

2009 Media & Tech Priorities

A PUBLIC INTEREST AGENDA



During the presidential campaign, Barack Obama published a detailed agenda containing goals and proposed policies for media and telecommunications.¹ The Obama plan is a strong statement of the next president's commitment to technology and innovation — a theme reflected in his campaign's now-legendary online organizing and fundraising strategies. But beneath the surface, Obama's agenda represents a fundamental shift toward communications policy in the public interest.

The core of the Obama agenda aligns squarely with Free Press' central mission of creating a more democratic media system and promoting universal access to communications technologies. President-elect Obama has promised to preserve the Internet's openness, to promote access to high-speed Internet networks, to foster increased diversity of media ownership, and to reinvigorate and transform public media.

We greatly look forward to working together on our shared agenda — and holding accountable those who will be charged with delivering on its promises. We urge the incoming administration to act quickly to advance our common goals. To do so, President-elect Obama and the next Congress should implement the following concrete policies and strategies.

PROTECT AN OPEN INTERNET

Background

Network Neutrality is the fundamental principle that prevents Internet service providers from discriminating against Web content based on its source, ownership or destination. Net Neutrality has made the Internet an unrivaled environment for free speech, democratic participation and economic innovation.



OBAMA'S PLATFORM

"Barack Obama strongly supports the principle of network neutrality to preserve the benefits of open competition on the Internet. Users must be free to access content, to use applications, and to attach personal devices. They have a right to receive accurate and honest information about service plans. But these guarantees are not enough to prevent network providers from discriminating in ways that limit the freedom of expression on the Internet.

Because most Americans only have a choice of only one or two broadband carriers, carriers are tempted to impose a toll charge on content and services, discriminating against websites that are unwilling to pay for equal treatment. This could create a two tier Internet in which websites with the best relationships with network providers can get the fastest access to consumers, while all competing websites remain in a slower lane. Such a result would threaten innovation, the open tradition and architecture of the Internet, and competition among content and backbone providers. It would also threaten the equality of speech through which the Internet has begun to transform American political and cultural discourse.

Barack Obama supports the basic principle that network providers should not be allowed to charge fees to privilege the content or applications of some web sites and Internet applications over others. This principle will ensure that the new competitors, especially small or non-profit speakers, have the same opportunity as incumbents to innovate on the Internet and to reach large audiences. Obama will protect the Internet's traditional openness to innovation and creativity and ensure that it remains a platform for free speech and innovation that will benefit consumers and our democracy."

Obama's support for Net Neutrality has been on display throughout his campaign. In announcing his technology agenda last year, then-Senator Obama declared he would "take a backseat to no one in my commitment to net neutrality. Because once providers start to privilege some applications or Web sites over others, then the smaller voices get squeezed out, and we all lose."² In October 2007, Senator Obama stated he would appoint only FCC commissioners who support Net Neutrality.³ His spirit began to catch on. Every incoming freshman Democratic senator pledged, during their 2008 campaigns, to support Net Neutrality.⁴

The history of Net Neutrality is precisely the kind of business-as-usual in Washington that President-elect Obama has promised to change. Over the past decade, industry has relentlessly pressured the government to "deregulate" and remove all legal oversight and consumer protections.

Although the principles of open networks have successfully governed our communications systems for a century, they were severely weakened by the Federal Communications Commission in 2005. Emboldened, executives at major telecommunications companies began to promise Wall Street a new kind of Internet that dispensed with open networks in favor of a pay-for-play system in which they would decide which Web sites and services would enjoy the fastest speeds. In 2006, these phone and cable companies urged Congress to pass a bill that would have deleted meaningful Net Neutrality from the books altogether.

But to the great surprise of many in Washington, millions of consumers from throughout the country and across the political spectrum rallied behind tech-savvy legislators to protect the open Internet and managed to help defeat the bill. Since then, the debate has been in limbo — even as the biggest companies were caught interfering with Internet traffic and text messages. Incremental policy changes have favored openness, but the issue hasn't been settled once and for all by unequivocally establishing Net Neutrality in the law.

