STATEMENT OF
CHAIRMAN JULIUS GENACHOWSKI

Re: Framework for Broadband Internet Service, GN Docket No. 10-127

In March, we released our country's first National Broadband Plan, an unprecedented, bold roadmap for America's broadband future. The Commission affirmed unanimously that: "Working to make sure that America has world-leading high-speed broadband networks—both wired and wireless—lies at the very core of the FCC's mission in the 21st Century."

In this increasingly interconnected world, broadband is our most important platform for investment, economic growth, and job creation—and for addressing major national challenges such as education, health care, and public safety.

As the National Broadband Plan recognized, however, America lags behind where it should be on broadband; the rest of the world isn't standing still; and government has a limited but vital role to play in spurring ubiquitous, fast, competitive, and affordable broadband networks available to every American.

In April, the DC Circuit issued a decision in the *Comcast* case that, unfortunately, created uncertainty in an area that had been widely regarded as settled. As our General Counsel has described, while acknowledging the agency's basic authority under the Communications Act to address issues of broadband access policy, the court opinion casts doubt on the particular legal theory the Commission had chosen to rely on for several years to support its efforts in this area. As others have described to me, this unwelcome decision was a curveball.

Last month, I said the Commission would initiate a process to explore and ultimately find a solution and resolve the uncertainty created by the decision. In particular, I said the Commission would consider all appropriate legal theories that would continue the same light-touch approach to broadband access policy that the agency has pursued for the past decade.

Recently, the Chairmen of the key Senate and House Committees—Chairmen Rockefeller, Kerry, Waxman, and Boucher—launched a process to update the Communications Act.

Let me take this opportunity today to say clearly: I fully support this Congressional effort. A limited update of the Communications Act could lock in an effective broadband framework to promote investment and innovation, foster competition, and empower consumers. I commit all available FCC resources to assisting Congress in its consideration of how to improve and clarify our communications laws.

Meanwhile, in view of the court decision, and as the Congressional Chairs have requested, the FCC has an obligation to move forward with an open, constructive public-comment process to ask hard questions, to find a solution, and resolve the uncertainty that has been created. The Congressional and FCC processes are complementary.

It's important to note that the recent court decision did not opine on the initiatives and policies that we have laid out transparently in the National Broadband Plan and elsewhere.

Our pro-investment, pro-innovation, pro-competition, pro-consumer policies remain unchanged and they remain essential for broadband in America. The purpose of the proceeding we launch today is to make sure those policies rest on a solid legal foundation by exploring and addressing the technical, legal questions the court decision raises.

For example, American businesses and consumers need safe and secure broadband networks, yet the court case raises questions about the right framework for the Commission to help protect against cyber-attacks.

American businesses and consumers need broadband networks that reach every community and every American—rural and urban, regardless of circumstances—yet the court case raises questions about the right framework for the Commission to help bring the benefits of broadband to the tens of millions of Americans and the many schools, libraries, and other anchor institutions that either do not have access to adequate broadband networks or can't afford the service.

American businesses and consumers need broadband networks that will serve as a powerful engine for investment and innovation, yet the court case raises questions about the right framework for the Commission to safeguard the freedom and openness of the Internet, which has fueled extraordinary investment and innovation, vast consumer benefits and choice, which has led to unprecedented opportunities to spread knowledge and facilitate new and diverse voices – and which has for several years been protected by a bipartisan FCC.

These and other issues affected by the court decision—like access by people with disabilities, like privacy—are real issues with real consequences for every American, and the nation's agency with oversight responsibility for communications has a duty to address them.

We do so today in an open and balanced way. The Notice of Inquiry we adopt puts out for comment, even-handedly, several possible solutions to the challenge created by the court case—including a Title I path, a full Title II path, and a middle-ground solution—the Third Way approach that I have previously described. The Notice also solicits new ideas.

The Third Way approach was developed out of a desire to restore the status quo light-touch framework that existed prior to the court case.

It was developed as a potential response to the court decision that would reject the extremes—a response that rejects both the extreme of applying extensive legacy phone regulation to broadband, and also rejects the extreme of eliminating FCC oversight of broadband.

It's not hard to understand why companies subject to an agency's oversight would prefer no oversight at all if they had the chance.

But a system of checks and balances in the communications sector has served our country well for many decades, fostering trillions of dollars of investment in wired and wireless communications networks, and in content, applications, and services—and creating countless jobs and consumer benefits.

And there is no question that we need to pursue a framework and policy initiatives that encourage and unlock massive private investment.

Internationally, the Third Way would enable continued leadership on communications policy and Internet freedom, while doing nothing would leave the U.S. virtually alone in the world in not having tools to protect broadband competition and consumers and preserve Internet freedom and openness.

I suggested the Third Way approach as a reasonable and narrowly tailored path for promoting the massive private investment we need in broadband, and achieving broadly supported policy goals. It is a preferable alternative to the approach of applying full Title II to broadband, an approach that is unacceptable to me.

While the term "Third Way" may be new to this debate, the model on which it is based is familiar. The Third Way is modeled on the highly successful deregulatory approach that the FCC has

used for almost 20 years for mobile voice services: application of a small number of Title II provisions, with broad and reliable forbearance from all other provisions.

The mobile voice experience has shown the wisdom of leaving pricing to competitive markets, as well as the ability of the Commission to forbear from regulation effectively and without backsliding. Industry has repeatedly hailed this framework as having spurred robust investment and innovation.

So it is not surprising that the Third Way has received support from a broad array of businesses and investors, representing many billions of dollars of investment and serving millions of consumers and small and large enterprises.

Supporters—who believe the Third Way is a path to boost robust investment and competition in the U.S.—include major American Internet and technology companies, competitive broadband access providers, rural mobile companies, consumer electronics manufacturers, entertainment companies, successful investors and entrepreneurs, as well as leading consumer groups.

Now, as we move forward, my focus is not on any particular legal mechanism; my desire is simply that we restore the status quo and have a workable light-touch framework for broadband access.

My core focus is on achieving vital national broadband goals to spur investment, innovation and our global competitiveness. In order to do that, we must solve the problem the *Comcast* case created.

I recognize that there are pros and cons to all of the potential solutions that have been raised, and that this isn't an easy issue, or one without complexity. I remain open minded, I welcome the possibility of new ideas.

I'm pleased that the announcement of an FCC process has already catalyzed action among stakeholders. I encourage these consensus-building actions and discussions to find an enforceable framework for broadband policy.

I'm pleased also that this process has produced healthy dialogue inside the Commission staff and among those of us on the bench. There are a number of different views as we begin tackling this issue. I believe firmly and deeply in the benefits of a free marketplace of ideas and its potential to produce the best answers to hard questions, as long as all keep open minds.

I ask only this of all participants in this discussion, inside and outside the Commission: Let's not pretend that the problems with the state of broadband in America don't exist; let's not pretend that the risk of excessive regulation is not real, or, at the other extreme, that the absence of basic protections for competition and consumers is acceptable.

Instead, let's put rhetoric and posturing aside, and work together to solve the problem created by the court case, so that we can rise together to the major 21st century challenges of achieving U.S. world leadership in broadband and innovation, fostering sustainable economic growth and job creation, and bringing the benefits of broadband to all Americans.