certainly not be that central authority. As others have said: "The minute that anyone, whether from government or the private sector, starts to control how people use the Internet, it is the beginning of the end of the Net as we know it." There should be no confusion on this point, at home or abroad. This Commission fully agrees that government must not restrict the free flow of information over the Internet.

Fifth, the Internet must be safe and secure as well as open. Open Internet rules should apply to *lawful* content, applications, and services. They are not a shield for copyright infringement, spam, or other violations of the law. They must honor the protection of users' privacy. And they must be consistent with public safety as well as homeland and national security.

Sixth, openness is essential for the Internet however it's accessed. It doesn't make sense to have one Internet when your laptop is plugged into a wall and another when accessing the Internet through a wireless modem. At the same time, wireless networks are different from wired networks. Given fundamental differences in technology, how, when and to what extent open Internet rules should apply to different access platforms, particularly mobile broadband, will undoubtedly vary. This is an important issue on which the Notice seeks to develop a full and informed record.

Let me close by emphasizing what I think all of us here on the dais believe. That the Internet's openness is a precious thing and that it must be preserved and promoted. That the Commission does its job best when it has input from all stakeholders and asks hard questions that provoke vigorous debate. And that we have great faith in the strong staff of the FCC, working with the broadest possible range of outside participants, to navigate through these complex waters.

I am pleased that there is broad agreement inside the Commission that we should move forward with a healthy and transparent process on an open Internet. I am pleased to see leaders outside the Commission working to find common ground on enforceable rules. Given the importance of an open Internet to prosperity and opportunity for all Americans, our country deserves no less.