In the Senate, Obama was among those who recognized the critical importance of the issue — co-sponsoring the bipartisan legislation of Sens. Byron Dorgan (D-N.D.) and Olympia Snowe (R-Maine) backing Net Neutrality.⁵ These leaders well understood that after a decade of deregulating telephone and cable operators, it was time to draw a line in the sand for consumers to guarantee a free marketplace for speech and commerce online. Failure to do so courted disaster for the technology that has energized our economy for years.

Although they were unable to pass legislation, the need for it was proven when Comcast was caught secretly interfering with lawful Internet traffic. In late 2008, the FCC acted on a complaint brought by Free Press alleging that Comcast was secretly blocking peer-to-peer technologies like the open-source BitTorrent protocol used to watch high-definition online television. A bipartisan FCC majority declared that Comcast violated federal policy by impeding consumers' access to an online technology.⁶ But the FCC did not specifically outlaw pay-for-priority arrangements, and wireless providers claim the decision does not affect them. Moreover, Comcast has appealed the decision in federal court.⁷

Leadership on this issue will settle the question of the future of the open Internet, ending several years of rancorous fighting that pit consumer advocates and tech companies against network owners. The Obama administration should move swiftly to put Net Neutrality into the law as a cornerstone of 21st-century telecommunications policy.

Obama Administration in 2009

It is essential for the Obama administration to guide the establishment of Net Neutrality in the law during 2009. It is time for new leadership to shut the book on this debate and make policies that favor the public interest – vindicating the efforts of public interest advocates and forward-looking legislators and regulators. To accomplish this goal, President-elect Obama should urge Congress immediately to enact the Dorgan-Snowe bill, or similar legislation, forbidding discrimination on the Internet based on the source, destination or ownership of online content. The bill should also ensure that phone and cable companies cannot create a pay-to-play system of Internet tolls on any network, wired or wireless.

Obama's FCC should act quickly to adopt rules preserving Net Neutrality that mirror the legislative effort. These rules should pertain to all wired and wireless networks and should enshrine the FCC's established four openness principles alongside a necessary fifth principle that prohibits discrimination and pay-for-priority tolls. The FCC should establish an expedited complaint process for violations of the rules and stiff penalties for violators. Finally, the FCC should move to require extensive disclosure of Internet providers' network management techniques as well as specific information about the quality of the Internet service being purchased by consumers.

PROMOTE UNIVERSAL, AFFORDABLE BROADBAND

Background

After years of deregulation in telecommunications infrastructure, our nation faces three major challenges in broadband policy: limited availability, slow speeds and sluggish adoption, in both rural and urban areas. While we have seen substantial increases in broadband subscribers in recent years, we are not keeping pace with the rest of the developed world. During the Bush years, the United States has fallen from fifth in the world in broadband adoption to 22nd, according to the International Telecommunications Union.⁸ Every study shows the same trend lines. The United States trails other nations not only in broadband penetration, but also in speed, cost, availability, competition and openness in high-speed Internet services.



OBAMA'S PLATFORM

"Barack Obama believes that America should lead the world in broadband penetration and Internet access. As a country, we have ensured that every American has access to telephone service and electricity, regardless of economic status, and Obama will do likewise for broadband Internet access.

Full broadband penetration can enrich democratic discourse, enhance competition, provide economic growth, and bring significant consumer benefits. Moreover, improving our infrastructure will foster competitive markets for Internet access and services that ride on that infrastructure.

Obama believes we can get true broadband to every community in America through a combination of reform of the Universal Service Fund, better use of the nation's wireless spectrum, promotion of next-generation facilities, technologies and applications, and new tax and loan incentives."

Most Americans can purchase a true broadband connection from no more than two providers — the local phone or cable monopoly. The absence of strong competition has not yielded sufficient speed increases or price decreases. And those who do subscribe receive substantially less for their money than those in other nations. Moreover, millions of Americans still do not own computers or have access to technology training. Consequently, more than 40 percent of households nationwide are not online.⁹

By any relative measure, the United States is slipping behind the rest of the world in broadband, but the Bush administration has ignored the problem. The National Telecommunications and Information Administration (NTIA) and the FCC issue rose-colored reports declaring that all is well. Intermittent efforts to promote new broadband networks have fallen flat — and no comprehensive policy promoting competition has emerged or even been contemplated.

