

**STATEMENT
of
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FEDERAL COMMUNICATIONS COMMISSION**

**Before the
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY
AND THE INTERNET
UNITED STATES HOUSE OF REPRESENTATIVES**

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Mr. Chairman, Ranking Member Stearns and Members of the Subcommittee, it is a privilege to appear before you today.

The Broadband Plan (Plan) offered up by the FCC's Office of Broadband Initiative represents a tremendous amount of hard work and thoughtfulness. It is important for everyone to understand, however, that the Plan does not carry with it the force and effect of law. In other words, the Plan itself contains no rules. Not having a Commission vote gave the Broadband Plan team the flexibility to make their recommendations to Congress and the Commission freely. Rulemakings, opportunities for public comment, subsequent debates and votes on proposed rules spawned by the Plan, not to mention possible legislation, still lie over the horizon. In short, we are at the beginning of a long process, not the end of one.

Before the government intervenes further into this marketplace, however, we should recognize how far America has come. As the Plan itself asserts, "The number of Americans who have broadband at home has grown from eight million in 2000 to nearly 200 million last year." In fact, today, out of 114 million households, only seven million lack access to broadband. Some form of broadband is available to roughly 95 percent of Americans, while over two-thirds have subscribed to these services. Seven years ago, only 180,000 homes had access to fiber-based broadband. By the middle of last year, that figure spiked to over 17 million households.

Additionally, America has experienced phenomenal growth in wireless broadband adoption. Mobile broadband was virtually unheard of in 2002. By the end of last year, however, an estimated 100 million Americans subscribed to wireless broadband technologies. America is home to more wireless companies than any country in the

world. More than half of all Americans have a choice of five wireless providers. Ninety-four percent have a choice of four. Similarly, we lead the world in 3G build-out and adoption.

Not only has investment and innovation been dynamic in the telecom “core” of the Internet environment, but economic activity at the “edge” of networks has been nothing short of explosive as well. For instance, last year Americans led the world by downloading over 1.1 billion applications onto their mobile devices. Not only does the United States have one-third of the world’s market share of “mobile apps,” but the American mobile app market has grown over 500 percent since 2007. Hundreds of thousands of mobile applications are pouring into the market, with countless more on the way from thousands of developers for years to come. By 2014, annual domestic mobile app downloads are estimated to reach nearly seven billion.

As a direct result of adopting policies that ensured the ’Net would be regulated only with a light touch, the Internet environment is growing and evolving faster than any individual, company or government can measure. The ’Net operates in an open and free marketplace where innovation and investment are thriving. In fact, some estimate that private sector investment in broadband infrastructure exceeded \$60 billion last year alone.

As Congress and the Commission consider the ideas from the Office of Broadband Initiative, we should make sure that we first and foremost do no harm. For instance, cable modem services alone are available to 92 percent of American households. Merely by upgrading cable networks with the DOCSIS 3.0 system, which is expected to happen over the next few years anyway, over 104 million American homes

will have access to speeds of up to 100 mbps. In other words, unless the government provides *disincentives* to investment, the Plan's goal of reaching 100 million households with 100 mbps services should be attained well before 2020 if we allow current trends to continue in an unfettered manner. To that end, I look forward to working with Congress and my colleagues to adopt policies that allow investment, innovation, job growth, competition and adoption in the broadband market to continue to flourish.

As we go forward, I agree that some aspects of the Plan deserve further investigation. For example:

- Although Chapter 5 of the Plan places great emphasis on long-term spectrum needs, I am hopeful that we will also encourage and consider ideas that call for more efficient use of spectrum. These include more robust deployment of enhanced antenna systems; improved development, testing and roll-out of creative technologies, where appropriate, such as cognitive radios; and enhanced consideration of, and more targeted consumer education on, the use of femto cells. Each of these technological options, already available in the marketplace, augment capacity and coverage, which are especially important for data and multimedia transmissions.
- As I have said for quite some time, we should accelerate our efforts to create a more specific framework for allowing unlicensed use of the television “white spaces.” And I am pleased that Recommendation 5.12 of the Plan agrees. I am also interested in using some portion of this spectrum to provide wireless backhaul in rural areas. Our work on white spaces started under FCC Chairman Michael Powell, but the Commission has been too slow to deliver our promise to all American consumers.
- Similarly, we should explore our existing authority under Section 336 of the Communications Act to provide television broadcasters an incentive to lease their spectrum. Focusing on this statutorily permissible and *voluntary* mechanism for leasing parts of the airwaves may be an easier path to accelerating deployment of advanced wireless services, as opposed to the more coercive means discussed in Chapter 5 of the Plan.
- Furthermore, we should bring spectrum that is lying fallow to auction as quickly as possible. I agree with Recommendation 5.5 of the Plan, which proposes that government should strive to lead in relinquishing spectrum it does not use efficiently or, sometimes, at all. Congressional input, as well as improved interagency coordination, is vital in this pursuit.

