Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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

COMMENTS OF TIME WARNER CABLE INC.

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SUMMARY

Promoting broadband deployment and adoption is an important national priority, and the development of a national broadband plan is a critical step toward ensuring that the benefits of broadband are extended to all Americans. As a leading broadband provider and innovator, Time Warner Cable Inc. looks forward to working with the Commission and other stakeholders to formulate policies that rapidly advance this country's broadband goals.

Fortunately, this effort is not starting from scratch; the Commission can build on the solid foundation that already exists. Judged against the roll-out of other technologies, the launch and provision of broadband services in the United States has been a resounding and unequivocal success. A wide range of private entities—including network owners, service providers, and software developers—have committed massive amounts of risk capital to construct broadband facilities using a multitude of technologies (cable, DSL, satellite, wireless, and others) and to develop applications and services to ride over them. This private sector investment has propelled broadband growth in this country at an unprecedented rate, fueling the phenomenal and widely acknowledged proliferation of broadband networks and services that have revolutionized the way we communicate, work, learn, and live. As a result, the majority of U.S. consumers already enjoy the social, economic, and other benefits of broadband that Congress specifically identified as goals of the broadband stimulus legislation.

Notwithstanding this remarkable success, more work lies ahead to ensure that the many benefits flowing from broadband Internet access reach all Americans. To that end, the Commission should pursue supply-side initiatives targeted to unserved areas. This pursuit should begin by assessing the effects of the stimulus programs now being implemented and then ascertaining what further governmental efforts, if any, may be warranted. The Commission and other federal agencies already have taken vitally important steps toward achieving these goals,

including by dramatically improving broadband data collection and preparing for more extensive mapping. Such efforts will enable the Commission and industry participants to identify with granularity those areas that remain unserved so the national plan can be targeted accordingly. The Commission also should pursue demand-side initiatives that combine outreach and education with Lifeline-like programs that help defray the costs associated with broadband Internet access service subscriptions and equipment for low-income households. These initiatives must, of course, be implemented on a technologically neutral basis.

At the same time that it acts to stimulate broadband availability and adoption where necessary, the Commission must be cognizant of preserving and enhancing the pro-investment and innovation-conducive environment that is responsible for the growth of the broadband marketplace thus far. This can be accomplished by pursuing measures that remove remaining barriers to investment and innovation by the private sector, and equally as critical, refraining from taking actions that would unnecessarily increase the costs of broadband build-out. Such restraint, coupled with affirmative initiatives focused on both supply *and* demand issues, will ensure that investment and innovation in the broadband marketplace continue unabated, resulting in the ubiquitous availability of affordable broadband Internet access service for all Americans.

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Time Warner Cable Inc. ("TWC") respectfully submits these comments in response to the Notice of Inquiry ("NOI") issued by the Commission in the above-referenced docket.[1] The NOI represents the first step in the Commission's development of an informed and cohesive national broadband policy that will "enable the build-out and utilization of high-speed broadband infrastructure" and, in turn, extend the many benefits of broadband to all Americans.[2] TWC considers the promotion of broadband deployment and adoption to be a top national priority and, as one of the leading broadband providers and innovators in the United States, it has significant experience with and interest in the many important issues presented by the NOI. TWC commends the Commission for its leadership in this context and looks forward to assisting in the development of policies that advance America's broadband objectives in a manner that serves the interests of all stakeholders.

INTRODUCTION AND BACKGROUND

This proceeding formally initiates the process of fulfilling the Commission's obligation under the American Recovery and Reinvestment Act ("ARRA") to develop and deliver to

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1 *A National Broadband Plan for Our Future*, Notice of Inquiry, GN Docket No. 09-51 (rel. Apr. 8, 2009) ("NOI").

2 *Id.* ¶ 1.

Congress a "national broadband plan."[3] This responsibility is unquestionably critical; indeed, Acting Chairman Copps termed it "the most important charge" the Commission has been given since the passage of the Telecommunications Act of 1996—if not its most important challenge ever.[4] The task ahead involves the prompt resolution of a wide range of complex and sometimes polarizing questions, many of which the Commission, the industry, and other parties have been grappling with for several years.[5] And the Commission's policy recommendations undoubtedly will have a significant impact on the broadband marketplace—and thus on our nation's economic well-being, our educational and health care systems, and our entertainment and civic discourse. To be sure, the stakes are high.

The Commission correctly acknowledges, however, that the challenge is not its alone. Rather, participation by many interested parties—broadband access, service, and application providers, consumers, and federal and state regulators, among others—is essential if the Commission is to formulate workable and consensus-driven recommendations for the further development of the broadband marketplace.[6] In the spirit of fostering that broad-based

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3 American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115, § 6001(k)(1) (2009) ("ARRA").

4 Remarks of Acting FCC Chairman Michael J. Copps, *Free Press Summit: Changing Media*, May 14, 2009, at 5.

5 The Commission recently identified and addressed many of these issues in a comprehensive manner in its report detailing a Rural Broadband Strategy as required by the 2008 Farm Bill. *See Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, Michael J. Copps, Acting Chairman, Federal Communications Commission, May 22, 2009 ("*Rural Broadband Report*"); *see also* Food, Conversation, and Energy Act of 2008, Pub. L. No. 110-246, § 6112, 122 Stat. 923, 1966 (2008) ("2008 Farm Bill"). That report will serve as one of the building blocks in developing the national broadband plan.

6 *See, e.g.*, NOI ¶ 7 (recognizing that the goal of producing a national broadband plan "requires the wholehearted effort of both the private and the public sector"); *see also Rural Broadband Report* ¶ 7 ("Success in this endeavor will require the input and cooperation of many different entities . . . . We must marry the dynamic innovations and flexibility of the

partnership, TWC stands ready to engage in a continuing dialogue on broadband-related issues that will extend beyond both this public comment cycle and the Commission's submission of its final recommendations to Congress next February.

That dialogue is one in which TWC is well qualified to participate. TWC has long been an innovator in the broadband arena, setting the pace for the cable industry for decades and establishing a remarkably successful track record in the provision of broadband-based services to residential and enterprise customers. Since 1996, TWC has expended more than $25 billion of capital in its business. Most pertinent here, this capital investment has helped facilitate the type of high-speed Internet access service that is the central focus of this proceeding.[7] TWC is now one of the country's largest providers of broadband Internet access, with nearly 9 million subscribers. In fact, TWC was one of the first service providers to launch a broadband Internet access service, Road Runner, a service that was available years before most telecommunications carriers offered even DSL.

These investments also have allowed TWC to deliver more robust multichannel video and other services to its customers. TWC is the nation's second-largest cable operator, with cable systems passing nearly 27 million homes in 28 states. By developing enhanced broadband capabilities, TWC can offer its more than 13 million video customers a range of expanded services, including more high-definition and diverse programming.

