

**STATEMENT OF**  
**COMMISSIONER ROBERT M. McDOWELL**

**March 16, 2010**

First, to the hard-working members of the Broadband Plan team who have spent countless hours away from your loved ones absorbing terabytes of information over these many months, if you remember nothing else I say today, please remember these few words: thank you for your efforts. You have floated ideas and taken some arrows. Your blood, sweat, toil and tears are appreciated. Your commitment, energy and sense of mission have not gone unnoticed. While you have had to give up your personal lives, including holidays with your families, I imagine this St. Patrick's Day will be one to remember, even if you're not Irish.

Second, we should be mindful that Blair and his team are presenting this plan to Congress during a tumultuous time. No, I'm not referring to the debate over healthcare legislation. I'm talking, of course, about March Madness. It should be obvious to policymakers everywhere that the NCAA basketball tournament and broadband enjoy a symbiotic relationship. To find definitive proof of unfettered innovation at the "edge" of networks, one needs to look no further than the statistics emanating from March Madness on Demand, or "MMOD" as it is known by those of us who are afflicted with March Madness. Last year, MMOD recorded 7.52 million unique visitors, which represented a 58 percent increase over 2008. Furthermore, online viewers consumed more than 8.6 million hours of video and audio in 2009. That is a 75 percent increase over 2008. If this trend continues, March Madness could be the Holy Grail of "killer apps" needed to accelerate broadband adoption to near ubiquity by 2020.

Increased demand for watching March Madness online, however, may not help us meet all of the "national purposes" outlined in the Stimulus Act, specifically economic development. Although the NCAA Tournament is heralded by many as one of the greatest human creations, some have trumpeted a recent innovation as surpassing the tournament's prowess in improving the human condition: the "Boss Button." A recent press release reveals that "[t]he 'Boss Button,' which was clicked over 2.77 million times during the 2009 tournament, hides the live video action on the screen and silences the audio, replacing it with a 'business-like' image." This may not be great for workplace productivity, but it could embody a market-driven solution to increased adoption.

In all seriousness, it is important for everyone to understand that the Plan offered up today for Congress's review represents a tremendous amount of hard work and thoughtfulness. However, it does not carry with it the force and effect of law. In other words, the Plan itself contains no rules. Not having a vote has given the Broadband Plan team the flexibility to make their recommendations to Congress and the Commission freely. Rulemakings, opportunities for public comment, subsequent debates and votes on proposed rules spawned by the Plan still lie over the horizon. In short, today marks the beginning of a long process, not the end of one.

In the past several years, America has made great strides in the deployment and adoption of broadband services. In 2003, only about 15 percent of American adults had access to broadband at home. Today that number is over two-thirds. Some form of broadband is available to roughly 95 percent of Americans. Out of 114 million households in America, only 7 million lack access to broadband. Seven years ago, only 180,000 homes had access to fiber-based broadband. By the middle of last year, that figure spiked to over 17 million households.

Additionally, America has experienced phenomenal growth in wireless broadband adoption. Mobile broadband was virtually unheard of in 2002. By the end of last year, however, an estimated 100 million Americans subscribed to wireless broadband technologies. America is home to more wireless companies than any country in the world. More than half of all Americans have a choice of five wireless providers. Ninety-four percent have a choice of four. Similarly, we lead the world in 3G build-out and adoption.

Not only has investment and innovation been dynamic in the telecom “core” of the Internet environment, but economic activity at the “edge” of networks has been nothing short of explosive as well. For instance, last year Americans led the world by downloading over 837 million applications onto their mobile devices. Not only does the U.S. have one-third of the world’s market share of mobile apps, but the American mobile app market has experienced an astonishing nine-fold increase in just two years. As impressive as that statistic is, it will seem small two years from now. Hundreds of thousands of mobile applications are pouring into the market, with countless more on the way from thousands of developers for years to come.

As a direct result of adopting policies that ensured the ’Net would be regulated only with a light touch, the Internet environment is growing and evolving faster than any individual, company or government can measure. The ’Net operates in an open and free marketplace where innovation and investment are thriving. In fact, some estimate that private sector investment in broadband infrastructure exceeded \$60 billion last year alone.

As the Commission and Congress move to consider the ideas offered up by the Office of Broadband Initiative, we should make sure that we first and foremost do no harm. For instance, cable modem services alone are available to 92 percent of American households. Merely by upgrading cable systems with the DOCSIS 3.0 system, which is expected to happen over the next few years anyway, over 104 million American homes will have access to speeds of up to 100 mbps. In other words, unless the government provides *disincentives* to investment, the Plan’s goal of reaching 100 million households with 100 mbps services should be attained well before 2020 if we allow current trends to continue in an unfettered manner. I look forward to working with my colleagues to adopt policies that allow investment, innovation, competition and adoption in the broadband market to continue to flourish.

