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
	)	

REPLY COMMENTS OF TIME WARNER CABLE INC.

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July 21, 2009

SUMMARY

The opening round of comments reveals widespread agreement that universal broadband availability and accessibility are fundamental to the national broadband plan. The comments reflect the common belief that the Commission can fulfill these objectives by pursuing two core priorities: stimulating broadband deployment in unserved areas and promoting broadband adoption. Parties appropriately urge the government to employ a combination of supply-side and demand-side initiatives designed to close the gap between the large number of Americans who currently have access to and use broadband services and those who do not. Likewise, the opening comments underscore the need to direct such measures at areas currently unserved by any broadband provider. The widespread agreement that characterizes the opening comments offers the Commission a clear path for devising a national broadband plan and demonstrates how private and public sector collaboration can and should inform the development of a sound national broadband policy.

Despite general consensus on these central issues, some proposals put forth in the opening comments raise concerns beyond the scope of the national broadband plan that would require the Commission to revisit other dockets—both open and closed—that for many years have been difficult to resolve. Such proposals risk turning this inquiry into an omnibus regulatory proceeding requiring the resolution of every complex matter that is or has been before the Commission, including some that have been long settled and judicially upheld. As such, these proposals threaten to derail this proceeding from its core objectives and frustrate the development of a timely and achievable national broadband plan.

In evaluating the record, the Commission should focus on whether and to what extent each proposal will contribute to stimulating broadband deployment in unserved areas or promoting broadband adoption. Certain proposals advanced in the opening comments would

undoubtedly promote these goals, and the Commission therefore should focus on these recommendations moving forward. For example, the government can use stimulus and other federal funds to encourage infrastructure investment in remote areas, and to support programs intended to increase awareness of the value of broadband or to improve the affordability of services and equipment in low-income communities. Likewise, the Commission can coordinate with other federal agencies to create joint programs designed to promote broadband infrastructure, assist in allocating funds efficiently, and ensure that no resources are left untapped.

Other suggestions, in contrast, would be far less effective in achieving the twin goals of deployment and adoption, and may indeed prove detrimental. Specifically, reclassifying broadband Internet access as a telecommunications service or adopting new regulatory mandates in the name of network "openness" would threaten to stifle private sector investment and innovation that so many parties have recognized as being responsible for the great success that the broadband marketplace has witnessed to date. Not only would these measures generate significant controversy, but they would increase regulatory uncertainty and disrupt the Commission's progress in achieving the clear objectives of the national broadband plan.

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Time Warner Cable Inc. ("TWC") respectfully submits this reply to the opening comments filed in response to the Commission's Notice of Inquiry ("NOI") in the above-referenced docket.[1] The opening round of comments, while voluminous and diverse, reveals a remarkable consensus on the most important issues—the state of the broadband marketplace today, where it needs to go, and what role the government should play in getting it there. This widespread agreement on these core issues provides the Commission with a solid foundation upon which to develop a national broadband plan.

INTRODUCTION

A wide range of key stakeholders in this nation's broadband policies have produced a substantial record offering ideas for components of a national broadband plan. These parties include broadband network owners and service providers that employ every conceivable technology to deliver valuable broadband capabilities today—cable operators, telephone companies, wireless providers, satellite operators, and electrical utilities; non-facilities-based service providers; providers of online content made available through these broadband services; manufacturers of the equipment used to receive them; local, state, and federal regulators; consumer advocates; and a host of other organizations speaking on behalf of particular constituencies or causes. And, of course, many individual citizens and consumers availed

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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").

themselves of this opportunity to provide input concerning the development of a national broadband plan.

For all the potentially controversial questions raised and the diverse perspectives represented, the opening round of comments reveals a broad-based consensus on the fundamental issues at the core of this proceeding. First and foremost, all parties support universal broadband availability and accessibility as a central objective of the national broadband plan and urge the government to pursue this objective by employing a combination of supply-side and demand-side initiatives designed to close the gap between the large number of Americans who currently have broadband capability and those who do not. There also is a general recognition that such measures are particularly critical in areas currently unserved by any broadband provider. This widespread agreement provides a solid foundation on which the Commission can develop a national broadband plan, and it signals the ability for productive private and public sector collaboration on these issues—an essential ingredient to the formulation of sound broadband policy.[2]

To be sure, the task of filling out the details of the national broadband plan remains a challenge. The voluminous comments received thus far—thousands of pages submitted by hundreds of parties—include a significant number of specific ideas and detailed propositions that the Commission must now evaluate. Some of these submissions cast an extremely wide net, importing arguments and issues from other dockets, both open and closed, that for many years have been difficult to resolve. Collectively, such proposals risk turning this inquiry into an omnibus regulatory proceeding and suggest the resolution of every complex question now before the Commission, even revisiting some long settled and judicially upheld matters. The primary

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[2] *See, e.g.*, NOI ¶ 7; *Bringing Broadband to Rural America: Report on a Rural Broadband Strategy*, Michael J. Copps, Acting Chairman, Federal Communications Commission, May 22, 2009, at ¶ 7 ("*Rural Broadband Report*"); *see also* TWC Comments at 2-3.

casualty in that circumstance, as Commissioner Copps has correctly recognized, would be a timely and achievable national broadband plan.[3]

Thus, in sifting through the various proposals now before it, the Commission should focus on whether and to what extent they will directly advance the undisputed goals of *this* proceeding—stimulating broadband deployment in unserved areas and promoting broadband adoption. Applying this critical and necessary filter will allow the Commission to proceed expeditiously with the development of a national broadband plan without becoming entangled in debates bearing only a tangential, if any, connection to that effort.

As discussed more fully below, certain proposals advanced in the opening comments—most importantly, the use of stimulus and other federal funds to encourage infrastructure investment in remote areas and to support outreach, training, and adoption—enjoy nearly unanimous support and unquestionably would facilitate universal broadband access and increased adoption. The Commission therefore should focus on these recommendations as it moves forward. Other suggestions, in contrast, would be far less effective in achieving those twin goals—and may indeed even prove detrimental. In particular, reclassifying broadband Internet access service or adopting new regulatory mandates in the name of network "openness" would threaten to curtail the private investment that so many parties rightly credit for the

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[3] Remarks of FCC Acting Chairman Michael J. Copps, Pike & Fisher's Broadband Policy Summit V, Washington, D.C., June 18, 2009, at 3 ("[I]f we get bogged down trying to resolve every telecom issue out there, we won't get the focused, realizable national broadband plan we so desperately need.") ("Copps Broadband Summit Remarks"); *see also id.* (noting that the Commission's challenge is to develop a "focused, practical, achievable broadband plan . . . instead of trying to resolve every contentious issue that has fueled so many years of seemingly-endless debates over telecommunications—debates that have too often deflected us from progress we should have been making, too frequently deflected us from the real issues of broadband because we spent so much time parsing arcane language rather than confronting real-world challenges").

remarkable success of the broadband marketplace to date.[4] The Commission need not and should not entertain such measures, as they would only generate controversy, increase regulatory uncertainty and instability, and derail progress toward achieving the objectives of a national broadband plan.