TWC's broadband infrastructure likewise has enabled it to deploy competitive digital voice services—*i.e.*, interconnected VoIP—throughout its geographic footprint. Indeed, TWC

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private sector with the policy vision of the public sector to create a model of how government and industry can partner to ensure ubiquitous broadband access.").

[7] *See, e.g.*, NOI ¶ 3 (stating that while "Internet access" is widely available, "its benefits are not yet ubiquitous"); *id.* ¶¶ 58-60 (asking about the privacy implications of broadband Internet access services); *id.* ¶¶ 64-105 (discussing a range of online activity conducted using broadband Internet access services).

was the first multi-system cable operator—and one of the first service providers—to introduce a mass-market, facilities-based VoIP service, Digital Phone, bringing a reliable, feature-rich, competitive voice alternative to millions of residential consumers. More recently, TWC launched its Business Class Phone service to small and medium-sized businesses in the majority of its operating areas, and it expects to complete the rollout of this service to all of its service areas in 2009.

TWC's efforts in the broadband arena build on its long history as an industry leader in creating and deploying innovative products and services. TWC was the first cable operator to launch an interactive television programming trial (in 1977), conduct a Video-On-Demand ("VOD") trial (in 1994), commercially launch VOD (in 2000), and offer Digital Video Recorders ("DVRs") (in 2002), HD-DVRs (in 2003), and multi-room DVRs (in 2004). TWC's pioneering efforts also include its introduction (in 2005) of "Start Over," an enhanced time-shifting feature that allows viewers to restart a program already in progress even when they have not programmed their DVRs, as well as its launch (in 2007) of "Look Back," which allows for same-day viewing of programs that have already aired without the need for a DVR. TWC has been recognized for its revolutionary technical achievements. Most notably, it has received four technical Emmy Awards based on such innovations, including one recognizing TWC's work in using a hybrid fiber-coax delivery system that paved the way for converged video, broadband, and voice services.

TWC's efforts in deploying broadband illustrate the type of private investment that has served as an engine for broadband proliferation in the United States. Judged against the roll-out of any other technology in our nation's history, the development of the broadband marketplace has been a resounding and unequivocal success. As described below, a wide range of private entities—including network owners, service providers, and software developers—have

committed massive amounts of risk capital to construct infrastructure and develop services and applications. This investment has propelled broadband growth in this country at an unprecedented rate, fueling the phenomenal and widely acknowledged proliferation of broadband networks and services that have revolutionized the way we communicate, work, learn, and live.

At the same time, there can be no doubt that there is more work to be done. There are pockets of the country where terrestrial broadband services remain largely or entirely unavailable, and there are many consumers who have yet to perceive the value of purchasing broadband Internet access service or who simply cannot afford to do so. Accordingly, this proceeding must put in place an effective strategy for closing this digital divide. Building on the ongoing stimulus efforts, recent improvements to the collection of broadband data, and the report on Rural Broadband Strategy, the Commission should focus its efforts on identifying areas unserved by any broadband provider and eliminating barriers to investment in those areas—including by targeting subsidies to locations that are uneconomic to serve. At the same time, the Commission should foster programs to stimulate additional adoption of broadband services in areas where broadband penetration is low. Indeed, the central purpose of the broadband stimulus legislation and the 2008 Farm Bill was to spur supply-side and demand-side initiatives that can bring broadband—and its many economic and other benefits—to those who do not have it. No serious participant in the debates about broadband policy can deny the urgency and importance of these objectives.

While the Commission can and should be proactive to ensure that the benefits of broadband Internet access are extended to all Americans, it should not lose sight of the success of private investment in getting us to where we are now. To that end, the Commission should ensure that broadband platform providers continue to have the necessary incentives to build out

networks capable of reaching all Americans. In particular, the Commission should confirm that such operators retain the necessary flexibility to engage in reasonable network management for the benefit of their customers and the integrity of the networks upon which the success of any broadband plan is so critically dependent. The Commission likewise should refrain from pursuing initiatives that would risk creating additional barriers to investment, such as increasing pole attachment rates or adopting additional privacy regulations. Such actions would impede further investment in broadband infrastructure by the private sector and thereby undermine the goal of achieving ubiquitous access to broadband.

DISCUSSION

In these comments, TWC addresses key concepts that should be incorporated into the Commission's national broadband plan. After assessing the status of the broadband marketplace today, TWC outlines how the Commission should pursue initiatives that will bring the broadband revolution to all Americans. These measures will combine a mix of targeted government support programs and regulatory actions that will extend broadband infrastructure and demand to areas where they have not yet taken hold, while preserving the critical investment incentives that are just as essential to fostering increased broadband deployment and adoption.

I. PRIVATE INVESTMENT HAS CREATED A SOLID FOUNDATION FOR THE DEVELOPMENT OF A NATIONAL BROADBAND PLAN.

In developing a national broadband plan, it is a significant fact that the Commission does not start from scratch. Substantial and ongoing investment by the private sector has resulted in the proliferation of broadband networks and services unlike any other technology, generating precisely the sort of benefits envisioned in the ARRA and the NOI. The progress made in this area thus far provides the Commission with significant momentum and a solid foundation upon which to formulate a strategy for ensuring truly ubiquitous broadband accessibility.

A. Private Investment and Innovation Have Fueled the Tremendous Growth of Broadband Networks and Services.

The broadband services marketplace has thrived in its relatively brief history. Broadband services are offered over a diverse array of platforms, including cable, DSL, fiber-to-the-home, satellite, fixed and mobile wireless, and broadband over power lines ("BPL"), and consumers have enthusiastically embraced these technologies. Indeed, the NOI correctly recognizes that "the majority of U.S. businesses and households have broadband connections, and access to the Internet through a variety of technologies—fiber, copper, cable, wireless, and satellite—is an integral and critical part of American life."[8] Competition between and among these platforms has been well documented by a host of Commission orders and voluminous submissions in prior dockets. Accordingly, TWC provides only a brief survey of developments that highlight the ongoing innovation and investment occurring in the broadband arena, in order to reinforce the critical need to preserve and facilitate this activity as a key component of the national broadband plan.

The Commission recently detailed the continued investment by broadband service providers and the resulting growth of this sector.[9] For example, the Commission found that fiber deployments by both large and small providers have "increased dramatically,"[10] while BPL and satellite technology continue to evolve and offer competitive alternatives to consumers.[11] The

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8 NOI ¶ 2 (citation and footnote omitted); *see also Rural Broadband Report* ¶ 10 (describing new broadband technologies being utilized by a range of platform providers).

9 *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Fifth Report, 23 FCC Rcd 9615 ¶ 34 & n.95 (2008) ("*Fifth 706 Report*").

10 *Id.* ¶ 14 & n.34.

