

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
A National Broadband Plan for Our Future) GN Docket No. 09-47, 09-51, 09-137

Reply Comments – NBP Public Notice # 30

**REPLY COMMENTS OF CONSUMER FEDERATION OF AMERICA, CONSUMERS
UNION, FREE PRESS, MEDIA ACCESS PROJECT, NATIONAL ALLIANCE FOR
MEDIA ARTS + CULTURE, NEW AMERICA FOUNDATION’S OPEN TECHNOLOGY
INITIATIVE, AND PUBLIC KNOWLEDGE**

January 27, 2010

The undersigned organizations, representing consumers and the public interest, submit these comments in the final Reply Comment period of the historic National Broadband Plan proceeding of the Federal Communications Commission. Though many of the undersigned organizations have filed numerous and lengthy comments in this docket on their own, or in collaboration with other groups, this particular filing reflects the public interest community's shared views and a top line summary of commonly held positions. This document should be read in concert with individual filings made separately by the same organizations that contain more lengthy discussion and analysis of all of the summary positions and goals described herein. The purpose of this filing is to be simple and straightforward—to elevate specific benchmarks, policy issues, and conclusions endorsed by all of the organizations and to bring them to the attention of the Commission in the final weeks of preparation of the National Broadband Plan.

Our basic message to the Commission is this—be bold. The Commission need not and should not be timid at this juncture in the creation of national broadband policy. The statute that directed the creation of this Plan is bold. The Plan should match that ambitious spirit and should not settle for short-sighted caution. It should chart a course that will meet the goals of the Recovery Act and bring the nation a world class information infrastructure available to all Americans in a reasonable period of time.

Our second message to the Commission is to be practical. While bold pragmatism may seem a contradiction in terms at first blush, it is not. It simply means that the FCC set ambitious goals *and* plot realistic next steps to achieve those goals. The agency must maximize the number of policy recommendations that it can effectuate on its own, but not shy from indicating where and how Congress or another federal agency or department should act to the benefit of the American public. Similarly, the Commission should not limit itself to tackling only those problems for which the solutions can be perfectly described or captured by analytical charts and graphs. Surely Congress did not expect the National Broadband Plan to solve every policy problem comprehensively with only a single year to study and write. Inevitably, the most difficult problems will contain questions that do not have easy answers. The job of this Plan is to set goals and next steps, and to initiate proceedings that move towards meeting short, medium, and long term benchmarks.

Finally, we caution the Commission to avoid the mistakes of its predecessors. A principal component of this Plan should be a clear articulation of the ways in which the agency has learned from the errors of the past. Foundational analysis for the Plan should include a review of current problems and challenges, the reasons that old policies have failed and old projections proved inaccurate, and new recommendations that correct the course. The focal point of the work should be on promoting good outcomes for consumers and avoid the ill-fated trap of refereeing disputes between industry segments. A policy framework that simply focuses on reducing costs, providing subsidies, and stripping regulations for incumbents will fail. These “trickle down” theories of the past left America's broadband infrastructure and rates of broadband adoption in such a predicament that it was necessary for Congress to instruct the FCC to make a Plan for immediate change.

What follows is a series of proposed benchmarks and key policy recommendations. The benchmarks represent top-line goals that the Commission should include in the National

Broadband Plan. The policy recommendations represent key methods that the agency should adopt to move toward the goals. These are not exhaustive lists—that is, implementation of our policy recommendations will not be sufficient to produce the desired outcomes. However, we believe adoption of each recommendation is a necessary condition without which there is little chance the Plan can succeed. Detailed analyses of each policy proposal listed below can be found in the individual comments of the undersigned organizations that have been filed throughout the National Broadband Plan proceeding.

Benchmark #1—The FCC should set a goal that U.S. broadband adoption of world class networks shall equal to current rate of telephone adoption (~95%) by 2020.