DISCUSSION

I. THE OPENING COMMENTS REVEAL A BROAD CONSENSUS REGARDING THE STATE OF BROADBAND TODAY AND THE FUNDAMENTAL OBJECTIVES GOING FORWARD.

A. The Broadband Plan Should Aim for the Universal Availability of Broadband Internet Access.

The opening comments reveal unanimous support for the central goal of the NOI and the stimulus legislation that prompted it: the universal availability of broadband.[5] Accordingly, the Commission should not hesitate to develop the national broadband plan around the core objective of making broadband available to 100 percent of the country. For this purpose, "broadband" should be understood to refer specifically to broadband Internet access capability.

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[4] As demonstrated in Section II, *infra*, neither reclassifying broadband Internet service as a telecommunications service nor adopting new "openness" mandates would further the two core objectives of the national broadband plan—to stimulate infrastructure deployment and promote broadband adoption. Indeed, these measures would more likely lead to decreased deployment.

[5] *See, e.g.*, National Exchange Carrier Association ("NECA") Comments at 1; United States Telecom Association ("U.S. Telecom") Comments at 1; Hughes Network Systems, LLC and WildBlue Communications, Inc. ("Hughes") Comments at 11; AT&T Comments at 1; Consumer Action Comments at 1; Google Comments at 1; Michigan Public Service ("Michigan PSC") Comments at 1; Communications Workers of America ("CWA") Comments at 2; NAACP Comments at 2; Free Press Comments at 28; Public Knowledge Comments at 6, 17; Consumers Federation of America and Consumers Union ("CU") Comments at 5-10; National Association of State Utility Consumer Advocates ("NASUCA") Comments at 21; National Association of Telecommunications Officers and Advisors ("NATOA") Comments at 8-10; CTIA Comments at 1-2; Wireless Communications Association International ("WCAI") Comments at 36; National Cable & Telecommunications Association ("NCTA") Comments at 3-8; *see also* NOI ¶ 5 ("Our goal must be for every American citizen and every American business to have access to robust broadband services.").

As many parties (including TWC) have observed, broadband Internet access is the focus of the NOI;[6] it therefore should be the focus of the Commission's efforts going forward.

A number of parties advance more specific requirements—such as particular speed thresholds or other criteria—for defining what broadband should mean for purposes of this proceeding.[7] TWC continues to support a definition that is consistent with the tiers set forth in the Commission's most recent Form 477 revisions, which have been thoroughly and recently vetted to reflect current broadband technologies and to account for technical differences among networks and other factors that affect broadband speeds.[8] Many commenters agree.[9] Moreover, in the interest of ensuring that the Commission's goals and benchmarks can be easily implemented and readily achieved, TWC reiterates the need to remain mindful of the problems inherent in an approach based on "actual" broadband speed, as opposed to "maximum available" speed.[10]

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6 *See, e.g.*, TWC Comments at 3; Comcast Comments at 8; Fiber-To-The-Home Council ("FTTH") Comments at 2; CWA Comments at 2; American Telemedicine Association ("ATA") Comments at 2; Coalition of Organizations for Accessible Technology Comments at 4-6.

7 *See, e.g.*, Covad Comments at 2, 11; Google Comments at 5; Microsoft Comments at 2; California Public Utilities Commission ("CPUC") Comments at 7.

8 *See* Comments of Time Warner Cable Inc., GN Docket No. 09-40, at 8-9 (filed Apr. 13, 2009) ("TWC Broadband Stimulus Comments").

9 *See, e.g.*, NCTA Comments at 8-9; Western Telecommunications Alliance Comments at 12-15; Globecomm Systems Comments at 3-4; National Rural Telecommunications Cooperative and DigitalBridge Communications ("NRTC") Comments at 7-10; ViaSat Comments at 10-13.

10 TWC Broadband Stimulus Comments at 9.

B. The Broadband Marketplace Has Flourished Through Substantial Private Investment, to the Benefit of Consumers.

In addition to consensus on the ultimate goal of universal broadband Internet access, many parties recognize the tremendous progress already made toward achieving that goal.[11] It is widely acknowledged that broadband networks are currently available to over 90 percent of America's households.[12] In fact, a number of commenters observe that in many areas of the country, consumers can choose from among multiple broadband service platforms—including cable, DSL, fiber-to-the-home, satellite, fixed and mobile wireless, and power lines.[13]

The opening comments particularly underscore the growth of wireless and satellite broadband options, which are competing for customers with wireline providers. As CTIA notes, for example, all four of the nation's largest wireless carriers now offer wireless broadband service, and the recent AWS and 700 MHz auctions are likely to expand wireless broadband

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11 *See, e.g.*, Free State Comments at 3; U.S. Chamber of Commerce ("Chamber of Commerce") Comments at 2-4; Connected Nation Comments at 7-8; CWA Comments at 1; Progress & Freedom Foundation ("PFF") Comments at 12-24.

12 *See, e.g.*, U.S. Gov't Accountability Office, Report to the Chairman, Committee on Energy and Commerce, House of Representatives: Broadband Deployment Plan Should Include Performance Goals and Measures to Guide Federal Investment 22 (2009) ("GAO Report"); AdHoc Telecommunications Users Committee ("AdHoc") Comments at 8; Chamber of Commerce Comments at 7; PFF Comments at 12-13; Free State Comments at 3.

13 *See* Sprint Nextel Comments at 1 ("Access to broadband service over multiple technologies—each of which offers particular benefits such as mobility, speed, and scope—is currently available to hundreds of millions of people across the nation, with wireless, wireline and satellite providers collectively spending billions of dollars each year to expand and improve their networks."); *see also* CWA Comments at 3; Hughes Comments at 16; Comments of XO Communications, LLC at 29-30; 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 (showing that, as of December 2007, consumers had five or more broadband provider choices in 78 percent of U.S. zip codes).

capabilities even further.[14] On the satellite side, Hughes observes that "[s]atellite networks offer reliable and quality access, including during emergencies, at true broadband speeds that only will increase with the introduction of next-generation satellites that currently are under development."[15] Such observations accord with the Commission's own findings about the growth of competition among broadband platforms.[16] These well-documented developments rebut the claims of those commenters asserting that the broadband marketplace is little more than a duopoly.[17] To the contrary, broadband competition among multiple platform providers grows more robust every day.

