

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

Comments of the
National Consumers League
Washington, DC 20006

The National Consumers League (NCL)¹ respectfully submits these comments in response to the Commission’s *Notice of Inquiry (NOI)* concerning “A National Broadband Plan for Our Future.” We urge the Commission to adopt a plan that encourages robust competition among current and future broadband delivery platforms, keeps retail prices affordable for moderate-to-low income consumers, creates sustainable jobs, and encourages innovative solutions to bridge the Digital Divide and connect all Americans to the benefits of broadband.

I. A National Broadband Plan Should Encourage Robust, Platform-Neutral Competition

A central goal of a national broadband policy must be to create regulatory conditions where competition among broadband delivery platforms can thrive. Regulatory definitions of “broadband” and “high-speed” are the subject of intense debate. At the end-user level, however, “broadband” is simply conceived of as an Internet connection that enables the use of common online applications (streaming video, Flash-

¹ The non-profit National Consumers League, founded in 1899, is America’s pioneering consumer organization. Our mission is to protect and promote social and economic justice for consumers and workers in the United States and abroad. For more information, please visit www.nclnet.org.

enabled Web surfing, file-sharing, and similar applications) at speeds demonstrably faster than dial-up access². Whether that connection is provided via 3G wireless networks, Wi-Fi, fiber, DSL, or cable modem is largely irrelevant to the end-user experience for most consumers. In the 21st century, consumers will increasingly demand an always-on Internet connection, regardless of delivery device, that they can use wherever they are.³

We acknowledge that certain broadband platforms are better suited than others depending on usage patterns. For example, current 3G wireless networks are largely unsuited for online gaming, downloading high-definition movies, or peer-to-peer file sharing. Consumers understand that they should not expect bandwidth akin to a fiber-to-the-home connection to be available while they are riding the bus. Nonetheless, consumers' baseline expectations for location-independent application performance are certain to increase going forward.⁴

Given this growing desire for always-on, location-independent bandwidth, the Commission should seek to craft regulatory policies that foster the growth of broadband networks that can deliver on this expectation, whether via a single delivery platform or via a combination of platforms. The Commission should not seek to “pick winners” among the competing platforms. Instead, the national broadband plan should seek to

² Federal Communications Commission. “FCC Consumer Facts: Getting Broadband.” Retrieved June 8, 2009 from <http://www.fcc.gov/cgb/consumerfacts/highspeedinternet.html> on June 8, 2009

³ This trend is already apparent in how use of mobile broadband devices are impacting overall online usage. According to the Pew Internet & American Life Project, 39% of Americans have seen the frequency of their online use grow as their reliance on mobile devices has increased. (Horrigan, John. *The Mobile Difference*. Pew Internet & American Life Project. March 2009. Pg. 3. Retrieved June 8, 2009 from http://www.pewinternet.org/~media/Files/Reports/2009/The_Mobile_Difference.pdf)

⁴ “Apple Will Have to Allow Over-the-Air Downloads for iPhone, Analyst Predicts,” Pike & Fischer. Press Release, August 7, 2007. Retrieved June 8, 2009 from <http://www.broadbandadvisoryservices.com/researchReportsBriefsInd.asp?repId=515>

foster regulatory conditions that allow all platforms to grow to meet consumers' evolving expectations.

II. Consumers Should Have Universal Access to Broadband At Affordable Rates

Access to broadband will be as essential to a high quality of life in the 21st Century as electricity and the telephone were in the 20th Century. The Internet has touched nearly every facet of modern life in the United States. Consumers without access to broadband are increasingly cut off from essential government services, workplace and educational opportunities, and social connections.⁵ This isolation will only deepen as life in 21st Century America becomes ever more enmeshed with the Internet. With this in mind, it is imperative that the national broadband strategy give the goal of promoting universal access to broadband the same attention and resources that previous generations applied to the goals of universal access to safe drinking water, electricity, and the telephone.