11 *Id.* ¶¶ 22-24; *Rural Broadband Report* ¶ 10 & n.15 (noting that satellite broadband has "near ubiquitous coverage and downstream data rates between 512 kbps and 5 Mbps,"

Commission also found that wireless broadband services using both licensed and unlicensed frequencies have expanded greatly.[12] Similarly, the Commission has observed that the enterprise broadband services "marketplace generally appears highly competitive."[13] Last year, a unanimous Commission stated that, overall, "providers have deployed broadband facilities to a tremendous degree since" 2000.[14] The ongoing emergence of next-generation technologies—such as WiMAX, LTE, and DOCSIS 3.0—will continue to fuel and enhance broadband proliferation and competition.[15]

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with three satellite operators providing broadband Internet access services—HughesNet (1-5 Mbps downstream and 128-300 kbps upstream); WildBlue (512 kbps-1.5 Mbps downstream and 128-256 kbps upstream), and Starband).

12 *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, WT Docket No. 08-27, Thirteenth Report, DA 09-54, at ¶¶ 1, 20-23, 94, 148-152, 201-207, 209-211, 233-239 (rel. Jan. 16, 2009) ("*Thirteenth Wireless Competition Report*"); *see also Wireless Telecommunications Bureau Seeks Comment on Commercial Mobile Radio Services Market Competition*, WT Docket No. 09-66, Public Notice, DA 09-1070, at 14 (rel. May 14, 2009) ("Wireless technologies appear to play an increasingly significant role in the market for broadband services.").

13 *Qwest Petition for Forbearance Under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Broadband Services*, Memorandum Opinion and Order, 23 FCC Rcd 12260 ¶ 26 (2008).

14 *Promotion of Competitive Networks in Local Telecommunications Markets*, Report and Order, 23 FCC Rcd 5385 ¶ 10 (2008).

15 *See Sprint Nextel Corporation and Clearwire Corporation; Applications For Consent to Transfer Control of Licenses, Leases, and Authorizations*, Memorandum Opinion and Order, 23 FCC Rcd 17570 ¶ 3 (2008) ("[A] nationwide WiMAX-based network . . . will lead to increased competition, greater consumer choice, and new services.") ("*Sprint-Clearwire Order*"); *id*. ¶ 40 ("[T]he mobile telecommunications industry is in the process of transitioning from the provision of interconnected mobile voice and add-on mobile data services over legacy wireless networks to the provision of mobile voice and data services over wireless broadband networks (*e.g.*, EVDO, WCDMA/HDSPA, mobile WiMAX, and Long Term Evolution (LTE) networks)."); Matt Hamblen, *WiMax vs. Long Term Evolution: Let The Battle Begin*, COMPUTERWORLD, May 14, 2008, *available at* http://www.computerworld.com/action/article.do?command=viewArticleBasic&articleId=9085202 (stating that WiMAX and LTE technologies are both able to "more that quadruple existing wireless wide-area access speeds for users"); Peter Percosan, *DOCSIS 3.0 Builds Better Business Model*, CED MAGAZINE, Apr. 1, 2008, *available at*

As the NOI recognizes, broadband providers continue to invest heavily to upgrade their infrastructure so they can offer faster and faster speeds in the face of dramatic increases in bandwidth consumption.[16] Indeed, wireline and wireless service providers have spent billions to construct broadband networks in recent years. As noted above, since 1996, TWC alone has invested more than $25 billion of capital in its business. Among the benefits of this investment is that TWC's broadband Internet access service currently reaches approximately 27 million homes. More broadly, the cable industry as a whole has invested more than $145 billion since 1996 on broadband network facilities.[17]

The cable industry's efforts in this regard warrant particular attention. The cable industry's massive investments in broadband infrastructure since 1996 have facilitated technological innovation and competitive broadband offerings.[18] In fact, this substantial investment allowed the cable industry to offer high-speed Internet access services as an alternative to dial-up access in 1996, long before telephone companies offered DSL to consumers.[19] The resulting networks also enabled cable companies to offer competitive voice

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http://www.cedmagazine.com/Article-DOCSIS-better-business-model.aspx ("DOCSIS 3.0 represents a revolutionary evolution for cable operators . . . [with] blazingly fast data rates [that] are catapulting the industry ahead of competitive technologies.").

16 *See, e.g.*, NOI ¶ 3 ("Both wireless and wireline broadband providers continue to upgrade their networks to provide additional broadband capabilities and services to existing and potential customers.").

17 *See* Testimony of Kyle McSlarrow, President and CEO, National Cable & Telecommunications Association, *Communications Networks and Consumer Privacy: Recent Developments*, Before the Committee on Energy and Commerce, Subcommittee on Communications, Technology and the Internet, U.S. House of Representatives, at 1 (Apr. 23, 2009).

18 Comments of the National Cable & Telecommunications Association, GN Docket No. 07-45, at 2-3 (filed May 16, 2007).

19 *Id.* at 3, 9-10.

services,[20] as well as valuable new services such as VOD, HD programming, and recording with DVRs.

The Commission has already recognized the continuing efforts of cable operators to upgrade their broadband networks to deliver new and improved services to both residential and business customers.[21] In addition to network upgrades, the cable industry is working to improve equipment capabilities, such as with DOCSIS 3.0, that will foster the delivery of new and complex services, including VoIP.[22] The cable industry has also prioritized the creation and deployment of its Next Generation Network Architecture, which will promote the transition to all-digital networks and support existing security features.[23] The technology that will result from these investment measures will revolutionize digital distribution and efficiency and reduce equipment costs.[24]

As a result of such efforts, broadband is widely if not yet ubiquitously available. In fact, the overwhelming majority of households have access to broadband services. According to one estimate, cable broadband is available to 96 percent of homes passed, and broadband via DSL is available to 82 percent of homes passed.[25] Similarly, as of mid-2007, wireless broadband networks had been deployed in areas of the country containing 233 million people, or 82 percent

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20 Comments of the National Cable & Telecommunications Association, MB Docket No. 06-189, at 44-48 (filed Nov. 29, 2006).

21 *Fifth 706 Report* ¶ 8.

22 *Id.* ¶ 9.

23 *Id.* ¶ 11.

24 *Id.*

25 *Id.* ¶ 69 n.206; *id.*, App. B, table 14.

of the U.S. population.[26] The broadband marketplace in the United States is one of the largest in the world, with approximately 80 million broadband subscribers.[27]

The speed with which broadband service has been deployed is unprecedented. Relative to other technologies, "broadband has had the fastest penetration rate of any technology in history," faster than that of "electricity, radios, TVs, VCRs, DVD players, PCs and every other technology in American history."[28] Such growth is only expected to increase—as the Commission has noted, "[w]hile the current rate of broadband services adoption is robust, . . . increased rates of broadband adoption are yet to come."[29]

B. The Private Sector's Efforts to Date Have Brought the Benefits of Broadband to Many Consumers.

This rapid and extensive deployment of broadband networks and services has resulted in substantial benefits for consumers. As the variety of broadband choices has increased, real prices for broadband services have fallen significantly. One independent study reports that "the data on broadband competition show a vibrant, expanding competitive industry" in which consumer choice is increasing and prices continue to decline.[30] The Federal Trade Commission ("FTC") likewise has determined that broadband competition is causing "declining prices for

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26 *Id.* ¶ 21.