Not only is there widespread agreement that broadband has been widely deployed, but there is also a broad consensus on the primary reason for it: the substantial and ongoing investment by the private sector that has occurred in a regulatory environment that encourages innovation.[18] As noted by the U.S. Chamber of Commerce, in 2008 alone the communications industry invested over $60 billion on broadband infrastructure.[19] Likewise, Verizon notes that the private sector invested more in communications infrastructure than the federal government invested in all forms of transportation infrastructure in 2008.[20] A recent report illustrates that, as

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14 CTIA Comments at 9-10.

15 Hughes Comments at 4.

16 *See generally* TWC Comments at 7-9 (citing Commission findings).

17 *See, e.g.*, Comptel Comments at 3-4; Free Press Comments at 40-48.

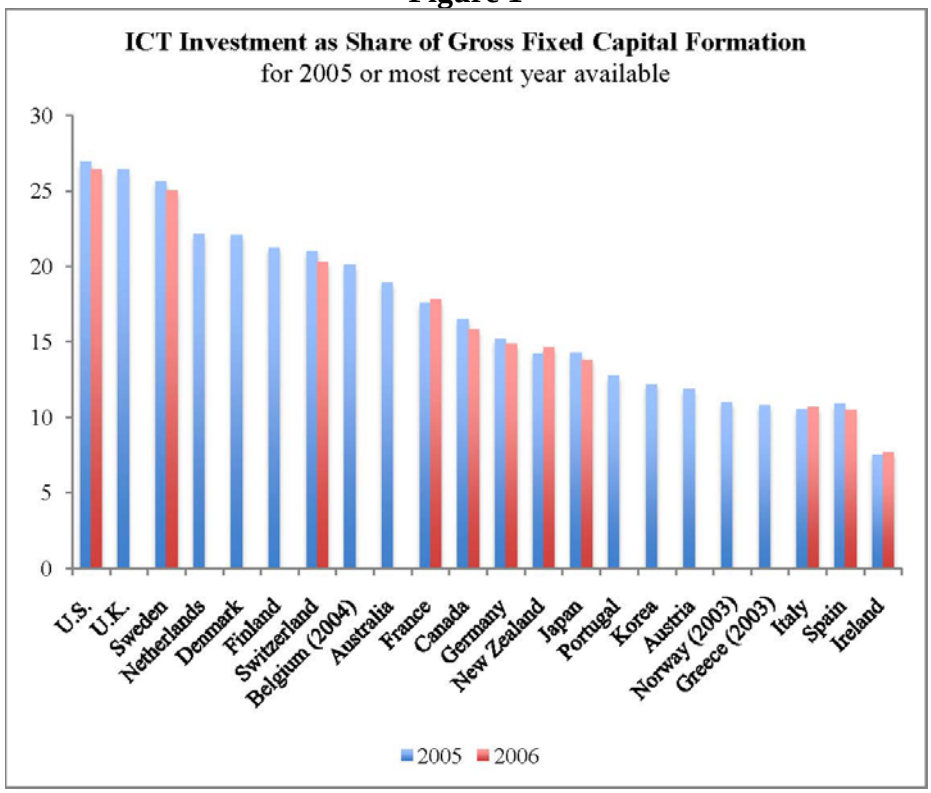
18 U.S. Telecom Comments at 2-3, 7; Windstream Comments at 1, 3-4; NCTA Comments at 9-14; Cisco Comments at 14-17; American Consumer Institute Comments at 16-21.

19 Chamber of Commerce Comments at 2.

20 Verizon Comments at 16 (further noting that while private investment throughout the economy dropped by 6 percent between mid-2006 and mid-2008, investment in communications equipment grew by nearly 10 percent); *see also* Free State Comments at 5-6; Georgetown Center for Business and the Public Policy and Technology Policy Institute Comments at 1; Broadband Opportunity Coalition Comments at 19; PFF Comments at 19.

a percentage of gross fixed capital, the United States was the global leader in communications infrastructure investment, as illustrated in Figure 1.[21]

Figure 1



A recent report by the U.S. Government Accountability Office ("GAO") further confirms the vital role of private investment in the broadband arena. In particular, GAO emphasized the wide deployment and availability of broadband infrastructure, noting that "some type of broadband infrastructure has been deployed to approximately 90 percent of U.S. households" because of "extensive private-sector investment and minimal government intervention."[22] To ensure that such investment can and will continue unabated, a number of parties share TWC's

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21 Scott Wallsten, *Understanding International Broadband Comparisons*, Technology Policy Institute 16 (June 2009).

22 GAO Report at 22; *see also* Letter from Henry A. Waxman, Chairman, House of Representatives Committee on Energy and Commerce, Rick Boucher, Chairman, Subcommittee on Communications, Technology, and the Internet, and Zack Space, Member, Subcommittee on Communications, Technology, and the Internet, to Michael J. Copps, Acting Chairman, Federal Communications Commission (June 10, 2009).

view that the national broadband plan must include a regulatory approach that preserves incentives for private investment and innovation.[23]

The widespread availability of broadband and competition among providers has generated significant benefits for consumers. Since 2001, prices for broadband services have fallen substantially.[24] As prices have fallen, consumers have experienced remarkable increases in speed: As of 2007, consumers could experience 10-20 times more speed than they could have received at the same price in 2000.[25] Broadband adoption among consumers has itself become an engine for economic development, as companies like Google and Facebook have grown from small start-ups to multi-billion dollar corporations.[26] Such economic gains extend to the local level, as the availability of broadband can be a key factor in determining whether a particular community experiences growth.[27]

Likewise, broadband has furthered important public policy goals, many of which Congress directed the Commission to address in the national broadband plan.[28] These goals include, for example, the deployment of telemedicine technologies, which expand consumer

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23 *See, e.g.*, Sprint Nextel Comments at 6-8; CTIA Comments at 35; Qualcomm Comments at 20; PFF Comments at 12-25; Telecommunications Industry Association ("TIA") Comments at 4-6.

24 Wallsten, *supra* note 21, at 24.

25 U.S. Telecom Comments at 6; *see also* Wallsten, *supra* note 21, at 24.

26 NCTA Comments at 14-15.

27 Connected Nation Comments at 16 (describing a study by the Massachusetts Institute of Technology Communications Futures Program showing that communities in which mass-market broadband was available "experienced more rapid growth in employment, the number of businesses overall, and businesses in IT-intensive sectors, relative to comparable communities without broadband").

