Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of The Federal Communications Commission's Consultative Role in the Broadband Provisions of the Recovery Act	GN Docket No. 09-40

COMMENTS OF THE USA COALITION

The Universal Service for America Coalition ("USA Coalition" or "Coalition"),[1] by its attorneys, hereby submits these comments in the above-captioned proceeding in response to the Request for Comment issued by the Federal Communications Commission ("FCC") regarding its role in advising the National Telecommunications and Information Administration ("NTIA") and the Department of Agriculture's Rural Utilities Service ("RUS") in their administration of the broadband provisions of the 2009 American Recovery and Reinvestment Act ("the Recovery Act").[2, 3] As a first step, NTIA and RUS (collectively, the "Agencies") must clearly define key terms of the Recovery Act so as to clarify the objectives of the Broadband Technology Opportunities Program ("BTOP") and the RUS programs. Once these key terms are defined, the Agencies can then move towards determining how to administer the program.

INTRODUCTION

The USA Coalition consists of six of the nation's leading rural providers of wireless services, and is dedicated to advancing regulatory policies that will enable Americans to enjoy

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1 The members of the USA Coalition include Carolina West Wireless, Cellular One, Corr Wireless Communications, Mobi PCS, SouthernLINC Wireless, and Thumb Cellular LLC.

2 *See* Comment Procedures Established Regarding the Commission's Consultative Role In The Broadband Provisions of the Recovery Act, GN Docket No. 09-40, DA 09-668 (Mar. 24, 2009).

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

the full promise and potential of wireless communications, regardless of where they live and work. The Coalition seeks to ensure that our nation's communications policies are technologically and competitively neutral, which facilitates competition that benefits consumers.

A vibrant, robust, and redundant communications network, which includes high-speed broadband internet access, is essential to the economic strength of the United States and the public safety of its citizens. In order to ensure the strength of the broadband network in rural, insular, and high-cost areas, broadband service must be affordable to residents of those areas. In some of these areas, however, high-speed broadband service will be affordable only with support from the government, either through the Universal Service Fund or another source.

Any support for broadband services must be made available in a technologically and competitively neutral manner so that technological innovation can be implemented into the communications network as rapidly and efficiently as possible.[4] Favoring one type of technology or class of service providers, whether explicitly or implicitly, will only slow the integration of technological innovation into the communications network and increase inefficiencies. The USA Coalition believes that allowing residents and businesses in rural, insular, and high-cost areas to select the services, technologies, and service providers of their choice is the best means for ensuring the vibrancy, robustness, and redundancy of the communications network.

Any broadband grants considered by the Agencies should be allocated and distributed in the manner that best facilitates the universal availability of affordable broadband services. This

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[4] *See* Preamble, Telecommunications Act of 1996, P.L. 104-104, 100 Stat. 56 (1996) (explaining that the purpose of the 1996 Act is "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies").

goal requires the Agencies to focus primarily upon the consumer, rather than upon the service provider, and to ensure that competition among providers and technologies is facilitated. Consumers want, and deserve, the ability to choose among various types of affordable broadband providers and technologies, including providers offering both fixed and mobile services. Providing consumers with competitive choice is also the best way to ensure that the need for support will decrease over time. By contrast, to the extent government programs interfere with competition by insulating providers from competitive forces, the level of support over time will be much higher, even if the level appears lower during the initial years of the program. At the same time, however, the Agencies must seek to reduce uncertainty and complexity to the greatest extent feasible. If the broadband initiatives create uncertainty or too much complexity, providers may choose to forgo participation altogether, which would negate the purpose of the initiatives and limit options available to consumers in rural, insular, and high cost areas where support is necessary. Therefore, the USA Coalition urges the Agencies to create a strong foundation for an ongoing commitment to the deployment of all types of services and technologies, including mobile services, throughout the United States. The broadband initiatives represent an important first step towards the creation of an environment where all consumers throughout the United States are able to enjoy the benefits of competition and technology, including the mobile services that so many seek but lack access to today.

I. THE AGENCIES SHOULD ADOPT DEFINITIONS FOR "CURRENT GENERATION BROADBAND SERVICES" AND "ADVANCED BROADBAND SERVICES" THAT FACILITATE ACHIEVEMENT OF THE RECOVERY ACT'S GOALS

Section 6001(b) of the Recovery Act provides that a key purposes of the BTOP program is to provide access to broadband services to Americans residing in unserved and underserved

areas of the United States.[5] The Recovery Act does not itself define "broadband services," leaving it to NTIA, in consultation with the Federal Communications Commission, to define the term. Properly defined, the terms "broadband service," "unserved areas" and "underserved areas" should facilitate the awarding of grants where support is needed to ensure the universal availability of affordable broadband services. In order to ensure that as many Americans as possible benefit from the BTOP program, the definitions must be technologically neutral so that consumer preference, not government fiat, shapes the still-emerging broadband marketplace. Otherwise, the United States will fall further behind other parts of the world because superior technologies and service providers will not be able to overcome distortions created by the discriminatory award of support for broadband services.

