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Ms. Susan Crawford  
Co-Lead, FCC Agency Review Team  
Obama-Biden Transition Team

Dear Susan:

Thank you for the taking time to meet to discuss our perspectives on the communications marketplace. We strongly agree that one of the early priorities must be the success of the broadcast digital television (DTV) transition, and we are committed to continuing our effort to accomplish that important goal. And, as the nation's first industry to deploy broadband to residential America -- a deployment fueled by an investment of \$130 billion in private capital -- we welcome the increased focus on broadband adoption, targeted deployment initiatives, and how use of high-speed networks may further other important policy goals.

While we covered a number of aspects of both DTV and broadband policy, we would like to underscore several critical points in response to your questions.

*I. As we discussed, the cable industry has begun deployment of next generation ultra-fast broadband.* The technology, known as DOCSIS 3.0 or wideband, allows cable operators to bond multiple channels (the same channels now used for analog TV channels) together to reach speeds over 100 megabits/second downstream and upstream. Initial test markets are deploying this technology in the 50 megabits/second downstream range.

While bonding more channels together offers the promise of even faster broadband, it also requires a reallocation of how cable networks currently use system capacity. Most of the typical cable "pipe" today is consumed by very inefficient, analog television signals. This is generally true even though most cable video customers subscribe to digital service that allows them to receive the high-definition content they want. As a result, in most of America, cable's broadband service is still largely provided on only one 6 MHz channel.

To free up more bandwidth for next generation broadband and other services, our industry is going through its own digital "migration" that is quite separate and distinct from the broadcast industry's DTV transition of February 17, 2009. When complete, this migration will enable cable companies to use their bandwidth more efficiently in ways that serve consumers' interest. One of the critical opportunities in front of Congress and the FCC over the next two



years will be to pursue policies that foster this increased efficiency and the resulting consumer benefits. At the very least, this means policies that support the ongoing migration of channels to a digital platform and the deployment of new, switched digital technologies. It also means policies that *resist* placing new demands and constraints on bandwidth use that are totally divorced from what consumers want: faster broadband, more high-definition content, and the deployment of new innovative and interactive services that take advantage of our two-way network.

*II. We recognize that broadband is a crucial driver of economic recovery and global competitiveness.* Broadband can add jobs to the economy and is central to improving educational opportunities and delivering healthcare more efficiently throughout the nation. To that end, it is appropriate to include broadband investment in the stimulus package now under consideration by Congress. That would include a number of options for promoting broadband investment, including additional bonus depreciation, tax credits, and interest-free broadband infrastructure bonds that entitle the purchaser to a tax credit. In determining the proper mix of incentives, however, we support promoting fairness by ensuring that equivalent relief is available through rebates or refundable tax credits for broadband providers willing to make qualifying investments who cannot utilize bonus depreciation or other tax incentives. We also support fully funding the broadband mapping program authorized by the Broadband Data Improvement Act to ensure that any stimulus is appropriately targeted to the areas that need it most.

As policymakers consider broadband stimulus proposals, we respectfully ask that they keep in mind the following considerations. *First*, stimulus for the deployment of new infrastructure should be targeted at areas where broadband facilities and services are not yet available. Government incentives for broadband investments are most appropriate in unserved (those areas with no broadband service) and underserved areas (those areas with fewer than two broadband providers), where normal market incentives have not proved adequate to attract competitive service providers. In unserved areas, financial incentives should be provided for the provision of current generation broadband (5 megabits downstream/768 kilobits upstream). Establishing too a high a bar for eligibility in these areas could have the perverse effect of deterring any investment there, depriving those areas of jobs in building out broadband and perpetuating the lack of broadband service rather than remedying it. This is likely not a concern for underserved areas, where incentives should therefore be limited to investments in “next generation” capabilities (50 megabits downstream/5 megabits upstream). Government stimulus is better directed to other important policy objectives in areas where there are already two or more broadband providers competing for customers.

*Second*, broadband stimulus should be technology-neutral. In addition to investment in new broadband plant, cable operators (as discussed above) will need to make expenditures to reclaim analog bandwidth, to split nodes, and to install new electronics at an operator’s head-end and at a customer’s home. All these investments are critical in their own way to the delivery of broadband service, and the government’s efforts to stimulate these types of investments should be flexible enough to ensure that these and other expenditures necessary to provide broadband are covered.



*Third*, we support the appropriation of funds for two new Lifeline and Link Up Programs to make broadband more affordable for low income households and unemployed adults. Expanding these existing low-income universal service programs that are specifically designed to subsidize connectivity for users who need the help would go a long way towards bringing the benefits of broadband to low-income consumers. Given the important social objectives served by expanding these programs to include broadband, funding should come directly from the government and not be offset by an assessment on telecommunications providers or their subscribers.

*Finally*, the availability of broadband networks and services alone isn't enough to get people connected. Many low-income households do not subscribe to the broadband services that are available because they don't have the necessary equipment, training or educational opportunities to take advantage of the benefits of Internet use. Congress should consider funding a program to stimulate demand by making computers or laptops available at a discount, at least to households with children, so that every American can take advantage of the improvements in healthcare, education, and the delivery of government services that broadband makes possible.

