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Testimony:
FCC Public *En Banc* Hearing on Broadband Network Management Practices

Monday, February 25, 2008

Thank you Mr. Chairman for the opportunity to participate in this hearing today. Broadband, particularly as it pertains to our economic development efforts in Massachusetts has been a focal point of my committee over the past few years. My district, the First Berkshire District, is a more rural part of the Commonwealth and our efforts to create jobs have been hampered by the inability to bring broadband to many of the communities of western Massachusetts.

For the record, I was the House Chair of the Government Regulations Committee for over ten years. This was the committee that heard all of our public utility legislation. For the last three plus years, I have been the Chair of the Economic Development and Emerging Technology Committee. More than that, I have been working for better telecommunication services in my district and throughout the state for all 22 years in the Legislature. Nineteen years ago I was an intervener in the first major rate case in telephony in many years. I took our Public Utilities Commission to the Massachusetts Supreme Judicial Court in 1991 suing over rulings regarding rates and expansion of calling areas. In 1995, I was able to fund a Western Massachusetts initiative that became Berkshire Connect, a collaborative partnership formed to improve our county's telecommunication system and Internet services.

In a $347 million economic development bill that I co-authored 2 years ago, I inserted a section creating an Office of Broadband Director in our Economic Development Secretariat. The directive for that office included working on broadband expansion and this year Governor Patrick filed a bill to commit $25 million towards making Broadband ubiquitous in the Commonwealth.

I have made such an effort because the Internet has changed the way we conduct our business in the United States and it has changed our way of life. When I was first elected, I had one telephone number. Today I have eleven, I think. In those 22 years we have fundamentally changed our conduct based on new technologies. Without access to those technologies, we fall far behind other regions and other nations in our ability to create jobs and conduct commerce. I am here today to say that I support efforts to craft some form of net neutrality regulation, legislation, or agreement as a way of keeping the

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Internet vibrant, vital, and innovative. Without net neutrality, things such as Berkshire Connect would not happen and innovation will be stifled. Obviously, while my focus as a legislator has been on the business aspects of broadband, it is a much larger issue than just commerce. Broadband is dramatically changing the way we educate our children and treat our sick. In fact, in 1996, I was in a small town in Russia advising the region on how to set up unemployment systems. I had occasion to talk to a group of students from the Pskov Polytechnic Institute. I asked these students what brought about democratic changes to Russia and they immediately answered that the Internet was responsible. The government could no longer control the information that people received. The internet is a powerful influence in every facet of our lives today.

Mr. Chairman, in my ten years as Chairman of the Government Regulation Committee, I have seen many initiatives that were designed to advantage one company or another. These things include reciprocal compensation, franchise fee fights, open access or open documents, right of way fees and ownership as well as bandwidth and frequency issues. The discussions and deliberations over these issues have all been made from two very different perspectives. Businesses such as the Bells or cable companies have a responsibility to their shareholders and want to profit from any expansion that they invest in. They argue for little government interference and the right to build out their networks as they see fit. Internet and smaller or start-up companies want unlimited cheap access to the largest available customer base. On both sides it is their responsibility to argue the best possible policy for their companies or constituency. It is our responsibility in government to be the arbiters of what is good policy for our citizens.

There have been cases where Internet providers have slowed access or in isolated cases to this point, denied access to certain sites. I know that they argue that they are doing so in order to ensure that they will be able to service customers and that it is not discrimination on their part to do so, but merely good business practices. They also argue that they should have the right to tier their services or charge premiums for some sites especially those that use more bandwidth. I think they are wrong for several reasons. First, you cannot argue that you are not restricting access and then argue that you have that right. They have to pick one argument or the other. Both cannot be right. Second, millions in this country access the Internet at any one time. We cannot allow a few large companies to pick and choose what people should have access to. Tiering services creates the kind of stratification in our society that we are trying to get rid of and further restricts access to services and companies. The issue of tiered services reminds me of the issue of slotting for space in supermarkets. In any large supermarket, there are tens of thousands of different products. In order to ensure premium exposure some enterprising company offered to pay the supermarket for product placement. This is a good marketing strategy. However, today almost all firms are charged a slotting fee in order to get their product anywhere on the shelf. Small firms fall by the wayside and firms that could be major market players, or may have better products are prohibited from participating in the market. Many think this has thwarted competition and customer choice. What started out as an economic and marketing tactic has lead to a stifling of competition and only the wealthy companies can compete. Today, food producers are routinely charged thousands of dollars for shelf space and even more money if they then want their product advertised

or promoted. The markets use the same argument that is used by large Internet providers. If we do not charge the users of shelf space, we will have to charge customers more for the goods we sell. Or if we cannot produce this revenue, we will have to limit our size and we cannot provide the services needed. I would submit that we should let customers decide which goods they want and let competition keep costs down.