The role of the definitions should be to define where support is available. In adopting definitions to serve this role, NTIA should consider not only the attributes of current broadband services generally available but also the technologies that are just over the horizon. However, the data transfer rates included in the definitions used to define where support is available should not also be used as a minimum threshold that grant recipients must meet. The unfortunate consequence of requiring all grant recipients to meet the same threshold speed requirement used to define unserved and underserved areas would be either that the speed is so low that support would be unavailable in many deserving areas or so high that many providers who otherwise would serve those areas would not be able to participate because of unavailability of equipment or spectrum. Put simply, many parts of the United States that currently lack adequate access to broadband services would benefit enormously from even modest improvements in available services. For this same reason, the Agencies should adopt separate definitions for fixed and

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[5] Recovery Act § 6001(a)-(b).

mobile services, as described in more detail below. In choosing between two otherwise equivalent applications (*e.g.*, two mobile broadband offerings to serve the same area with similar qualifications and proposed deployment schedules), the Agencies can and should give preference to the application that would offer consumers faster broadband speeds.

A. The Agencies should adopt definitions for "Current Generation Broadband Services" and "Advanced Broadband Services" that differ for fixed and mobile services.

For the purpose of defining where support should be available, the USA Coalition proposes two separate, yet related, definitions for broadband services: "Current Generation Broadband Services" and "Advanced Broadband Services." Moreover, the Agencies should adopt separate definitions for fixed (*i.e.*, wireline and fixed wireless) and mobile services. In light of the significant differences in technology and equipment availability, not to mention spectrum requirements, technological neutrality can be maintained only if the Agencies adopt separate definitions for fixed and mobile services. By recognizing the legitimate differences in fixed and mobile technologies, including equipment availability and spectrum needs, the Agencies can ensure that consumer choice of technology is not stymied by an infusion of grant money into one particular technology (*i.e.*, fixed services) merely because it is able to offer higher speeds.

With respect to mobile services, the term "Current Generation Broadband Services" should be defined as follows:

> **Current Generation Mobile Broadband Service** means a service provided on an advertised and generally available basis to each customer that has an information transfer rate equivalent to at least 1.0 megabits/second from the provider to the customer (downstream) and at least 200 kilobits/second from the customer to the provider (upstream).

Areas lacking this level of mobile broadband service availability should be considered to be unserved, as discussed below.

The definition of "Advanced Broadband Services" that the USA Coalition proposes with respect to mobile services is designed to encourage the deployment of technologies that will remain relevant despite future technological advances:

> **Advanced Mobile Broadband Service** means a service provided on an advertised and generally available basis to each customer that has an information transfer rate equivalent to at least 3.00 megabits/second from the provider to the customer (downstream) and at least 768 kbps from the customer to the provider (upstream).

Areas lacking this level of mobile broadband service should be considered "underserved," as discussed below. The inclusion of Advanced Broadband Services in the BTOP program will encourage the construction of new facilities that will not need be redeployed as technology changes. Furthermore, funding for Advanced Broadband Services may stimulate research and development of new networking technologies that can provide for additional economic and technological growth.

B. Unserved and underserved areas should be defined in a complimentary manner designed to ensure that both types of areas receive adequate support.

The Recovery Act instructs NTIA, through the BTOP program, to provide access to broadband services to consumers in "unserved areas" and in "underserved areas." As with the definition of "broadband service," Congress delegated authority to the NTIA to define what constitutes both an "unserved area" and an "underserved area." In adopting definitions for these terms, NTIA must ensure that such definitions do not forestall consumer choice and the eventual development of a competitive market for broadband services.

In light of these concerns, the USA Coalition proposes the following definition of an "unserved area:"

> **Unserved Area** means (i) a geographic area where at least 90% of the customers to be served by the project lack access to a provider of Current Generation Broadband Service; or (ii) a geographic area where Current Generation Broadband Services, regardless of the technology used to

> provide such services, are priced at more than 150% of the average price for Current Generation Broadband Services in the 25 largest urban areas;

Defining an "unserved area" in this manner ensures that the BTOP program does not exclude areas where there is some minimal amount of service available (*i.e.*, at speeds slower than Current Generation Broadband Service) or areas where broadband service is only available to a select few.[6] By requiring that 90% of customers have access to Current Generation Broadband Service, the BTOP program can ensure that nearly the entire population in a region has reasonable access to affordable and sufficient broadband services before the area would be deemed ineligible for funding.