*III. You also asked for our perspectives on the Universal Service Fund (“USF”) program.* We are committed to the success of USF. But the federal USF program, particularly the high-cost fund, desperately needs updating. Improvements in technology, particularly the transition to IP-based equipment and services, have made it possible for cable operators and other facilities-based competitors to serve areas that previously might not have supported competitive entry. Similarly, incumbent local exchange carriers (“LECs”) increasingly are able to provide multiple services (including DSL and video) over infrastructure previously used solely to provide telephone service. Robust facilities-based competition for voice and non-voice services calls into question the need for continued government funding at historical levels. To better align the USF program with today's marketplace realities, we would advocate a three-pronged approach to USF reform.

*First*, cap the High-Cost Fund. USF contributions have steadily increased in recent years, with the surcharge exceeding 11% on monthly telephone bills earlier this year. Placing a permanent cap on the size of the high-cost fund will protect consumers and promote greater efficiency. We recognize that the government can play an important role in extending the economic and social benefits of Internet connectivity, but we believe that interest is best served by more targeted initiatives and not by increasing the universal service burden on voice service providers and their customers.

*Second*, adopt a numbers-based contribution mechanism. NCTA has also long supported basing USF contributions on assignment of telephone numbers, rather than the current approach of assessing interstate telecommunications revenue. A numbers-based contribution scheme, if properly structured and implemented, holds out the prospect of providing a more stable, predictable and nondiscriminatory funding mechanism that would affect all end-users of switched telephone service equitably, irrespective of the particular service they purchase or the technology used to provide that service.



*Third*, modernize distribution mechanisms. The existing mechanism for distributing high-cost support has failed to capture the benefits of improving technology and expanding competition. Where there is evidence that the market is working to make service available to locations previously thought to be uneconomic, the Commission should take steps to reduce the support provided to those areas. The amount of support provided to competitive areas can be reduced to more efficient levels through a variety of mechanisms, including reverse auctions. Before reverse auctions are used, however, a number of significant details must be resolved to ensure that auctions further, rather than retard, the development of competition in high-cost areas.

*Finally*, as noted above, it would be appropriate for the government to fund an expansion of the existing Lifeline and Link Up USF programs to include broadband services and the purchase of the equipment necessary to connect to the Internet.

*IV. You asked for any ideas we might have on procedural reforms in terms of how the FCC conducts its business.* As an expert agency, the FCC already has many talented career public servants who would like a meaningful opportunity to apply their expertise to an important sector of the economy, a sector undergoing exciting and dynamic changes daily. So, an important early task for any new Chairman and the other Commissioners will be to understand and utilize the incredible expertise that already exists at the FCC. At a high level, translating that expertise into policy decisions made at the Commission level will require that:

- The FCC should act quickly to keep pace with “Internet time” – the blistering rate at which ideas are created, shared and, in some cases, commercialized using digital technologies.
- The FCC should act in a manner that is transparent to the public, affords adequate opportunity for public input before decisions are made, and resists gaming by regulators or privileged insiders.
- The FCC should base its rules on proven facts, rigorous critique and full and fair input from the public and others.
- The FCC should examine and modify its rules regularly to keep up with, and not impede, rapid developments in technology.

Our concerns about process breakdowns are well known and I will not recount them here. But, as members of Congress and others have suggested, there are specific procedural reforms, some of which we itemize below, that we would urge a new Chairman to consider that would enhance the credibility of policy outcomes at the FCC:

*First*, provide adequate notice to the public of issues to be addressed in rulemakings. It would help to make clear distinctions between Notices of Inquiry (“NOIs”) and Notices of Proposed Rulemakings (“NPRMs”). In particular, broad inquiries that lack any tentative



proposals should be deemed to be inquiries rather than NPRMs. At whatever stage in a rulemaking a proposed rule is actually crafted, it would be important to afford the public an opportunity to comment.

*Second*, provide adequate notice to the public of items to be addressed at Commission meetings or on circulation. This could be done by codifying in the Commission's rules the recently-adopted informal practice of providing public notice when items are distributed to Commissioners for action on circulation, setting the agenda for meetings at least three months in advance, and similarly requiring public notice when "white copies" of agenda items are circulated. It would also be important to make public the text of the rule or decision proposed for action no later than when the agenda meeting items are circulated.

*Third*, provide time to fully consider filings or reports. This could include not acting on items based on last minute filings (e.g., last minute ex parte filings) on which there has been no reasonable opportunity to comment and ensuring that action on internal or external reports will not be the basis of action without notice and comment and, where appropriate, meaningful peer review. Similarly, annual reports should be made available in draft form for public comment before the need for Commission or Bureau action.

*Finally*, complete action on all matters in a timely fashion. The Commission should establish its own requirement to act on waiver requests within 180 days, and hew to the similar shot clock in merger reviews and other transactions where the parties in good faith supply all relevant information in a timely way. Reports to Congress should similarly be completed in a timely fashion, and the text of orders adopted at Commission meetings should be released no later than 30 days after adoption.

Again, thank you for considering these perspectives.

Kyle E. McSlarrow