By contrast, Obama highlighted the need for universal broadband access in his innovation agenda, his speeches, and in presidential debates. Obama's focus on the American infrastructure as a starting point for economic recovery has included broadband deployment to rural communities and erasing the digital divide. His innovation policy agenda announces a commitment to policies that will help achieve these goals through legislative and regulatory action.

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Obama Administration in 2009

The upcoming months and years present many opportunities to promote broadband deployment through policy at the FCC, NTIA and Federal Trade Commission. To begin, the FCC should redefine “broadband” starting with a standard of at least 5 megabits in both directions and evolving as new technologies emerge. The FCC must also collect meaningful, fine-grained data on nationwide broadband service deployment and availability to guide policymaking. In addition, the agency should seek data and analysis about the nature, quantity and patterns of traffic flow on the Internet.

In the past few months, the FCC has wrestled unsuccessfully with the issue of Universal Service reform. This \$7 billion a year subsidy program for telecommunications networks is fraught with waste and fraud and in desperate need of repair. Within the first year, Obama’s FCC should begin the transition of the Universal Service Fund into a program geared toward broadband infrastructure investment in unserved and underserved areas. The new FCC should also adopt broadband Lifeline/Linkup programs for broadband services to ensure that rural and low-income citizens are not left on the wrong side of the digital divide. Meanwhile, the agency will have to address the archaic system of intercarrier payments. Cost-based, transparent subsidies and rigorous oversight must be the new organizing principles of USF policy.

The agency should continue to look at innovative uses of spectrum (such as shared use of the “white spaces”), transitioning away from inefficient old limits. In the first year of the administration, the FCC and NTIA should reassess spectrum policy to support emerging technologies. Perhaps most importantly, the NTIA should inventory government spectrum use to assess and reallocate inefficiently used frequencies.

The FCC must open inquiries to promote broadband competition. New ideas about shared infrastructure, access to network interconnection points, and investigation into monopoly chokepoints should be pursued unabashedly. The Obama administration should also address the demand side of the broadband equation. Congress and federal agencies should develop educational programs and subsidies to provide training and computers to allow all citizens to receive the full benefits of broadband.

Finally, the first year of this administration should seek to lay the groundwork for major reform of telecommunications law. Existing statutes were designed for a bygone era — when different services and technologies had different regulatory frameworks. Now we are in the era of convergence, where virtually all media and communications move on the same digital networks. The law must catch up with technology and the market. This means a streamlined legal framework to govern our broadband infrastructure, promote competition, and maximize consumer welfare.

INCREASE DIVERSITY IN MEDIA OWNERSHIP

Background

For decades, the policies governing the broadcast industry have recognized the importance of limiting the consolidation of media ownership in local and national markets. Basic principles of fairness and competition guided rules to limit control over news production in a local community, to diversify ownership and content, and to control domination of national media markets by a handful of corporate titans.

Yet twice in the past eight years, the Bush administration's FCC attempted to do away with the limits on concentration of media ownership, following on mistakes of the 1990s that relaxed or removed public interest protections. In each case, the FCC encountered strong resistance from millions of Americans from across the political spectrum. And in each case, the FCC's changes were rejected by one or both houses of Congress as well as the federal courts.



OBAMA'S PLATFORM

"Barack Obama believes that the nation's rules ensuring diversity of media ownership are critical to the public interest. Unfortunately, over the past several years, the Federal Communications Commission has promoted the concept of consolidation over diversity. Barack Obama believes that providing opportunities for minority-owned businesses to own radio and television stations is fundamental to creating the diverse media environment that federal law requires and the country deserves and demands. As president, he will encourage diversity in the ownership of broadcast media, promote the development of new media outlets for expression of diverse viewpoints, and clarify the public interest obligations of broadcasters who occupy the nation's spectrum.

An Obama presidency will promote greater coverage of local issues and better responsiveness by broadcasters to the communities they serve."

The results of media consolidation are deeply troubling. In spite of mergers, business is not booming. Profits are down and downsizing is up. Fewer jobs mean fewer journalists — and the quality and diversity of news has declined. Cookie-cutter programming has replaced locally produced content. Yet rather than change business models, the industry pursues more mergers, sacrificing long-term community needs to reap short-term revenue gains. The virtues of localism and community service — while still a part of the job for many locally owned broadcasters — have been tossed aside by the corporate giants.

