



October 29, 2010

Julius Genachowski, Chairman
Federal Communication Commission
445 12th Street, SW
Washington, DC 20554

Re: National Broadband Plan, GN Docket No. 09-51, Framework for Broadband Internet Service, GN Docket No. 10-127, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109

Dear Chairman Genachowski and Members of the Commission:

We the undersigned write today to support several key goals that the Federal Communications Commission has laid out as part of its National Broadband Plan and urge the Commission to take the regulatory actions necessary to achieve those goals. Specifically, because of the DC Circuit decision in *Comcast vs. FCC*, there are now questions regarding Commission's authority to implement these goals.¹ While legislation might be one route to achieving this objective, we urge the Commission to move forward expeditiously to adopt a legally justifiable regulatory framework to enact the broadband plan.

We are writing this letter now because the importance of moving forward on key civil rights objectives of the national broadband plan has been lost in the context of the debate on net neutrality. Regardless of how organizations view net neutrality, the Commission's authority to achieve many objectives critical to the civil rights community must be affirmed. These objectives include expansion of the Universal Service Fund to broadband, assurance of transparency and truth in billing, protection of consumers' privacy online, and internet accessibility for those with disabilities. Because the *Comcast* decision makes the Commission's authority to undertake these critical elements of the Plan subject to clarification, it is incumbent on the Commission to have a comprehensive framework on which to move forward to implement its stated goals.

Expanding Universal Service

According to the National Broadband Plan it is critical to:

Expand the Lifeline and Link-Up programs by allowing subsidies provided to low-income Americans to be used for broadband.²

In 2010 66% of Americans nationwide have broadband access. Yet a study by the Pew Internet & American Life Project shows that only 50% of rural residents, 56% of African Americans and 45% of households earning less than \$30,000 have broadband in the home.³

¹ *Comcast Corp. v. F.C.C.*, 600 F.3d 642 (C.A.D.C.,2010).

² Federal Communications Commission, *Connecting America: The National Broadband Plan*, pg. XIII.

³ <http://www.pewinternet.org/~media/Files/Reports/2010/Home%20broadband%202010.pdf>

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The FCC's Broadband study found that 39% of all Americans without broadband have some type of disability.⁴ This clearly shows that urgent action is needed to ensure that underserved communities have equal access to broadband.

Expanding the Universal Service Fund (USF) to broadband and in particular, expanding *Lifeline* and *Linkup* programs to broadband is the way to ensure that this is achieved. This is especially relevant to underserved urban communities who only have access to Lifeline and Linkup services while others such as rural communities have access to the more expansive *High Cost Program*. The USF was created at a time when communication was largely limited to voice telephony services. Since then, broadband has become vital for tasks including applying for a job, applying for small business contracts and claiming government benefits such as food stamps – in fact, broadband is the enabler of progress across a range of fields. All of this helps to level the playing field for minority owned businesses and assure a diverse and prepared workforce.

The USF has produced significant results in voice telephony – since 1985, when the Commission first established Lifeline to help low-income households afford the monthly cost of telephone service, penetration rates among low-income households have grown from 80.0% to 90.4%⁵. We strongly urge the Commission to continue this success of the USF by expanding it to broadband so that underserved communities have the tools to empower themselves.

Transparency and Truth in Billing

Additionally the Plan seeks to:

Develop disclosure requirements for broadband service providers to ensure consumers have the pricing and performance information they need to choose the best broadband offers in the market. Increased transparency will incent service providers to compete for customers on the basis of actual performance.⁶

Consumers have a right to a clear and accurate account of the broadband services they purchase. Currently it is extremely difficult for individuals to compare the connection speed and price of competing plans because advertisers bill speed as “up to” instead of disclosing an accurate average connection speed. As the Commission has recognized, advertised broadband speeds are dramatically different than those the consumer actually receives and, in fact, “actual download speeds experienced by U.S. consumers lag advertised speeds by roughly 50%”⁷. This is a fundamental protection – consumers are quite literally not getting what they are paying for. The Commission must be able to set standards for disclosing actual speeds as well as **include** “simple clear data that a ‘reasonable consumer’ can understand” and more detailed information for “tech-savvy customers, software developers and entrepreneurs” as called for in

⁴ Federal Communications Commission, *Broadband Adoption and Use in America*, Feb. 2010, pg. 3.

