The American Civil Rights Union

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Date: October 20, 2009

To: The Federal Communications Commission

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Re: Comments – NBP Public Notice # 13
Regarding Docket Nos. 09-47, 09-51 and 09-137

This comment is being made by the American Civil Rights Union, a non-partisan civil rights organization dedicated to defending Americans' constitutional rights. Its Policy Board consists of the Honorable Edwin Meese III, Dr. James Q. Wilson, Hon. William Bradford Reynolds, Ambassador Curtin Winsor, Jr., Dean J. Clayburn LaForce, Jr., Dr. Walter E. Williams and Dean Kenneth W. Starr. Counsel for the ACRU who wrote these comments practiced First Amendment law in the US Supreme Court for 33 years.

The FCC has sought comments on the report on broadband services in the US by the Berkman Center at Harvard University. The text of that study is found here: http://www.fcc.gov/stage/pdf/Berkman_Center_Broadband_Study_13Oct09.pdf

The Commission seeks comments in the following areas:

1. Does the study accomplish its intended purposes?

2. Does the study provide a complete and objective survey of the subject matter?

3. How accurately and comprehensively does the study summarize the broadband experiences of other countries?

4. How much weight should the Commission give to this study as it develops a National Broadband Plan?

5. Are additional studies needed along the lines of the Berkman study?

6. Do you bave any other comments on the Berkman study that you deem relevant?

We reply to those issues in order, by number.

1. As a technical description of (a) what broadband access is, (b) how important it is in many areas of data transmittal, and (c) the technicalities of its transport, the study is excellent. The Berkman Center did what it was asked to do. However, the study has nothing to say about FCC actions which might force current broadcast content to use broadband, or use government-supplied broadband as a basis to establish FCC content censorship over the Internet. Both of these potential actions would be gross violations of the Constitution's First Amendment.

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2. The study is complete and objective, but only for its narrow focus. See comment number 1.

3. It is a serious error to rely on the broadband experiences of other nations. Most nations do not have First Amendment freedoms of speech and press that we do. And many that do, have other provisions which take-back or override such freedoms. For example, one clause of the Constitution of the USSR guaranteed "freedom of the press" and included the very new technology of "television," However, a later clause in that Constitution forbade "any actions not in accord with the socialist state."

For a more current example, Article 57 of the Bolivian Republic of Venezuela (the full name of that nation) reads, *"Everyone has the right to express freely his or her thoughts, ideas or opinions, orally, in writing or by any other means of communication and diffusion, and no censorship shall be established. Anyone making use of this right assumes full responsibility for everything expressed. Anonymity, war propaganda, discriminatory messages, or those promoting religious intolerance are not permitted. Censorship restricting the ability of public officials to report on matters for which they are responsible is prohibited."*

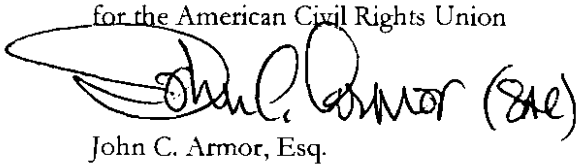
The Commission should be well aware of the recent actions of the Chavez regime in Venezuela shutting down first radio and then TV stations which were critical of it, despite this constitutional provision. So, as a general rule, no experiences from other countries should be considered in establishing any FCC policies unless such countries have a recent and unbroken history of freedom of the press.

4. On the technical side (see comments 1 & 2) the Commission should give weight to the Berkman Study. Beyond that, the FCC should not develop any policy on broadband without first taking up the freedom of the press implications. See comment number 3.

5. No. The technology issues are clear. It is the First Amendment issues that are both muddy, and potentially dangerous.

6. No other comments. See comment numbers 1, 2 & 3.

Respectfully Submitted
for the American Civil Rights Union



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