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Consumers Assail FCC Broadband Proposal Cite Threat to Net; Consumers

FCC Proposal Violates the Law

(Washington, May 2, 2002)—Leading national consumer and media advocacy organizations today charged that the Federal Communications Commission (FCC) is pursuing an illegal deregulatory agenda that will result in significant harm to competition, consumers and the Internet. These assertions came in comments to be filed Friday with the FCC by the groups in response to the Notice of Proposed Rulemaking (NPRM) issued by the FCC in its “Wireline Broadband” proceeding. The groups filing comments include Consumer Federation of America (CFA), the Texas Office of Public Utility Counsel, Consumers Union (CU), Media Access Project (MAP), the Center for Digital Democracy (CDD) and other state and local groups.

In its NPRM, the FCC proposes a seemingly obscure reclassification of Internet Services from a standard telecommunications service to an “information service,” thereby allowing local phone monopolies to close their networks to broadband Internet competition.

The groups argue that the FCC proposal violates the Telecommunications Act and creates bad public policy that would:

- allow facilities owners to discriminate against rivals or among content providers,
- deregulate the Bells allowing them to withhold access to advanced telecommunications functionalities of their networks, and
- perpetuate broadband monopolies that would subject consumers to higher prices and fewer choices.

“This proceeding is just one element of a broader campaign by the FCC that appears to follow Chairman Powell’s agenda of deregulating markets before competition is established instead of after, as prescribed by the Telecommunications Act,” Mark Cooper, CFA’s Director of Research said. “The FCC is attempting to achieve backdoor deregulation of telecommunications markets by twisting the language of the Act. Unfortunately, Powell’s proposal will put a stranglehold on broadband competition,” noted Cooper.

Andy Schwartzman, President and CEO, Media Access Project, points out that “The 1996 Act makes it clear that nondiscriminatory access must be required except under one of two circumstances: The Commission must find that sufficient competition exists in product or geographic markets to make regulation

unnecessary, or there has been a major failure in the deployment of advanced telecommunications capabilities. The Commission has made no such findings.”

“Deregulating facility owners, as the FCC’s proposal does, would strangle the primary suppliers of services to the public—ISPs,” said Jeff Chester, Executive Director, Center for Digital Democracy. “This proposal threatens open access—the founding principle of the Internet—and places the future of the Net in the hands of a few large cable and telephone monopolies.”

“Real competition is the best form of regulation for consumer protection. The Commission’s proposal exposes consumers to the worst of both worlds, a market that is disciplined neither by competition nor by regulation,” noted Chris Murray, Internet and Telecommunications Counsel, Consumers Union.

The comments point out that the Commission misapplies sections 706 and 230 of the Telecommunications Act in an effort to set a lower legal standard for deregulation. The proper legal standard is found in section 10, which requires that the Commission make a finding of substantial justification before it can forebear the consumer protections of the Act.

The filing demonstrates how the Commission goes on to use a series of definitional gymnastics—reclassifying Internet services from a telecommunications service to an “information service” in an effort to repeal the requirement that the Bells provide nondiscriminatory interconnection for DSL service to ISPs.

The Commission’s proposal is premised on the untested theory of “intermodal” competition, which argues that only by tipping the scales sharply in favor of facility owners, at the expense of content suppliers and applications developers, can more facilities be built.

“Chairman Powell’s definition of intermodal competition amounts to competition without competitors. His definition will allow dominant facilities owners to become gatekeepers who have the power to abuse consumers, limit innovation and stamp out competitors,” said Cooper.

Finally, the study provides an in-depth analysis of past anticompetitive practices by proprietary facilities-based owners in the cable and local telephone markets, including:

- Pricing discrimination
- Content discrimination
- Conduit discrimination
- Foreclosing the market for ISPs
- Dictating technology conditions and terms
- Price squeezing independent ISPs

An Executive Summary of the comments is available online at <http://www.consumerfed.org/WirelineExec.20020502.pdf>

Full text of the comments will be available Friday May 3 at <http://www.consumerfed.org/FCCcomments.Wireline.20020503.pdf>

The Consumer Federation of America is the nation's largest consumer advocacy group, composed of two hundred and eighty state and local affiliates representing consumer, senior, citizen, low-income, labor, farm, public power and cooperative organizations, with more than fifty million individual members. CFA is online at www.consumerfed.org.

Consumers Union, publisher of Consumer Reports, is an independent, nonprofit testing and information organization serving only consumers. CU is comprehensive source for unbiased advice about products and services, personal finance, health and nutrition, and other consumer concerns. Since 1936, CU's mission has been to test products, inform the public, and protect consumers. CU's income is derived solely from the sale of Consumer Reports and its other services, and from noncommercial contributions, grants, and fees. CU is online at www.consumersunion.org.

The Center for Digital Democracy is a nonprofit group committed to preserving the openness and diversity of the Internet in the broadband era. CDD is online at www.democraticmedia.org.

Media Access Project is a twenty-four year old nonprofit, public interest law firm that represents the interests of the public to speak and to receive information via the electronic media of today and tomorrow. MAP is online at www.mediaaccess.org

The Texas Office of Public Utility Counsel is an independent agency, separate from the state's Public Utility Commission of Texas (PUC), created to represent the interests of residential and small commercial customers in state utility matters before the PUC, courts, and other utility regulatory agencies. The OPUC is online at www.opc.state.tx.us.

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