DISSENTING STATEMENT OF
COMMISSIONER MEREDITH A. BAKER

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

The foundation of a strong national broadband policy is already in place, and we do not need to alter the regulatory classification of broadband Internet access service to achieve the important goals unanimously agreed to in the Joint Statement on Broadband.[1] We have a proven way forward under the existing "information services" classification by lawfully asserting our direct and ancillary authority to address universal service reform, disability access, and other consensus policy goals.[2] I greatly appreciate the Chairman's inclusion of a robust and balanced discussion of how the Commission could proceed based upon the existing classification, and hope this demonstrates a good faith effort to reach a true bipartisan solution.

Unfortunately, I am compelled to dissent because there are significant consequences to even initiating this far-reaching proceeding. Although I generally support building robust public records to bolster the Commission's work and asking questions that lead to a developed analysis of all sides of an issue, this is the rare case where opening a proceeding creates so much regulatory uncertainty that it harms incentives for investment in broadband infrastructure and makes providers and investors alike think twice about moving forward with network investments under this dark regulatory cloud. This outcome can only harm consumers who need better, faster, and more ubiquitous broadband today. For those that suggest the D.C. Circuit forced our hand, I respectfully disagree. Nothing in the recent *Comcast* decision requires the Commission to revisit broadband's classification.

I also have significant concerns that the outcome in this proceeding has been prejudged. The Chairman has publicly endorsed the so-called "Third Way" approach in the days leading up to this Notice, and I cannot support such a conclusion. At the outset, I reject the effort to re-brand a Title II classification with forbearance as a middle ground, it is not. There will be time to address all of the legal and factual infirmities of a Title II approach for broadband, and its adverse impact on capital markets, consumer welfare, and international regulatory norms. Today, I will limit my initial comments to the central question of legal and regulatory predictability. This approach will subject the Internet and consumers to years of litigation and uncertainty. I acknowledge that retaining our Title I framework is not without some legal risk too–no approach is. It is, however, substantially less risky than reclassifying broadband and overturning forty years of Commission precedent codified by Congress, and affirmed by the courts. And, if legal certainty is paramount, only Congress has the ability to provide the Commission with clear jurisdictional footing and direction to move forward to tackle the challenges of the broadband age.

It is also important to view this proceeding in context of other recent statements in which the Commission has conveyed a pessimistic view of competition and market conditions. First, we had the National Broadband Plan that did not conclude that having more that 80 percent of Americans living in markets with more than one provider capable of offering download speeds in excess of 4 Mpbs was a success. Last month, the Commission was silent as to whether a wireless market in which 91.3 percent of Americans can choose from four or more providers is competitive. Then, in releasing consumer survey results this month, the Consumer & Governmental Affairs Bureau's headline was that 80 percent of

[1] *Joint Statement on Broadband,* GN Docket No. 10-66, FCC 10-42 (Mar. 16, 2010).

[2] Remarks of Commissioner Meredith Attwell Baker at Broadband Policy Summit VI, The Proven Way: A Regulatory Approach to Promote the Public Interest by Creating Jobs, Fostering Investment, and Driving Broadband Opportunity (June 10, 2010).

households do not know their broadband speeds. The more important and positive fact to me was that 91 percent of consumers are satisfied with their broadband speed, yet that finding received significantly less attention. The next test will be the section 706 report in which the Commission will have to evaluate whether broadband deployment is timely and reasonable, a finding that has been made in the affirmative in every prior report. Taken as a whole, I have concerns that these statements represent a view that government should try to engineer better results, and a Title II classification would certainly provide a stronger platform from which to take a more intrusive regulatory approach. I recognize that industry alone will not solve every challenge and no commercial market is perfect, but I fear that a more proactive broadband regulatory approach would adversely affect consumers, competition, and investment.

I want to thank the staff for the hard work that went into this item, and I truly appreciate that this *Notice* does not close the door on Title I. I agree with the Chairman that we share many of the same policy goals, and I commit to working with my colleagues constructively on a consensus broadband agenda. Reclassifying and regulating an entire sector of the Internet is not necessary to achieve this. I am hopeful that this proceeding will not divert the agency's or industry's resources and attention away from addressing the core spectrum, broadband adoption, and broadband deployment challenges facing our nation in the months to come.