

TABLE OF CONTENTS

SUMMARY	iii
I. INTRODUCTION	2
II. ADDITIONAL SPECTRUM SHOULD BE ALLOCATED FOR BROADBAND SERVICES.....	6
III. MINIMAL REGULATION OF A COMPETITIVE BROADBAND MARKET IS THE MOST EFFECTIVE AND EFFICIENT MEANS OF ENSURING NATIONWIDE ACCESS.....	9
IV. THE NATIONAL BROADBAND PLAN MUST PRESERVE THE OPEN INTERNET	11
V. CONCLUSION.....	12

SUMMARY

The future of our nation's leadership in innovation and technology depends in large part on broadband. The United States not only needs to have a broadband policy, it needs to have the right policy in place to ensure continued American technological and communications leadership.

The Consumer Electronics Association and its member companies have long advocated aggressive policies to ensure access to robust and competitively-priced broadband technologies. CEA supports adoption of the National Broadband Plan and urges the Commission to include three essential elements:

- (1) The Plan should seek an allocation of at least 200 MHz of new spectrum for advanced wireless services;
- (2) The Plan should maintain pro-competitive, deregulatory policies that promote market-driven, facilities-based competition among broadband providers; and
- (3) The Plan should include pro-consumer policies that ensure open and unfettered access to the Internet and the ability to use any non-harmful device regardless of platform.

It is imperative that the National Broadband Plan recognize spectrum as an essential determinant to the availability of wireless broadband access. As business and consumer interests continue to rapidly increase demand for wireless access, the Plan should embrace CEA's 2008 Wireless Compact, which proposes that NTIA and the Commission each identify 100 MHz of spectrum that can be repurposed toward higher value uses. National spectrum policies must also continue to further the benefits that result from both licensed and unlicensed uses. Finally, as the Federal Government considers spectrum reform, it must remain vigilant to the perils of inadvertently hampering innovation.

The Plan must also emphasize policies that advance competition, broadband deployment, and adoption by stimulating investment in end-to-end high speed infrastructure, both wired and wireless. The most effective means of ensuring nationwide broadband access is through minimal regulation of the broadband market. Market-driven, facilities-based competition has provided consumers with access to an array of content, service and applications choices, accessible through a diversity of products.

Finally, the Plan must preserve the open Internet. The open Internet that we enjoy today has fostered the development of content, applications and services that were unimaginable only a few short years ago. That openness must be preserved on all broadband platforms, including wireless, to ensure that the Internet remains a foundation of innovation. Though broadband service providers should have some flexibility to reasonably manage their networks, they should continue to abide by the four principles established in the Commission's *Policy Statement*.

demand, and to ensure that our nation's broadband platforms are sufficiently robust to allow for the development of increasingly bandwidth-intensive applications, content and services, the Commission's National Broadband Plan² must contain the following three elements:

1. More spectrum. It should seek an allocation of at least 200 MHz of new spectrum for wireless broadband services;
2. Competition. It should maintain pro-competitive, deregulatory policies that promote market-driven, facilities-based competition among multiple Internet service providers; and
3. Openness. It should include pro-consumer policies that ensure open and unfettered access to lawful online content, applications and services and the ability to utilize any non-harmful device regardless of the platform.

I. INTRODUCTION

It has now become almost axiomatic - access to broadband is one of the essential challenges the country faces today. As CEA President Gary Shapiro has stated, "broadband is an enabling service . . . We must invest in [competitive] high-speed infrastructures [providing consumer] choice among broadband providers."³ From health care reform to a "greener" energy policy, from job creation to distance learning, connecting members of the public to broadband forms the foundation for the broader forces of change across the full reach of our nation. This is not merely theoretical; multiple studies suggest that a wide diffusion of broadband will lead to broad economic growth, including both job creation and income expansion.⁴ One study has

² *A National Broadband Plan for Our Future*, Notice of Inquiry, GN Dkt. No. 09-45, FCC 09-31 (rel. Apr. 8, 2009) ("NOI").

³ Gary Shapiro, President, Consumer Electronics Association, Keynote Address at the 2009 International CES (Jan. 8, 2009), <http://www.ce.org/PDF/Gary-Shapiro2009-CES-Keynote-no-Sony.pdf> ("Shapiro CES Keynote").

