Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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

COMMENTS OF THE AMERICAN LEGISLATIVE EXCHANGE COUNCIL (ALEC)

The American Legislative Exchange Council (ALEC) hereby offers its official Comments to the Commission concerning the National Broadband Plan. In these Comments, ALEC highlights the foundational premises that should guide the Commission's creation of the National Broadband Plan. ALEC believes the Commission should approach the National Broadband Plan from a perspective that embodies three foundational and related themes: (1) commitment to constitutionally-limited government; (2) reliance on free market mechanisms to deliver competing goods and services; and (3) emphasis on individual consumer choice in broadband adoption and use. In its approach to the National Broadband Plan, the Commission should reject temptations to centrally plan our nation's future technological order. Rather, the Commission should take a comprehensive look at a variety of modest and achievable tasks that government can undertake to encourage the private sector to deploy and deliver broadband and for consumers to adopt and use broadband.

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STATEMENT OF INTEREST

The American Legislative Exchange Council (ALEC) is the nation's largest nonpartisan, individual membership organization of state legislators. ALEC's mission is to promote Jeffersonian principles of limited government, federalism, free markets, and individual liberty. ALEC establishes public policies for modern communications and broadband through its Telecommunications and Information Technology Task Force. Official ALEC policies concerning modern technologies seek to preserve free-market principles, protect consumer welfare, promote competitive federalism, uphold deregulation efforts, and keep new technologies free from burdensome regulations. Over the years, ALEC has adopted statements of principles, resolutions, and model state legislation concerning a variety of information technology and related matters, including cybersecurity, online child safety, Internet taxation, health IT, network management, state cable and video franchising, wireless tower citing and collocation, public rights-of-way, spectrum policy, online tax filing, and digitally-delivered government services.

In particular, ALEC's *Statement of Principles for the Internet and Electronic Commerce* further elucidates its core commitments with respect to government, the marketplace, and technology by stressing that government policies pertaining to the Internet must be guided by and emphasis on: (1) dynamic competition through the replacement of government mandates with market competition; (2) development of innovative technologies and promotion of broad universal access; (3) strong preference for industry-driven codes of conduct and individual user empowerment in a market environment over intrusive government regulation; (4) freedom of speech and expression; (5) low, non-discriminatory taxation of the Internet and competitively neutral taxation of information technologies; (6) privacy and security for citizens through the promotion of innovative technologies created in the market, as opposed to government controls

and technical mandates; and (7) government's presence on the Internet through agency websites that make information publicly available and offer services to citizens via broadband.

Also, ALEC draws in part on its own experience with adopting model state legislation in the 1990s for the development of comprehensive telecommunications plans for the states to be recommended to their respective legislatures. The objective of ALEC's *Concurrent Resolution: Creating a Special Joint Committee to Develop a Comprehensive Telecommunications Plan for the State and to Make Recommendations Thereon to the Legislature* was "to develop a plan which provides the flexibility to deploy the necessary technology at a price consumers can afford, state regulators can approve, and the private sector can deliver."

Likewise, ALEC draws on its more recent experience concerning broadband and local government. ALEC has followed developments concerning municipal broadband networks. While many such ventures have resulted in business failure and steep losses to taxpayers, ALEC has been mindful that apparent municipal broadband success can come at the expense of private competition and increased choices for consumers. Accordingly, ALEC's model legislation *Municipal Telecommunications Private Industry Safeguards Act*, provides that important limits be placed on government's delivery of broadband so as to prevent government's misuse of its powers to unfairly undermine private marketplace competitors.

ALEC's views touching on broadband infrastructure and services are elaborated through several other officially-adopted polices, including its *Statement of Principles on Online Privacy*, its *Resolution Supporting Pro Consumer Public Policy for Voice, Video, and Data Services*, and its *Resolution on Network Neutrality*. These official ALEC policies and others form the basis for ALEC's general Comments below, and will likewise form the basis for a more detailed and specific Reply to Comments to be filed later in this proceeding.