27 Organization for Economic Co-Operation and Development, OECD Broadband Portal, http://www.oecd.org/document/54/0,3343,en_2649_34225_38690102_1_1_1_1,00.html (May 20, 2009).

28 Remarks of Commissioner Robert M. McDowell, Catholic University School of Law Symposium; *Broadband Deployment in a Multi-Media World: Moving Beyond the Myths to Seize the Opportunities* (Mar. 15, 2007).

29 *Fifth 706 Report* ¶ 73 (citing sources).

30 Stephen B. Pociask, *The American Consumer Institute, Net Neutrality and the Effects on Consumers*, at 10 (2007).

higher-quality service."[31] The rapid growth of broadband investment and deployment in the United States is evident: As of December 31, 2007, in nearly 88 percent of U.S. zip codes, consumers have three or more broadband choices, up from 81 percent in 2005, 61 percent in 2003, and 32 percent in 2000.[32] In 78 percent of U.S. zip codes, consumers have *five* or more broadband choices, up from 53 percent in 2005, 35 percent in 2003, and 15 percent in 2000.[33] While these figures should not obscure the fact that there remains real work to be done to ensure that *all* Americans have access to broadband services, they do reveal a well-functioning marketplace that is maximizing service options for the majority of consumers.

The rapid deployment of broadband networks has likewise facilitated consumer access to the numerous services and applications that the ARRA seeks to further promote. There, Congress specified that the national broadband plan should advance a number of policy goals, including the promotion of **consumer welfare**, **civic participation**, **community development**, **health care delivery**, **education**, and **entrepreneurial activity**, among others.[34] Indeed, these enumerated benefits of broadband are available today to consumers and small business as a direct result of private investment in a robust broadband infrastructure:

1. Consumer Welfare. Current broadband capabilities have greatly enhanced consumer welfare. Within the last few years alone, consumers of all classes and backgrounds have gained greater access to goods and services available on broadband networks. The increased competition fostered by online retailers has led to substantial savings for consumers

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31 Federal Trade Commission Internet Task Force, *Staff Report: Broadband Connectivity Competition Policy*, at 100 (June 2007) ("FTC Report").

32 FCC Industry Analysis and Technology Div., Wireline Competition Bureau, *High-Speed Services for Internet Access: Status as of Dec. 31, 2007*, table 15 (Jan. 2009), *available at* http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-287962A1.pdf.

33 *Id*.

34 *See* ARRA § 6001(k)(2)(D); *see also* NOI ¶¶ 63-105.

encompassing a wide variety of essential and discretionary expenditures.[35] The welfare gains also apply on a more targeted basis. For example, broadband services to assist disabled individuals have risen dramatically over the past three years.[36] Likewise, broadband access rates among low-income individuals[37] and minorities[38] are also rising. Consumer welfare gains also include an array of safeguards that enhance the online experience. Privacy and security controls related to broadband access have become the marketplace norm to protect consumers from malware, spyware, viruses, and other privacy invasions.[39] Filtering tools and other applications offer effective means to block objectionable Internet content.[40]

2. Civic Participation. Consumer access to broadband networks has resulted in unprecedented civic engagement and content distribution. User-generated content is now a marketplace staple. As of late 2008, approximately 64 million blogs were being tracked in North

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35 *See, e.g.*, Rick Newman, *Why Credit Card Fees Won't Go Up*, U.S. NEWS AND WORLD REPORT, May 20, 2009 ("[T]he advent of the Internet . . . has generated intense competition for practically everything and allowed consumers to shop for the lowest price without leaving home.").

36 *Fifth 706 Report* ¶ 66 (noting the significant increase in use of IP Relay and video relay services).

37 As of June 2007, 92 percent of the lowest income zip codes had at least one high-speed subscriber, up from 81.9 percent in December 2003. *Id.* ¶ 63.

38 *Id.* ¶¶ 65-66.

39 For example, all of the major web browsers used by consumers today—Microsoft Internet Explorer 8.0, Mozilla Firefox 3, Google Chrome 1.0, and Apple Safari 4—employ extensive privacy controls that enable consumers to directly manage whether and how their private information is accessible. *See* JR Raphael, *Internet Explorer 8's Privacy Controls Worry Advertisers*, TECHNEWSWORLD, Aug. 26, 2008, *available at* http://www.technewsworld.com/story/64296.html?wlc=1243518631; Mozilla Products-Security, http://www.mozilla.com/en-US/firefox/security; Apple – What is Safari, http://www.apple.com/safari/what-is.html#security; General Privacy: Safe Browsing – Google Chrome Help, http://www.google.com/support/chrome/bin/answer.py?hl =en&answer=99020.

40 Adam Thierer, *Parental Controls & Online Child Protection: A Survey of Tools and Methods* 92-122 (2008), available at http://www.pff.org/parentalcontrols/Parental%20 Controls%20&%20Online%20Child%20Protection%20%5BVERSION%203.1%5D.pdf.

America, featuring discourse on topics ranging from politics to sports to healthcare.[41] It is beyond question that "blogs represent a growing sector of America's news information sources."[42] In addition, many members of the Senate and the House of Representatives now use Twitter to communicate with their constituencies.[43] This historic level of civic engagement is transforming media and providing information transparency not previously imaginable.

3. Community Development. Localism and community development also have thrived because of broadband. Multiple websites have emerged that provide "hyperlocal news" to consumers seeking information on local matters in their respective communities.[44] Some online services available over broadband networks have enabled local marketplaces to emerge (such as Craigslist), while others facilitate local meetings among individuals with common interests (such as Meetup and LinkedIn).

4. Health Care Delivery. Broadband networks are likewise improving health care delivery. Telemedicine services are expanding, with over 200 networks in the United States,

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41 Technorati: State of the Blogosphere 2008, TECHNORATI, *at* http://technorati.com/blogging/state-of-the-blogosphere/who-are-the-bloggers/.

42 Statement of Commissioner Deborah Taylor Tate at Media Ownership Hearing, Chicago, Illinois (Sept. 20, 2007); *see also* John Borland, *Blogs Play Critical Role In Campaigns*, CNET NEWS, Nov. 1, 2004, *available at* http://news.cnet.com/Blogs-play-critical-role-in-campaigns/2100-1028_3-5432879.html ("[B]logs have been a critical part of a campaign that has relied in unprecedented fashion on the Internet as a tool of information gathering and communication."); Heather Green, *U.S. Political Campaign Discourse Explodes Online*, BUSINESSWEEK ONLINE, Sept. 29, 2008, *available at* http://www.businessweek.com/technology/content/sep2008/tc20080928_412324.htm ("Bloggers are more important than ever in this Presidential campaign.").

