

20 July 2009

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioners:

This letter is in response to the FCC's acceptance of reply comments re: "In the Matter of a National Broadband Plan for Our Future" MB Docket No. 09-51.

In this letter the Institute for Policy Innovation (IPI)¹ provides input regarding the direction given in The Recovery Act tasking the Commission with developing a national broadband plan by February 17, 2010. By Congress's direction, this plan shall seek to ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal.

Our reply comments are framed with those goals in mind and with the continuing observation that, in general, the story of broadband deployment thus far in the United States is a story of success, not failure. Government actions related to broadband policy can enhance, but should not supplant, our existing, largely private network infrastructure.

Overview

In our comments filed as part of the Notice of Inquiry we discussed at length the success, so far, of broadband roll out. The study on which we relied, the Pew Internet & American Life Project, Home Broadband Adoption report, has been updated and demonstrates an even more aggressive availability and adoption trend than a year ago. We wanted to take the opportunity to update those numbers for the Commission.

Also, in our comments we proposed the development of "broadband enterprise zones," which we view as a most efficient and most preferred way of extending broadband service into unserved areas where it is believed the assistance of the federal government is needed. In these reply comments we revisit our broadband enterprise zone proposal.

¹ The Institute for Policy Innovation (IPI) is a market-oriented public policy think tank with headquarters in Lewisville, Texas. IPI is recognized by the IRS as a 501(c)(3) non-profit organization. IPI has been involved for several years with policy analysis and research on the communications marketplace. Specifically, we have worked on policy development, including economic analysis, with regard to opening, expanding, and preserving markets for video, voice, and Internet access, including broadband.

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Further, in these reply comments we wish to note that the comments filed by some groups represent misguided policy recommendations that arise out of a historic and philosophical disagreement over the current regulatory approach to the broadband marketplace, and an inherently anti-market and anti-corporate bias that suffuses all the advocacy work of those groups.

Finally, we wish to suggest that demonstrable public harm is occurring through the massive piracy of intellectual property goods over broadband networks, and regulators should allow market forces, including negotiations between content owners and network providers, to attempt to combat this harm to the U.S. economy.

The rollout of broadband continues to be a success

According to the recent (June, 2009) Pew Internet & American Life Project report, U.S. broadband penetration has increased another 15 percent in the last year, following a 17 percent last year, resulting in nearly 2/3 (63 percent) of all adult Americans having a high speed Internet connection at home.

Again digging into the details the story this year gets better. Older Americans, one of the slowest demographics to adopt new technologies, are continuing to adopt broadband rapidly, with 61 percent (a 22% increase over last year) of those 50-64, and 30 percent (a huge 58% increase over last year) of those 65 and older having home broadband access.

Among African American households, home broadband adoption rates stood at 46 percent, an increase of 7 percent.

Rural Americans, folks often cited as falling behind in broadband access, have increased broadband in the home by more than 21 percent just one year, with broadband now in 46% of rural homes.

Consumers with incomes of \$20,000-\$30,000 with a nearly 26% increase in adoption just last year bringing home broadband to 53 percent of those households. Similarly, now 54 percent of households with income of \$30,000-\$40,000 have broadband, a one year increase of 10 percent.

And in a time of continuing economic turmoil and household budget distress households with annual incomes of \$20,000 or less have adopted broadband in the home at a surprising 40% rate.

Perhaps the most important finding again was that this year only 4 percent of respondents indicated that broadband simply was not available, a noticeable drop from 10 percent last year.

So, in a handful of years, broadband in the home has penetrated 63 percent, easily besting the adoption rates for telephone, cell phone, the Internet, and even electricity. Even the recent December, 2008 OECD data shows that the large landmass and population diffuse U.S. has a nearly 27 percent adoption rate for what they define as broadband, not just availability but *adoption*, and a total number of those with

broadband that is almost as many as the four next closest countries. (While the U.S. has more than 80 million broadband adopters, Japan with the second greatest total has a mere 30 million).

We reiterate the obvious -- in general, the approach taken thus far by Congress and the FCC, with frequent guidance from the courts, has resulted in a robust broadband rollout that is reaching the majority of population centers within the United States, and that is providing broadband choice in many of those same areas. This despite claims by critics that the approach has been a series of terrible mistakes, and that virtually everything that has been done in the past decade on broadband should be undone and replaced by a system of government mandates, regulations, abrogation of property rights, and devaluations of existing private investment. Such a move would be a tragic and economically wasteful mistake.

Other Comments Ignore This Reality

We were disappointed to see that comments filed by a number of groups seem to omit or purposely ignore the tremendous success of the current market-based broadband rollout. We will not engage in a point-by-point refutation of their numerous false assumptions and resulting mistaken policy recommendations, but rather will observe that the comments by these groups reflect some common and predictable themes.

1. They want to refight the unbundling debate.

All problems, according to these groups, go back to their preference that the FCC had followed a common carrier, forced unbundling regime for broadband policy. In their view, everything has gone wrong and virtually nothing positive has happened since the FCC's decision to allow builders of new broadband networks to fully enjoy the benefits and property rights associated with the ownership of a network infrastructure.

2. If it happened under the existing regulatory regime, it didn't really happen.

Because they cannot acknowledge the dramatic rollout of broadband to the American people which dates almost precisely to this positive change in FCC policy, they cannot bring themselves to acknowledge the empirical facts of the broadband rollout and the demonstrable uptake of these services by the American people as recounted through the Pew Survey data.