Simply having access to broadband is less viable if that access is unaffordable. While access to broadband-level speeds is technically feasible in great swaths of the country thanks to satellite connections, the price of those connections places it far out of reach of most consumers. According to Connected Nation, twenty-three percent of non-adopters of broadband cited high cost as a factor in their decision not to subscribe.⁶

⁵ United State Department of Agriculture. *Rural Broadband At A Glance, 2009 Edition*. USDA Economic Research Service, February 2009. Retrieved June 8, 2009 from <http://www.ers.usda.gov/Publications/EIB47/EIB47.pdf>

⁶ Connected Nation (2008). *Consumer Insights to America's Broadband Challenge*. Retrieved June 5, 2009, from <http://www.nga.org/Files/pdf/0812BROADBANDCHALLENGE.PDF>

While price is not the sole factor in a consumer's decision to adopt broadband, lowering the cost of that access is likely to increase adoption, particularly among moderate-to-low income consumers.

A lesson from the telephone marketplace can be applied in this instance to the broadband marketplace. In numerous states where telephone rates remain regulated, the cost of providing basic dial-tone service is kept low so as to remain affordable to the great majority of consumers. Similarly, numerous federal programs including the Universal Service Fund and the Lifeline and Link-Up programs seek to keep telephone rates affordable. While this basic service does not provide a high-level of functionality it does provide a degree of connection to essential local services for consumers.

In the *Notice of Inquiry*, the Commission requests comment regarding how broadband stimulus and universal service funds can be used to address consumers' broadband needs. We support the use of broadband stimulus funds to begin to address the goal of deploying ubiquitous, universally accessible broadband, focusing first on unserved and underserved areas. Building out broadband is not sufficient to eliminate the Digital Divide if the resulting service is not affordable, however. To achieve a baseline level of affordability, we urge the Commission to pair the use of broadband funds with an expansion of the Lifeline and Link-Up programs to encompass broadband, with appropriate funding coming from the Universal Service Fund.

While we do not endorse a return to the telephone rate regulation of past decades, we do find it appropriate for the Commission to set certain price targets for a baseline level of broadband access. Precedent supporting such action can be found in the December 2006 agreement entered into by AT&T as a condition of its merger with BellSouth in which the company agreed to offer unbundled ADSL broadband service for \$10 per month to certain subscribers within the ex-BellSouth service area.⁷

III. A National Broadband Plan Should Encourage the Creation of Sustainable, Good-Paying Jobs

A key goal of the American Recovery and Reinvestment Act (ARRA) is fostering job creation and economic growth. As an organization dedicated to advocating on behalf of consumers and workers, NCL believes that encouraging the creation of good-paying jobs is critical to the well-being of all Americans. Investment in the nation's IT infrastructure will create jobs in the short-term. According to the Information Technology and Innovation Foundation (ITIF), a \$10 billion investment in broadband networks will support an estimated 498,000 new or retained job in the U.S. annually.⁸ The national broadband plan should recognize the important role that investment in broadband has in stimulating job growth nationally.

Where broadband deployment projects are not immediately "shovel-ready," the national broadband plan should seek to support projects that help states prepare for such

⁷ *In the Matter of AT&T Inc. and BellSouth Corporation Application for Transfer of Control* (WC Docket No. 06-74), Memorandum Opinion and Order, App. F, para. 3 (December 2006).

⁸ Atkinson, Robert and Castro, Daniel and Ezell, Stephen. "The Digital Road to Recovery: A Stimulus Plan to Create Jobs, Boost Productivity and Revitalize America." The Information Technology and Innovation Foundation. (January 2009). Retrieved June 5, 2009 from <http://www.itif.org/files/roadtorecovery.pdf>.

projects. An important step in this process is the development of effective broadband mapping solutions. Public-private partnerships can play an important role in this effort. As a member of the Board and National Advisory Council of Connected Nation, NCL believes that its track record of achievement in this area provides a replicable model for broadband mapping projects in states across the country. As the Commission develops policies that achieve the job creation goals of the ARRA, the job-creation potential of such public-private partnerships should be fostered.

IV. The Commission Should Seek to Encourage Innovative Solutions That Reduce the Digital Divide

As the Commission develops its plan to address the Digital Divide, it should also seek to promote innovative programs that increase the availability of broadband to all consumers, especially in low-income populations. These populations are often difficult to serve due to factors such as frequent relocation, insufficient credit histories, and lack of access to computers. While expanding access to community broadband centers such as schools and libraries will help, low-income consumers – like other consumers – benefit most from a broadband connection that is conveniently accessible.