Worse yet, women and people of color aren't represented on the public airwaves. Communities of color make up more than a third of the population, yet own just over 3 percent of television stations. Women own just 5 percent.¹⁰ The numbers in radio are not much better. This level of inequality is in large part a result of the pressures of consolidation and the policies that facilitated them over the years.

President-elect Obama has consistently emphasized the importance of promoting diversity of ownership in media. In October 2007, Obama called the FCC's proposed changes to media ownership rules "irresponsible," and the commission's contemplated repeal of newspaper and television cross-ownership

rules “disturbing.”¹¹ Obama co-sponsored the Media Ownership Act of 2007, which aimed to promote openness and accountability in media ownership rules and to increase the number of women and minority media owners.¹² He also supported the bipartisan “resolution of disapproval” — which the Senate passed overwhelmingly — that sought to overturn the FCC’s latest rule changes.¹³

In line with this continued leadership, President-elect Obama’s technology innovation agenda naturally seeks to promote greater coverage of local issues and greater diversity in media ownership, and to “clarify” the public interest obligations that accompany broadcasters’ permission to use the public airwaves.

Obama Administration in 2009

The road to reform in media ownership begins at the FCC with a reversal of the Bush administration’s loosened limits on TV, radio and newspaper ownership. The path to better media and healthy markets is not further consolidation. The Obama administration’s FCC should investigate local market concentration in television and radio broadcasting to determine where rules should be modified to promote diversity of media ownership and responsiveness to local needs. The next FCC should carry out President-elect Obama’s pledge to promote minority ownership of media outlets as a prominent media policy priority; this effort should include an improved version of the “minority tax certificate” program discontinued by the Republican Congress in the mid-1990s.

Policies to promote media diversity should not be limited to the broadcasting industry. Obama’s FCC and the next Congress should examine existing cable television regulations, evaluating the impact of cable’s increasing vertical integration and market power on the diversity of ownership and the variety of content. The new administration should level the playing field for competition among all cable operators and content providers by applying nondiscriminatory principles and by promoting reasonable rates, terms and conditions.

As a result of rampant anti-competitive practices, cable rates are skyrocketing. Meanwhile, independent programmers, minority owners, and new kinds of content cannot get carried on cable systems. If the FCC cannot address the problem, the Department of Justice should explore ways to crack the foundation of the cartel of cable operators and Hollywood studios.

RENEW PUBLIC MEDIA

Background

Noncommercial, publicly funded and not-for-profit sources of media provide extensive coverage of public affairs, children's programming, educational fare and entertainment. In opinion surveys of the best use of tax dollars, public media rank below only national defense. They are also the most trusted news sources.¹⁴ Despite this, our public media are chronically underfunded.

Public media are forced to seek private corporate financing and yearly appropriations from Congress — both of which come with political pressures. Perennially short on resources, public and community broadcasters do not adequately reach

audiences starved for quality news and entertainment. Nor have public broadcasters been able to fully realize the potential of digital conversion and multimedia delivery over the Internet.

Meanwhile, other forms of community and noncommercial media have been strangled. Cable television providers have underfunded public, educational, and government (PEG) television channels and hidden them from viewers. Low Power FM (LPFM) radio licenses have been limited to all but the most rural markets at the

behest of the commercial broadcasting lobby. And new forms of independent media and journalism have struggled to get their footing.

The Obama campaign made public media a substantial component of its policy agenda. The campaign called for the creation of "Public Media 2.0," including an interactive, modernized version of educational and entertaining children's programming. With expanded support and visionary leadership, public media will realize their original mandate to serve all parts of our multicultural society.

Obama Administration in 2009

President-elect Obama should encourage the next Congress to significantly increase funding for public media at all levels — from the national networks of NPR and PBS to community outlets that provide much-needed local perspectives on issues. At the same time, the administration must make public media governance and funding less vulnerable to undue political influence and implement long-term funding solutions.

