

**Concurring Statement of Commissioner Jon Leibowitz Regarding the
Staff Report: “Municipal Provision of Wireless Internet”**

Let me begin by commending the staff for this Report. It begins the process of identifying guiding principles for our growing

solve this problem.⁵ The municipal broadband movement is a grassroots effort by this country's local officials – many of whom recognize that broadband Internet access is increasingly essential to economic growth – to respond to real needs on the part of their constituents to make broadband more available and affordable.⁶ As the Report notes, municipalities are adopting a variety of models to improve residents' access to broadband, many of which do not involve the municipality providing the services themselves, but instead involve pairing with private sector partners like Google or EarthLink to implement the technology.⁷

When I asked for this Report last year, telephone and cable companies were furiously lobbying state legislatures around the country to prohibit municipalities from offering broadband.⁸ Underlying their position was the view that regulation – in this case, in the form of state prohibitions or restrictions on municipal broadband – is necessary to *protect* the market. It was a somewhat surprising argument coming from the incumbents who, while appropriately seeking deregulation for themselves elsewhere, were asking states to raise insurmountable barriers against those who wanted to compete with them for broadband customers.

Put differently, imagine if Barnes & Noble and Borders, claiming it was “killing” their book sales, asked state lawmakers to ban cities from building new libraries. The legislators would laugh them out of the State House. Yet the same thing was happening with respect to wireless high speed Internet services; and elected state officials were taking the argument all too seriously.

Now the debate is different. Activity in state legislatures has died down – perhaps because the most enlightened cable and te

provide wireless broadband to their residents. The Report does a good job of describing the various proposals and what their effect would be on local attempts to improve access to broadband.¹¹

Hopefully, next year federal action will resolve this issue permanently – that is, Congress will pass a telecom law that includes a provision preempting states from prohibiting their cities and towns from developing a “third pipe” to the home. But if there is no federal telecom statute – or if a final telecom measure fails to include this crucial provision – then the danger remains that the telephone and cable companies will renew their efforts at restricting the ability of local governments to improve their residents’ access to broadband Internet. If that happens, in my view the Commission is now poised to adopt a vigorous advocacy program that opposes these attempts to stifle competition.¹²

¹¹ See Report at 35-38.

¹² The Commission has a long history of defending new business methods and technologies when they are attacked by entrenched industries in state legislatures or elsewhere in state governments. See generally Deborah Platt Majoras, Chairman, Federal Trade Commission, *A Dose of Our Own Medicine: Applying a Cost/Benefit Analysis to the FTC’s Advocacy Program*, remarks before the Charles River Associates “Current Topics in Antitrust Economics and Competition Policy” Conference, Washington, D.C. (February 8, 2005), available at www.ftc.gov/speeches/majoras/050208currebttopics.pdf. As the Report notes, the Commission has engaged in advocacy relating to competition in various telecommunications industries, both before states and before the FCC. See Report at 4-5.