3. They are reflexively anti-market and anti-corporate.

Even a cursory examination reveals that the common thread in their advocacy has been to oppose corporations and to distrust market solutions. In their view, the status quo is always a failure (regardless of market evidence of consumer uptake), and the solution is more government regulation and government manipulation of markets.

In particular, they want broadband networks to be either overt or *de facto* publically owned and/or publically controlled utilities. It is particularly ironic that, despite the hostility of these groups to monopolies, their policy recommendations hearken back to those in operation during the time when the nation had a single regulated voice provider operating under common carrier obligations. We must note that the present era of communications innovation began very shortly after that regime was broken up, and market forces began to facilitate the robust competition and innovation that we see all around us in the communications market today.

Policy Changes Should Be Fact-Based

Any new policies arising from the National Broadband Plan should be fact based, and not based on philosophical disagreements or unproven assertions.

We think it's been empirically demonstrated that the market-based broadband rollout has been a success thus far, and likely will continue to be under status quo regulatory treatment.

We also believe that the allegations made by some do not rise to the threshold of demonstrable public interest harm. There is very little to suggest that the public interest is being harmed by any industry network management practices. And evidence further suggests that existing FCC practices and authority is sufficient to deal with industry network management practices.

Broadband Enterprise Zones

In our original comments on the National Broadband Plan, IPI suggested Broadband Enterprise Zones as a means of extending the reach of broadband networks to unserved areas.

Such zones will be easy to define once broadband mapping projects currently in process have been completed. Once these zones have been defined, each zone could be put out to a competitive bidding process through which tax credits would be extended by the federal government to a vendor who built out a broadband network to the particular broadband enterprise zone.

IPI's suggestion is that, through a reverse auction process, tax credits should be awarded to providers who agree to provide broadband service to a particular zone for the lowest tax credit amount.

In addition, in a broadband enterprise zone, vouchers would be issued by the federal government to residential addresses in the zone for the purpose of helping to pay for one-time installation and hook-up expenses.

The goal of the broadband enterprise zone would be to ensure that broadband services were built out to every unserved area of the country, for the smallest possible tax credit amount, and that homeowners in the zone would have federal assistance in

getting hooked up to broadband. The goal of broadband enterprise zones would NOT be that the zone would be permanently dependent on federal subsidies or assistance of any type for ongoing operations or maintenance of the network after a period of perhaps three (3) years.

Because the goal of broadband enterprise zones is to get broadband service into an unserved area as quickly as possible, service extended into the enterprise zone should NOT be burdened with discriminatory regulations or reporting requirements beyond those which apply to all existing broadband service.

Demonstrable Public Harm in Copyright Piracy

One area where there is clear and demonstrable public harm occurring in the broadband market is large-scale copyright piracy.

In 2007, using a well-established U.S. government model and the latest copyright piracy figures, an IPI study found that, each year, copyright piracy from motion pictures, sound recordings, business and entertainment software and video games costs the U.S. economy \$58.0 billion in total output, costs American workers 373,375 jobs and \$16.3 billion in earnings, and costs federal, state, and local governments \$2.6 billion in tax revenue.

This is demonstrable public harm, and whatever perceived public benefit might accrue to some by free access to goods covered by copyright, that perceived benefit is more than outweighed by the cost to the American economy in terms of lost jobs, earnings, and government revenue.

In these comments IPI does not call for any government mandates upon broadband network owners or upon their network management practices to combat copyright piracy. However, we do strongly suggest that any recommendations from the FCC regarding a National Broadband Plan allow and encourage private, market-based negotiations between content owners and network operators, and that the definition of reasonable network management practices include practices, including technological measures, designed to assist copyright owners in the identification and prosecution of those engaged in criminal activity, including copyright piracy.

IPI further strongly suggests that no notion of “privacy” be extended that prohibits network operators from responsible network management practices designed to identify and prosecute criminal activity, including offenses against children and copyright piracy.

Don't Abrogate the Right to Contract

In recent days some attention has been focused on exclusive contracts freely engaged between wireless network providers and handset manufacturers. We are concerned that the right to contract, including exclusive contracts that are commonplace in all other sectors of the economy, might somehow become frowned upon during the course of the broadband NOI.

Contracts, including exclusive contracts, are a direct extension of property rights. To exclude handset manufacturers from engaging in exclusive contracts denies them the full enjoyment of their property rights, and raises the marginal risk of innovation, because it removes the security that an exclusive contract can provide during the design and manufacturing process.

The broadband industry should not suffer under discriminatory policies that deprive industry partners of the same rights enjoyed by other companies in other industries, such as the right to enter into exclusive contracts. And the broadband NOI process should not be used as an opportunity for rent-seekers to use the blunt instrument of government to assist them as they compete in the marketplace.

Conclusion

In conclusion, the Institute for Policy Innovation (IPI) continues to urge policymakers to have an honest and appropriate appreciation of the tremendous progress that we have made in rolling out broadband services to a significant portion of the American population—all done using private risk capital and deployed in a demand-driven, market-oriented manner.

We urge that when government does act that it leverage and supplement this tremendous current and ongoing private investment in broadband infrastructure and avoid all policies that would devalue or put this investment at risk. Where there are not sufficient market forces, we have made a specific suggestion for broadband enterprise zones to address those areas.

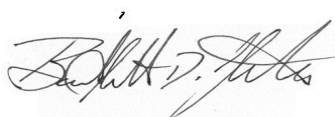
We again urge policymakers to not return to failed policies such as unbundling, which they will no doubt be urged to do by others providing input.

We thank the FCC for this opportunity to provide input, and we would be happy to participate in further hearings and discussions related to the formulation of this crucial broadband policy initiative.

Sincerely,



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