

**STATEMENT OF
COMMISSIONER MICHAEL J. COPPS**

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

This is an historic day at the FCC. It is historic because the Commission takes a long stride—perhaps its longest ever—toward ensuring a free, open and dynamic Internet. While in one sense today’s *Notice of Proposed Rulemaking* marks a natural progression from our adoption of the *Internet Policy Statement* in 2005, in reality it is the clearest statement yet that we will ensure that the genius of the Internet is not subverted as it leaves its infancy and begins to come of age. We must start from the premise that we are dealing with something very precious here—a technology leap as great as the printing press that was invented 570 years ago. This is perhaps the greatest small “d” democratic platform ever devised. In its capacity to facilitate communications—indeed, to manage almost the totality of the communications that take place among us—the potential power of this technology is awesome. It can do so much good. Misused, it can fail itself and fail us all. So I start from the premise that we as regulators, we as businesses, we as users—all of us—have an historic obligation to maintain the freedom of the Net.

I have advocated long and hard for the Commission to establish a mechanism to ensure that consumers have continued access to a vibrant, open Internet—an Internet that was born on openness, thrived on openness, and depends on openness to realize its going-forward potential. This Commission will act, I predict, to maintain that openness.

We need rules-of-the-road to make that happen. We need expert judgment to evaluate any and all allegations that the freedom of the Internet is being compromised. And we need a venue with authority to redress such wrongs if, indeed, such wrongs are found. I stated my preference for clear-cut rules, including a fifth principle of non-discrimination, at the time we adopted the Four Principles of the *Internet Policy Statement*. Now, four years later—having gained a lot more knowledge and some practical experience in applying the principles of Internet openness—we finally step up to the critical challenge of developing meaningful, predictable, transparent and clearly enforceable rules of the road. And we propose a sixth rule of transparency. Users have a right to know how the network is being managed and what practices providers are employing. This sixth rule of transparency is not just good policy—it is essential policy.

The Notice we adopt today is not only a clarion call for Internet freedom. It is also a reasoned and rational way to get there—a data-driven, on-the-record examination of how to safeguard the benefits of the Internet for American consumers from potential gatekeeper control. The Internet must never be about powerful gatekeepers and walled gardens. It must always be about the smoothest possible flow of communications among people. As consumers increasingly access the Internet via different technology platforms, we seek to develop rules to preserve Internet openness, regardless of how consumers choose to access it. History tells us we have to do this. History tells us that when technological capability to exercise control combines with a financial incentive to do so, some will try to turn this power and opportunity to their own advantage. That doesn’t mean I expect this to become normal business practice, but even if it’s only a few who try, the risk to our interconnected and interdependent Internet is too great to take. I’m not into riverboat gambles that everything will be fine if we just look the other way.

We recognized in the Four Principles—as well as in the draft rules we propose today—that a well-considered approach to an open Internet should take into account reasonable network management. Evolutionary and revolutionary changes can alter the landscape and even change the parameters of what is or is not reasonable at a particular time. What is reasonable today may be unreasonable tomorrow—and *vice versa*. What constitutes reasonable network management in a 768 Kbps world will likely be

different from reasonable network management in a 50 or 100 Mbps world. And what constitutes reasonable network management in a wireless world will differ from reasonable network management in a wireline world. The proposed rules recognize this reality. And they provide the expert venue—the FCC—where consumers can come if they have concerns or complaints to make. It’s about as commonsensical a way to ensure an open and dynamic Internet as I can imagine.

The principles I pushed for in the *Internet Policy Statement* four years ago focused on consumer rights. This is, after all, a consumer protection agency. While just about everybody gains from the availability of an open Internet, no one gains so much as consumers. As we move forward with draft rules, the legal language in the Notice shifts from the rights of consumers to the obligations of providers. But let’s be clear that the consumer focus has shifted not a whit. While some may prefer the broad language of the original principles, it is important to be clear as to whom the obligations apply. That said, I am pleased that we seek comment on the pros and cons of applying these rules to entities other than broadband Internet access service providers. In particular, we need to recognize that the gatekeepers of today may not be the gatekeepers of tomorrow. Our job is not so much to mediate among giants as it is to protect consumers.

Though we may differ in some respects on the substance of today’s proceeding, I want to commend the spirit of collegiality and compromise that my colleagues have shown in shaping the Notice we adopt today. I know we often say this at these agenda meetings, but—wow!—it was really true here—like I’ve seldom seen before. Chairman Genachowski has set a new tone of openness. He has consulted with the experts, studied the record, met with stakeholders large and small, walked the halls of the Eighth Floor to understand the concerns of his colleagues and to search for the resolution of differences. The Notice is much the better for it. You will see in this Notice of Proposed Rulemaking something we haven’t often seen in other NPRMs in recent years—the *actual language* of the proposed rules! How’s that for a change? And how better to stimulate discussion and build a meaningful record than giving the public something specific to react to? Moreover, to ensure a thoughtful, well-considered and participatory result—one that’s based on the best possible record—we ask many questions and refrain from tentative conclusions. Also, we seek to fully develop the record by providing an extensive period for public comment. So, Mr. Chairman, I salute you for not just the substance of what we will shortly vote on, but on the process that brings this item to us and that will continue to move us forward.

Now the ball is in the public arena. The Notice earnestly solicits stakeholder input—indeed, the proceeding will rise or fall on the quality of such input. Final action *will* be forthcoming in this proceeding. This Commission *will act*, and it will act on the record it amasses. What will help us most is not flocks of Chicken Littles running around proclaiming “the sky is falling,” but rather facts, data and the real world experiences of innovators, entrepreneurs, industries small and large, consumers, and anyone interested enough to give us the benefit of their thoughts, experiences and recommendations. So, operating on the old adage that decisions without you can sometimes be decisions against you, I urge every individual and every group with an interest to bring us the best and brightest thinking of which they are capable.

In addition to thanking the Chairman, I want to commend my three other colleagues. If their engagement on this item is any indication—and I think it is—of how this new Commission will conduct its deliberations, I am very optimistic about what we can accomplish. I appreciate the input we have already received from a wide gamut of stakeholders and can report that this did indeed make a difference. Finally, I am enormously grateful to my hard-working staff, and the Chairman’s, and my colleagues’ and to the Bureaus who all worked very long, very hard and very successfully to bring us this far. Thanks for a job well done.