

Permissible Government Action to Close the Broadband Divide

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FCC's Enumerated Tasks

- Provide a roadmap toward achieving the goal of ensuring that all Americans reap the benefits of broadband by identifying:
 - The most effective and efficient ways to ensure broadband access for all Americans
 - Strategies for achieving affordability and maximum utilization of broadband infrastructure and services
 - Evaluation of the status of broadband deployment...
 - How to use broadband to advance numerous national goals...



Permissible Government Action

- **What does the law compel or limit regarding government action to close gaps in broadband access and adoption?**



Remarks

- Mandates (Requirements)
- Obstacles (Briefly)
- Possible Constraints (time permitting)
 - Constitutional
 - Regulatory



Mandate

- ***"to make available...to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient nationwide . . . wire and radio communication service, with adequate facilities at reasonable charges."***
- **CA34 as amended by TA96 (47 U.S.C. § 151).**



Mandate

- ***Encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans... TA96 § 706***



Mandate

- ***Initiate periodic NOIs concerning the availability...***
- ***Determine whether deployment is reasonable and timely.***
- ***If not,...take immediate action to accelerate deployment...by***
 - Removing barriers to investment, and
 - Promoting competition



Mandate

- Develop a national broadband plan to seek ***to ensure that all people of the United States have access to broadband...***
- **ARRA § 6001(k)(2)**



Mandate:

- **Conduct a triennial review and report to Congress on:**
 - (1) efforts to ***identify and eliminate regulatory barriers to market entry in the provision and ownership of telecommunications services and information services***...by entrepreneurs and other small businesses, and
 - (2) proposals to ***eliminate statutory barriers to market entry by those entities***, consistent with the public interest, convenience, and necessity. (**§ 257 CA34**)



Mandate:

- ***The Commission is required to:***
 - ***Facilitate inclusive, non-discriminatory, affordable, access to broadband in a reasonable and timely manner, and where not reasonable and timely, **take immediate action to accelerate deployment...by removing barriers to investment, and promoting competition.*****



Mandate:

- ***Including...the identification and elimination of regulatory and statutory barriers to market entry by entrepreneurs and small businesses.***



Obstacles to Access

■ Adoption and Affordability

- Substantial disparity in internet use between:
 - Adults with household incomes of < \$40,000 (49%) and >\$80,000 (92%) (PPIC/California)
 - African Americans (46%) and national average (63%). (Pew)
 - Low income minorities (20%) and non minorities without regard to income (52%) (Connected Nation)



Obstacles to Access

- Absence of relevant content.
 - 50% of individuals without broadband access reported that it was not relevant to their lives. (Pew)
 - Several major organizations have argued for relevant content provided by “public-purpose media”
 - Relevant content “is created specifically to be engaging and informative, while it facilitates action.” (NUL,NCLR,OE)



Proposed Solutions

- Public Purpose Media (PPM)
 - “tailor content to the cultural, financial, geographic and professional needs of individual communities they seek to serve.
- PPM such as CBOs, Wisps, Clecs, Government initiated broadband networks
 - have targeted communities as likely markets for the provision of service and demonstrate that there are responsive strategies that can be employed.



Possible Constraints: Regulatory Environment

- Address broadband policy in the context of the larger regulatory environment.
 - Universal Service (funding beyond ARRA)
 - Rural ETC Policies
 - Govt. Led Broadband Initiatives
 - Net Neutrality
 - Network Interconnection,
 - Reciprocal Compensation,
 - Resale and Cost of Network Elements



Possible Constraints:

Constitution Environment-Diversity

- Address broadband policy in the context of the Constitutional Environment
 - Post Grutter analysis (including Justice Kennedy's concurrence in Parents Involved) suggests:
 - Diversity remains a compelling state interest, and race may be used as a factor in attaining the social benefits of that diversity, as long as all other race-neutral options have been exhausted, or race is used as only one factor in a holistic approach to examining an individual.