28 NOI ¶¶ 63-105; *see also* TWC Comments at 11-17 (describing these benefits of broadband).

access to health services and greatly reduce healthcare costs;[29] "improving the quality of America's schools;"[30] and enhancing "civic participation, health care delivery, energy independence, and education."[31] The record demonstrates widespread belief that private investment and innovation must be central to the national broadband plan to further these key public policy objectives.

C. The Government Can Close the Digital Divide Through Targeted Initiatives Addressing Broadband Availability and Demand.

Regardless of the health of the broadband marketplace, there is no dispute that more can and must be done to promote the availability and adoption of broadband Internet access service. In particular, virtually every commenter agrees that the government should take affirmative steps to promote the further build-out of broadband infrastructure and to assist consumers with the decisions of whether and how to use broadband services.

1. The Commission Should Pursue Supply-Side Initiatives To Promote Infrastructure Deployment.

There is widespread support for supply-side initiatives that would encourage the construction of broadband infrastructure, particularly in unserved areas.[32] Virtually all parties addressing broadband infrastructure agree that the Commission can stimulate broadband deployment by adopting policies and rules that reduce barriers to investment. For example, like TWC, a number of parties point out that pole attachment and right-of-way rules have a significant impact on the ability of companies to deploy new facilities; the Commission therefore

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29 ATA Comments at 1-2.

30 Education and Libraries Network Coalition Comments at 12.

31 U.S. Telecom Comments at 7.

32 *See, e.g.*, Embarq Comments at 6; Verizon Comments at 125; Appalachian Regional Commission ("ARC") Comments at 1; Vermont Department of Public Service Comments at 8.

should avoid actions in connection with these issues that raise barriers to investment.[33] Another common proposal involves the use of tax incentives for broadband deployment.[34] Similarly, Congress can permit accelerated depreciation to encourage capital expenditures for broadband equipment.[35] These and other regulatory solutions would encourage build-out by the private sector without any need to distribute additional federal funds.[36]

Of course, in some cases, subsidies may be necessary to create the proper incentives where the economic case for private investment is lacking. The key role of the broadband stimulus funds in supporting broadband deployment in this regard is beyond dispute. While some parties predict that this funding may be insufficient to achieve truly universal broadband access,[37] it will be available and quantifiable in the near term and should be a primary tool in building a supply-side strategy.

In addition to the stimulus funds, parties identify a number of existing programs that can be used to support broadband infrastructure development. The GAO recently identified many such programs administered by other federal agencies that can be used for this purpose.[38] In 2008, two programs that are focused specifically on broadband infrastructure—both

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33 *See* TWC Comments at 23-25; *see also* Clearwire Comments at 5, 7-10; CTIA Comments at 15-26; Cricket Comments at 7-8; Sunesys Comments at 2-12; Wireless Internet Service Providers Association Comments at 20-21.

34 *See, e.g.*, U.S. Telecom Comments at 25; Hughes Comments at 13; FTTH Comments at 26-28; TIA Comments at 2; CWA Comments at 17-18. Although tax-based initiatives may be outside the Commission's jurisdiction, it may still propose such incentives to Congress as a means to promote broadband deployment.

35 *See* Internet Innovation Alliance ("IIA") Comments at 7.

36 As discussed below, however, some proposals that are described by their proponents as facilitating investment may not advance that goal and warrant additional scrutiny. *See infra* Section II.

37 *See, e.g.*, TDS Telecommunications Corporation Comments at 4.

38 GAO Report at 12 (noting eleven federal programs administered by six federal agencies that can help fund telecommunications infrastructure deployment).

administered by the Department of Agriculture's Rural Development Utilities Program—contributed $300 million to broadband deployment.[39] While nine additional programs provided over $7 billion to communications infrastructure, the responsible federal agencies did not systematically track the amount tied to broadband deployment.[40] One or more of these existing support programs can be used to fund broadband.[41] Moreover, as several parties recommend, the Commission should coordinate with other federal agencies to create joint programs designed to promote broadband infrastructure, assist in allocating funds efficiently, and ensure that no existing potential resource is left untapped.[42] In managing such inter-agency programs, the Commission could place a greater emphasis on offering grants, rather than loans or loan guarantees, to support recipients.[43] The Commission should consider recommending that Congress require all federal agencies and departments to incorporate policies that promote broadband Internet adoption and use into their existing programs.[44] As the Computer and Communications Industry Association notes, however, in any coordinated inter-agency efforts,

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39 *Id*.

40 *Id*.

41 *See, e.g.*, Broadband Opportunity Coalition Comments at 14.

42 *See* Computer and Communications Industry Association ("CCIA") Comments at 1-2 (suggesting that the national broadband plan act as a "charter" than can be used by multiple federal agencies to create a coordinated, multi-agency approach to deploying broadband); Utilities Telecom Council and Edison Electric Institute Comments at 11; *see also* NOI ¶¶ 86, 113 (seeking comment on whether and how the Commission should coordinate with other federal departments and agencies to implement the national broadband plan); *Rural Broadband Report* ¶ 13 (encouraging Congress to require federal agencies (1) to review their existing programs "to identify what internal barriers . . . may be making rural broadband deployments more difficult," and (2) to coordinate their criteria and definitions relating to broadband programs).

43 NRTC Comments at 15.

44 Comcast Comments at 82 (citing Simon Wilkie, Aspen Institute, *ICT: The 21st Century Transitional Initiative – Report of the 23rd Annual Aspen Institute Conference on Communications Policy* 2-3 (Jan. 7, 2009)).

"the private sector must play a key role in working with government to expand broadband access."[45]

As TWC has noted, once the federal stimulus programs are underway, the Commission will be in a better position to determine what additional funding measures, if any, are required.[46] A number of parties propose the expansion or reform of certain universal service programs to directly support broadband.[47] To the extent the Commission ultimately elects to rely on universal service support for this purpose, it should do so only in a manner that avoids placing additional pressure on support mechanisms that, by all accounts, already are under tremendous strain.[48] Moreover, the Commission should avoid dispersing support in a manner that would merely subsidize competition and create marketplace imbalances. Any support should be distributed on a technologically and competitively neutral basis.[49]

2. The Commission Should Pursue Demand-Side Initiatives To Promote Adoption and Affordability.

A number of commenting parties identify demand and adoption issues as presenting the greatest challenge confronting the Commission. Although recent studies indicate ongoing

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45 CCIA Comments at 15.

46 TWC Comments at 19-20.

47 *See, e.g.*, CTIA Comments at 39-44; Qualcomm Comments at 18-19; Rural Cellular Association Comments at 18-26; Michigan PSC Comments at 4-5; IIA Comments at 6.