- With respect to the Universal Service Fund and intercarrier compensation mechanism, which are discussed in Chapter 8 of the Plan, reform is embarrassingly overdue. As a Commission, we came very close to codifying consensus on reforms in late 2008. Unfortunately, needless procedural roadblocks thrown in our way prevented us from consummating any agreements. I hope we can rekindle the same constructive and positive bipartisan spirit, which existed at that time, in any future proceedings.
- For several years, I have said that any USF reform must accomplish five basic objectives. The Commission must:
 - (1) contain the growth of the Fund;
 - (2) in a limited and fiscally sound manner, explore the possibility of broadening the base of contributors;
 - (3) reduce the contribution burden (By the way, the contribution factor has grown from 5.53 percent during the first quarter of 1998 to currently a level of 15.3 percent, which is an historic high. This confiscatory money grab not only burdens America's consumers the most, it is evidence that the Fund's viability is in question.);
 - (4) ensure competitive neutrality; and
 - (5) eliminate waste, fraud and other abuses of the system.

Such comprehensive reform – which would include all of these objectives – should be accomplished *before* embarking on any effort to alter the distribution system.

As I continue to review and analyze the Plan, I may find additional proposals I can support. At the same time, I would be remiss if I did not point out some ideas that give me concern.

- First, Chapter 17 of the Plan opens the door to classifying broadband services as old-fashioned monopoly era, circuit-switched, voice telephone services under Title II of the Communications Act of 1934. Broadband deployment and adoption have flourished in the absence of such regulations. Not only do I doubt that such a reclassification would survive appeal, I don't see how foisting a regulatory framework first devised in the 19th Century would help a competitive 21st Century marketplace continue to thrive.
- Second, Recommendation 4.7 of the Plan implies that the Commission should mandate the unbundling of fiber and other network elements that have been deployed since the agency deregulated some of these components. As a result of that deregulation, fiber deployment has spiked in recent years. Rather than reversing course by re-opening settled conflicts, the Commission instead should ensure that any future actions will not discourage capital investment. By

unearthing regulations from yesteryear to foist on cutting-edge innovations, we would be inviting years of unnecessary litigation and all of the regulatory uncertainty that comes with it. Such an environment would inhibit investment.

- Third, Chapter 4 of the Plan refers to the elephant in the room, a proceeding that has shadowed the Plan since last fall: the open Internet or “net neutrality” proceeding. Although the Plan does not take a position on that proceeding, I take this opportunity to reiterate my serious concerns regarding the Commission embarking on such a regulatory journey.
- I also question Recommendation 15.6, which asks Congress to fund a new “public media” communications venture that, unlike current funding for public broadcasting, would cover new online digital platforms and expand the eligible pool of applicants beyond FCC license holders. I cannot in good conscience endorse new federal spending for this or many other ideas contained in the Plan when our government is spending record amounts by taking on monumental levels of debt – all while America’s families and businesses are cutting their budgets in an attempt to restore fiscal responsibility.
- In the same spirit, I am concerned that Chapter 4 of the Plan may have given new life to ideas that could result in the imposition of new taxes on the Internet. Federal preemption of Internet taxation could be beneficial, but only if it results in more freedom.
- After the Commission’s workshop on capital investment in the broadband sector last October, I was hopeful that the Plan would contain a chapter discussing and making recommendations on the ideas several commenters submitted in the record regarding tax incentives to spur more broadband deployment and adoption. Helping to elevate that discussion could lead to new ideas that could further our goal of greater broadband ubiquity. The Plan’s recommendation (7.2) to make the Research and Experimentation tax credit “long term,” however, is a step in the right direction.
- Furthermore, I question recommendations 11.4, 15.7 and 15.9, which call on Congress to amend the “fair use” provision of the Copyright Act for various purposes. These recommendations were edited late in the process; however, it still is not clear how broadly the Plan’s proposal actually sweeps. Copyright issues in the digital era are highly complex. More importantly, policies that support strong enforcement of property rights, including intellectual property rights, will encourage the creation of more compelling content that could help spur broadband adoption. I look forward to learning more about the request for statutory change.
- Finally, when it comes to the Plan’s discussions regarding set-top boxes in Chapter 4 of the Plan, I caution the Commission to tread gingerly. Technological mandates by the government almost never result in robust innovation. In fact,

history shows that such mandates are more often than not counterproductive. It is my hope that if the Commission is to act at all in this area, it start with a notice of inquiry to explore whether any further action is required.

The time has come to debate the Plan's recommendations in a positive, constructive and civil manner, and I am pleased to be a part of this dialogue. While we may disagree at times on the best paths to follow during our upcoming journey, we can agree on at least the primary destination: a country that offers faster broadband access to more Americans at affordable prices.

In conclusion, America's communications sector is at a critical juncture. America's technological future could be even more brilliant if we, as policymakers, have the courage to make the right choices. I look forward to continuing to work with Congress, Chairman Genachowski and my Commission colleagues on these important policies to grow the economy, create new jobs and make America stronger and more competitive.

Mr. Chairman, Ranking Member Stearns and Members of the Subcommittee, thank you again for the opportunity to appear before you today. This concludes my statement, and I look forward to answering your questions.