



Consumer Federation of America



March 30, 2004

The Honorable George W. Bush  
Office of the President  
1600 Pennsylvania Ave.  
Washington, DC 20500

Dear Mr. President:

Consumers Union and Consumer Federation of America have a longstanding commitment to the affordability and accessibility of communications services and promotion of competition and innovation in high technology markets. We were, therefore, encouraged to hear you recently set a national goal of making high-speed Internet access available to every American home within three years. In fact, we agree with your statement on March 26 that you intend to ensure that consumers have plenty of choices when selecting a broadband carrier because "the more choices there are, the more prices will go down."

Given that 80 percent of Americans today do not have broadband access, we applaud your declaration of a progressive goal for the digital information age, but it will require a 180-degree change of direction from recent policies.

We believe that robust competition is essential to the effort to make the Internet accessible and affordable for all. While we look forward to working with you to achieve this important goal, we do not believe that your Administration has pursued policies that have, in fact, moved the nation in that direction. As you recently noted, the more competition that exists in the broadband arena, the more Americans will benefit through choice and lower prices. However, we believe the Administration has moved away from giving consumers more competitive choices, and instead supported or adopted policies that have strengthened the hand of cable and phone monopolists, who together own and control virtually all broadband connections.

The Federal Communications Commission (FCC) is pursuing the "cable model" of closed networks in which facility owners act as gatekeepers; this will produce neither genuine consumer choice nor an environment that promotes dynamic innovation. Cable operators force consumers to buy the services that they create or package. That is not consumer choice; it is a dictatorship by the facility owner. This has led to inflated and rising prices.

For example, since 2001, the cost of buying the services that connect a cable customer to the high-speed Internet have been on the rise: for consumers who purchase a package of cable modem and expanded basic cable, prices have shot up almost three-times faster than inflation,

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and consumers who want high-speed service and their own Internet Service Provider (ISP) must pay their cable company \$55 to \$75 a month for that option. This trend is absolutely contrary to our shared goal of offering consumers “more choices” in a manner that ensures that “prices will go down.”

The FCC, led by your appointed chairman Michael Powell, has done nothing to promote policies that allow consumers to choose the ISPs they want for cable companies’ high-speed service offerings. As a result, the ranks of the ISP sector have been devastated. There are fifteen times as many ISPs per subscriber on the dial-up Internet, where such exclusion and discrimination are forbidden, than on the cable modem platform. Although the Ninth Circuit Court of Appeals has twice found this policy to violate the Telecommunications Act of 1996, the FCC is proposing to allow telephone companies to close their networks to independent ISPs.

As the recent hearings in the Senate Commerce Committee illustrate, consumers on both sides of the political spectrum are rebelling against this denial of choice because of the skyrocketing cost and offensive programming content the cable operators impose on them. Cable operators responded to these legitimate concerns by offering consumers the ability to block the channels that they already pay for. A simpler solution would be to let consumers choose which channels to buy in the first place. If your Administration really wants consumer choice, we urge you to support “a la carte” choice for video and Internet content on the demand-side of the market.

We also ask your Administration to adopt a “non-discrimination” policy for broadband services on the supply-side of the market to foster an entrepreneurial environment that allows creators to build the “killer applications” that will stimulate consumer demand for broadband Internet access. Currently, entrepreneurs are reluctant to develop innovative applications for broadband because they have no assurance they can offer their services to the public without first getting “permission” from the network provider – usually the cable or phone company.

To date, the cable operators have not voluntarily negotiated one agreement with an unaffiliated ISP to compete for Internet access. Under current FCC policy they never will, because they can simply hold out until the competition is eliminated and they can dictate price and market terms to consumers. A recent GAO report found that cable operators discriminate against unaffiliated programming in the video market, being 64 percent more likely to carry their own programming. There is nothing in the current policy of the FCC to prevent this type of discrimination from migrating to the broadband Internet, where cable operators have a dominant position.

The FCC Chairman is pushing a similar policy in voice service that would destroy the competition that has provided consumers choice for the first time in the history of local telephone service. In the Triennial Review Order, a bipartisan majority at the Commission struck a balance between the demands of incumbent telephone companies to be deregulated and the needs of new entrants to have access to the elements of the local telephone network that remain bottleneck facilities. The D.C. Circuit Court in *USTA v. FCC* overturned the order, primarily because it delegated too much authority to the states. We hope your Justice Department will support the majority at the Commission and choose to appeal the anti-consumer

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decision, which will otherwise unplug millions of consumers who have chosen competitive carriers for their local phone service, and limit competition for broadband Internet connections.

Finally, in the rush to stimulate the march to the broadband Internet, it is critical that we do not leave millions of Americans out of the Information Age. Today, the number of American households that do not have any Internet access far surpasses those that have broadband access. Accordingly, it is essential that Internet services are affordable for all Americans, and that our diverse population is computer literate. Such a policy would further the goal of closing the digital divide and stimulating broadband deployment and demand. Studies have shown that once homes are connected to the Internet via traditional dial-up services, consumers are much more likely to upgrade to high-speed broadband service, even when controlling for income. A national policy that supports computer accessibility, as well as computer literacy, is a necessary first step in your stated goal of making high-speed Internet access available to all.

When the Communications Act of 1934 declared the 20<sup>th</sup> Century goal for telecommunications was "to make available, so far as possible, to all the people of the United States a rapid, efficient nationwide and worldwide wire and radio communications service with adequate facilities at reasonable charges," two-thirds of Americans did not have a telephone. That goal was achieved by a steadfast commitment to non-discrimination and just and reasonable rates. We believe that same commitment must hold true today if we are to accomplish our shared goals.

Sincerely,



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Consumer Federation of America



Gene Kimmelman  
Director of Public Policy and Advocacy  
Consumers Union

cc: FCC Commissioners