48 *See* Comments of Time Warner Cable Inc., WC Docket No. 05-337, at 5-8 (filed May 8, 2009); *see also* Copps Broadband Summit Remarks at 5 (noting the Commission's announcement that the Universal Service Fund ("USF") contribution factor had reached an all-time high of 12.9 percent—representing a decrease in contributions and an increase in demand—and stating that this was "not-so-good-news" for the universal service program, the communications industry, and consumers); GAO Report at 36 (noting fear among stakeholders that expanding the USF program to include broadband service would increase program expenditures, require additional funding, and possibly undermine the entire USF program).

49 *See* Independent Telephone & Telecommunications Alliance Comments at 2; Motorola Comments at 21-22; AdHoc Comments at 10; NCTA Comments at 36; Verizon Comments at 6; Free Press Comments at 233.

progress, the fact remains that there exists a gap between the availability of broadband Internet access service and the number of Americans that subscribe to it.[50] Comcast, for example, states that the challenge of promoting adoption is "four times as large" as that of promoting access.[51] The United States Internet Industry Association and NetLiteracy agree that the biggest issue facing the Commission in this proceeding is the "adoption of broadband by those who have access available and still cannot use the Internet for a variety of reasons."[52] Consequently, demand-side initiatives present some of the best opportunities for closing the broadband gap and disseminating the benefits of broadband to all Americans.

The adoption challenge includes two key components: promoting *awareness* of the benefits of broadband, and ensuring the *affordability* of broadband services and equipment. As TWC and others have explained, research indicates that a lack of awareness and education presents a greater impediment to broadband adoption than economic concerns.[53] One leading report found that approximately 50 percent of dial-up users and those without any Internet service report that they do not have broadband access because they do not deem it to be "relevant," while approximately 13 percent take issue with the "usability" of broadband.[54] Thus, a lack of awareness, education, or relevance accounts for approximately 63 percent of non-

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50 For example, one recent study states that as of April 2009, 63 percent of adult Americans had adopted broadband at home, compared to 55 percent in the prior year. *See* John B. Horrigan, *Home Broadband Adoption 2009*, PEW Internet & American Life Project 3 (June 2009) ("2009 Pew Report").

51 Comcast Comments at 5 (noting that nearly four times as many American households have access to broadband but do not subscribe to it than have no access at all).

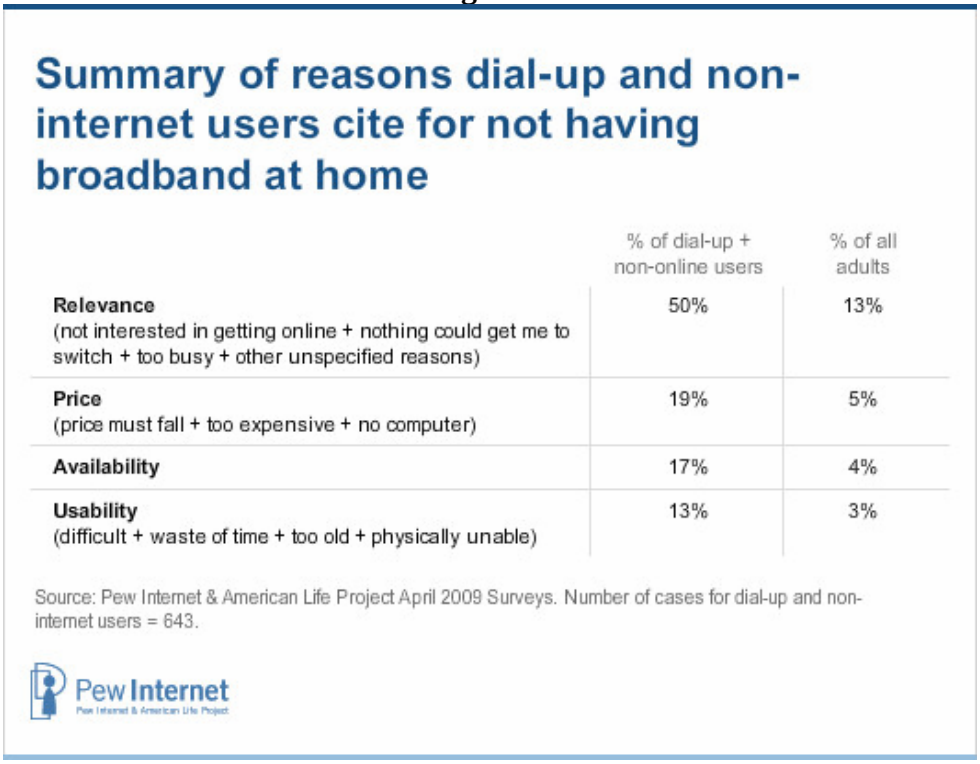
52 U.S. Internet Industry Association and NetLiteracy ("USIIA") Comments at 1, 3-4; *see also* Embarq Comments at 5; U.S. Telecom Comments at 25.

53 *See, e.g.*, TWC Comments at 21-22; U.S. Telecom Comments at 25.

54 2009 Pew Report at 42.

adoption, while affordability and lack of access account for only 19 and 17 percent of non-adoption, respectively, as reflected in Figure 2.[55]

Figure 2



Summary of reasons dial-up and non-internet users cite for not having broadband at home

	% of dial-up + non-online users	% of all adults
Relevance (not interested in getting online + nothing could get me to switch + too busy + other unspecified reasons)	50%	13%
Price (price must fall + too expensive + no computer)	19%	5%
Availability	17%	4%
Usability (difficult + waste of time + too old + physically unable)	13%	3%

Source: Pew Internet & American Life Project April 2009 Surveys. Number of cases for dial-up and non-internet users = 643.