ANALYSIS

I. The National Broadband Plan Should be Viewed Through the Lenses of Limited Government, Free Market Innovation & Competition, and Consumer Welfare

It is ALEC's view that the Commission should approach the task of preparing a National Broadband Plan in light of three interrelated themes: (1) commitment to constitutionally-limited government; (2) reliance on free market mechanisms to deliver competing goods and services; and (3) emphasis on individual consumer choice in broadband adoption and use.

A. Broadband Should Be Promoted Consistent with Limited Government

- Government Should Provide and Enforce Clear, Neutral Rules

ALEC believes that government must operate according to the rule of law. It is the role of government to provide clear, limited public rules of order that are equally applicable to all. Government thereby promotes and encourages a thriving economic environment by enforcing law. A crucial prerequisite to a free market economy is government's enforcement of public laws designed to protect consumers from harms such as public nuisances and unfair or deceptive trade practices. Free markets also require government's enforcement private law obligations between competing private sector entities such as those arising from private contracts.

- The Private Sector Must Lead in Actual Deployment of Broadband and Delivery of Services

Government's maintenance of a system of public order in which the free marketplace and individual liberty can thrive entails that the private sector is the source of economic enterprise. Entrepreneurship creates wealth and drives the economy forward, not government. Private industries, businesses, partnerships and individual entrepreneurs must undertake the tasks of

assessing consumer demands, expending capital on research and development, as well as marketing and delivering goods and services to the public.

As a general matter, ALEC's policies favor private, voluntary entrepreneurial activity over government regulation when it comes to addressing perceived economic difficulties. When it comes to modern information technologies such as the Internet and broadband, ALEC endorses the "hands off" approach that has led to the proliferation of Internet offerings and broadband deployment that we have seen in recent years. ALEC believes that the adoption of new or extended regulations that impose burdensome technical mandates dictating when, where and how to build and manage broadband infrastructure and offer broadband services are inconsistent with the "hands off" approach that has proven so successful.

- Digital Government: Government Should Drive Demand by Providing More Services Via Broadband

In ALEC's view, government's current and potential use of broadband technologies in delivering basic services should serve as a primary focus of the National Broadband Plan. The National Broadband Plan is an appropriate vehicle for detailing how government should address broadband in its proprietary capacity. Accordingly, ALEC believes the Commission should consider the plan as a vehicle for setting government priorities, goals, and benchmarks for making its services accessible via broadband. Such a plan may sensibly include provisions for how government can better accommodate broadband technologies to deliver necessary government services at added convenience to citizens and at reduced cost for taxpayers.

ALEC supports government efforts to harness the powers of the Internet to efficiently and conveniently to interact with citizens and provide services. Broadband offers government ample means to handle transactions such as permitting and licensing, or searching and providing public records such as property records or government documents available under sunshine laws.

Likewise, broadband can allow government to facilitate bidding for public works contracts electronically. Government can also provide educational and informational programs to citizens. Increased availability of basic government functions online will help drive demand for broadband, further encouraging competing private providers of broadband services to make such service available to consumers.

- Government Can Promote Broadband Adoption by Raising Public Awareness and through Educational Outreach

ALEC believes that government can also promote and encourage broadband adoption and use through public outreach. Government efforts to promote digital or broadband literacy through promotional ad campaigns or through educational efforts can help citizens who have not adopted broadband or who seldom use it to make better informed decisions about the benefits of broadband. ALEC recognizes that the private sector already has strong incentive to expand and deepen their respective broadband customer bases. The Internet exhibits significant "network effects" whereby its informational and interactive value increases with every additional user. Nonetheless, government can undertake efforts to reach out to citizens in unserved areas or demographics that stand to draw significant benefit from broadband adoption and use.

- Continuing the "Hands off" Approach to the Internet and Broadband is Strongly Preferred Over any Misguided Attempts to Centrally Plan Technology Adoption and Use Decisions

The proliferation of the Internet and broadband that has occurred under this nation's "hands off" approach cautions against governmental overreach or micromanagement of technologies. ALEC believes that the National Broadband Plan should *not* be mistakenly viewed as central plan for the future of broadband technology in America. Marketplace freedom is crucial to technological innovation and consumer choice.

