

to play, especially if it targets support to unserved areas and undertakes certain measures designed to increase adoption, such as subsidizing the cost of terminals for low-income persons.

In contrast to a national plan grounded in market-oriented principles, a few parties urge the Commission to adopt a plan grounded in a radically different vision. Theirs is a vision in which broadband is regulated in an inflexibly heavy-handed manner as a traditional public utility service, one in which the property rights of the broadband operators are derogated or even abrogated, and in which government regulators in Washington decide which services and applications should be made available to consumers. The comments of Free Press, Public Knowledge,⁴ and Consumers Federation of America and Consumers Union, singly and collectively, reflect this view. Even a casual reading of their comments will show that these commenters have a very strong anti-market bias that leads them presumptively to favor, at every turn, more government control over the communications marketplace. So, for example, they advocate common carrier regulation of broadband, implementation of an inflexible nondiscrimination mandate that would preclude effective network management, structural separation for wholesale and retail broadband services that would create substantial economic inefficiencies, re-regulation of special access services that would discourage additional competition, and more.

While the comments of the Free State Foundation and the majority of parties reflect, albeit with some differences in emphasis, show an appreciation of the substantial broadband progress that already has been made under the largely deregulatory

⁴ Public Knowledge, Media Access Project, The New America Foundation, and U.S. PIRG.

environment put in place five or six years ago,⁵ Free Press and its allies refuse to credit any such progress, preferring instead to talk broadband down as a means of supporting their calls for a public utility regime. Their comments reflect an ingrained anti-market bias, one that invariably dictates more regulation, and a bias against privately-owned broadband networks. Rather than any nuanced view that focuses on, say, unserved areas as targets for special regulatory attention or support, or that acknowledges existing evidence as to why Americans do not subscribe to broadband service,⁶ Free Press, Public Knowledge, Consumers Union, and CFA take a blunderbuss approach that advocates one-size-fits-all nationwide regulatory solutions.

This anti-market bias is captured in Free Press's statement at the beginning of its comments that a break is needed from a regulatory approach "that has viewed Internet access and broadband delivery network as *commercial* services."⁷ This reflects the notion that the provision of broadband services either should be offered on a non-commercial basis, or that if profits are allowed, they should be closely regulated by the government. Although mixing its syntax a bit, Public Knowledge captures the sentiment by stating that "certain fundamental principles are too important to be left to the marketplace."⁸

The point of these reply comments is this: The Commission already has received boxcar full loads of data in this proceeding, with more to come, that demonstrates that

⁵ For many indications and specific indicia of such progress, see the transcript of FSF's June 5, 2009 seminar entitled, "Broadband Nation: Where Does the U.S. Really Stand in the World Rankings?" available at: http://www.freestatefoundation.org/images/Broadband_Nation_Transcript_Edited.pdf .

⁶ For example, in its vein of inventing the world anew, Free Press says: "We need to *begin* by evaluating why people do not buy broadband when it is available to them." Free Press, at 7. Free Press must be aware of the extensive survey research done by the Pew Internet and American Life Project which have reported for years on the reasons Americans do not subscribe to broadband. Non-price reasons predominate.

⁷ Free Press, at 1.

⁸ Public Knowledge, at 1. Perhaps Public Knowledge means to say that "certain services" are too important to be left to the marketplace. In any event, the disdain for the marketplace is evident.

over 92% of households have access to broadband and almost 60% of those subscribe. Even if the government did nothing, the trend lines are all in the direction of further deployment and increasing subscription rates. It is appropriate for the government to undertake limited, targeted actions as described in the Free State Foundation's initial comments. But adoption of the inflexible, non-targeted anti-market proposals put forth by Free Press and its allies would be inappropriate, unsound, and harmful to the nation's economy and to consumers. If the Commission were to adopt a national plan that incorporates or reflects these proposals, it will be sending a clear signal that has the effect of discouraging private investment capital. Free Press and its allies do not dispute that over \$200 billion in private capital has been invested in recent years in broadband deployment; they just ignore this fact because, willfully or otherwise, they are oblivious to the role that private sector investment has played in achieving such widespread deployment.

In formulating its national plan, in order to build upon and expand the successes already achieved in the broadband marketplace, the Commission must explicitly reject the proposals of Free Press, Public Knowledge, Consumers Union, and CFA for implementation of a plethora of new regulations. Instead, the Commission must make

clear that the national plan will be grounded in market-oriented principles that reflect the competitiveness and dynamism of the digital age marketplace.

Respectfully submitted,

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