As we go forward, I agree that some aspects of the plan deserve further investigation. For example:

- Although the Plan places great emphasis on long term spectrum needs, I am hopeful that we will also consider ideas that call for more efficient use of spectrum. These include more robust deployment of enhanced antenna systems; improved development, testing and roll-out of creative technologies, where appropriate, such as cognitive radios; and enhanced consideration of, and more targeted consumer education on, the use of femto cells. Each of these technological options, already available in the marketplace, augment capacity and coverage, which are especially important for data and multimedia transmissions.
- As I have said for quite some time, we should accelerate our efforts to create a more specific framework for allowing unlicensed use of the television “white spaces.” I am also interested in using some portion of this spectrum to provide wireless backhaul in rural areas. Our work on white spaces started under FCC Chairman Michael Powell, and we are long overdue to make it a reality for all American consumers.
- Similarly, we should explore our authority under Section 336 to provide television broadcasters an incentive to lease their spectrum. Focusing on this statutorily permissible and *voluntary* mechanism for leasing parts of the airwaves may be an easier path to accelerating deployment of advanced wireless services than more coercive means.
- Furthermore, we should bring spectrum that is lying fallow to auction as quickly as possible. I agree with the Plan’s recommendations that government should strive to lead in relinquishing spectrum it does not use efficiently or, sometimes, at all. Improved interagency coordination is vital in this pursuit.
- Reform of our Universal Service Fund and intercarrier compensation mechanisms is embarrassingly overdue. As a Commission, we came very close to codifying consensus on reforms in late 2008. Unfortunately, needless procedural roadblocks thrown in our way prevented us from consummating any agreements. I hope we can rekindle the same constructive and positive bipartisan spirit, which existed at that time, in any future proceedings.
- Since 2007, I have said that any USF reform must accomplish five basic objectives. The Commission must:
  - (1) contain the growth of the Fund;
  - (2) broaden the base of contributors;
  - (3) reduce the contribution burden (By the way, the contribution factor has grown from 5.53 percent during the first quarter of 1998 to currently a level of 15.3 percent, which is an historic high. This confiscatory money

grab not only burdens America's consumers the most, it is evidence that the Fund's viability is in question.);  
(4) ensure competitive neutrality; and  
(5) eliminate waste, fraud and other abuses of the system.

All of this should be accomplished *before* embarking on any effort to alter the distribution system.

I'm sure that the Plan contains many ideas I can support, and further study of it will reveal such proposals in the days to come. At the same time, I would be remiss if I did not point out some ideas that give me concern.

- First, the Plan opens the door to classifying broadband services as old-fashioned monopoly era, circuit-switched, voice telephone services under Title II of the Communications Act of 1934. Broadband deployment and adoption have flourished in the absence of such regulations. Not only do I doubt that such a reclassification would survive appeal, I don't see how foisting a regulatory framework first devised in the 19<sup>th</sup> Century would help a competitive 21<sup>st</sup> Century marketplace continue to thrive. But we will have plenty of time to engage in this debate.
- Second, the Plan implies that the Commission should mandate the unbundling of fiber and other network elements that have been deployed since the agency deregulated some of these components. As a result of that deregulation, fiber deployment has spiked in recent years. Rather than reverse course, the Commission should ensure that any future actions will not create regulatory uncertainty and litigation risk that could scare away capital investment.
- Third, the Plan refers to the elephant in the room, a proceeding that has shadowed the Plan since last fall: the open Internet or "net neutrality" proceeding. Although the Plan does not take a position on that proceeding, I take this opportunity to reiterate my serious concerns regarding this agency embarking on such a regulatory journey.
- Additionally, I question the recommendation that appears to ask Congress to fund a new communications venture that, unlike current funding for public broadcasting, would cover new online digital platforms and expand the eligible pool of applicants beyond FCC license holders. I cannot in good conscience endorse new federal spending for this or other ideas contained in the Plan when our government is spending record amounts by taking on monumental levels of debt – all while America's families and businesses are cutting their budgets in an attempt to restore fiscal responsibility.
- In the same spirit, I am concerned that the Plan may have given new life to ideas that could result in the imposition of new taxes on the Internet. Federal

preemption of Internet taxation could be beneficial, but only if it results in more freedom.

- Furthermore, although the recommendation that Congress amend the “fair use” provision of the Copyright Act has been the subject of recent edits, it still is not clear how broadly the Plan’s proposal actually sweeps. Copyright issues in the digital era are highly complex. More importantly, policies that support strong enforcement of property rights, including intellectual property rights, will encourage the creation of more compelling content that could help spur broadband adoption. I look forward to learning more about the concept behind this recommendation.
- When it comes to the Plan’s discussions regarding set-top boxes, I caution the Commission to tread gingerly. Technological mandates by the government almost never result in robust innovation. In fact, history shows that such mandates are more often than not counterproductive. It is my hope that if the Commission is to act at all in this area, it start with a notice of inquiry to explore whether any further action is required.
- Finally, after the Commission’s workshop on capital investment in the broadband sector last October, I was hopeful that the Plan would contain a chapter discussing and making recommendations on the ideas several commenters submitted in the record regarding tax incentives to spur more broadband deployment and adoption. Helping to elevate that discussion could lead to new ideas that could further our goal of greater broadband ubiquity.

In sum, today’s Plan is the product of countless hours by the undaunted Broadband Plan team. Now is the time to debate their recommendations in a positive, constructive and civil manner. While we may disagree at times on the best paths to follow during our upcoming journey, we can agree on at least the primary destination: a country that offers faster broadband access to more Americans at affordable prices. And now it is time to get to work on this important endeavor.

Mr. Chairman, I want to take this opportunity to also thank your Senior Legal Advisor, Bruce Gottlieb, for his continued generosity, graciousness and leadership. It goes without saying that I look forward to working with you, all of our colleagues, and the entire FCC team in our effort to achieve common goals.