

Remarks of
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Toward a Regulatory Regime for the Internet Age”
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**PRESERVING INTERNET FREEDOM:
GUIDING PRINCIPLES FOR THE INDUSTRY**

The Vision for the Broadband Internet

Good afternoon. I want to thank Phil Weiser for graciously asking me to speak today at what I hope will be one of many fruitful conferences on the great Digital Broadband Migration.

“Digital Migration” is a term I coined to describe our movement from a slow conventional analog world to a digital world that promises incredible new opportunities for faster, more reliable and higher-quality communications. The move to this digital world comes with a radical transformation, but its benefits will be felt by every American.

Those of you who follow the FCC closely should be very familiar with the agency’s vision for the high-speed, broadband Internet. Our national broadband policy seeks to promote investment in diverse, faster and more sophisticated Internet and related digital technologies. This, in turn, will foster economic growth, innovation and empower American consumers to make more choices in how they live, work and play.

A recent Pew Internet Study suggests that consumers are already taking advantage of the new opportunities provided by high-speed connections at home. Those with broadband generally do more online than those with dial-up connections. This includes peer-to-peer file sharing, enhanced instant messaging, streaming media and virtual private networks.

The next generation of broadband will make new applications possible and more established applications more compelling. But we won’t get there by wishful thinking; everyone involved in the broadband Internet – users, network providers, content and applications developers and policymakers – must continue to be missionary in driving infrastructure deployment and compelling applications if our Nation hopes to stand among the leaders of the Information Age.

The experiments to date have given Americans a growing number of ways to communicate, gather information and entertain themselves. High-speed Internet accelerates that trend. These expanded choices, in turn, result in lower prices and higher value. And the almost infinite

flexibility of the Internet Protocol gives users the tools to tailor these valuable innovations to their own individual needs – to make them their own.

All this activity is precisely what Congress had in mind when it directed the Commission to “encourage the deployment [of broadband] on a reasonable and timely basis.” The Communications Act also mandates that we take “immediate action to accelerate deployment” if it is not reasonable or timely.

That’s why the Commission has pushed to create incentives and tools to encourage companies to bring consumers additional high-speed Internet technologies. We have taken steps to promote investment in established platforms, such as cable modems and DSL, but we have also led the charge for new, emerging broadband platforms, such as broadband over power lines, WIFI, Ultra-wideband, and satellite.

A real bright spot has been hot spots. By making licensed and unlicensed spectrum available for wireless broadband uses, we have seen an explosion of wireless access points and have witnessed blossoming wireless technologies (such as EvDO and WiMax) that allow powerful, untethered internet access around the country. As we look forward, our goal is to continue to champion and facilitate higher-speed, more capable platforms that can run the applications of tomorrow.

These efforts to promote investment and competition among broadband networks follow from a simple truth: No amount of regulation (or wishful thinking, for that matter) will bring consumers the benefits of high-speed Internet if the networks are not in place to serve them. And, importantly, we have a historic opportunity to bring multiple pipes to consumers and, thereby, take a big bite out the “last mile” problems that have plagued competition and invited heavy monopoly regulation.

Achieving the Vision: Power to the People

Promoting competition among high-speed Internet platforms is only half of our task, however. We must ensure that the various capabilities of these technologies are not used in a way that could stunt the growth of the economy, innovation and consumer empowerment. Thus, we must expand our focus beyond broadband networks – the so-called “physical layer” of the Internet’s layered architecture.

Broadband networks are impressive generators of economic growth, innovation and empowerment. But generators don’t work unless they have *fuel to burn*. Broadband networks are fueled by consumers’ hunger for an ever-expanding array of high-value content, applications and devices that run over these networks. Easy access to this content and technology is bringing more power to the people.

Personal computing devices are at the leading edge of this revolution in consumer empowerment. These devices exploit rapid innovation in silicon, software and storage, often combined with speedy Internet connections. This potent combination is putting in the hands of common folks the same computing power that once was reserved for CalTech, the military or the phone company.

You've no doubt heard the litany of electronic devices that can offer consumers more options and more personalization using the Internet: music players like iPod; personal video recorders like TiVO; boxes for Internet voice services like Vonage; online game devices like xBOX and Gamecube; smartphones; and WiFi that allows you to surf the Internet from your local coffee shop or your back porch.

