

Stanford Testimony – Ben Scott, Free Press

Good afternoon Mr. Chairman and commissioners. Thank you for the opportunity to testify. I am the policy director for Free Press. We have a large membership in the Bay Area that I am proud to represent here today.

I'm the last panelist at the end of a long day. So I want to use my remarks to sum things up.

This hearing is a pivotal moment in the short history of Internet policymaking.

The arguments we've heard today fall roughly in line with two competing visions for the future of the Internet -- open versus closed. Will we embrace the openness that has shaped the Internet to the present day? Or will we permit network owners to move to the closed systems of content control we have had with cable television and broadcasting? Obviously, there are arguments on both sides.

It is not hyperbole to say that few choices in the history of the FCC carry as much weight as this one does...So no pressure.

Let's be clear: Openness does not mean an end to all network management. It does not mean every bit should be treated exactly alike on the Internet. Openness does not reject protecting children or copyright or security on the Internet.

Openness simply means that Internet policy should promote free speech and commerce in the online marketplace. Openness means faithfully guarding against interference from the cable and telephone companies who have the power to become gatekeepers between consumers and producers of Internet content.

The Comcast case is a bellwether. It's a test of the 2005 Internet Policy Statement on openness. That is why it has been the focus of so much money, influence and attention. It is *not* ordinary.

The Commission adopted its Policy Statement to stand in place of long-established and successful nondiscrimination provisions in the Communications Act. Many of us feared then that handing over the legacy of an open communications systems to such a weak guardian was a dangerous business. Today we are testing the mettle of that guardian.

The recent history of deregulation has led us to a bright red line of basic consumer protection. We should not stray beyond it. We see the clash between open and closed most famously in the Net Neutrality debate – but it is also in merger proceedings, spectrum auctions, wireless policy, white spaces, text messaging -- and now, network management. Several key decisions have leaned toward openness, rather than against it.

So what plot line in this story brings you to Stanford? Was it Silicon Valley finally organizing its corporate might to challenge the telephone and cable companies in a battle of the titans?

Nope. It was a barber shop quartet. As you've heard from Robb Topolski, he began the testing that ultimately exposed Comcast's interference with peer-to-peer software because he couldn't share with his friends his favorite recordings of barber shop tunes. Comcast first denied blocking, then acknowledged it, then directly challenged the legitimacy of the Policy Statement, and finally reversed itself and promised to stop in the future.

Honestly, I couldn't make this stuff up. Robb has proven why this debate isn't about Google, AT&T or Comcast. It's about every consumer wanting to seek or share information on the Internet.

But few of us are even capable of doing what Robb did. Fewer still will witness their personal conflict with the cable company become first tier business for a federal agency. Yet the pressure of public scrutiny and regulatory oversight was highly effective—triggering some industry collaboration. But that doesn't mean the FCC can pack up and go home.

The response to this case has been extraordinary precisely because it is a bellwether, a one-off chance to pass or fail a signal test. The side deals do not show us the magic of the market at work. They show us the magical threat of regulatory intervention.

If the agency doesn't act decisively, it will not have sent the correct signals to the market. Violations are almost certain to recur when the dust settles.

From a consumer perspective, openness on the Internet, is a user experience. That's what is at risk here. In turn, that user experience depends on preserving the seedbed for emerging technologies, new ideas and the latest invention. This test case will partly determine whether entrepreneurs choose to introduce their ideas in

our markets or others. It will determine whether consumers get access to the new services, devices and content that this open environment breeds.

Finally, I would be remiss if I did not extend the olive branch to the cable industry. In my view, cable has a legitimate issue with network congestion—mostly because they have not yet upgraded their networks for the future of broadband. It will only get worse if we do not acknowledge and address that.

There are many legitimate ways for network providers to handle capacity problems together with consumers and innovators. Application blocking simply isn't one of them. Meanwhile, consumers pay for all-you-can-eat broadband that is too limited and a fixed menu of cable TV that is too broad. As consumer demand for bandwidth increases, the cable industry will shift capacity to high speed Internet services. The Commission should encourage that outcome.

At the end of the day, consumers are relying on the Commission to set a baseline standard to protect openness on the Internet. A duopoly market of access providers will not discipline itself. Nor can we expect that fans of barber shop quartets will always be the white knights that ride to the rescue. This is a clear moment for the agency to act. The future of the Internet for everyone depends on it.

I thank you for your time and look forward to your questions.