43 *See Twitter takes Washington by storm*, Google News, May 1, 2009, *at* http://www.google.com/hostednews/afp/article/ALeqM5je7Zy2XLhWpTjwFJ7daDnJPwNZYQ.

44 Claire Cain Miller and Brad Stone, *"Hyperlocal" Web Sites Deliver News Without Newspapers*, N.Y. TIMES, Apr. 12, 2009, *available at* http://www.nytimes.com/2009/04/13/technology/start-ups/13hyperlocal.html (discussing website services such as EveryBlock, Outside.in, Placeblogger, and Patch).

including over 3,500 participating medical healthcare institutions.[45] This growth has been facilitated by the Commission's existing policy of supporting the availability of telemedicine services, including through the rural health care component of the universal service fund.[46]

5. Education. Similar strides have occurred in connection with education. Rural and urban schools have witnessed tremendous growth in broadband access. The Commission has observed that "[a]ccess to the Internet is virtually ubiquitous in public schools and libraries."[47] Public libraries have experienced similarly high rates of adoption for broadband access.[48] The current broadband infrastructure has led to enormous gains in distance learning.[49] Universities throughout the United States have successfully adopted online learning courses for years,[50] and increased competition among these institutions is yielding further benefits for

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45 American Telemedicine Association, *What Is Telemedicine & Telehealth?, available at* http://www.americantelemed.org/files/public/abouttelemedicine/What_Is_Telemedicine.pdf; *see also* Susan Abram, *Telemedicine Trend Makes Use of Robots, Technology to Treat Patients*, THE DAILY NEWS OF LOS ANGELES, Mar. 12, 2009 (quoting Jonathan Linkous, CEO of the American Telemedicine Association, as stating that telemedicine "is growing by leaps and bounds").

46 *See, e.g.*, *Rural Healthcare Support Mechanism*, Order, 21 FCC Rcd 11111 ¶ 1 (2006); News Release, *FCC Update on Rural Healthcare Pilot Program Initiative: Six Telehealth Projects Approved for $46 Million in Universal Service Funds* (rel. Apr. 16, 2009) (announcing the approval of funding under the Commission's Rural Health Care Pilot Program for the build-out of broadband telehealth networks in various states).

47 *Fifth 706 Report* ¶ 61.

48 *Id.* ¶ 62.

49 Skip Descant, *Miss. St. Takes On the Next Wave of Nontraditional Classes*, ASSOCIATED PRESS, Oct. 11, 2007 ("The growth of distance learning can be seen across the country. In the fall of 2005, 3.2 million students across the country were in distance learning classes . . . and this is up 20 percent from the previous year. More than 96 percent of major large institutions of 5,000 students or more offer some type of distance learning classes.").

50 For a list of academic institutions offering online learning who are also members of the Sloan Consortium, a consortium of institutions committed to offering online education, *see* Sloan-C – Institution, http://catalog.sloan-c.org/programs/sortbyinstitution.asp.

students.[51] In 2008, online enrollments grew at a greater rate than the rate of total higher education enrollment, with "no signs of slowing."[52] In the fall of 2007, over 3.9 million students were enrolled in a degree-granting postsecondary institution, compared to 1.6 million five years before—a remarkable 144 percent increase.[53] During this same short period, online enrollment as a percentage of total postsecondary enrollment more than doubled.[54] Most online training aims to target geographically diverse areas of the country and a broad array of students, including those who serve in the military.[55] These advances in online training would not be possible without the robust broadband networks and services that exist today.

6. Entrepreneurial Activity. The widespread availability of broadband also has been critical in promoting entrepreneurship and innovation. Competition among service providers has enabled small businesses to obtain improved service at lower cost.[56] Indeed, TWC and other major broadband providers offer service packages designed specifically for small businesses. The growth in fiber broadband facilities is expected to further contribute to small

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51 Kim Clark, *E-Learning Clicks With Students*, U.S. NEWS AND WORLD REPORT, May 1, 2009 (noting that "as more colleges launch online courses, competition is reducing tuition and raising quality").

52 I. Elaine Allen & Jeff Seaman, *Staying the Course: Online Education in the United States* 1 (2008), *available at* http://www.sloanconsortium.org/publications/survey/pdf/staying_the_course.pdf.

53 *Id.* at 5.

54 *Id.*

55 *Id.* at 15-16.

56 Becky Waring, *Options Multiply for Small-Business Broadband*, PC WORLD, June 10, 2008, *available at* http://www.pcworld.com/businesscenter/article/146938/options_multiply_for_smallbusiness_broadband.html (noting that "competition between cable and telephone companies for business broadband customers is red-hot," resulting in "better pricing, convenience, and service" for small businesses).

business development.[57] In addition to the benefits resulting from advanced infrastructure, broadband networks have enabled valuable applications, services, and online tools to emerge that can assist entrepreneurs in essential business functions, many of which are offered at little or no cost.[58]

II. GOVERNMENT SHOULD BE PROACTIVE IN TAKING STEPS TO ELIMINATE THE DIGITAL DIVIDE.

Notwithstanding enormous success to date, there is more work to be done to bring broadband to all Americans. As discussed below, the Commission's national broadband plan must work proactively to bring broadband to unserved areas by eliminating regulatory barriers to investment and providing targeted subsidies where necessary. The Commission also should take a lead role in enhancing opportunities for consumers to take advantage of broadband services.[59] Such supply-side and demand-side initiatives are core components of the Rural Broadband Strategy that Acting Chairman Copps recently submitted to Congress;[60] through this proceeding, the Commission can extend those initiatives to encompass all Americans regardless of where they live.

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57 Marc Saltzman, *Fiber Increases Broadband Internet Alternatives*, INC. MAGAZINE, Mar. 2009, *available at* http://technology.inc.com/telecom/articles/200903/fiber.html.

58 *See, e.g.*, Web 2.0 Payment Apps – Entrepreneur.com, http://www.entrepreneur.com/magazine/entrepreneur/2009/february/199634.html (describing payment applications like PayPal and E-junkie, and collaboration/marketing tools such as Twitter and CampfireNow, available to small businesses at little or no cost); *see also* 10 Free (or Cheap) Tools for Start-ups, http://www.inc.com/print/76.

59 *See generally* NOI ¶¶ 52-57.

60 *See generally Rural Broadband Report* ¶¶ 105-12 (recommending ways to stimulate broadband demand in rural areas); *id.* ¶¶ 113-20 (recommending ways to subsidize broadband infrastructure build-out in rural areas).

