



Federal Trade Commission

**Opening Remarks of Chairman Deborah Platt Majoras
FTC Workshop on Broadband Connectivity Competition Policy
Tuesday, February 13, 2007
Washington, D.C.**

Good morning. I am pleased to welcome those gathered here in Washington, D.C., and those watching on-line, to the Federal Trade Commission's workshop on broadband connectivity competition policy. I want to thank all of you – and especially our distinguished panelists – for participating in this workshop. We have a “dream team” lineup, and we must all make the most of this opportunity to hear from some of the most knowledgeable and passionate parties involved in the complex and important debate over so-called “network neutrality.”

In a short time, the Internet has fundamentally changed our lives – it has made the world bigger in the sense that it expands our reach in offering and acquiring knowledge, opinions, or goods and services, and smaller in the sense that it makes communicating and transacting around the globe a cinch. For our children, geographical and spatial limitations are diminishing, as they can play games with friends across town or communicate with a classroom halfway around the globe; their circles of friends and influences increasingly come less from geographic neighborhoods than from on-line social networking neighborhoods. And when they are on the move, they can take it all with them on mobile devices. Whereas we have grafted the Internet onto our lives, the younger generation knows no life without it; they are growing up in it, and

they will shape it into something we today likely cannot fathom. Our job, in the meantime, is to not screw it up.

Beyond providing a means to communicate and get news and entertainment, the Internet has fostered – or, in some cases, created – competition in countless markets. The FTC’s job is to protect that on-line competition, and we use many tools in that effort. For over a decade now, the FTC has investigated and brought enforcement actions – under both the antitrust and consumer protection laws – in matters involving Internet access. From combating spam, malicious spyware, and deceptive on-line claims to investigating mergers involving broadband and other Internet access services, the FTC has devoted and will continue to devote significant enforcement resources to this crucial part of our economy. And while the Internet environment presents new challenges, the fact is that tried and true principles of competition, truthful and complete disclosures, and securing sensitive consumer information still apply. Thus, often we have found that the FTC’s existing legal authority is sufficiently flexible to allow the agency to address competition and consumer protection concerns that new technologies raise.¹

In addition to law enforcement, the agency actively engages in competition advocacy in an effort to inform policymakers of the competitive and consumer implications of proposed legislation or policies. This is an extremely important complement to our work in private enforcement, because from the market’s perspective, government-imposed restrictions on

¹ See, e.g., Remarks of Chairman Deborah Platt Majoras, “Public Hearings on Protecting Consumers in the Next Tech-ade,” Washington, D.C. (Nov. 6, 2006), *available at* <http://www.ftc.gov/speeches/majoras/061106dpmtech-aderemarksltrhd.pdf>; Remarks of Chairman Deborah Platt Majoras, “The Progress & Freedom Foundation’s Aspen Summit,” Aspen, Colorado (Aug. 21, 2006), *available at* <http://www.ftc.gov/speeches/majoras/060821pffaspenfinal.pdf><http://www.ftc.gov/speeches/majoras/060821pffaspenfinal.pdf>.

competition or barriers to entry may be more harmful than private exclusion. Increasingly, our advocacy efforts target proposed restrictions on electronic commerce. Just within the past year, for example, we have responded to invitations to analyze proposed legislation involving on-line auctions,² wine sales,³ and legal matching services,⁴ as well as a “do not email” registry.⁵ A recurring theme in many of our advocacies – in the area of e-commerce and elsewhere – is that policymakers should be wary of regulations that are clothed in terms of protecting consumers but that in practice would hamper competition, while benefitting only certain vested interests. This is particularly a concern where there is no clear evidence of market failure or consumer harm.

Another potent tool in the FTC’s arsenal is innovative and timely consumer education. Foremost among our education efforts is OnGuardOnline.gov, a multimedia website designed to educate consumers about computer security issues, such as phishing, spyware, online shopping,

² See Letter from FTC Staff to La. State Senator Noble Ellington (May 26, 2006), *available at* <http://www.ftc.gov/os/2006/06/VO60015CommentstoLouisianaStateSenateImage.pdf> (involving legislation to clarify online auction rules to allow use of trading assistants).

³ See Letter from FTC Staff to Fla. State Senator Paula Dockery (Apr. 10, 2006), *available at* <http://www.ftc.gov/os/2006/04/V060013FTCStaffCommentReFloridaSenateBill282.pdf> (involving wine direct shipping legislation); Letter from FTC Staff to Ohio State Senator Eric Fingerhut (Mar. 22, 2006), *available at* <http://www.ftc.gov/os/2006/03/V060010CommentReOhioSB179DirectShipmentofWine.pdf> (same).

⁴ See Letter from FTC Staff to Prof’l Ethics Comm. for the State Bar of Tex. (May 26, 2006), *available at* <http://www.ftc.gov/os/2006/05/V060017CommentsonaRequestforAnEthicsOpinionImage.pdf> (involving ethics opinion regarding use of on-line legal matching services).