But the possibilities for consumer empowerment extend beyond devices. These possibilities arise from the Internet's open architecture, which allows consumers to freely interact with anyone around the globe. Musicians and writers, who could never have landed a contract with a major record label or publisher, can find - or create - audiences for their work. Small town radio stations can reach people who have moved to the big city. E-Bay is another good example: gone are the days when each of us had only a small group of potential buyers for what we think is junk in our garages. Somewhere, in the next state or the next continent, there are people who may very well want to buy that "junk" and pay us more than we ever dreamed for it. The open internet has opened markets beyond the traditional geographic limitations.

Companies are eager to feed consumer hunger for these Internet-related goodies. Many are racing to develop content, applications and devices they hope will entice more and more consumers to abandon dial-up and slower broadband Internet access in favor of faster broadband. But first, these companies must be able to reach broadband consumers.

Thus, usage and deployment of high-speed Internet depends on access to and use of content, applications and devices. Giving broadband consumers the access they want is not a matter of charity but simply of good business. Network owners, ISPs, equipment makers, content and applications developers *all* benefit when consumers are empowered to get and do what they want.

Maintaining Openness: Empowering Consumers Without Regulating the Internet

This is why ensuring that consumers can obtain and use the content, applications and devices they want – is critical to unlocking the vast potential of the broadband Internet.

Today, broadband consumers generally enjoy such internet freedom. They can access and use the content, applications and devices of their choice. This easy access includes some of the most promising new uses of broadband. For example, the head of the National Cable and Telecommunications Association recently stated that cable modem providers would not block traffic from competing Internet voice providers, such as Vonage. Such commitments are good business, but also essential to nurturing competitive innovation. Consumers also can generally obtain meaningful information regarding their competitive choices for broadband.

These general conditions suggest that many, if not most, in the industry recognize that providing such access and information is in their own self-interest, particularly as infrastructure providers and developers struggle to discover valuable uses that will enable them to recoup their substantial investments in high-speed Internet technologies.

Nevertheless, we must keep a sharp eye on market practices that will continue to evolve rapidly. And we must do so while safeguarding Congress' intent that the Internet remains free of unnecessary regulation that might distort or slow its growth.

Steering Clear of Potential Obstacles on the Horizon

Despite the wide open seas broadband consumers currently enjoy, we must steer clear of obstacles that could appear on the horizon. The high-speed Internet continues to evolve rapidly and somewhat unpredictably. Some argue that new threats could undermine broadband consumers' easy use of content, applications and devices.

Professors Phil Weiser and Joe Farrell, a former FCC Chief Economist, make this point in a 2002 paper published with the Competition Policy Center at the University of California at Berkeley. Weiser and Farrell acknowledge the strong incentives that network owners have to ensure that broadband platforms remain open. Such openness encourages competition among Internet applications and services, which will in turn make broadband platforms more valuable to both consumers and network owners.

Weiser and Farrell note, however, that there may be exceptions to this general rule. They suggest a network owner might face incentives to begin restricting some uses of their platforms in certain cases: if regulators set prices for using the platform too low, if bargaining among networks owners and other companies breaks down, or if companies are just unable to recognize their own self-interest in maintaining the freedom broadband consumers want and expect.

This may not be mere academic speculation. A few troubling restrictions have appeared in broadband service plan agreements. Professor Tim Wu of the University of Virginia School of Law catalogued some of these restrictions for a symposium here last year. According to Wu, these restrictions have included things such as cable companies' early efforts to impose restrictions on use of virtual private networks, WiFi and home networking equipment and on operation of servers in the home. Moreover, press reports allege that at least one cable company has not provided enough guidance to intensive broadband users regarding the bandwidth limits of their service plans.

The evidence is unclear, however, as to whether and to what degree these restrictions have been enforced against consumers. Nor is there much evidence that consumers have been denied from getting what they want, even if they are willing to change service plans. Further, some providers counter any service plan restrictions have been reasonable attempts to manage their networks to prevent service disruption to other customers. They also claim that the few restrictions that have popped up have been removed when it became clear they were not necessary to ensure service quality.

Based on what we currently know, the case for government imposed regulations regarding the use or provision of broadband content, applications and devices is unconvincing and speculative. Government regulation of the terms and conditions of private contracts is the most fundamental intrusion on free markets and potentially destructive, particularly where innovation and experimentation are hallmarks of an emerging market. Such interference should be undertaken only where there is weighty and extensive evidence of abuse.