⁴ See e.g., Dr. Kristin Van Gaasbeck et al., *Economic Effects of Increased Broadband Use in California*, Sacramento Regional Research Institute 30-36 (2007); Sharon E. Gillett et al., (continued on next page)

suggested that just a seven point increase in broadband adoption could result in more than \$100 billion in direct economic impact and the creation of 2.4 million jobs.⁵ Indeed, to remain a leader in the global economy, our broadband networks must remain innovative and robust to empower consumers, businesses, and public and private institutions alike. The nation's new policies must be designed to encourage Americans to take full advantage of current and future bandwidth-intensive and quality-sensitive applications, as well as to reap the additional powerful benefits of a mobile broadband connection. The United States not only needs to have a broadband policy, it needs to have the right policy in place to ensure continued American technological and communications leadership.

For nearly a decade, CEA has promoted aggressive policies to ensure access to robust and competitively-priced broadband technologies.

- CEA was a member of the High Tech Broadband Coalition (HTBC), an ad hoc alliance of the leading trade associations of the computer, telecommunications equipment, semiconductor, consumer electronics, software and manufacturing sector. HTBC was a key player in the proceeding that led to the Commission's application of a light regulatory touch towards wireline broadband services.
- CEA was also a member in the Coalition of Broadband Users and Innovators (CBUI), a coalition of consumer groups, high-tech companies and trade associations. CBUI helped convince the Commission of the need to adopt the *Policy Statement*⁶ which has helped preserve the openness of the Internet and fueled its growth.

Measuring the Economic Impact of Broadband Deployment, U.S. Department of Commerce National Technical Assistance, Training Research and Evaluation Project #99-07-13829, 4 (2007).

⁵ CONNECTED NATION, THE ECONOMIC IMPACT OF STIMULATING BROADBAND NATIONALLY, 5 (Feb. 21, 2008), http://www.nextgenweb.org/wp-content/uploads/2008/02/connected-nation-the-economic-impact-of-stimulating-broadband-nationally_aconnectednationreport_001.pdf.

⁶ *In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Policy Statement, 20 FCC Rcd 14986 (2005) (“*Policy Statement*”).

- In 2003, CEA noted that the then-current average speed connection was not enough to support existing and future Internet services and applications. That year, the CEA Board approved a Five-Year Strategy Plan that called for a 50% household penetration of 1 Mbps to the home and 100 Mbps throughout the home. We also noted however that the eventual deployment of true “100 mbps” broadband is necessary for the Internet to evolve and for innovation to flourish.⁷
- For several years, CEA has sought the allocation of additional spectrum on multiple occasions, most recently in our 2008 Wireless Compact in which we proposed that 200 MHz of spectrum be identified and repurposed by NTIA and the FCC for advanced wireless services.
- To facilitate telecommuting, CEA provides employees the option to work from home and reimburses their broadband access expenses up to \$500 a year. The Arlington County (VA) Board recently recognized CEA’s telecommuting program with its 2009 Fresh AIRE Business Champion Award.⁸

The consumer electronics industry is at the vanguard of the effort to promote and leverage broadband. The industry accounts for more than 15 million American jobs and a trillion dollars of annual economic activity.⁹ At the 2009 International CES, over 20,000 new products were unveiled – products that will help to drive the economic recovery. Meanwhile, consumer broadband devices are becoming commonplace in American households. Every day, Americans use computers, Smart phones, Internet-connected video game consoles, portable music players, modems, remote DVRs, and Internet radio and video devices. Put simply, the availability of broadband drives new innovation – from gadgets that enable communications to devices that keep us aware of the latest news and sports, the consumer electronics industry works tirelessly to provide new products that consumers come to enjoy and rely on.

⁷ CEA Strategic Five Year Goals, 2003

⁸ See <http://www.arlingtonva.us/Portals/Topics/ClimateBusinesses.aspx>.

⁹ See *Innovation**, *US economic contribution of consumer electronics*, PriceWaterhouseCoopers, April 2008, pp. 2-3, available at http://www.ce.org/PDF/CEA_Final_Report_20080401_Lo-Res.pdf.