Enough about supermarkets. If we want a truly innovative Internet, we need to make sure it is nondiscriminatory. That is my definition of net neutrality. The large providers will tell us that in order to provide services they must have some leeway in deciding what to slow down or they reserve the right to tier services so that people will pay for more excessive use of bandwidth. The question is, who decides what is excessive use? Is it the 50th Youtube video of people tasering one another? Is it the 100th video of people using Mentos and Coca Cola to create an explosion? Or is it a fringe political group? Or how about a group of social activists? How about the views of a black minister who was sick of discrimination and wants to become active in his community? If firms could prohibit user access and the Internet was in effect at the time, would the Reverend Dr. King have had his website published and experience traffic, or would it be excessive use to go to the website of a small town activist preacher? Would Google become a leader today used by millions if it could not pass muster on start up worthy of placing in an affordable tiered service? The answer is we need access to all of these sites if the Internet is to be truly nondiscriminatory and ubiquitous. Let users decide what they should open and download. That said, there should be some small exceptions. Of course, Providers should be able to remove viruses and viral sites as well as be able to remove or restrict sites that demonstrate a clearly defined public safety danger.

The FCC principle on healthy competition is a good one. The Providers claim that competition will keep prices affordable and keeps most websites in service; this presupposes that there is already enough competition to achieve this. However, today, this is simply not true. In many places there is one provider. Some small providers try to compete by reselling services, but that leaves them subject to the whim and the bandwidth of the large providers. That does not solve the problem. We must keep the Internet open and free to prevent the few from deciding what the many can or cannot open or download.

Finally, Mr. Chairman, the issue is not content, it is capacity. And here the large providers have a point. The chairman of Cisco Systems has said that in one day Youtube sends data equivalent to 75 billion emails. This is a problem and we need to keep up with expansion if we are to continue to expand the content and knowledge found on the Internet. I would make two suggestions. First, by keeping the Internet open and nondiscriminatory, we will continue to witness the kind of innovation that has kept up with market demand for many. DSL was an innovation that allowed us to receive higher speed Internet over old twisted copper wires. Today people are looking at VPN or P4P in order to work within the existing system. Innovators are working to make packets smaller with new compression techniques. As long as they can participate in an open system, creative individuals and companies will find innovative ways to adapt and achieve more service within our existing system.

Second, and even more importantly, we need a national broadband plan. Business claim that they have to maintain the right to make bandwidth decisions is a perverse incentive that allows them to maximize profits by keeping the system restricted. There is no incentive for them to expand capacity as supply drops demand and price. Yet, this system is as important to us as deployment of universal voice or rural electrification was in its time. Government must step in with a plan and with money to build out our systems, and not just to keep up with demand, but also to increase our average US speed in order to compete in the global marketplace. We are falling behind other countries in our ability to conduct business at maximum speeds. Japan is ten times faster than our speeds and others, such as Korea, France, and Singapore to name a few are leapfrogging over our aging infrastructure. Today Japan has fiber to the home in 80 percent of their households. We need to act if we are to compete in this new market paradigm. We need a national plan to achieve universal coverage and to increase speed to 100MBpS. We need fiber to the premise, not just high density fiber areas, but to our all cities and within our communities. A.T. & T's stated policy is fiber to the neighborhood node, while Qwest has not even committed to that penetration! This may be good for their shareholders but it is disastrous for our long-term needs. We need more long term planning and planning that takes into account our national needs and not just short-term profit margins. There is nothing wrong with making a profit and certainly these companies have a responsibility to their bottom line. But we have a national need that we must address that transcends any one company's corporate strategy. States are stepping up. We have, as I said, devised an expansion plan in Massachusetts and other states, such as New York and California are in the planning stages and some such as Kentucky have already implemented plans that increase coverage in their states. However, we are the only industrialized nation in the world without a national broadband strategy. States are being asked to include regulations on net neutrality and other issues in these state initiatives. I fear this will lead to a patchwork of regulations, most unenforceable that will stifle competition and build out. The Brookings Institute has said that widespread increased coverage of high-speed broadband would immediately add over $500 million to our economy and over 1.2 million jobs per year. This is too important and too expensive to presume that large companies will do this by themselves. I read recently that the large North American providers invested $70 billion in infrastructure last year alone. But at the end of the day, they have invested where they think they can make the most profit and investment is uneven. Verizon alone has spent hundreds of millions in Massachusetts over the last few years, and yet one third of Western Massachusetts has little or no access to Broadband, and those that do are at much lower speeds than are necessary to be competitive in today's marketplace. Just as Massachusetts is poised to commit $25 million or more to broadband development, other states and the federal government need to work together to develop a national strategy. This is critical. We should be partners with companies to build a strong competitive market in order to keep up with demand, negate the argument for discrimination in use of bandwidth, lower costs to international levels, and provide the strong business network we need to compete with in today's global economy.

Thank you and I look forward to questions after the entire panel has spoken.