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June 8, 2009

Acting Chairman Michael J. Copps
Commissioner Jonathan S. Adelstein
Commissioner Robert M. McDowell
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: A National Broadband Plan for Our Future – GN Docket No. 09-51

Dear Acting Chairman and Commissioners:

Pursuant to Sections 1.415 and 1.419 of the Federal Communications Commission's (hereinafter "Commission") Rules,¹ the Center for Individual Freedom (hereinafter "CFIF") files its comment as an interested party in response to the Commission's Notice of Inquiry dated April 8, 2009, GN Docket No. 09-51 (hereinafter "NOI").

CFIF is a non-profit, non-partisan organization with over 250,000 grassroots supporters and activists across America. It was established in 1998 for the purpose of safeguarding and advancing Constitutional rights, as well as ensuring continued American innovation, leadership, economic prosperity and worldwide entrepreneurial preeminence. As a central part of that mission, CFIF advocates public policies that advance technological, Internet and broadband development most effectively and efficiently. CFIF is grateful for the opportunity to comment on the instant NOI, and welcomes any and all responsive commentary.

Universal Broadband Access Is a Noble Goal

First and foremost, CFIF applauds the Commission's effort to achieve 100%, ubiquitous access to high-speed broadband technology, and to complete build-out and utilization of America's broadband infrastructure. Over the past two decades, Internet development and access have played a central role in maintaining America's status as the most prosperous, most entrepreneurial and most innovative nation in the world. As a direct result of the telecommunications sector's massive private investments during that span, America has

¹ 47 C.F.R. §§ 1.415, 1.419.

witnessed incredible advances in the areas of healthcare information and delivery, education, police effectiveness, public safety, homeland security, emergency response, energy efficiency, workforce training, entertainment, interpersonal communication, office efficiency, news access, scientific research and innumerable other spheres of American life. It has also generated tens of millions of high-paying jobs and propelled American economic prosperity.

Although the past two decades have witnessed breathtaking progress and growth, however, much work remains to be done. Continued advancement in high-speed network infrastructure and innovative technologies is critical to American economic well-being. That is precisely why the Commission's effort to commence a public/private campaign to reach the critical goal of 100% high-speed broadband access is so important.

The Focus Must Be On Policies That Actually Work, Not Accommodating Special Interests

As the Commission commences this cooperative public/private effort, it must focus on what policies actually *work*, rather than capitulating to a cacophony of divergent special interest groups or counterproductive agendas. Although public policy can trigger progress in achieving universal broadband access, ill-advised policies will only slow existing progress and create wholly new barriers. The Commission must therefore ascertain what efforts have worked most effectively and efficiently to date, and pursue the policies that promise continued concrete progress. Otherwise, its effort will be for naught.

Simply put, the Commission must avoid any well-meaning but counterproductive actions that ultimately *impair* investment. Rather, the policies moving forward must encourage more investment from the private sector and not stifle providers' ability to manage their own networks in response to consumer demands and wishes.

This public/private initiative is a healthy undertaking, but it must ultimately serve as a mechanism to improve the already-extraordinary innovations and achievements that have occurred to date, not unravel them. The American people deserve no less.

Private Investment Will Be the Primary Engine to Achieve the Commission's Goals

As the Commission recognizes in its NOI, private telecommunications sector investment since 1996 has resulted in a fundamental transformation of the U.S. economy, and the manner by which Americans live their lives. Since the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996) (amending the Communications Act of 1934), the Internet has progressed from a novel idea to a central aspect of American life and prosperity. At that time, just thirteen short years ago, the few Americans who did possess Internet access utilized excruciatingly slow dial-up connections. And as the Commission notes, only a tiny percentage of Americans possessed cellular telephone service at that time, cable was a locally-regulated video delivery platform, and satellite and World Wide Web service were in their infancy.

In just over one decade, however, the majority of American households and businesses have acquired broadband access, and now utilize the Internet via a multitude of technologies – wireless, satellite, cable, copper, and fiber. This achievement has been nothing short of remarkable.

So how did this incredible progress occur?

Primarily through massive investment by private, innovative telecommunications and cable entrepreneurs. Since 1996, the cable and telecommunications sector has invested a remarkable \$147 billion in infrastructure development.² In 2008 alone, the industry invested at least \$15 billion, and expects to invest an even larger amount this year.³

To provide some perspective, the cable and telecommunication sector's \$15 billion 2008 investment alone amounts to over twice the \$7.2 billion allocated by Congress to expand broadband deployment in the instant American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (Recovery Act signed into law on February 17, 2009). That massive private investment has provided the solid foundation upon which the progress cited by the Commission has occurred since 1996.