Pew Internet

In view of these statistics, there is widespread support among commenters for incorporating demand-side initiatives as a key component of the national broadband plan. Various parties advance specific proposals designed to promote consumer education and digital literacy that could be considered for this purpose. For example, the government could fund programs intended to increase awareness of the value of broadband in low-income communities, or allocate a percentage of E-Rate funds to improve professional development or training for teachers.[56] Such federally sponsored efforts will help consumers understand how broadband can

55 *Id.*

56 Broadband Diversity Supporters ("BDS") Comments at 24.

improve their lives through enhanced employment, educational opportunities, and civic participation, among other well-established benefits.[57]

Notwithstanding the clear need to educate consumers on the benefits of broadband, there can be no doubt that affordability also is critical to broadband adoption. In this regard, there is substantial agreement that the government should take positive steps to defray the costs of equipment and subscriptions for low-income households.[58] Examples include programs that will stimulate demand by making computers or laptops available at a discount to specified households, subsidizing monthly service fees for low-income consumers, and reimbursing individuals for telehealth expenditures;[59] government-subsidized broadband subscriptions and computer equipment costs through the Lifeline and Link-Up programs;[60] and allocation of E-Rate funds to training and educational programs.[61] Additional funding for these types of programs may come from the Broadband Technology Opportunities Program.[62]

While targeted government initiatives are critical, the industry itself can also play an active role in increasing demand for broadband services. For example, several parties underscore the connection between ensuring consumer confidence in online privacy and security and increasing broadband demand; they accordingly propose that industry-based working groups

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57 *See* NCTA Comments at 37-38; ARC Comments at 3 ("Training and education are critical components for rural deployments. Making sure rural residents have sufficient computer skills also helps fuel broadband demand. Outreach programs using community colleges and workforce training centers are excellent ways to accomplish this training.").

58 *See, e.g.*, Verizon Comments at 31-35; CWA Comments at 18-19; Connected Nation Comments at 23-25; Telecommunications for the Deaf and Hard of Hearing Comments at 3-4.

59 NCTA Comments at 37.

60 Cricket Comments at 6.

61 *See, e.g.*, BDS Comments at 33; *see also* NOI ¶ 92.

62 *See* FTTH Comments at 33; Cricket Comments at 6.

establish best practices in this regard.[63] TWC submits that such working groups must enable providers to build into their practices those elements of privacy and security which consumers most desire while not unnecessarily constraining the development of applications or features they demand. As U.S. Telecom notes, ensuring consumer confidence in privacy matters is critical to boosting adoption, and the industry should be allowed to develop "robust self-regulatory principles that are technology neutral."[64] Such proposals corroborate TWC's view[65] that service providers have incentives to protect the privacy of their customers and will do so without the need for further mandates.[66] In other words, while government initiatives are essential to stimulating broadband demand, they are not the exclusive solution, as the industry can and should be proactive in this regard.

3. There Is No Need To Impose Additional Reporting Obligations on Broadband Providers.

Finally, while it is important for the Commission to monitor the marketplace and assess its success in achieving these goals, the Commission can do so without imposing additional reporting requirements on broadband providers, as some parties request.[67] As TWC and others observe, other steps that have been taken in this regard—such as revisions to FCC Form 477, and measures taken pursuant to the Broadband Data Information Act—will improve the

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63 *See, e.g.*, Verizon Comments at 54; AT&T Comments at 143-45, 148-51.

64 U.S. Telecom Comments at 28-29.

65 TWC Comments at 25-26; Comments of Time Warner Inc., WC Docket No. 05-271, at 7-8 (filed Jan. 17, 2005).

66 *See, e.g.*, Chamber of Commerce Comments at 8 ("Unless a market failure has occurred and consumer harm will result, policymakers should refrain from intervening [in privacy regulation]."); Cox Comments at 11-12.

67 *See, e.g.*, NATOA Comments at 52-58; CPUC Comments at 12-14; Michigan PSC Comments at 6; Google Comments at 4.

Commission's ability to measure its success in promoting broadband deployment and adoption.[68] Moreover, the recently released Notices of Funds Availability ("NOFAs") by the National Telecommunications and Information Administration and the Rural Utilities Service, including the NOFA on mapping, contain multiple provisions that will facilitate the collection of broadband-related data.[69] At a minimum, the Commission should allow those initiatives to work, in conjunction with ongoing private-public partnerships such as those operated by Connected Nation,[70] before imposing additional data-collection obligations on broadband providers.

II. THE COMMISSION SHOULD PURSUE ONLY THOSE PROPOSALS THAT WILL DIRECTLY ADVANCE THE CORE GOALS UNDERLYING THIS PROCEEDING.

The many proposals advanced in the opening comments include some that, despite the claims of their proponents, would not promote broadband deployment or adoption—and, if anything, would compromise both objectives. The Commission should refrain from pursuing such recommendations in this proceeding, including in particular the two that TWC discusses below. Instead, it should focus intently and exclusively on implementing those measures that

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68 *See* TWC Comments at 18; Hughes Comments at 10; *see also* Reply Comments of Time Warner Cable Inc., WC Docket No. 09-47, at 3-4 (filed Apr. 17, 2009).

69 *See generally* Department of Commerce, National Telecommunications and Information Administration, State Broadband Data and Development Grant Program, 74 Fed. Reg. 32545 (July 8, 2009); *see also* Department of Agriculture, Rural Utilities Service, Broadband Initiatives Program; Department of Commerce, National Telecommunications and Information Administration, Broadband Technology Opportunities Program, 74 Fed. Reg. 33104, 33123 (July 9, 2009) (requiring fund awardees that offer Internet access service to the public for a fee to participate in the State Broadband Data and Development Grant Program, and noting that "data supplied by awardees [will] support the development of the broadband mapping project" conducted pursuant to the ARRA) ("BTOP NOFA").

70 *See* Connected Nation Comments at 9-15 (noting that nine states are employing the collaborative, public-private approach for household level broadband mapping, facilitated by the Broadband Data Information Act).

hold particular promise for extending broadband to unserved areas and encouraging adoption in all areas.

A. Reclassifying Broadband Internet Access as a Telecommunications Service Would Not Promote Broadband Deployment or Adoption.

A handful of parties ask the Commission to reverse its series of well-reasoned and record-based decisions classifying broadband Internet access as an information service and instead deem it a telecommunications service subject to regulation under Title II of the Act.[71] These belated reconsideration requests flow from a dubious premise: that broadband policy in this country has been a failure, and that the Commission's classification decisions are the reason why.[72] As discussed above and at length in many opening comments, this dour view of the broadband marketplace lacks any basis in fact. Broadband penetration has proceeded at a faster rate than that of any other technology, such that most Americans now have broadband access and many can choose from among multiple broadband service providers. Indeed, the NOI in this proceeding recognizes these facts at the outset, and the GAO Report has since validated them.[73]

In any event, this misguided proposal would not resolve any perceived shortcomings in the development of the broadband marketplace. Its proponents seek to justify reclassifying broadband Internet access as a telecommunications service by noting that doing so would require network owners to provide the underlying transmission to competitors on an unbundled basis,

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71 *See* NASUCA Comments at 11; Free Press Comments at 260-61; Public Knowledge Comments at 24-25; Comptel Comments at 21-22.