For many low-income consumers, wireless broadband technology holds many promises, chief among them being the convenience derived from the technology's inherent mobility. Unfortunately, current wireless broadband prices largely put such technologies out of reach for low-income users. However, as history has shown, competition in the wireless telephone market will likely drive prices down, particularly

when compared to traditional landline telephone prices⁹, making wireless technology more accessible to those on limited budgets.

An additional factor that may put downward pressure on broadband prices is the increasing availability of wireless devices that can access free or low-cost Wi-Fi and cellular signals.¹⁰ The proliferation of low-cost mini-laptops (the so-called “netbooks”) along with Wi-Fi enabled cellular handsets and cellular “aircards” is making broadband accessible to those who in years past would not have been able to afford it.¹¹ Pilot programs that seek to connect low-income consumers with broadband-enabled wireless devices and educate those consumers about the use of such devices should be identified and supported. Communities can play a role in such efforts. Maps indicating freely accessible wireless access points at government and retail locations should be developed and distributed widely. While NCL has not taken a position with regards to the concept of municipal ownership of broadband networks, the Commission’s national broadband plan should seek to help communities develop strategies for connecting their citizens to broadband where no options exist or where such options are unaffordable.

The ARRA rightfully emphasized the importance of broadband in the delivery of health care services. Tele-health technologies hold great promise for minimizing disparities in health care, particularly among rural and low-income consumers. As

⁹ Taylor, William and Ware, Harold. *The Effectiveness of Mobile Wireless Service as a Competitive Constraint on Landline Pricing: Was the DOJ Wrong?* NERA Economic Consulting. December 2008. Pg. 2. Retrieved June 8, 2009 from

http://www.nera.com/image/PUB_DOJ_Effectiveness_Wireless_Service_0109_FINAL.pdf

¹⁰ *Thirteenth Report*, FCC. Para 119-123. (January 2009). Retrieved June 8, 2009 from http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-09-54A1.pdf

¹¹ “Netbooks Will Drive Uptake of Mobile Broadband Services, Pyramid Research Find,” Pyramid Research. Press release, May 21, 2009. Retrieved June 8, 2009 from http://www.pyramidresearch.com/pr_prlist/PR05209NTBKS.htm

policies are developed to meet the ARRA's requirements in this area, we urge the Commission to include strict measures of quality (relative to the services provided) to monitor the success of programs — such as the Rural Health Care Pilot Program — in helping these populations gain access to high-quality health care.

V. A Need for Basic Consumers Protections Should Be Recognized

The goal of ubiquitous, affordable broadband should be paired with a respect for certain core consumer protection principles.

First, consumers' right to privacy must be preserved. In an age where ever-more ingenious methods of targeting consumers with advertising are being developed every day, the need for greater consumer control over their personal information has never been greater. The national broadband plan should include a determination that consumers are the ultimate rights-holder of their personal information. Whenever content providers, Internet service providers, or other online entities collect personal information, that activity should be clearly disclosed. Further, mechanisms should be put in place for consumers to reclaim their personal information, upon request from any entity that has acquired it.

Second, anti-competitive practices in the broadband marketplace must be controlled. Such practices include the use of mandatory binding arbitration clauses in the terms of service of any online content provider or Internet service provider. These clauses take away consumers' rights to a jury trial and force them to accept arbitration where the odds of success are not in their favor.

Finally, the national broadband plan should include provisions strengthening consumer protections from online fraud and unfair and deceptive trade practices. Fear of falling victim to online scams is a significant barrier to entry for many consumers' adoption of broadband.¹² The Commission should consult with other relevant agencies, including the Federal Trade Commission and Department of Justice as it seeks to include strong anti-fraud provisions in the national broadband plan.

VI. Conclusion

The National Consumers League applauds the Commission for undertaking this Notice of Inquiry and we appreciate the opportunity to provide comment. The chance to develop a national broadband strategy is a once-in-a-generation opportunity to shape consumer-friendly policies. The Internet of today little resembles the Internet of even ten years ago and the Internet ten years from today will resemble it even less. A national broadband strategy that encourages competition, universal and affordable access, sustainable jobs, innovation, and consumer protection will help ensure that the Internet of the future remains an engine of growth and a force for good for consumers.

Respectfully submitted,

/s/

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¹² McKinnon, Mary and McCurry, Mike. "Cybersecurity report is a good 1st step," *POLITICO*. May 29, 2009. Retrieved June 8, 2009 from <http://mobile.politico.com/story.cfm?id=23090&cat=ideas>

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