But the Commission cannot take these incredible achievements for granted. They did not happen by accident, and were not inevitable. Rather, they occurred because the nation's regulatory environment did not undermine or obstruct them. While more work remains to be done, the Commission must resist calls to dismantle that foundation or halt momentum by imposing counterproductive re-regulation of, or new regulations upon, private industry actors that stand willing and able to further invest in network infrastructure and new technologies.

New Regulations That Impair Private Investment Will Subvert the Commission's Efforts

Ignoring the astounding achievements noted above, which resulted directly from private sector investments, some insist on a massive and fundamental re-regulation of – or the imposition of new regulations upon – the cable and telecommunications industries. Such voices incorrectly allege “failed policies” by the Commission that are somehow “the root of America's broadband decline.”

The reality is quite different.

As the latest data from the Organisation for Economic Cooperation and Development (OECD) demonstrates, the United States maintains the largest broadband market in the entire world –

² See, National Cable & Telecommunications Association Industry Data, www.ncta.com/Statistics.aspx.

³ *Id.*

some 30% of the entire OECD total.⁴ Furthermore, the International Telecommunications Union's 2009 Development Index found that the United States possessed the most affordable broadband in the world.⁵ A sampling of other recent data confirms these findings. For example, the World Economic Forum ranked the U.S. number one in its 2008-2009 Competitiveness Report,⁶ the Swiss IMD Business School found that "again this year, the United States is first in the rankings of the 2008 IMD World Competitiveness Yearbook,"⁷ and the University of Calgary ranked the U.S. atop its "Connectivity Scorecard."⁸

Those who nevertheless advocate unwise overregulation of the cable and telecommunications sector typically cite defective data to advance their agenda. For instance, they employ flawed mathematical models that simply divide the number of broadband connections in a given nation by its total population, even though broadband service is overwhelmingly accessed at the household or business structure level. Consequently, such rankings ignore the fact that the average American household is larger than other OECD nations, and result in unsound conclusions.⁹

Such flawed measurements and policy prescriptions will only serve to obstruct the Commission's effort to continue progress on broadband development.

Additional Investment Is Needed To Achieve Universal Access

The evidence thus demonstrates that instead of imposing counterproductive re-regulation of the cable and telecommunications sector based upon flawed measurements, the Commission should partner with private investors to achieve the mutual goal of universal broadband access.

By joining and coordinating with private industry, the Commission can complete broadband buildout, and convince remaining reluctant consumers of the value of moving online. When skeptical American consumers recognize the value of broadband capabilities and fully develop a sense that their connections are safe, secure and high-quality, universal access can be achieved.

That cannot occur, however, unless a national broadband policy focuses upon further incentivizing – or more importantly, avoids discouraging – private investment to establish a smart, secure, effective and fully accessible network.

⁴ See, Organisation for Economic Cooperation and Development Broadband Statistics, www.oecd.org/sti/ict/broadband.

⁵ See, International Telecommunication Union, *Measuring the Information Society*, www.itu.int/ITU-D/ict/publications/idi/2009/material/IDI2009_w5.pdf

⁶ See, World Economic Forum, *The Global Competitiveness Report 2008-2009*, <http://www.weforum.org/en/initiatives/gcp/Global%20Competitiveness%20Report/index.htm>.

⁷ See, IMD World Competitiveness Yearbook 2008, <http://www.imd.ch/about/pressroom/pressreleases/PR-WCY2008.cfm?bhcp=1>.

⁸ See, http://www.connectivityscorecard.org/countries/united_states_of_america.

⁹ See, http://www.oecd.org/document/46/0,3343,en_2649_34225_39575598_1_1_1_1,00.html.

Conclusion

In sum, universal access will be accomplished by facilitating the private investments that have achieved such breathtaking progress in little more than a decade, not by imposing counterproductive new or re-regulations. Together, the Commission and America's private cable and telecommunications entrepreneurs can achieve ubiquitous high-speed broadband. Doing so, as the Commission cogently states, will "restore America's economic well-being and open the doors of opportunity for more Americans, no matter who they are, where they live, or the particular circumstances of their lives."

Thank you for your attention to this matter. Please don't hesitate to contact us with any questions, concerns or additional comments.

Sincerely,

/s/

Timothy H. Lee
Director of Legal and Public Affairs