Future technological invention and adoption are exceedingly difficult to predict. Assessing the diffusion of and demand for innovative information technologies is hard enough for the countless, industries, businesses, partnerships and individual entrepreneurs in the private sector to ascertain. Creating and providing broadband capacity and services involves numerous, complex trade-offs and judgment calls. In a competitive environment, technology products, technology services, and technology business models that are here one day are gone the next. It is *not* the role of government to attempt any central planning for the future of America's technological order by substituting the innumerable decisions of private entities and individuals with regulatory mandates. ALEC therefore calls upon the Commission to approach the National Broadband Plan in light of significant, realistic, time-tested limits on the ability of government to order our technological future.

B. Free Market Mechanisms Should Drive Broadband Access and Adoption

ALEC believes that the National Broadband Plan should emphasize free market mechanisms as the essential and primary means of promoting and encouraging broadband access and adoption by Americans. A competitive environment fostering individual initiative, private innovation, and voluntary cooperation best taps the deep and dispersed knowledge of various industries, businesses, and entrepreneurs. Government does not have the knowledge, capabilities, or incentives necessary to ascertain, provide for, or satisfy ever-changing consumer demands.

- <u>Competition is Promoted through Technological Neutrality</u>

It is ALEC's view that marketplace competition cannot be directly created or micromanaged by government. But government can and should promote and preserve the conditions for competition. It should promote and encourage competition by setting and

enforcing neutral rules. Ideally, competing technology sectors and technology platforms should be subject to neutral laws and regulations. Government should not pick winners and losers in the broadband marketplace. Instead, it should empower consumers to make broadband adoption decisions. Consumers benefit from the proliferation of choices offered by competing network providers, competing application and service providers, and competing content providers.

- Competition is Promoted by Removal of Barriers to Entry

Government can also promote and encourage competition by removing barriers to marketplace entry. Unduly burdensome regulatory regimes can result in high entry costs that discourage would-be competitors from entering into the market. Regulations adopted to address monopoly concerns posed by the prior generations of technologies easily outgrow their intended purposes. Where innovation renders the constraints of older technologies obsolete, marketplace competition should replace managed competition.

- Artificial Competition is Wasteful and Hinders Growth

ALEC opposes artificial competition created through government subsidies. It opposes regulations catering to special interests. And it opposes discriminatory taxation. These unsound methods of government interventionism cause disastrous dislocations of resources, deprivations of innovating incentives, and a diminution of consumer choice. Whereas genuine, free marketplace competition encourages risk-taking and investment in the future, artificial competition stifles future investment and slows technological advancement.

- Government Should Avoid or at Least Limit its own Direct Competition with the Private Sector in Providing Broadband Access and Services

ALEC reiterates that the continued deployment of broadband access and its adoption should be lead by the private sector, not government. As a general matter, government should

not be in the business of business. The National Broadband Plan should take a cautious approach toward any government efforts to provide broadband access in competition with private marketplace providers. Because governments powers of regulation and taxation, ALEC believes that there is a temptation for government providers of broadband access to unfairly use such powers to unfairly disadvantage competitors. It is ALEC's position that taxpayers should not have to pay taxes to fund municipal broadband projects. Nor should taxpayers be on the hook for losses that result when municipal broadband projects fail. Where the private marketplace can provide consumers with broadband choices, taxpayer dollars are better spent elsewhere.

Importantly, the Commission must not overlook the significant private industry investment in broadband infrastructure and networks that has been made in recent years. These investments dwarf the stimulus broadband grants programs established by the *Recovery Act*. Investment by the private sector has the advantage of drawing upon the distributed, localized knowledge of investors and entrepreneurs. Private investment also requires the risk of loss is placed on the private sector, not taxpayers. ALEC believes that a free marketplace governed by minimal regulation best promotes and encourages the investment in broadband infrastructure and services that consumers want.

C. Government Plans and Policies Concerning Broadband Should Promote and Protect Consumer Choices

ALEC believes that enhancement of individual consumer choice should inform all priorities and benchmarks established in the National Broadband Plan. An emphasis on the perspective of the individual consumer should inform the Commission's attempts to define several key terms of the plan. Emphasizing consumer choice best fits with the limited role of

government and the operation of a competitive free marketplace in delivering broadband access and services to consumers.

