



April 6, 2009

Notice of Ex Parte Presentation

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th 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 3, 2009, Wendy Wigen of EDUCAUSE and John Windhausen of Telepoly Consulting (an advisor to EDUCAUSE) met with Thomas Buckley, Ian Dillner, Katie King, Kevin Holmes, Michael C. Smith, John Schauble, and Lynn Ratnavale of the FCC staff to discuss the American Recovery and Reinvestment Act (ARRA). In particular, we discussed our view of the definitions of the five terms set out in the Public Notice issued on March 24, 2009 (DA 09-668).

EDUCAUSE is a non-profit association of over 2200 colleges and universities. We represent the interests of the IT professionals on campus from the Chief Information Officers (CIOs) to the professionals who keep the network up and running on a day to day basis. In January 2008, we released a paper called "[*A Blueprint for Big Broadband*](#)," which we believe helped lay the groundwork for the inclusion of broadband funding in the ARRA. Even though the legislative language does not match exactly what we proposed, the *Blueprint* made the case for federal funding to spur broadband deployment through grants and matching contributions, and we are pleased at the progress. We look forward to working with the FCC in these proceedings as well as in developing a National Broadband Strategy.

The FCC has asked for comment on five definitional issues in the current legislation. We would like to suggest definitions that look to the future and build toward a National Broadband Strategy. The definitions in general should be broad and should not disqualify any particular entity or application. Each grant proposal should be considered on its merits because local circumstances vary enormously from region to region.



We would like to note at the outset that “unserved” and “underserved” do not apply to schools, libraries, medical and healthcare providers, community colleges, other institutions of higher education, and other community support organizations. The terms “unserved” and “underserved” in section 6001(b)(1) and (b)(2) only apply to “consumers residing” – meaning residential consumers. These terms do not appear in the three other purposes of the bill in 6001(b)(3), (b)(4) or (b)(5). Thus ALL schools, libraries, health care facilities, community colleges and institutions of higher education are eligible for grants, even if they have some level of broadband service today. Many of these entities need much greater bandwidth and will need even more in the future as demand continues to grow. For instance, state education and research networks, which are often created specifically for the purpose of providing broadband connectivity to these public institutions identified in (b)(3), should have the right to seek funding to add to their broadband capacity or to extend the reach of their networks

We believe this interpretation is consistent with goal of the legislation – to promote access to broadband services to the largest possible number of people at the highest possible speeds. There is no reason to disallow funding to a community college that needs a T1 connection to serve its students and teachers simply because it is located in a residential area that is “served” by DSL services. There is no reason to disqualify a university from obtaining funding for a fiber connection simply because the residences around it can receive cable modem service. Community colleges, universities, and other public entities identified in (b)(3) should be eligible for funding because they aggregate large groups of people and have a need for high-capacity broadband connections independent of the surrounding households.

Nevertheless, we offer the following thoughts regarding the definitions of these terms as a guide to the FCC:

1. **“Unserved”** should refer to those consumers who have no access to broadband *in their homes*. Even if a consumer has access to broadband at work or at a community center, library, school, that residential consumer should be considered “unserved” if there is no broadband service available at his/her residence.
2. **“Underserved”** should refer to residential consumers who have a broadband connection that is less than 100 Mbps service at their home. This definition allows the NTIA to prioritize projects based on the speed offered as one of several important criteria, such as subscription cost and access to equipment and training, and would encourage the industry to strive for the highest speeds possible in the most efficient way.



3. **“Broadband”**: The FCC definition that defines different classes of broadband based on tiers of speeds is useful. These could be used to define criteria for scoring proposals as well as mapping results. Again, the goal should be ever increasing speeds to where 100mbps becomes the new minimum.
4. **“Non-discrimination obligations”**: Commercial broadband providers that offer service to the general public must not operate their networks in such a way that privileges, degrades, prioritizes, or discriminates against any lawful Internet content, application or service transmitted over the grant recipient’s network. It is essential that these commercial broadband providers that serve the general public not be allowed to skew the marketplace or discourage innovation at the edge of the network by engaging in prioritization or discrimination. These commercial networks should have a duty that goes beyond the “four principles” to treat all Internet traffic on a neutral and open basis. Therefore, we support adding a fifth principle to the FCC Broadband Principles to this effect. Private networks, however, that are only offered to a closed group of users, such as intra-corporate networks designed for internal communications among a corporation’s employees, or private networks operated by universities exclusively for the benefit of their students, researchers and faculty, should not be subject to regulation. The traditional and historical difference between networks serving the general public and private networks serving a limited group of users should continue to be respected.
5. **“Network interconnection obligations”**: Priority should be given to those commercial broadband providers that offer service to the general public that agree to make their networks available on a wholesale basis to multiple retail service providers. This priority should be a part of the programs administered by both NTIA and RUS.

Thank you for your time and consideration of these comments.

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CC: Thomas Buckley, Ian Dillner, Katie King, Kevin Holmes, Michael C. Smith, John Schauble, and Lynn Ratnavale