STATEMENT OF
CHAIRMAN TOM WHEELER

Re: *Protecting and Promoting the Open Internet*, GN Docket No. 14-28.

I strongly support an open, fast and robust Internet. This agency supports an Open Internet. There is ONE Internet. Not a fast internet, not a slow internet; ONE Internet.

The attention being paid to this topic is proof of why the open and free exchange of information must be protected. Thank you to the thousands who have emailed me personally. Thank you to those who felt so strongly about the issue that they camped outside. The Founding Fathers must be looking down and smiling at how the republic they created is practicing the ideals they established.

By releasing this Item today those who have been expressing themselves will now be able to see what we are actually proposing. They have been heard, we look forward to further input, and we say thank you.

Today we take another step in what has been a decade-long effort to preserve and protect the Open Internet. Unfortunately, those previous efforts were blocked twice by court challenges by those who sell Internet connections to consumers. Today this agency moves to surmount that opposition and to stand up for consumers and the Open Internet.

This *Notice of Proposed Rulemaking* starts an important process. Where it ends depends on what we learn during this process. That is why I am grateful for all the attention this topic has received.

We start with the simple, obvious premise: Protecting the Open Internet is important both to consumers and to economic growth. We are dedicated to protecting and preserving an Open Internet.

What we are dealing with today is a proposal, not a final rule. With this *Notice* we are specifically asking for input on different approaches to accomplish the same goal: an Open Internet.

The potential for there to be some kind of "fast lane" available to only a few has many people concerned. Personally, I don't like the idea that the Internet could become divided into "haves" and "have nots." I will work to see that does not happen. In this Item we specifically ask whether and how to prevent the kind of paid prioritization that could result in "fast lanes."

Two weeks ago I told the convention of America's cable broadband providers something that is worth repeating here, "If someone acts to divide the Internet between 'haves' and 'have nots,'" I told the cable industry, "we will use every power at our disposal to stop it." I will take a backseat to no one that privileging some network users in a manner that squeezes out smaller voices is unacceptable. Today, we have proposed how to stop that from happening, including consideration of the applicability of Title II.

There is only ONE Internet. It must be fast, robust and open. The speed and quality of the connection the consumer purchases must be unaffected by what content he or she is using.

And there has to be a level playing field of opportunity for new ideas. Small companies and startups must be able to effectively reach consumers with innovative products and services and they must be protected against harmful conduct by broadband providers. The prospect of a gatekeeper choosing winners and losers on the Internet is unacceptable.

Let's look at how the Internet works at the retail level. The consumer accesses the Internet using connectivity provided by an Internet Service Provider (ISP). That connectivity should be open and

inviolate; it is the simple purchase of a pathway. I believe it would be commercially unreasonable – and therefore not permitted– for the ISP not to deliver the contracted-for open pathway.

Let's consider specifically what that means. I want to get to rules that work like this:

- If the network operator slowed the speed below that which the consumer bought (for reasons other than reasonable network management), it would be a commercially unreasonable practice and therefore **prohibited,**
- If the network operator blocked access to lawful content, it would violate our no blocking rule and be commercially unreasonable and therefore doubly **prohibited,**
- When content provided by a firm such as Netflix reaches the consumer's network provider it would be commercially unreasonable to charge the content provider to use the bandwidth for which the consumer had already paid and therefore **prohibited,**
- When a consumer buys specified capacity from a network provider he or she is buying open capacity, not capacity the network can prioritize for its own profit purposes. Prioritization that deprives the consumer of what the consumer has paid for would be commercially unreasonable and therefore **prohibited.**

Simply put, when a consumer buys a specified bandwidth, it is commercially unreasonable – and thus a violation of this proposal – to deny them the full connectivity and the full benefits that connection enables.

Also included in this proposal are two new powers for those who use the Internet and for the Commission:

- **Expanded transparency will require networks to inform on themselves:** The proposal expands the existing transparency rules to require that networks disclose any practices that could change a consumer's or a content provider's relationship with the network. I thus anticipate that, if a network ever planned to take an action that would affect a content provider's access there would be time for the FCC to consider petitions to review such an action.
- **Voice for the Average American:** Recognizing that Internet entrepreneurs and consumers shouldn't have to hire a lawyer to call the Commission's attention to a grievance, an Ombudsperson would be created within the FCC to receive their complaints and, where warranted, investigate and represent their case.

Separate and apart from this connectivity is the question of interconnection ("peering") between the consumer's network provider and the various networks that deliver to that ISP. That is a different matter that is better addressed separately. Today's proposal is all about what happens on the broadband provider's network and how the consumer's connection to the Internet may not be interfered with or otherwise compromised.

The situation in which this Commission finds itself is inherited from the actions of previous Commissions over the last decade. The D.C. Circuit's ruling in January of this year upheld our determination that we need rules to protect Internet openness, and upheld our authority under Section 706 to adopt such rules, even while it found that portions of the *2010 Open Internet Order* were beyond the scope of our authority. In response, I promptly stated that we would reinstate rules that achieve the goals of the 2010 *Order* using the Section 706-based roadmap laid out by the court. That is what we are proposing today.

Section 706 is one of the two principal methods proposed to accomplish the goals of an Open Internet. Today we are seeking input on both Section 706 and Title II of the Communications Act. **We are specifically asking for input as to the benefits of each and why one might be preferable to**

another. We have established a lengthy comment and reply period sufficient to allow everyone an opportunity to participate.

As a former entrepreneur and venture capitalist, I know the importance of openness first hand. As an entrepreneur, I have had products and services shut out of closed cable networks. As a VC, I invested in companies that wouldn't have been able to innovate if the Internet weren't open. I have hands-on experience with the importance of network openness.

I will not allow the national asset of an Open Internet to be compromised. I understand this issue in my bones. I can show you the scars from when my companies were denied open access in the pre-Internet days.

The consideration we are beginning today is not about <u>whether</u> the Internet must be open, but about <u>how</u> and <u>when</u> we will have rules in place to assure an Open Internet. My preference has been to follow the roadmap laid out by the D.C. Circuit in the belief that it was the fastest and best way to get protections in place. I have also indicated repeatedly that I am open to using Title II.

This rulemaking begins the process by putting forth a proposal, asking important and specific questions, and opening the discussion to all Americans. We look forward to hearing feedback on all these approaches.