The FCC's National Broadband Plan should focus on three key elements: more spectrum, competition and openness. If policymakers succeed in 1) identifying 200 MHz of additional spectrum for wireless broadband services; 2) maintaining deregulatory policies that promote market-driven, facilities-based competition among multiple Internet service providers; and 3) preserving an open Internet, consumers and businesses will continue to find new ways of leveraging broadband to enable countless and unimaginable advances in technology, communication, and quality of life. Achieving ubiquitous availability and adoption of broadband will create a raft of new demand for products and services – from new “smart meters” to the latest cell phone, from videoconferencing technology to electronic books. In turn, unfettered access to new innovative applications, services and devices drives consumer adoption. This demand will spur further investment in the innovation economy and fuel America's global leadership.

The open Internet that we enjoy today has fostered the development of content, applications and services that were unimaginable only a few short years ago. That openness must be preserved in the broadband era, for all platforms, to ensure that the Internet remains a foundation of innovation. Though broadband service providers should have some flexibility to reasonably manage their networks, they should continue to abide by the four principles established in the Commission's *Policy Statement*¹⁰ that ensure unfettered consumer access to lawful applications, content and services and the ability to use devices of their choice so long as they do not cause harm to providers' networks. Moreover, the Commission should make clear that the *Policy Statement* applies to all broadband platforms, including wireless.

¹⁰ *Policy Statement*.

II. ADDITIONAL SPECTRUM SHOULD BE ALLOCATED FOR BROADBAND SERVICES

The United States is a nation on the move – more than any other country on earth, Americans rely on their mobile devices and laptops for connectivity at work, on the go and at home.¹¹ Increasingly consumers not only expect to be able to talk at all times in all places, they also want broadband connectivity. Nearly one-third of all teens use their mobile phones to surf the Internet and one in five teens performs social networking tasks via their mobile phone.¹² Meanwhile, wireless platforms are an increasingly popular alternative for business and residential consumers to access services. High speed wireless broadband and mobile commerce are already becoming a part of our daily lives and offer the potential to reach even the hardest to reach rural areas.¹³

Yet our progress on these fronts will be limited because spectrum availability for new services does “pose a constraint on broadband access and development.”¹⁴ As the Congressional Research Service has before noted, “American competitiveness in advanced wireless technology

¹¹ The United States leads the world in average consumers’ minutes of use per month with 829 average minutes. By comparison, other nations include Japan (139), Germany (102), United Kingdom (192), Canada (444), South Korea (320) and Mexico (162). See CTIA–The Wireless Association®, Written Ex Parte Communication, RM-11361, GN Dkt. No. 09-51, WC Dkt. No. 07-52, 9 (May 12, 2009).

¹² See CTIA–The Wireless Association® and Harris Interactive, *Teenagers, A Generation Unplugged*, 21-22 (Sept. 2008), http://files.ctia.org/pdf/HI_TeenMobileStudy_ResearchReport.pdf (last visited May 30, 2009).

¹³ As Acting Chairman Copps has recognized, “wireless broadband service can offer cost-effective connectivity where no broadband exists, as well as complementary or competitive service where it does.” Michael J. Copps, Acting Chairman, FCC, *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, ¶ 142 (May 22, 2009) (“Rural Broadband Report”).

¹⁴ *NOI* at ¶ 44.

may be constrained by the limited amount of exploitable bandwidth that is available.”¹⁵ And the undeniable consumer thirst for broadband will only increase as mobile devices are used as media platforms and become further integrated as instruments of commerce.

To meet this demand, the Plan should embrace CEA’s Wireless Compact, which proposes that 200 MHz of spectrum be identified and repurposed by NTIA and the FCC toward higher value uses.¹⁶ CEA’s Wireless Compact provides a reasonable and achievable roadmap for fulfilling the full potential for wireless as a part of the Commission’s National Broadband Plan.

The Compact calls for additional spectrum resources to keep the wireless economic engine running at top speed. First, Congress and NTIA should take steps to identify and reallocate 100 MHz of spectrum to transfer from Federal government to non-government use, and the FCC should make this spectrum available promptly for commercial applications. Past releases of government spectrum have paved the way for new waves of investment and innovation. NTIA should explore the full range of policy options to achieve this result, including additional applications of the Commercial Spectrum Enhancement Act, rigorous use of OMB Circular A-11, exploration of spectrum fees, additional rights for federal government incumbents to lease their spectrum, more opportunities for spectrum sharing, and a rigorous review of agency use of spectrum.

