

**Written Statement of Commissioner Meredith Attwell Baker
Federal Communications Commission**

**Before the Committee on Energy and Commerce
Subcommittee on Communications, Technology, and the Internet.
United States House of Representatives**

**“Network Neutrality and Internet Regulation:
Warranted or More Economic Harm than Good”**

February 16, 2011

Good Morning Chairman Walden, Ranking Member Eshoo, and distinguished members of the Subcommittee. Thank you for the opportunity to appear before you.

Today, 95 percent of U.S. households have access to high-speed broadband services, and the vast majority of those households have a choice between competing broadband providers. Our regulatory approach has attracted over half a trillion dollars to build new network infrastructure since 2000. Billions more have been invested in devices and applications that ride on those networks. This is an area of our economy that is clearly working, and our surveys reveal that 93 percent of subscribers are happy with their broadband service. On this strong foundation lies the promise of future innovation, our nation’s global competitiveness, and high-paying jobs across the Internet sector.

The Commission’s most significant challenge is how to build on this success: How do we craft the regulatory environment that will incent broadband deployment to extend networks deeper into communities; to upgrade networks for next-generation services; and to foster broadband competition. Given our nation’s significant budgetary constraints, it is clear that the next generation of networks will be constructed primarily by private capital, just as today’s networks were built.

It is through this prism—how do we craft policies to promote greater private investment in our nation’s telecommunications infrastructure—that I view all of our decisions at the FCC, including Net Neutrality. With that perspective, I believe that Net Neutrality was both the wrong policy and the wrong priority. This action also exceeded our statutory authority—establishing a national policy is Congress’s role, not the FCC’s role.

Preserving the open Internet is non-negotiable: it is a bedrock principle shared by all in the Internet economy. There were no systemic problems around Net Neutrality for the Commission to solve in December. The Internet is open without the need for affirmative government regulation. Lacking an evidentiary record of documented industry-wide abuses, the Commission’s Net Neutrality decision was based on speculative harms—the word “could” alone appears over 60 times. By acting in anticipation of hypothetical harms, the Commission was unable to act in a targeted manner to address specific market failures or harm to consumers.

The result is overly broad rules, which I fear will force the government into too prominent a role in shaping tomorrow’s Internet. The genius of the Internet is that there is no central command, no unitary authority to dictate how innovation is to occur. The Commission has now inserted itself into the role of judging how the Internet and broadband networks will evolve. Government will be hard pressed to manage the next-generation of the Internet as well as competition and consumer demand have done for previous generations.

This risk is heightened because the Internet and our broadband networks are still very much in their infancy. These networks cannot sit still. The Internet will increase fourfold by 2014, and mobile broadband will more than double each and every year. To respond to the consumer demands for faster and more robust broadband services, operators will have to invest

billions more in their infrastructure. They will need to experiment and innovate with new approaches, new network management techniques, and new business models to serve consumers. Those decisions will now be regulated and managed by the Commission, subject to the uncertainty of government sanction and the delay of government decision-making. This regulatory uncertainty is already beginning to cast its shadow on new technology and service offerings.

The FCC's rules will surely impact network operators' incentive to innovate, invest, and deploy broadband, directly counter to our primary mission to foster nationwide broadband availability. The FCC's decision also suggests a preference for the Internet edge companies over networks. I disagree with that approach, because there was no need to pick winners and losers in the Internet economy. Indeed, the Commission should have sought to maintain an environment in which companies across the Internet economy continue to have the incentives to invest and innovate.

All regulations have costs, and the costs of Net Neutrality regulations going forward could be dramatic given the potential distortive effect of government micromanagement of broadband networks. This could be to the direct detriment of consumers and entrepreneurs who will be adversely affected if network upgrades and improvements are delayed or forgone.

The open-ended nature of the decision—both in how it was legally justified and in the number of issues left undefined or undecided—will only breed greater regulatory uncertainty, which necessarily raises the cost of capital for infrastructure investment. Congress has given the Commission clear statutorily mandated responsibilities, and Net Neutrality is not one of those. Lacking explicit authority, the Commission twisted the statute in order to establish a national

Internet policy. By effectively creating its own authority, the Commission chose to regulate an entire sector of the Internet, and could subsequently expand its rules further under this same unbounded claim of legal authority.

Similarly, by avoiding definitions of key terms, questioning but not banning practices, couching decisions as “at this time” repeatedly, and inviting both case-by-case complaints and declaratory rulings, the Net Neutrality decision—in too many ways—was a first step, not a last step. We already see special interest groups pushing to change and expand the rules even before they become effective. This uncertainty – a direct result of the Commission acting broadly without congressional directive –only reinforces that the proper government role over the Internet is a question best left to the stability and finality of legislation.

Net Neutrality was also the wrong priority for the Commission. The focus on Net Neutrality diverted resources away from bipartisan reform efforts that could have directly addressed the core challenge of promoting broadband deployment and investment. This lost opportunity is one of the gravest consequences of the Net Neutrality debate. Reforming universal service and intercarrier compensation regimes to focus on broadband and IP networks would remove uncertainty around today’s outdated system, promote fiscal discipline and accountability, affirm providers’ future revenue streams necessary to invest, and target federal support to those areas where private capital will not build broadband services.

The launch of 4G next-generation wireless services will unleash billions in investment in our mobile broadband infrastructure. 4G wireless offerings can be the third, fourth, fifth, and sixth broadband choice for consumers if our spectrum policy keeps pace with technology and

consumer demands. Accordingly, we need a paradigm shift in how we address spectrum policy to combat spectrum exhaustion and ensure the most efficient use of finite spectrum resources.

Lastly, broadband infrastructure reform to streamline the timelines and reduce the costs to build towers and lay fiber can mean the difference in whether broadband will reach that next subdivision, town, or farmhouse.

While we may disagree on particular details, I welcome the Chairman's renewed focus on these three areas directly linked to broadband deployment and only regret that we did not place a higher priority on these efforts sooner. Our ability to successfully take any of these steps is dependent upon our strong working relationship with Congress and this Subcommittee in particular. It is critical we work collaboratively with you to ensure that we prioritize and target our efforts appropriately and that we have sufficient statutory authority to move forward to promote nationwide broadband, a vital platform for our future.

Thank you.