⁵ Federal Communications Commission, *Telephone Penetration by Income by State* (May 2010) available at: http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-297986A1.pdf.

⁶ Broadband Plan, pg. XI

⁷ Federal Communications Commission, *Broadband Performance, OBI Technical Paper No. 4*, Pg. 4



the plan.⁸ Similarly, the Commission must be able to move ahead on its “bill shock” proceeding, which aims to protect consumers from unexpected and unaffordable charges on their telecommunications bills.

Privacy Protections

Another goal of the broadband plan is to:

Clarify the relationship between users and their online profiles to enable continued innovation and competition in applications and ensure consumer privacy, including the obligations of firms collecting personal information to allow consumers to know what information is being collected, consent to such collection, correct it if necessary, and control disclosure of such personal information to third parties.⁹

Increased internet use and broadband capacity has allowed private companies to collect vast amounts of data on users – information that is being used to create detailed profiles of their movements, interests and activities online.¹⁰ This harms consumers by invading their privacy and curbs innovation and adoption of new technologies by making consumers hesitant to use them. In order to address consumer fears, the Plan calls on Congress, the Federal Trade Commission, and the FCC to improve the relationship between users and the entities that create these online profiles. **In order for the FCC to meet its obligations, it requires the legal authority to enact privacy protections for broadband service under Section 222. Without that authority the Commission will be unable to quell invasive practices like deep packet inspection.** If such routine privacy invasions are permitted to take place, the value of Internet communications will decrease as a social good, contrary to the mission of the FCC and our national interest.

Increasing Adoption Rates for People with Disabilities

Finally the Plan recognizes that:

An important and cross-cutting issue is accessibility for people with disabilities. Some 39% of all non-adopters have a disability, much higher than the 24% of overall survey respondents who have a disability.¹¹

Broadband access can be invaluable in helping individuals with disabilities live independently while staying connected with people around them. It enables telecommuting, distance learning, cutting edge access to medical and health applications through telemedicine and telerehabilitation, and the capacity to fully participate in American life. In fact, it is quickly becoming as essential as assistive technology. The Plan acknowledges the barriers faced by these individuals and has called upon the **FCC and the Department of Justice to modernize accessibility laws, rules and related subsidy programs to ensure broadband access.** As we move into the digital age, the Commission must ensure it uses all its legal authority – including the provision in the recently enacted “21st Century Communications & Video Accessibility Act of 2010” – to ensure that people with disabilities are not left behind and will also share in the benefits of broadband access.

⁸ Plan pg. 46.

⁹ Plan, pg. XII.

¹⁰ Julia Angwin, *The Web's New Gold Mine: Your Secrets*, Wall Street Journal, July 30, 2010.

¹¹ Plan, pg. 169.



As the National Broadband Plan states, “like electricity a century ago, broadband is a foundation for economic growth, job creation, global competitiveness and a better way of life.”¹² It is impossible to meet any of the critical goals described above or any of the Plan’s broader goals without the re-establishment of clear FCC authority to regulate in these critical areas.

Sincerely,

American Association of People with Disabilities

American Civil Liberties Union

Asian American Justice Center

Benton Foundation

Communications Workers of America

Consumer Action

Consumer Watchdog

Leadership Conference on Civil and Human Rights

NAACP

National Consumers League

National Organization for Women

National Urban League

Privacy International

Privacy Lives

Privacy Rights Clearinghouse

Privacy Times

United Church of Christ, Office of Communication, Inc.

¹² Plan, pg XI.