- Government Should *Not* Substitute Consumer Preferences Reflected in the Marketplace with its Own, Arbitrary Pricing Decisions

It is ALEC's view that the National Broadband Plan should *not* be misconstrued as a vehicle for a government-set rate scheduling for broadband access and services in America. To be sure, inherent limits on government know-how and capabilities strongly caution against attempts to micromanage the broadband marketplace to fit consumer preferences. The perceived value and affordability of broadband access and services to an individual consumer depends upon innumerable circumstances and factors. Those individualized perceptions are always changing in light of technological advancements, availability of new substitutes, etc. Government does not have the knowledge or capabilities required to make such individualized value judgments. A functioning marketplace requires that consumers be free to make decisions about broadband themselves.

The free marketplace offers the best means of assessing the value of broadband use to consumers generally. Consumer preferences are reflected in market prices. But market prices are ever-changing in light of new inputs and outputs. Here too, government faces epistemic and institutional limits on its ability to decide what consumers' needs are and how they should be met. Broadband is a fast-evolving technology. Any government attempt to designate prices for particular broadband technology use as "affordable" will rely upon arbitrary judgments made by government officials, rather than the consumers themselves. Similarly, any suggestion that regulations be imposed ensure such prices be "affordable" must likewise rely upon arbitrary judgments by government decision-makers.

- Promotion of Increased Consumer Choices Should Include Careful Consideration of Broadband Deployment and Adoption Trends and Trajectories

Government can observe changing market prices for various broadband technologies and services. Based on that information, trends and trajectories can be discerned. The crucial questions to be answered include whether those trends and trajectories included increasing choice of broadband offerings and lower prices for consumers. A pro-consumer emphasis includes a forward-looking perspective that takes into consideration where services and prices are heading (rather than where they have been or where they are presently).

Although broadband adoption and use in this nation can certainly be improved, recent trends and trajectories suggest we are headed in the right direction. In the last several years, broadband has deployed to households and businesses across the nation. This deployment owes in significant part to incentives for broadband investment offered by deregulation of telecommunications networks, streamlined statewide video franchise reforms, and other investment-friendly policies. The National Broadband Plan can promote affordability of broadband access and use by further promoting those kinds of pro-investment policies.

- Government Can Promote Consumer Choice by Providing Incentives and Information Needed for Broadband to Reach Unserved Areas

The National Broadband Plan can perform a beneficial role in assessing and highlighting geographic barriers to broadband deployment and adoption. Despite the significant progress of the last several years, too many rural residents still lack broadband access altogether because of the high costs of broadband build-out. This presents an “affordability” problem that the National Broadband Plan can address through consideration of limited, explicit subsidy options that incentivizes broadband build-out to unserved residents.

To the extent that existing broadband mapping information can made available in the National Broadband Plan, ALEC urges Commission make it so. A number of states have created public-private partnerships to map out broadband access and speed capabilities in their respective jurisdictions. The *Broadband Data Improvement Act* provided added mechanisms for funding future statewide mapping efforts and the *Recovery Act* has provided such funding. Making information publicly available will better encourage competing broadband providers to build out to new customers or to offer additional services to both existing and new customers.

- Consumer Choice Requires Individual Freedom to Use Broadband

ALEC believes that consumers must continue to be free to make their own choices about how to make the best use of broadband technologies. The *Notice of Inquiry* for this proceeding provides a laundry list of uses for broadband, including the advancement of consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, worker training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes. From a consumer choice perspective, it is the consumers themselves who should ultimately decide whether, when, and how to employ broadband for such purposes.

The development of a plan for broadband infrastructure and services to advance these uses should therefore avoid adoption of any new regulations that would limit consumer choices concerning broadband adoption and use. To the fullest extent possible, consumer preferences should determine whether, when, and how to use broadband for particular purposes—not government. The National Broadband Plan should not displace consumer choice with government standardization. Rather, the Plan must ensure that consumers continue to have the freedom to use broadband in the manner they see fit.

Respectfully submitted,

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