Second, the FCC should closely examine its own spectrum allocations and policies to identify spectrum that can be moved to more favorable use, with the goal of making at least 100

¹⁵ U.S. Library of Congress, Congressional Research Service, *Wireless Technology and Spectrum Demand: Advanced Wireless Services* by Linda K. Moore, 2 (Jan. 20, 2006).

¹⁶ Consumer Electronics Association, *CEA Washington Insider Series: Better Living Through Wireless: The Wireless Revolution U.S. Spectrum Policy* (2008).

MHz of spectrum available for new commercial services. Acting Chairman Copps has already recognized the importance of conducting a spectrum review for this very purpose:

We recommend the Commission conduct a thorough inventory of the spectrum it has already licensed, examining how, why, and where it is used. . . . The Commission could then consider various ways to redeploy this spectrum for more efficient use, including possible modifications to secondary markets rules.¹⁷

Where it can be clearly demonstrated that inefficiencies exist, policymakers must reallocate underutilized spectrum and/or adopt market-driven policies such as flexible use and secondary markets to ensure greater consumer access to wireless broadband. Congress and the FCC can and should make more efficient and intensive commercial use a national priority and grant additional service flexibility where appropriate.

Third, it is essential that national spectrum policies continue to further the benefits resulting from both licensed and unlicensed uses. Both are needed, because licensed and unlicensed are complementary models. Exclusive licensing has proven to be a significant source of innovation and investment because of its freedom from interference and consumer benefit. Meanwhile, unlicensed spectrum has provided a platform for numerous consumer electronics products, including Wi-Fi, which have opened a new frontier of high-speed Internet options for consumers. Both models promote a competitive environment in which the marketplace rewards innovation.

Finally, as the Commission and other policymakers reform spectrum policies, they must ensure that policies or mandates do not inadvertently hamper innovation. To that end, the Commission should continue to be technology-agnostic and allow consumers to determine what

¹⁷ Rural Broadband Report at ¶ 150.

devices and applications succeed or fail. The minimally intrusive approach that Congress and the Commission have generally taken toward wireless has resulted in an unparalleled success. In the past decade alone, prices have fallen, minutes of use have skyrocketed, penetration has soared, investment has climbed and wireless service has moved beyond voice to include an exploding array of broadband capabilities. The Commission should, of course, remain vigilant to ensure that the wireless marketplace continues to be competitive and provide new broadband services, but should seek to intervene only where necessary. The Commission should avoid picking technological winners and losers, and reject calls to burden certain spectrum bands with particular obligations or service conditions. Limiting direct government regulation of spectrum-based services and adding new spectrum to the pipeline will allow continued dynamic growth of the wireless platform crafting multiple vital competitors to the wireline and cable platforms.

III. MINIMAL REGULATION OF A COMPETITIVE BROADBAND MARKET IS THE MOST EFFECTIVE AND EFFICIENT MEANS OF ENSURING NATIONWIDE ACCESS

Market-driven, facilities-based competition is the best way to promote the rapid deployment of broadband technologies and increase consumer demand. As the result of the Commission's nurturing and cautious regulatory approach to information services, the Internet has exploded. Today, consumers have access to an unprecedented array of content, services, and applications, accessible through an ever-increasing diversity of products. From the availability of routers to Wi-Fi-enabled handsets, consumers are benefiting from this competitive marketplace.¹⁸

¹⁸ Today, US consumers can choose amongst 29 different Wi-Fi enabled handsets. *See* Letter from Christopher Guttman-McCabe, Vice President, Regulatory Affairs, CTIA-The Wireless (continued on next page)

The United States remains a formidable global leader in information and communications technology, largely as the result of this framework. The Telecommunications Act of 1996 was adopted to ensure that a “pro-competitive, de-regulatory national policy framework” was applied to the communications industry.¹⁹ This congressional mandate recognized that, as a general matter, the operation of market forces will best serve the public interest. Indeed, today’s thoughtfully regulated broadband marketplace has produced competition and consumer choice while enabling consumers to realize the full economic benefits of innovative information technologies. For example, millions of Americans can choose among a number of highly competitive choices for high-speed Internet access provided via cable, telecom, wireless, or satellite. This intermodal platform competition has increasingly yielded lower prices and innovation for consumers of high-speed Internet services.²⁰

The current approach the Commission has taken with respect to broadband services is also reaping benefits in the form of continued investment in multiple platform infrastructures. Since 1996, the cable industry has invested more than \$130 billion to deploy new broadband networks.²¹ By 2010, Verizon alone will have invested more \$23 billion to launch its fiber-optic

Association to Marlene H. Dortch, Secretary, FCC, RM-11361, GN Dkt. No. 09-51, WC Dkt. No. 07-52, 2 (May 12, 2009).