Nonetheless, the industry should take heed of how critical unfettered access to the Net has been and will continue to be for the success of broadband. Consumers have a high expectation that such access will continue, and that the benefits to them and the nation are significant.

Consequently, it is time to give the private sector a clear road map by which it can avoid future regulation on this issue by embracing unparalleled openness and consumer choice.

Consumer Are Entitled to “Internet Freedom”

As we continue to promote competition among high-speed platforms, we must preserve the freedom of use broadband consumers have come to expect. Thus, I challenge the broadband network industry to preserve the following “Internet Freedoms:”

Freedom to Access Content. First, consumers should have access to their choice of legal content.

Consumers have come to expect to be able to go where they want on high-speed connections, and those who have migrated from dial-up would presumably object to paying a premium for broadband if certain content were blocked. Thus, I challenge all facets of the industry to commit to allowing consumers to reach the content of their choice. I recognize that network operators have a legitimate need to manage their networks and ensure a quality experience, thus reasonable limits sometimes must be placed in service contracts. Such restraints, however, should be clearly spelled out and should be as minimal as necessary.

Freedom to Use Applications. Second, consumers should be able to run applications of their choice.

As with access to content, consumers have come to expect that they can generally run whatever applications they want. Again, such applications are critical to continuing the digital broadband migration because they can drive the demand that fuels deployment. Applications developers must remain confident that their products will continue to work without interference from other companies. No one can know for sure which “killer” applications will emerge to drive deployment of the next generation high-speed technologies. Thus, I challenge all facets of the industry to let the market work and allow consumers to run applications unless they exceed service plan limitations or harm the provider’s network.

Freedom to Attach Personal Devices. Third, consumers should be permitted to attach any devices they choose to the connection in their homes.

Because devices give consumers more choice, value and personalization with respect to how they use their high-speed connections, they are critical to the future of broadband. Thus, I challenge all facets of the industry to permit consumers to attach any devices they choose to their broadband connection, so long as the devices operate within service plan limitations and do not harm the provider’s network or enable theft of service.

Freedom to Obtain Service Plan Information. Fourth, consumers should receive meaningful information regarding their service plans.

Simply put, such information is necessary to ensure that the market is working. Providers have every right to offer a variety of service tiers with varying bandwidth and feature options. Consumers need to know about these choices as well as whether and how their service plans protect them against spam, spyware and other potential invasions of privacy.

Thus, I challenge all facets of the industry to ensure that broadband consumers can easily obtain the information they need to make rational choices among an ever-expanding array of different pricing and service plan.

Key Benefits of Preserving “Internet Freedom”

Numerous benefits will follow if the industry continues to preserve “Net Freedom.” Preserving “Net Freedom” will preserve consumers’ freedom to access and use whatever content, applications and devices they choose based on the service plan they choose. It will promote comparison shopping among the growing number of providers by making it easier for consumers to obtain access to meaningful information about the services and technical capabilities they rely on to access and use the Internet.

Internet Freedom also promotes innovation by giving developers and service providers confidence that they can develop broadband applications that reach consumers and run as designed. Internet voice applications are a notable example that has been grabbing headlines recently. Net Freedom will ensure that consumers will continue to be able to choose whatever Internet voice service that will function over their high-speed Internet connection.

Preserving “Net Freedom” also will serve as an important “insurance policy” against the potential rise of abusive market power by vertically-integrated broadband providers.

And, if we secure a reasonable balance between the needs of network providers and internet freedom, consumers will reap the benefits of broadband *without intrusive regulation*, while preserving industry’s incentives to deploy more high-speed broadband platforms.

In closing, I would emphasize that consumers also have a role in this challenge to preserve “Net Freedom.” I encourage consumers to challenge their broadband providers to live up to these standards and to let the Commission know how the industry is doing. “Net Freedom” is intended to give broadband consumers the choices, value and personalization they have come to expect. Thus, consumers are the ultimate judges of whether the industry is successfully preserving “Net Freedom,” or falling short.

I look forward to working with consumers, the industry and all of you in taking this important step forward in the Digital Broadband Migration. The journey continues, but we have begun to see the signs of land. Continuing to keep a sharp watch for dangerous shoals will ensure that someday soon we will dock safely on the shore and begin a bright new era in communications.

Thank you.

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