⁵ See Letter from FTC Staff to Cal. State Senator Fukunaga (Mar. 31, 2006), *available at* <http://www.ftc.gov/os/2006/04/V060012FTCStaffCommentReHawaiiSenateBill2200Image.pdf> (involving legislation to create child protection registry).

and wireless security. Education empowers consumers to protect themselves on-line. It also promotes competition, in that educated consumers can cause changes in business behavior and move markets on the Internet. Our latest effort in the area of consumer education is a home page that went live on our Web site this morning titled “Competition in the Technology Marketplace.” There, consumers can learn about the FTC’s actions to promote and protect competition in technology markets.

Finally, we consistently inform our enforcement, advocacy, and consumer education efforts through robust research and information gathering. This can take the form of studies, like our Municipal Wi-Fi Report⁶ that our staff issued last October. The report provides an analytical framework for policymakers considering whether and how municipalities should provide wireless Internet service. We also increase our knowledge by holding public hearings and workshops, such as this one.

Last August, I announced the formation of the Internet Access Task Force. My rationale was simple: I wanted to gather more facts and less rhetoric. After being asked increasingly about our views on network neutrality from the competitive and consumer perspective, I began doing more reading and talking with others about the issue, and I was actually surprised by the lack of constructive public debate on the issue. What I found were too many soundbites and too much talking past one another and not enough acknowledgment that this is a tough issue that poses risks in all directions. When I announced the formation of the Task Force, I suggested a set of questions that we ought to explore before jumping in to regulate the Internet.

⁶ Federal Trade Commission Staff, MUNICIPAL PROVISION OF WIRELESS INTERNET (Oct. 2006), *available at* <http://www.ftc.gov/os/2006/10/V060021municipalprovwirelessinternet.pdf>.

Following my open invitation to interested parties to come in and talk to us about the issue of network neutrality, the Task Force has met with representatives from dozens of interested parties, including: content and applications providers; Internet backbone operators; broadband service providers; equipment manufacturers; computer scientists; advocacy groups (on every conceivable side of the issue); consumer rights organizations; and academics. Through these discussions, we explored market conditions and incentives, and opinions about likely short- and long-term effects of network neutrality regulation. Because the discussions were so valuable, we decided that airing them in a more public forum would contribute to furthering a public understanding and analysis in this area.

We will have two panels this morning to help set the stage for our discussions over the next two days. Because we are not all electrical engineers, our first panel this morning will provide technical background on the workings of the Internet to help inform our discussions and to make sure we are all speaking the same language. Our second panel this morning will attempt to define the parameters of the debate over network neutrality. We will review the regulatory changes – at the FCC and in the courts – that have sparked this debate, and air the core concerns of proponents and opponents of net neutrality regulation. In the process, we will attempt to identify the actual and potential harm to consumers and competition that is at stake here.

In the afternoon sessions later today, we will have panels devoted to the two main areas of the net neutrality debate: data discrimination and prioritization. In the first of these panels, we will have five economists addressing the incentives of Internet service providers to discriminate against or block content or applications provided by unaffiliated parties, as well as the risks and benefits of vertical integration by ISPs into content and applications. In the second of these panels, we will address the many issues associated with ISPs and other network operators

charging content and applications providers for prioritized delivery of their data. Among the many interesting issues involving data prioritization is the likely effect of network neutrality regulation on innovation and investment – both in the network “core” or infrastructure and at the “edges” of the network, that is, the content and applications.

Tomorrow morning, our first panel will address the current and future state of broadband competition in the United States. Our Task Force has heard many divergent views on that subject, with some characterizing the broadband market as a duopoly (at best) and others touting the existing or imminent alternatives to DSL and cable modem, such as wireless, broadband over power lines, and others. The competition panel will offer views on the competitive significance of these alternatives and debate whether robust competition in the market for broadband Internet access is the best way to address the potential harms envisioned by proponents of network neutrality regulation.

Our second panel tomorrow morning will explore consumer protection issues in this area, including the disclosure of material terms in Internet access agreements. As ISPs are providing more differentiated services, consumers will have to pay closer attention to the terms of their service agreements. ISPs, in turn, may need to provide more information to consumers to allow them to make truly informed decisions regarding their Internet access, particularly if the ISP is affecting (either positively or negatively) consumers’ access to certain content or applications.

Our final two panels tomorrow will address what framework best promotes competition and consumer welfare in the area of broadband Internet access, with industry views explored in one and academic and policy views explored in the other. Among the topics to be addressed are whether enforcement of existing antitrust, consumer protection, and communications laws is sufficient to address the concerns raised by network neutrality proponents, and, if regulation is

the answer, what form it might take.

The purpose of this workshop is to further the discourse on these important issues arising in the area of broadband Internet access. In addition, I expect that the Internet Access Task Force will issue a report that conveys our learning from the workshop and provides some guidance on the way forward. Again, I thank each of our moderators and the panelists for devoting their time and efforts to this workshop. We had more volunteers than we could possibly accommodate, but we will still accept written comments until the end of the month. I am delighted by the high level of interest here, and I hope that each of you will benefit from listening to the differing views offered over the next two days.

It is now my pleasure to turn things over to Charles Goldfarb of the Congressional Research Service, who has graciously agreed to moderate the first panel.