A. The Commission Should Pursue Supply-Side Initiatives to Expand Broadband Access in Unserved Areas.

One essential objective of the national broadband plan must be the expansion of broadband infrastructure to currently unserved areas. This goal goes to the heart of what Congress sought to accomplish with the recent broadband stimulus programs,[61] and is an underlying theme of the Commission's Rural Broadband Strategy as well.[62] Congress and the Commission began laying the groundwork for supply-side initiatives some time ago, by undertaking to improve the collection of meaningful broadband data to permit a more granular assessment of what areas remain unserved so that funds and regulatory action may be targeted accordingly.[63] These efforts, in conjunction with the mapping program funded by the ARRA, supplement ongoing efforts by public-private partnerships such as those operated by Connected Nation, which have been effective in identifying areas that need broadband service.[64]

With these resources already at its disposal, the Commission can proceed expeditiously to articulate a plan for expanding broadband to unserved areas. The broadband stimulus funding provides a much needed tool to jumpstart this effort. In that context, TWC and numerous others

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61 *See, e.g.*, ARRA § 6001(b)(1) (stating that a purpose of the ARRA is to "provide access to broadband service to consumers residing in unserved areas of the United States").

62 *See, e.g.*, *Rural Broadband Report* ¶ 15 (noting that "[r]ural communities have long been unserved or underserved by broadband technology").

63 *See Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691 ¶ 32 (2008) ("*Broadband Reporting Order*") (explaining that the Commission's revised Form 477 will permit "a more detailed understanding of the scope of broadband adoption" and make it possible to "pinpoint[] areas that are currently unserved or underserved"); Broadband Data Improvement Act of 2008, Pub. L. No. 110-385, 122 Stat. 4097, § 103(c) (2008), codified at 47 U.S.C. § 1303(c) (directing the Commission to conduct and publicize customer surveys concerning broadband usage).

64 *Broadband Reporting Order* ¶ 34 & n.120.

have urged the Commission to give the term "unserved" its plain meaning—that is, an "unserved" area should be defined as one in which there is no broadband of any kind available (*i.e.*, neither current-generation nor next-generation).[65] Such an approach would ensure that funding is directed to those areas most in need of some type of broadband Internet access service, consistent with congressional intent.[66] The Commission should assess the effects of the stimulus programs now being implemented and then ascertain what further governmental programs, if any, may be warranted. In that regard, the Commission should ensure that any federal support is distributed on a technologically neutral basis.[67] The Rural Broadband Strategy endorses such an approach; the same principle should be applied more broadly in the national broadband plan.[68]

To the extent government support initiatives are deemed necessary or desirable for areas where some type of broadband Internet access service is already available, the Commission should pursue this idea with extreme caution. Not until it has fully assessed the extent of need in unserved areas should any other broadband infrastructure initiative be entertained. Moreover, directing subsidies to areas where broadband service already is available from at least one provider risks giving artificial advantages to particular competitors in such areas.[69] Notably, the

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65 Comments of Time Warner Cable Inc., GN Docket No. 09-40, at 9-10 (filed Apr. 13, 2009) ("TWC Broadband Stimulus Comments").

66 Letter from Senator Jeanne Shaheen *et al.* to Michael J. Copps, Acting Chairman, FCC, at 1 (Mar. 9, 2009) (urging the Commission to prioritize funding for unserved areas, described as those that have access only to dial-up connections).

67 *See, e.g.*, Comments of Time Warner Cable Inc., WC Docket No. 05-337, at 7-8 (filed May 8, 2009).

68 *Rural Broadband Report* ¶ 78 (stating that "decision makers should proceed on a technology-neutral basis"); *id.* ¶ 126 n.327 (noting the Commission's prior adoption of the principle that federal support mechanisms be competitively and technologically neutral).

69 TWC Broadband Stimulus Comments at 10.

European Union recently echoed this concern in formulating its guidelines for broadband subsidies, noting that state funding in areas where broadband networks already have been deployed could lead to an "unacceptable distortion of competition and the crowding out of private investors."[70] Accordingly, the Commission's primary strategy for any area other than one that is considered unserved should be one that is based on demand-side programs to encourage adoption and affordable broadband services.

B. The Commission Should Pursue Demand-Side Initiatives Targeted to Adoption and Affordability.

Of course, merely deploying broadband infrastructure is not enough. Many Americans do not fully appreciate the ways in which broadband Internet access can improve their daily lives, and those who do may lack the computing equipment or other resources necessary to take full advantage of this technology.[71] Accordingly, extending the benefits of broadband to these Americans requires targeted efforts to empower them and their families to use the technology where it is available. TWC encourages the use of federal funds to support broadband demand-side programs, with a focus on outreach and education, subsidies for low-income consumers, and programs that distribute laptops to low-income schools and families. Such initiatives are a core component of the broadband stimulus legislation,[72] and figure prominently in the Rural Broadband Strategy.[73] Even where broadband services are available from multiple providers, penetration remains relatively low in certain at-risk communities. Addressing that gap should be

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70 Brian Hammond, *EC Proposes State Broadband Aid Guidelines*, TRDAILY, May 22, 2009.

71 NOI ¶ 55.

72 ARRA § 6001(b)(3); *see also* NOI ¶¶ 54, 56.

73 *Rural Broadband Report* ¶ 110.

among the Commission's highest priorities, facilitated by the process of obtaining improved information about the extent of that gap already underway, independent of this proceeding.[74]

Among the more promising solutions to broadband adoption problems is a program comparable to the existing Lifeline and Linkup programs to offset the economic obstacles that may prevent low-income households from taking advantage of broadband service options that are otherwise available to them.[75] Such programs have been successful in promoting increased telephone subscribership by low-income households, and there is every reason to think they would achieve similar results for broadband Internet access service. Indeed, the Commission already has sought comment on a pilot program by which $300 million would be made available annually, over a three-year period, for discounts on broadband Internet access service and equipment for low-income consumers.[76] The national broadband plan should embrace and incorporate a similar initiative, provided that it is designed and implemented on a technologically neutral basis, and not tied to existing programs that are not technologically neutral in practice.

While there has been much emphasis on need-based efforts and the best ways to subsidize low-income consumers, the importance of enhancing awareness about the possible uses of broadband should not be overlooked. For example, some studies reveal that large numbers of consumers cite

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74 *See supra* note 63 and accompanying text.

75 *See, e.g.*, NOI ¶ 54 nn.79-80 (noting proposals to extend existing Lifeline/Linkup programs to broadband); *Rural Broadband Report* ¶ 112 (same).