72 *See, e.g.*, Public Knowledge Comments at 23 ("The reason the U.S. is falling behind [the rest of the world in broadband] can be traced directly to the decisions the Commission made over the past 10 years to reclassify broadband service . . . ."); Free Press Comments at 261 (referring to the Commission's broadband classification decisions as "the most fundamental mistake of the past 10 years in telecommunications").

73 *See generally* TWC Comments at 7-11 (discussing Commission findings concerning the extent of broadband availability); GAO Report at 22.

which might increase the prospect of intramodal broadband competition.[74] But that outcome would do nothing to extend broadband infrastructure to unserved areas, nor would it address the principal adoption challenges—lack of awareness, need for greater education, and concerns about affordability and relevance.[75] The NOI makes clear that this proceeding should focus on addressing those issues.[76] Any action that merely grants competitors access to existing networks on a wholesale basis—and arguably creates disincentives for them to construct their own facilities—would not advance these fundamental goals, but rather have the reverse effect. That outcome is inconsistent not just with the objectives of this particular proceeding, but with the Act itself.[77]

Apart from being unnecessary, reclassifying broadband Internet access would be counter-productive. Forcing broadband platform owners to provide unbundled transmission would restore the disincentives to investment that convinced the Commission to eliminate that requirement in the first place. As the Commission has recognized, such mandates have a "significant impact" on the ability of providers "to develop and deploy innovative broadband

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74 *See, e.g.*, Public Knowledge Comments at 25; Comptel Comments at 22. To the extent these commenters are suggesting that increased intramodal competition would result in lower prices in areas that already have broadband options, and thus stimulate greater demand, they miss the mark. As discussed above, affordability is not the primary reason why consumers do not adopt broadband; rather, a lack of awareness or perceived benefit has been identified as an even larger problem—which would not be addressed through increased intramodal competition. *See supra* Section I.C.2.

75 *See supra* Section I.C; *see also, e.g.*, Free Press Comments at 29 (noting importance of expanding infrastructure in unserved areas); NASUCA Comments at 78 (same).

76 *See, e.g.*, NOI ¶ 1 (stating that the NOI's "focus is to enable the build-out and utilization of high-speed broadband infrastructure"); *id.* ¶¶ 55-57 (seeking comment on how to improve digital literacy and consumer adoption of broadband services).

77 *See, e.g.*, *Verizon California v. FCC*, 555 F.3d 270, 274 (D.C. Cir. 2009) (stating that "the promotion of facilities-based local competition" is a "fundamental policy" of the Act) (citing *United States Telecom Ass'n v. FCC*, 359 F.3d 554, 576 (D.C. Cir. 2004)); *see also* Telecommunications Act of 1996 § 706, codified at 47 U.S.C. § 157 nt.

capabilities that respond to market demands."[78] The Commission has found that "the additional costs of an access mandate diminish a carrier's incentive and ability to invest in and deploy broadband infrastructure investment," a result that the Commission deemed "troubling" given "Congress' clear and express policy goal of ensuring broadband deployment."[79] Accordingly, Communications Workers of America emphasizes that "unbundling requirements would create disincentives to network investment and should be avoided."[80]

Finally, it is not clear on what basis the Commission could legitimately reverse its prior rulings, and the parties that urge it to do so offer little assistance.[81] Reconsidering the classification of broadband Internet access would require the Commission to jettison the functional analysis that it consistently has employed in applying the Act's definitions and that

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78 *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 ¶ 44 (2005), *pet. for rev. denied*, *Time Warner Telecom v. FCC*, 507 F.3d 205 (3d Cir. 2007).

79 *Id. Cf. Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 ¶ 47 (2002) (predicting that "many, if not most, cable operators would stop offering telephony if such an offering triggered a multiple ISP access obligation for the cable modem service"), *aff'd*, *National Cable & Telecomm. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967 (2005) ("*Brand X*"). The Commission cited these same factors in relieving incumbent local exchange carriers of the obligation to offer to competitors unbundled access to fiber-to-the-home and fiber-to-the-curb loops. *See Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 ¶ 278 (2003); *Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Reconsideration, 19 FCC Rcd 20293 ¶ 9 (2004).

80 CWA Comments at 19. For these same reasons, the Commission should resist any calls that it subject cable or other broadband networks to a regime akin to the *Computer Inquiry* requirements that applied to incumbent telephone companies before the advent of inter-platform competition. *See generally* NCTA Comments at 41-45 (describing the recognized harms of access requirements for broadband deployment and providing an overview of the Commission's original rationale for the *Computer Inquiry* requirements).

81 *See, e.g.*, Free Press Comments at 261 (stating without basis that reclassifying broadband "should not be a heavy lift for the Commission").

served as the primary basis for its decisions in this regard.[82] The Supreme Court upheld that precise reasoning.[83] While the Commission of course is entitled to reverse a particular rule or policy, it still must provide "a reasoned analysis for the change."[84] It is not at all apparent how the Commission could satisfy that standard in the course of abandoning its consistent approach to statutory classification decisions—particularly for cable broadband services, which have *never* been subject to Title II regulations as common carriers—in favor of a policy-based approach premised entirely on competitive concerns that are unsupported by the Commission's own precedent.

In fact, here the Commission would likely face a higher standard to justify its about-face: the Supreme Court has ruled that an agency must "provide a more detailed justification than what would suffice for a new policy created on a blank slate" when "its new policy rests upon factual findings that contradict those which underlay its prior policy[,] or when its prior policy

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82 Specifically, the Commission has determined that the broadband Internet access services offered over cable, wireline, wireless, and powerline facilities are "single, integrated service[s]" that "inextricably combine[] the transmission of data . . . with computer processing, information provision, and computer interactivity," permitting users to run a variety of Internet applications that satisfy the statutory definition of an "information service." *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, Declaratory Ruling, 22 FCC Rcd 5901 ¶¶ 25-26 (2007) (citing prior classification decisions and applying the same reasoning to wireless broadband Internet access service).

83 *Brand X*, 545 U.S. at 990 ("The question, then, is whether the transmission component of cable modem service is sufficiently integrated with the finished service to make it reasonable to describe the two as a single, integrated offering. We think that they are sufficiently integrated . . . .") (citation omitted).

84 *Motor Veh. Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983); *see also Verizon Telephone Cos. v. FCC*, No. 08-1012, 2009 U.S. App. LEXIS 13269, at *16-17 (D.C. Cir. June 19, 2009).

has engendered serious reliance interests that must be taken into account."[85] The Commission would face a steep climb to explain why the competitive environment it foresaw does not exist and to overcome the fact that broadband network owners have invested heavily in infrastructure in reliance on the understanding that they would not be required to make it available to their competitors on a wholesale basis. The mere fact that broadband subscribership is not yet universal does nothing to undermine the validity of a regulatory framework that was designed to promote widespread deployment of broadband facilities and to spur the development of online applications and services—and that has been remarkably successful in doing so. Rather, this experience points to a need to devote additional resources to demand-side programs, not to revisit the regulatory framework that has created a strong and stable platform for investment and innovation.

