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April 2, 2009

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**Ex Parte**

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Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

**Re The Commission's Consultative Role in the Broadband Provisions of The Recovery Act, GN Docket No. 09-40**

Dear Ms. Dortch:

On April 1, 2009, Will Johnson and I represented Verizon at a meeting with the following FCC representatives regarding the above proceeding: Claude Aiken, WCB; Katie King, WCB; Bill Dever, WCB; Rebekah Goodheart, MB; Kevin Holmes, WTB; Jennifer Salhus, WTB; Ron Repasi, OET; Walter Johnston, OET; and Carol Simpson, PSHSB.

We explained that the primary focus of the American Recovery and Reinvestment Act's (Recovery Act) broadband programs must be projects that deliver broadband to currently unserved areas. These are areas where no broadband provider currently offers broadband using any technology (other than satellite or dial-up, which are available everywhere). While state-level broadband availability maps are a good starting point for identifying unserved areas where those maps have already been created (and state and local officials may be a source of other information concerning unserved areas where such maps have not yet been created), the Commission also can fulfill its obligation to consult with NTIA and RUS and can help to ensure that funds are targeted to unserved areas by providing NTIA and RUS with available broadband data that the Commission is already collecting (subject to appropriate protections for competitively sensitive information). The recently revised Form 477 provides a substantial amount of granular data that can help to identify or confirm areas not currently served by broadband.

We also emphasized that in order to ensure the success of the Recovery Act's broadband programs, NTIA and RUS should not impose new regulatory requirements or other strings that limit the number of eligible or willing participants, and instead should encourage a wide range of proposals by qualified and capable providers for reaching the unserved in a sustainable and efficient manner. Instead, the Commission should direct NTIA and RUS to relevant Commission precedent. In particular, consistent with the terms of the Recovery Act, any "nondiscrimination and network interconnection" terms that apply to recipients of NTIA grants should not expand upon the current FCC framework set out in the Broadband Policy Statement. The FCC's principles already incorporate the key guidelines that provide consumer choice, and wireline broadband providers have every incentive to conduct their business in accordance with those principles in order to satisfy customer demand and to fill their networks in order to recover

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the costs of network investment. Accordingly, those principles are sufficient to ensure that wireline broadband recipients maintain open networks and provide access to all of the benefits the Internet has to offer. By its express terms, the Recovery Act does not require NTIA to do more. Of course, the wireline broadband principles were expressly designed for, and only apply to, wireline broadband providers. They were not designed for, and have never been applied to, wireless broadband providers, nor should they be applied to wireless providers in the context of the stimulus grants. On the contrary, good reasons exist not to apply those principles to wireless providers because wireless networks present unique technical challenges and concerns that distinguish them from wireline broadband networks. Moreover, the Commission has lightly regulated the wireless market because it has long been especially competitive. That is equally true of emergent wireless broadband services. Regardless, no problems exist which warrant additional restrictions, and any such requirements would discourage qualified providers from participating in the Recovery Act's broadband programs and would otherwise create regulatory uncertainty that could dissuade broadband investment and deployment. By injecting regulatory delay and uncertainty, restrictions addressing such ancillary policy disputes also would undermine the Recovery Act's goal of quickly and efficiently creating jobs and stimulating economic activity.

Likewise, NTIA and RUS should not deter proposals for efficiently reaching the unserved by adopting new definitions for "broadband." Instead, the Commission's current definition of broadband provides an appropriate baseline to be eligible for funding. As long as a proposed project would provide service at that level, NTIA and RUS should be able to consider whether the project would further the goals of the Recovery Act and merits funding.

Finally, we noted that no new definition for "underserved" areas is required, as that term may apply to a wide range of demand-side and supply-side factors that limit broadband availability or adoption in certain areas. Projects that address demand-side issues – such as lack of computer literacy or ownership – should be the priority in underserved areas where broadband is available today. A recent survey by the Pew Internet and American Life Project indicates that for more than two-thirds of Americans who do not subscribe to broadband, the primary reasons relate to lack of perceived relevance or to usability concerns – not to broadband availability or price.<sup>1</sup> Moreover, some studies suggest that broadband penetration is already approaching 80 percent for those Americans who own computers.<sup>2</sup> Therefore, focusing on demand-side issues would be the most effective strategy for encouraging broadband in unserved and underserved areas. This approach also has the benefit of being competitively and technologically neutral, and would encourage – rather than undermine – private investment in broadband facilities.

Sincerely,



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<sup>1</sup> See Pew Internet & American Life Project, "Obama's Online Opportunities II," [http://www.pewinternet.org/~media/Files/Reports/2009/PIP\\_Broadband%20Barriers.pdf](http://www.pewinternet.org/~media/Files/Reports/2009/PIP_Broadband%20Barriers.pdf) (Jan. 21, 2009).

<sup>2</sup> *Downgrading Telecom Services to Market Weight*, Credit Suisse, at 3 (Feb. 19, 2008).