76 *Rural Broadband Report* ¶ 112 n.268 (citing *High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, CC Docket Nos. 01-92 *et al.*, at ¶ 40; App. A, ¶¶ 64-91; App. C, ¶¶ 60-87 (rel. Nov. 5, 2008)). While this particular proposal, under the framework of the current universal service system, may not have the practical effect of technological and competitive neutrality, similar programs that account for such shortcomings should be explored.

lack of interest in broadband as their primary reason for not utilizing the technology, rather than a lack of financial resources or lack of access.[77] For these individuals, educational efforts may provide a more cost-effective method of stimulating demand and thus warrant careful consideration.

III. THE COMMISSION SHOULD ENSURE THAT ITS ACTIONS PRESERVE AND ENHANCE INCENTIVES FOR CONTINUED PRIVATE BROADBAND INVESTMENT.

The Commission is keenly aware of the role that investment incentives will play in furthering the build-out and utilization of broadband infrastructure.[78] At the same time that it takes targeted actions to stimulate broadband deployment and demand where necessary, the Commission must take great care to maintain the pro-investment environment that, as discussed above, is largely responsible for the growth of the broadband marketplace thus far. In particular, the Commission should pursue measures that will remove the remaining barriers to investment and innovation by the private sector while avoiding measures that would produce the opposite result.

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77 *See, e.g.*, John B. Horrigan, *Stimulating Broadband: If Obama Builds It, Will They Log On?*, Pew Center Research Publications, Jan. 21, 2009, *at* http://pewresearch.org/pubs/1085/stimulating-broadband (stating that 33 percent of non-broadband users cited a lack of interest as their reason, compared to 7 percent who cited its expense and 13 percent who cited a lack of access); NOI ¶ 54 n.77 (citing another study finding that 19 percent of dialup users could not be convinced to get broadband).

78 *See, e.g.*, *supra* at 2-3 (noting Commission's acknowledgement of need for private sector participation in development of national broadband plan); NOI ¶ 37 (asking about the most effective ways to attract risk capital to broadband infrastructure projects); *id.* ¶ 42 (seeking comment on the need to increase flexibility and reduce regulatory costs for wireless broadband providers to facilitate greater buildout); *id.* ¶ 50 (asking "whether there are requirements or policies contained in any current federal, state, or local broadband grant or loan programs that act as strong incentives or disincentives for the deployment of broadband"); *see also id.*, Statement of Commissioner Robert M. McDowell at 58 ("[I]t is essential that our plan give current and prospective network and service providers the proper incentives to deploy new technologies.").

A. The Commission Should Refrain from Taking Actions That Would Increase the Costs of Deploying Broadband Networks and Services.

While the national broadband plan will appropriately identify areas where the government must be proactive if broadband is to reach all consumers, restraint is both necessary and appropriate in other instances—specifically, with respect to proposed regulations that would result in increased costs for broadband providers without delivering corresponding benefits to consumers. Whether through direct costs (due to compliance) or indirect costs (due to regulatory uncertainty), such requirements or restrictions would likely chill investment and curtail innovation. This outcome is a particular risk in light of today's challenging market conditions, as capital markets are no longer willing to bear the same amount of risk as in previous years and thus require a greater degree of certainty. Such requirements would also threaten the affordability of broadband services, as the costs of additional regulatory uncertainty and compliance ultimately would fall to end users.[79] Imposing unnecessary governmental mandates would most assuredly risk undoing the benefits of plans to stimulate broadband supply and demand that arise from this effort and would undermine rather than advance the core purposes of this proceeding. To that end, TWC addresses a few areas of critical importance.

1. The Commission Should Not Amend Its Pole Attachment Rules in a Manner That Raises Broadband Infrastructure Costs.

One factor that could have a substantial impact on terrestrial broadband deployment and affordability is the rates charged for broadband pole attachments. If rates are set too high, the

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[79] *See* J. Gregory Sidak, *A Consumer Welfare Approach to Network Neutrality Regulations of the Internet*, 2 J. OF COMPETITION LAW & ECON. 349, 352 (2006).

adverse impact for consumers would be profound—not just in the rural context, as the Commission recently acknowledged, but in all areas.[80]

The Commission has been considering various changes to its pole attachment rules for some time now.[81] Among other matters, the Commission has tentatively determined that all categories of providers should pay the same pole attachment rate for attachments used for broadband Internet access service, and that this unified rate should be higher than the current cable rate.[82] Though intended to be technologically neutral,[83] this action, if implemented, risks substantially increasing infrastructure costs for cable operators—the leading providers of broadband Internet access.[84]

Accordingly, the Commission should resolve at least this aspect of the pending pole attachment rulemaking as part of the national broadband plan, by establishing that cable operators may continue to pay the existing cable rate for pole attachments used in connection with broadband services. To the extent the Commission remains concerned about achieving parity with pole attachment rates in the interest of technological neutrality, it should use this opportunity to lower the rates paid by competitive local exchange carriers ("CLECs") in connection with commingled communications services involving broadband Internet access. As

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80 *Rural Broadband Report* ¶ 157 (stating that "reasonably priced access to poles . . . is critical to the buildout of broadband infrastructure in rural areas").

81 *Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, Notice of Proposed Rulemaking, 22 FCC Rcd 20195 (2007) ("*Pole Attachment NPRM*"); *see also* NOI ¶ 50 (asking about the extent to which issues concerning pole attachments, among other factors, stand as impediments to further broadband deployment).

82 *Pole Attachment NPRM* ¶ 36.

83 *Id.* (stating that this tentative conclusion is consistent with Section 706's directive that the Commission promote the deployment of broadband).

84 *See generally* Comments of Time Warner Cable Inc., WC Docket No. 07-245, at 3-18 (filed Mar. 7, 2008).

TWC has explained, there is a broad consensus (which includes many pole owners) that the Commission possesses the statutory authority to apply the cable rate to CLECs in this circumstance, which would ensure that pole owners are fully compensated (and not over-compensated) without erecting new barriers to any terrestrial broadband service provider.[85]

2. The Commission Need Not Adopt Additional Privacy Protections in the Broadband Context.

Consistent with its observations about the growth of broadband, the Commission asks in the NOI about the privacy implications of consumers' expanded reliance on broadband services.[86] While the disclosure of sensitive customer information without approval is indeed a legitimate concern in any context, the marketplace and existing rules already protect against that threat with respect to broadband.

Consumers and service providers have demonstrated a high level of sophistication in connection with issues relating to broadband privacy. For example, as TWC has explained elsewhere, consumers expect providers of Internet access services to post their privacy policies on their websites, and some service providers actually compete on the basis of those policies.[87] This distinguishes broadband Internet access from interconnected VoIP services, which the Commission recently subjected to its revised customer proprietary network information ("CPNI") rules based on its prediction that consumers have come to expect such protections as interconnected VoIP has grown to replace traditional telephone services.[88] The Commission's

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85 *See id.* at 44-47; Reply Comments of Time Warner Cable Inc., WC Docket No. 07-245, at 12-15 (filed Apr. 22, 2008).