Implicit in this benchmark is the corollary goal that broadband networks should be universally available at world class speeds to all households, with prices and quality of service that are reasonably comparable for all Americans. But, availability is not simply enough. If broadband is available to all but not adopted by a substantial minority of the public, the Plan will have failed. Broadband has become an essential infrastructure critical to social and economic opportunity in this country, but delivering on this advancement’s promise requires more than availability. It was not merely availability of clean water, electricity, and telephony that drove social and economic progress and opportunity. It was adoption. We should set our goals for broadband accordingly.

Policy Recommendations

- Universal Service Fund: USF should be transitioned to support broadband deployment and adoption in a fiscally responsible manner, investing in rural infrastructure as well as deployment and adoption in low income areas in order to promote availability and affordability of services reasonably comparable to those available in more affluent urban areas.
- Lifeline/Link-up: These programs, which were initially designed to ensure low-income households adopted telephone service, should now be extended to ensure broadband adoption.
- Public Investment: The investments made by the Commerce and Agriculture Departments in broadband infrastructure through the Recovery Act should be recommended as an example for future investments. Targeted grants and loans for high-speed and high-capacity middle-mile fiber-optic infrastructure, in particular, will benefit all end-user networks and ensure that those networks are scalable over time.
- Anchor institutions: The Plan should recommend provisioning high-capacity infrastructure to link public and community institutions. This proposal offers a simple way to ensure that sufficient bandwidth is available for public use and public service purposes.
- Digital literacy and adoption programs: Long term programs should be created to provide digital literacy, technology training, and computer provisioning to maximize adoption rates. A substantial portion of the cost for these programs should be borne by the carriers.

Benchmark #2—The FCC should set a goal of substantially improving the level of competition between providers of broadband Internet access to move the country out of a stagnant duopoly by the end of 2012.

The filings in this docket submitted by the Department of Justice and the National Telecommunications and Information Administration conclude that the nation's broadband market is a rigid duopoly.¹ While wireless technologies may one day become a substitutable competitor to wireline broadband service from telephone and cable companies, it is too early to tell substantial hurdles facing that outcome can be cleared. In short, relying on the potential of wireless competition at some unknown point in the future is not sufficient to constitute a real competition policy. As recommended by the DOJ, we propose that the Commission undertake market-by-market competition analyses.² The Commission should not simply count the number of possible providers; it should also take a hard look at price, actual speed, market share, and the presence of anti-competitive or anti-consumer practices that demonstrate market failure.

Policy Recommendations

- **Analysis and Triggers:** The Commission should conduct ongoing market analyses that include specific triggers for policy intervention. All options should be on the table, including the reintroduction of some form of infrastructure sharing policies if competition does not emerge under current market trends.
- **Unlicensed and open spectrum:** The Commission should learn from the extraordinary successes of shared and opportunistic spectrum use in the last decade. Any spectrum reallocated or reclaimed in the future for broadband use should include a band of frequencies set aside on a national scale for unlicensed use. In addition, both federal and privately-licensed spectrum not in use in particular geographic areas or times should be made available for opportunistic access.
- **Competitive spectrum allocation:** The Commission should seek to maximize the utility of spectrum licenses, assigning with them with public service conditions attached, and adopting rules and processes promote robust competition.
- **Special access reform:** The Commission should act on its long-standing proceedings to regulate and prevent monopoly pricing in special access circuits because allowing entities with market power to impose unreasonable rates, terms, and conditions for use of special access facilities depresses market competition among end-user networks.

¹ *Ex Parte* Submission of the United States Department of Justice, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, at 13-14 (Jan. 4, 2010) (*DOJ Ex Parte*); *Ex Parte* Submission of the National Telecommunications & Information Association, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, at 3 (Jan. 4, 2010).

² *DOJ Ex Parte* at 20.

Benchmark #3—The FCC should set a goal of establishing real consumer protections for broadband customers within 12-18 months.