In the end, reclassifying broadband Internet access would merely revive old disputes at a time when forging consensus and making progress toward the goals of universal broadband availability and more widespread adoption are the critical objectives. Indeed, it took years of litigation, spanning all levels of the federal judiciary, to clarify the regulatory status of broadband Internet access. Reopening this matter now would simply foster increased regulatory uncertainty, which inevitably would stifle investment at a time when it needs to be promoted. Given the significant downside to this proposal, the far better approach to promoting broadband deployment and adoption is to focus on the supply-side and demand-side initiatives discussed above, emphasizing targeted funding to unserved areas and outreach and education efforts to stimulate broadband demand.

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[85] *FCC v. Fox Television Stations*, 129 S. Ct. 1800, 1811 (2009) (citing *Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735, 742 (1996)); *see also id.* (stating that it "would be arbitrary and capricious to ignore such matters").

B. Additional Net Neutrality Mandates Would Undermine the Goals of This Proceeding.

The opening comments, unsurprisingly, demonstrate widespread recognition of the value of an open Internet. Of course, as TWC has noted, the importance of maintaining open networks should be and generally has been beyond dispute.[86] Thus, TWC and other network operators have incorporated principles of openness in their business practices to provide the best possible service for their customers in response to marketplace demands. Indeed, a number of commenters note that the market already is functioning to produce a greater array of choices for consumers consistent with the concept of an open Internet.[87] The Commission itself has favorably noted such marketplace developments.[88]

Some commenters nevertheless insist that the Commission should supplement the *Broadband Policy Statement* with additional requirements and codify this collection of principles to create binding, bright-line rules.[89] These parties allege that network owners have incentives to discriminate against certain traffic or to otherwise impair their customers' online experiences,

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86 TWC Comments at 26.

87 *Id.*; *see also, e.g.*, Chamber of Commerce Comments at 4 (stating that "the industry is already engaging in and experimenting with ways to bring an even greater choice of services and products to their networks and to their customers"); Clearwire Comments at 11 ("Clearwire has built its network based upon an open standard and has committed to adhering to the four principles set forth in the Commission's *Internet Policy Statement*."); Consumer Electronics Association Comments at 12 (noting that "the market is providing more device and application choices for consumers"); Verizon Comments at 96 (observing that "the wireless marketplace is already moving rapidly toward increased openness, but in a way that meshes with the unique constraints of wireless networks").

88 *See, e.g.*, *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*, Thirteenth Report, 24 FCC Rcd 6185 ¶ 171 (2009) (noting formation of the Open Handset Alliance to "accelerate innovation and 'openness' in the provision of mobile wireless services").

89 *See, e.g.*, Center for Democracy & Technology Comments at 10; Free Press Comments at 251-53.

and will do so unless the Commission preemptively imposes strict prohibitions on such conduct.[90]

As TWC and others have repeatedly explained, however, this claim is both unsupported and unsupportable.[91] Indeed, there remains a critical omission in the case offered in favor of additional net neutrality mandates: None of the parties endorsing this outcome has demonstrated a tangible problem that would be solved through such regulation. Rather, they continue to rely on speculation concerning what broadband network owners might do in the absence of further rules.[92] Actual marketplace experience, backed by existing safeguards, illustrates that there is no basis for concern and no problem to address. The voluminous record that the Commission has compiled on the issue—in this proceeding and others—demonstrates that any network owner that might be inclined to degrade or block traffic would do so at its own peril, since the competitive nature of the broadband marketplace affords consumers plenty of leverage over their service providers.[93] The absence of any market failure with respect to network openness undercuts any suggestion that additional net neutrality regulation is necessary.

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90 *See, e.g.*, Public Knowledge Comments at 7.

91 *See, e.g.*, TWC Comments at 27 & nn.94-95 (citing prior comments).

92 *See, e.g.*, Free Press Comments at 141-42; Public Knowledge Comments at 7. Proponents of regulation in this context also cite the practices at issue in the Commission's enforcement proceeding against Comcast. *See 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). Putting aside whether the Commission's findings against Comcast were correct on the merits, the case illustrates that where a problem in connection with network openness is perceived, the Commission already has tools at its disposal to address it.

93 *See* TWC Comments at 27.

Because the market already is functioning to protect consumers in this respect, many commenters observe that there is no need for the Commission to adopt further requirements or to take any other additional steps in the name of maintaining network openness. To the contrary, the adoption of more regulation in this area would threaten to harm consumers by creating impediments to broadband investment, thereby setting back the core goals of this proceeding. Significantly, this view is shared not just by the network owners that would be required to comply with any further net neutrality mandates, but by a variety of other parties that recognize that the costs of such rules ultimately would fall on all other participants in the broadband marketplace—such as content providers, equipment manufacturers, representatives of communications workers and businesses, and other groups.[94]

Accordingly, the only affirmative step that the Commission need take in connection with network openness is to confirm the continued ability of network owners to employ reasonable traffic management techniques.[95] This is the one key issue in the net neutrality debate on which proponents and opponents of regulation are largely united. Indeed, virtually all parties appreciate that reasonable traffic management is essential to protecting networks and ensuring that consumers enjoy the best possible online experience.[96] The NOFAs further underscore the importance of reasonable network management.[97]

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94 *See, e.g.*, CWA Comments at 19; Embarq Comments at 9; CTIA Comments at 28; Hughes Comments at 8-9; Alcatel-Lucent Comments at 12-15; Chamber of Commerce Comments at 4-5; Free State Comments at 12.

95 *See* TWC Comments at 26-27.

96 *See, e.g.*, CTIA Comments at 14; Motion Picture Association of America Comments at 3; Walt Disney Comments at 2; Ericsson Comments at 12; New York Public Service Commission Comments at 11; CWA Comments at 19; Public Knowledge Comments at 8; Free Press Comments at 167-68; CU Comments at 18-19.

97 *See* BTOP NOFA, 74 Fed. Reg. at 33132-33.

CONCLUSION

TWC is gratified to see the extent of agreement among all stakeholders, as it marks a strong beginning to the broad-based collaboration that will be essential to the Commission's completion of a national broadband plan by February 2010. TWC looks forward to continuing to assist the Commission with that process.

Respectfully submitted,

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July 21, 2009