86 NOI ¶¶ 58-60.

87 *See* Comments of Time Warner Inc., WC Docket No. 05-271, at 7-8 (filed Jan. 17, 2005).

88 *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information*,

other motivation for recently revising its CPNI framework—its desire to protect the sensitivity of call detail records, as underscored by a spate of "pretexting" incidents in which such information fell into the hands of bad actors[89]—likewise does not apply with the same force to broadband Internet access services; providers of such services do not track usage or bill customers based on individual "calls" (or Internet sessions), and therefore do not even possess the types of information that the Commission has focused on safeguarding. Thus, there is every reason to believe that any privacy issues that may arise in the broadband arena can be addressed without the addition of regulations and their attendant costs.

B. Competitive Market Forces and Existing Safeguards Will Ensure That Broadband Providers Adhere to Open Network Principles.

Finally, the NOI asks whether and to what extent "open network principles" should be incorporated into the national broadband plan, including whether the Commission should adopt regulations to further that goal.[90] TWC believes that an open Internet is critical to unlocking the full potential of broadband to enhance our economy, education and healthcare, civic discourse, and even entertainment. To that end, TWC and other operators have implemented broadband service policies and practices that reflect principles of openness.[91]

On this general point, there should be little debate. The sticking point has always been what affirmative actions the Commission should take, if any, to promote openness in the broadband context. One pro-investment step the Commission can take in this context is to confirm that broadband providers have the necessary flexibility to manage network traffic in the

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Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 ¶ 56 (2007) ("*CPNI Order*"); *see also* NOI ¶ 60 n.93.

89 *CPNI Order* ¶¶ 1, 12.

90 NOI ¶ 48.

91 *See, e.g.*, *Sprint-Clearwire Order* ¶ 99 (noting Sprint and Clearwire's intention that customers on the new WiMAX broadband network "will have unimpaired access . . . to any service provider, application or WiMAX-compatible device they desire").

best interest of their subscribers and to ensure the integrity of the broadband networks upon which the success of the national broadband plan depends. The Commission has long recognized the legitimacy and importance of reasonable network management,[92] and even proponents of rigid "net neutrality" mandates have recognized that reasonable network management must be permitted.[93]

Otherwise, no additional action is necessary to promote network openness. The burgeoning broadband services marketplace will ensure that consumers continue to enjoy an open Internet in which they have unfettered access to services and applications of their choosing.[94] Given the competitive nature of the broadband marketplace as described above, the ever-present threat of customer defections exerts a powerful discipline on service providers as they develop pricing plans, network management tools, privacy policies, and other facets of their offerings. This is not mere conjecture: as TWC has previously noted, recent history confirms that network operators will be responsive to consumer demands, including in particular when their business practices are perceived as unreasonable.[95]

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92 *See Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Policy Statement, 20 FCC Rcd 14986 ¶ 5 n.15 (2005) ("*Broadband Policy Statement*"); *see also Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289 ¶ 222 (2007) (noting that C Block licensees may manage bandwidth demands through "technology-neutral capacity pricing that does not discriminate against subscribers using third-party devices or applications").

93 *See, e.g.*, Google Comments, WC Docket No. 07-52, at 22 (June 15, 2007) (noting that "[m]ost known network management techniques will create few if any competitive and discrimination issues").

94 *See* Reply Comments of Time Warner Cable Inc., WC Docket No. 07-52, at 5-7 (filed Feb. 28, 2008) ("TWC Feb. 28 Comments"); Comments of Time Warner Cable Inc., WC Docket No. 07-52, at 4-9 (filed Feb. 13, 2008) ("TWC Feb. 13 Comments"); Comments of Time Warner Cable Inc., WC Docket No. 07-52, at 2-8 (filed June 15, 2007) ("TWC 2007 Comments").

95 *See, e.g.*, TWC Feb. 13 Comments at 7.

This market-based framework already is backed by federal oversight, not only by this Commission, but by the FTC and Department of Justice ("DOJ"). The Commission has made clear its intention to monitor broadband industry practices and to engage in targeted enforcement of its *Broadband Policy Statement*.[96] Adhering to the *Broadband Policy Statement* is also a requirement for entities receiving broadband funding grants under the ARRA.[97] The FTC has examined broadband providers' disclosure practices and also assessed the efficacy of relying on market forces, finding no basis for further regulation.[98] DOJ likewise has evaluated the status of the broadband marketplace from an antitrust perspective, and it too found no evidence of market failure.[99] These agencies will continue to scrutinize industry practices in the context of mergers and joint ventures, as well as through the FTC's consumer protection role. These overlapping layers of government oversight, coupled with service providers' desire to meet consumer demands, provide a safety net in the event that any market failures arise, and they obviate the need for additional regulatory mandates. Absent market failure, the adoption of additional

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96 *See Broadband Policy Statement* ¶ 5; *Formal Complaint of Free Press and Public Knowledge Against Comcast Corporation for Secretly Degrading Peer-to-Peer Applications; Broadband Industry Practices Petition of Free Press et al. for Declaratory Ruling that Degrading an Internet Application Violates the FCC's Internet Policy Statement and Does Not Meet an Exception for "Reasonable Network Management,"* Memorandum Opinion and Order, 23 FCC Rcd 13028 (2008).

97 ARRA § 6001(j).

98 As the FTC noted in June 2007, there is no evidence "of any significant market failure or demonstrated consumer harm from conduct by broadband providers." FTC Report at 160. For this reason, the agency's staff concluded that additional regulation of the broadband marketplace is likely unwarranted. *Id.* ("Policy makers should be wary of enacting regulation solely to prevent prospective harm to consumer welfare, particularly given the indeterminate effects on such welfare of potential conduct by broadband providers and the law enforcement structures that already exist.").

99 Ex Parte Filing of the United States Department of Justice, WC Docket No. 07-52, at 1 (Sept. 6, 2007) ("The FCC should be highly skeptical of calls to substitute special economic regulation of the Internet for free and open competition enforced by the antitrust laws.").

regulatory mandates in this context would threaten to harm consumers by thwarting the continued deployment of broadband networks.[100]

CONCLUSION

Promoting broadband is a critical national priority. Broadband is a recognized driver of economic growth, a boon to education and healthcare, and an essential tool for boosting this country's global competitiveness. While private investment has permitted many Americans to enjoy these benefits, the Commission can and must extend them to the rest of the country by adopting a national broadband plan that targets supply-side and demand-side initiatives to those areas where they are most needed yet ensures that investment and innovation continue unabated. TWC looks forward to working the Commission and other stakeholders in pursuit of those goals.

Respectfully submitted,

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[100] *See* TWC Feb. 28 Comments at 5-8; TWC Feb. 13 Comments at 21-28; TWC 2007 Comments at 9-15.