¹⁹ See S. Conf. Rep. No. 104-230, 104th Cong. 2d Sess. Preamble (1996).

²⁰ See *Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, Thirteenth Annual Report, ¶ 64 (2009) (Noting that “cable companies and telephone companies are competing for high-speed Internet subscribers using faster speeds and promotional offers.”)

²¹ National Cable & Telecommunications Association, *Cable’s Value*, <http://www.ncta.com/IssueBriefs/Cables-Value.aspx> (last visited May 30, 2009).

Internet service, FiOS.²² And, in 2008, the wireless industry made \$20.1 billion in annualized incremental capital investment.²³ These investments create American jobs and lay the foundation for broadband products and services. Such commitments result from the do-or-die mentality of all sectors in the communications marketplace to stay ahead amidst robust competition to provide consumers and businesses with ever more robust broadband access.

In the current economic environment and as reflected in the urgency surrounding the American Recovery and Reinvestment Act, the Commission's broadband policy must redouble its efforts to encourage this competitive deployment of infrastructure and services on multiple platforms. Competition brings high quality services and products to consumers. The Commission must continue to foster an environment of investment and innovation in competing technological alternatives for broadband services through a deregulatory and technologically neutral approach to policymaking.

IV. THE NATIONAL BROADBAND PLAN MUST PRESERVE THE OPEN INTERNET

CEA has consistently advocated that open and unfettered consumer access to content, service, applications and devices – all of which have fueled the phenomenal growth of the Internet – must be preserved. The Commission's *Policy Statement*²⁴ is a non-restrictive framework that provides guidance for industry and the Commission as the competitive marketplace becomes increasingly robust. The *Policy Statement* provides a mechanism for the

²² Stephanie N. Mehta, Verizon's Big Bet on Fiber Optics, CNNMoney.com (Feb. 22, 2007), http://money.cnn.com/magazines/fortune/fortune_archive/2007/03/05/8401289/ (last visited May 30, 2009).

²³ See CTIA-The Wireless Association®, Wireless Quick Facts, <http://www.ctia.org/advocacy/research/index.cfm/AID/10323> (last visited May 30, 2009).

²⁴ *Policy Statement*.

Commission to monitor marketplace developments. Should the Commission find violations of the *Policy Statement*, then it should take appropriate enforcement action to ensure that the connectivity principles set forth in the *Policy Statement* are preserved.

CEA has also long supported a consumer's right to use any device on any broadband platform to access the Internet so long as these devices cause no harm to the network. Recent announcements like the Open Handset Alliance²⁵ and Verizon Wireless' 3G and LTE announcements²⁶ indicate that the market is providing more device and application choices for consumers. Nevertheless, unlike other regulatory mandates, an open access requirement would promote customer choice without inhibiting market forces. The Commission should pursue an open device policy on all platforms, and, in the case of wireless platforms, should ensure that the process for approval of device attachment is transparent, objective and competitively neutral, consistent with the operation of market forces.

V. CONCLUSION

The National Broadband Plan offers a clear opportunity to the Commission to articulate national broadband goals and chart a strategic course to achieve those goals. CEA, as the advocate for the broadband consumer electronics industry, shares the FCC's vision of a ubiquitous and robust broadband experience for Americans across the country. To achieve that end, it must seek out an additional 200 MHz of commercial broadband spectrum, foster multiple minimally regulated competitive broadband platforms and preserve the vitality and innovation that derives from an open Internet.

²⁵ See http://www.openhandsetalliance.com/oha_overview.html.

²⁶ See e.g., Verizon announcements at https://www22.verizon.com/opendev/112707_news.aspx; <http://news.vzw.com/news/2009/04/pr2009-04-16c.html>.

Respectfully submitted,

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