On perhaps no other set of issues before the Commission has there been more consensus than on question of transparency. The agency should waste no time in establishing new rules to protect consumers against price gouging, unfair billing practices, anticompetitive bundling, exorbitant early termination fees, and undisclosed interference in consumers' communications. A consumer-friendly Internet is critical to one of the primary goals Congress established for the National Broadband Plan—"maximum utilization."

Policy Recommendations

- **Truth in billing:** The FCC should institute a comprehensive rulemaking to protect consumers against a host of anti-consumer billing practices across the broadband industry and establish clear disclosure rules to empower consumers with robust information regarding the actual price and performance of their broadband connection.
- **Privacy:** The FCC should protect consumer privacy against the increasingly intrusive technologies in the Internet advertising marketplace. Consumers should have ultimate control of their personal information.

Benchmark #4—The FCC should set a goal of implementing new broadband data collection standards and new rules for utilizing that data in market analyses by the end of 2010.

The FCC's broadband data collection efforts have been notoriously deficient in recent years. Though the Commission has recently taken important steps to rectify these problems, the work has only begun. Moreover, simply getting data collection correct is only half the battle. The other half is establishing new analytical metrics to ensure that competition and availability reports for all broadband market sectors are no longer meaningless—but rather serve a critical role in identifying real problems and triggering pro-consumer policies.

Policy Recommendations

- **Spectrum Data:** The FCC should collect specific information about spectrum use to determine whether spectrum in specific license areas is being fully used, and whether reclamation, secondary markets, shared access or opportunistic use are necessary and possible. In addition, both federal and privately-licensed spectrum not in use in particular geographic areas or times should be made available for opportunistic access.
- **Broadband Utility Data:** The FCC should move beyond adoption and availability data to collect information about actual speeds and prices of consumer broadband connections. Granularity and precision should be the goal on a national level as well as in snapshot studies of individual markets.
- **Traffic and Usage Data:** The FCC should lead an effort to collect traffic and usage measurements for broadband networks.

Benchmark #5—The FCC should set a goal of establishing rules protecting open markets for speech and commerce on broadband networks as soon as feasible.

While the Commission laudably has begun a proceeding to consider open Internet rules on a track parallel to the National Broadband Plan work, we reject any notion that these issues can be fully separated. It should be impossible to talk about the Plan for universal availability and adoption of world class broadband networks without underlining the importance of openness. Promoting openness principles means not only preserving the open Internet, but also fostering openness in the market for cable-set top boxes and other consumer services and products on which the Plan has focused.

Policy Recommendations

- Network Neutrality rules: The FCC should complete its open Internet rule-making in the spring of 2010 to provide the basic, light-touch rules guaranteeing nondiscrimination, transparency, innovation, and open markets on the Internet.
- Open set-top boxes: The FCC should move to standardize and open the market for cable set-top boxes to free consumers from these expensive, clunky, proprietary choke-points on broadband networks.
- Open devices: The FCC should proceed broadly to ensure all devices are open, standardized, and portable across all end-user broadband networks to the extent technically feasible.

Conclusion

The evidence before the FCC demonstrates that America’s preeminence in broadband infrastructure and investment has been eclipsed. A substantial number of households lack access to broadband, and those who have access face slower speeds and higher prices than their counterparts in other advanced industrialized nations. The incumbent carriers have had well over a decade to rectify these problems, but they have failed to do so.

To achieve the goals laid out by Congress and “to ensure all people have access to broadband capability[,]... affordability of service[,]... and maximum utilization of broadband infrastructure,” the Commission must adopt policies to that promote universal service, competition, openness, and consumer protection. The FCC has more than enough data to craft a visionary and effective National Broadband Plan. Under its existing statutory authority, the FCC can immediately implement steps to promote broadband adoption. It should simultaneously call on other federal agencies with responsibility for important factors that affect broadband adoption and use to do the same. And, it should highlight areas where Congress needs to act to take additional steps to achieve the important goals it laid out for broadband infrastructure in the American Recovery and Reinvestment Act of 2009. American consumers deserve no less.