

**Before the
Federal Communications Commission
Washington, D.C.**

In the Matter of)
)
Comment Procedures Established)
Regarding the Commission's) GN Docket No. 09-40
Consultative Role in the Broadband)
Provisions of the Recovery Act)
)

COMMENTS



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I. Introduction.

The American Cable Association (“ACA”) submits these comments in response to the Commission’s Public Notice¹ seeking comments on the Commission’s consultative role in the broadband provisions of the American Reinvestment and Recovery Act of 2009.² The Public Notice seeks comment on five specific terms and concepts that Congress has charged the Commission, in consultation with the United States Department of Commerce’s National Telecommunications and Information Administration (“NTIA”), to define.

American Cable Association. Small markets and rural areas across the country receive video services from more than 900 small and medium-sized independent operators represented by the ACA. ACA member operators range from family run businesses serving a single town to multiple system operators with small systems in small markets. More than half of ACA’s members serve fewer than 1,000 subscribers. Where economically feasible, these operators have also launched high speed data and phone service.

ACA’s membership is comprised of cable, phone, and fiber-to-the-home operators and municipalities, many of whom deliver affordable basic and advanced services, such as high-definition television, next generation Internet access, and digital phone services to more than 7 million households and businesses, some of whom have

¹ *Comment Procedures Established Regarding the Commission’s Consultative Role in the Broadband Provisions of the Recovery Act*, Public Notice, DA 09-668, GN Docket No. 09-40 (rel. Mar. 24, 2009) (“Public Notice”).

² American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“Recovery Act”).

no other means of receiving these vital services.

ACA is uniquely positioned to assist the Commission in its consultative role with NTIA in defining specific terms and concepts relating to the Broadband Technologies Opportunities Program (“BTOP”), and welcomes the opportunity to provide comments in response to the Commission’s Public Notice.

II. Comments

A. “Unserved” and “Underserved” Areas.

The Commission seeks comment on the definition of “unserved area” and “underserved area” for purposes of the BTOP.³ ACA urges the Commission to define an “unserved area” and an “underserved area” as follows:

“Unserved area.” A Census Tract in which at least 50% of the households do not have access to reliable broadband of 1.5 Mbps downstream and 128 Kbps upstream transmissions.

“Underserved area.” A Census Tract in which at least 50% of the households do not have access to reliable broadband of 5.0 Mbps downstream and 500 Kbps upstream transmissions.

Census Tracts are small, relatively permanent statistical subdivisions of a county that are designed to be homogeneous with respect to population characteristics, economic status and living conditions, and usually include between 2,500 and 8,000 persons.⁴

The Commission already requires facilities-based providers of broadband service to report the number of connections in each of the Census Tracts in which they

³ Public Notice at 1.

⁴ See generally *Census Tracts and Block Numbering Areas*, United States Census Bureau, available at http://www.census.gov/geo/www/cen_tract.html.

operate.⁵ Moreover, as the Commission has noted, “[Census Tract] information will provide [the Commission] with a highly detailed and reliable account of broadband subscription and deployment nationwide, enabling [the Commission] to make more informed policy determinations and to support more effectively the efforts of states and others seeking to promote broadband services.”⁶ Using Census Tracts to determine whether an area is “unserved” or “underserved” will allow NTIA to target areas where grant funding is needed most in an efficient and effective manner.

For purposes of defining “unserved” and “underserved” areas, “reliable broadband” means broadband service that is readily available through existing technologies, consistent, and allows users to run applications and upload and download information through an Internet connection.

B. Non-discrimination and Network Interconnection Obligations.

The Commission further seeks comment on what non-discrimination and network interconnection obligations should be made contractual conditions of grants awarded under the BTOP.⁷

Non-discrimination and Network Interconnection Obligations. ACA urges the Commission to not place non-discrimination obligations on grants awarded under

⁵ See *In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriber Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriber Data*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691, 9698, ¶ 14 (2008) (“We therefore require facilities-based providers of wired, terrestrial fixed wireless, and satellite broadband connections to report the number of connections that they have in service to households and businesses in each of the Census Tracts in which they operate.”).

⁶ *Id.*

⁷ Public Notice at 2.

the BTOP which are more stringent than those outlined by the Commission in its 2005 Broadband Policy Statement.⁸ The Commission should only require that grant recipients provide consumers with the ability to access any lawful content, applications, or services through the network, and allow consumers to attach any legal devices that do not harm the network.⁹ Moreover, due to rapidly changing methods and technology, any non-discrimination and network interconnection obligations should continue to allow for the use of non-specific, reasonable network management practices and techniques.¹⁰

Additionally, any non-discrimination and network interconnection obligations should be imposed **only on the infrastructure being funded with grant funds**, and should not affect or apply to other facilities owned or operated by a successful grant applicant, or those that connect to the funded infrastructure. Furthermore, successful grant applicants seeking to use grant funds for so-called “middle mile”¹¹ infrastructure should be obligated to provide access to the funded infrastructure to other entities at fair and reasonable prices, terms, and conditions.

⁸ *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review—Review of Computer III and ONA Safeguards and Requirements; Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, Policy Statement, 20 FCC Rcd 14986 (2005) (“2005 Broadband Policy Statement”).

⁹ See *id.* at 14987-88, ¶ 4.

¹⁰ See *id.* at 14988 n.15 (“Accordingly, we are not adopting rules in this policy statement. The principles we adopt are subject to reasonable network management.”).

¹¹ “Middle mile” facilities provide relatively fast, large-capacity connections between the Internet backbone and an Internet Service Provider’s “last mile” facility or facilities.

III. Conclusion.

The Commission, in consultation with NTIA, has an important and instrumental role in defining key terms and concepts to be used by NTIA in implementing the BTOP. ACA is uniquely positioned to assist the Commission in this consultative role, and urges the Commission to adopt and promote the definitions proposed by ACA in these comments.

Respectfully submitted,

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