The next Congress should hold hearings to search for ways to use public media to solve the growing national problem of insufficient critical journalism. The Obama administration should strive to reinvigorate and modernize public media by using new funding to supplement traditional broadcasting with interactive,



OBAMA'S PLATFORM

"An Obama administration will encourage the creation of Public Media 2.0, the next generation of public media that will create the Sesame Street of the Digital Age and other video and interactive programming that educates and informs. Obama will support the transition of existing public broadcasting entities and help renew their founding vision in the digital world."

online components, making “Public Media 2.0” a distinct and valuable component of the modern media landscape. New appointees at the Corporation for Public Broadcasting should demonstrate visionary leadership about where public media should go in the 21st century.

Finally, Congress should be encouraged to protect and expand existing community media outlets. The law should be strengthened to guarantee PEG access channels the funding and channel capacity they need to operate successfully. And Congress should pass the bipartisan Local Community Radio Act, which would allow new, noncommercial Low Power FM radio stations in cities, towns and suburbs across the country, enabling new local voices to be heard on the public airwaves.

Endnotes

- ¹ Obama for America, "Barack Obama: Connecting and Empowering All Americans Through Technology and Innovation," November 2007, available at http://www.barackobama.com/pdf/issues/technology/Fact_Sheet_Innovation_and_Technology.pdf (accessed Dec. 1, 2008).
- ² Obama for America, "Obama Unveils Innovation Agenda at Google," Nov. 14, 2007, available at http://www.barackobama.com/2007/11/14/obama_unveils_innovation_agend.php (accessed Dec. 1, 2008).
- ³ MTV/MySpace Forum, "Maintaining Net Neutrality," Oct. 29, 2007, beginning at 2 min. and 50 sec., video available at <http://www.mtv.com/videos/news/185103/16-of-21-maintaining-net-neutrality.jhtml> (accessed Dec. 1, 2008).
- ⁴ Matt Stoller, "Every Major Senate Democratic Challenger Announces Support for Network Neutrality," OpenLeft, July 24, 2008, available at <http://www.openleft.com/showDiary.do?diaryId=7125> (accessed Dec. 1, 2008).
- ⁵ Internet Freedom Preservation Act, S. 215, 110th Congress (introduced January 9, 2007), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s215is.txt.pdf (accessed Dec. 1, 2008).
- ⁶ Federal Communications Commission, *Formal Complaint of Free Press & Pub. Knowledge Against Comcast Corp. for Secretly Degrading Peer-to-Peer Applications; Broadband Industry Practices; Petition of Free Press et al. for Declaratory Ruling That Degrading an Internet Application Violates the FCC's Internet Policy Statement & Does Not Meet an Exception for "Reasonable Network Management,"* WC Docket No. 07-52, Memorandum Opinion and Order, FCC 08-183, available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-08-183A1.pdf.
- ⁷ Saul Hansell, "Comcast Appeals F.C.C. Sanction," *New York Times Bits Blog*, Sept. 4, 2008, available at <http://bits.blogs.nytimes.com/2008/09/04/comcast-appeals-fcc-sanction/> (accessed Dec. 1, 2008).
- ⁸ Data gathered from International Telecommunications Union, *ICT Statistics Database*, available at <http://www.itu.int/ITU-D/icteye/Indicators/Indicators.aspx#> (accessed Dec. 1, 2008).
- ⁹ U.S. Census Bureau, *2007 Current Population Survey*.
- ¹⁰ S. Derek Turner & Mark Cooper, *Out of the Picture 2007: Minority & Female TV Station Ownership in the United States*, October 2007, available at <http://www.freepress.net/files/otp2007.pdf>.
- ¹¹ Sen. Barack Obama, *Obama: FCC Policies Must Encourage Media Ownership Diversity*, Oct. 22, 2007, available at http://obama.senate.gov/press/071022-obama_fcc_polic/ (accessed Dec. 1, 2008).
- ¹² Media Ownership Act of 2007, S. 2332, 110th Congress (introduced Nov. 8, 2007), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s2332is.txt.pdf (accessed Dec. 1, 2008).
- ¹³ Resolution of Disapproval, S.J. Res. 28, 110th Congress (introduced March 5, 2008), available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:sj28is.txt.pdf (accessed Dec. 1, 2008).
- ¹⁴ PBS News, "PBS #1 In Public Trust For the Fifth Consecutive Year According to a National Roper Survey," June 10, 2008, available at http://www.pbs.org/aboutpbs/news/20080610_ropersurvey.html (accessed Dec. 1, 2008).