In contrast to an "unserved area," an "underserved area" requires a significantly more complex definition. As a matter of logic, the definition of "underserved area" should exclude all "unserved areas," which should be treated differently than underserved areas. Second, as Mark Seifert of NTIA noted at the kick-off meeting, both the Act itself and its legislative history emphasize the need for high-speed service and the need for "forward-looking future-looking programs."[7] As such, the definition of an "underserved area" should include areas where Advanced Broadband (*i.e.*, faster) Services have not yet been deployed or have only been partially deployed, even if Current Generation Broadband Services are available. Third, as

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[6] Defining an "unserved community" in this manner also avoids the problems raised by Jonathan Large, Dan River District Supervisor in Aragat Virginia, at the hearing held by the House of Representative's Subcommittee on Communication, Technology and the Internet. At that hearing, Mr. Large explained that just prior to Aragat, Virginia receiving an RUS loan, a single provider began providing service to a single household, thereby making Aragat ineligible for RUS funding (which requires that no provider offer any broadband service to any customer throughout the region). However, two years later, only the single house remains served.

[7] Transcript, *American Recovery and Reinvestment Act of 2009 Broadband Initiative Kick Off*, at 60 (Mar. 10, 2009) available at http://www.ntia.doc.gov/broadbandgrants/090310/transcript_090310.pdf.

Congressman Boucher noted at the Broadband Oversight hearing, the goal of the BTOP program is *both* to make sure that everyone access to broadband and to make sure that everyone has access at "affordable prices and can benefit from competition among service providers."[8] The USA Coalition agrees with Congressman Boucher on this point and strongly believes that no grant should result in the creation of *de facto* monopolies that interfere with the development of competition over time. Thus, the definition of "underserved areas" should also allow support for new entrants to enter a market with only one or two providers. Additionally, the definition must include a component that measures the retail price of Current-Generation Broadband Services so as to ensure that consumers can afford the services that are available.

Guided by these factors, the USA Coalition proposes the following definition:

> **Underserved Area** means:
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> (1) (i) a geographic area, excluding those defined as an "unserved area," where at least 90% of the customers to be served by the project lack access to more than two providers of Current Generation Broadband Service (which is to be determined separately for wireline/fixed wireless or mobile wireless providers); (ii) a geographic area, excluding those defined as an "unserved area," where at least 90% of the customers to be served by the project lack access to a provider of Advanced Broadband Service (which is to be determined separately for wireline/fixed wireless or mobile wireless providers); or (iii) a geographic area where Current Generation Broadband Service is priced at more than 125% of the average price for Current Generation Broadband Service in the 25 largest urban areas;
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> (2) a geographic area where at least 90% of the Community Anchor Institutions to be served by the project lack access to a provider of wireline/fixed wireless Advanced Broadband Service; or
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> (3) any census tract which is located in (i) an empowerment zone or enterprise community designated under 26 U.S.C. § 1391, (ii) the District

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[8] *Oversight of the American Recovery and Reinvestment Act of 2009: Broadband*: *Hearing Before the H. Subcommittee on Communications, Technology, and the Internet*,111th Cong. (2009) (Opening Statement of Subcommittee Chairman Boucher at 2) available at http://energycommerce.house.gov/Press_111/20090402/boucher_open.pdf.

> of Columbia Enterprise Zone established under 26 U.S.C. § 1400, (iii) a renewal community designated under 26 U.S.C. § 1400E, or (iv) a low-income community designated under 26 U.S.C. § 45D.

As with the Coalition's proposed definition of "unserved areas," the above definition examines fixed and mobile services separately, to ensure that consumers have adequate choices in their technology type. Additionally, by including areas with only a one or two Current Generation Broadband Service providers, the proposed definition provides incentives for providers considering entrance into areas with limited service options, thereby ensuring that communities in such areas can benefit from true competition. Third, by including a pricing component, the proposed definition ensures that consumers can afford the services that are available. As Mr. Seifert noted at the recent House Subcommittee on Communication, Technology and the Internet hearings, if services are too expensive for members of a community to serve, than the community remains underserved despite the existence of broadband services in the region. Finally, by providing financial support for Advanced Broadband Services projects even in areas where there is adequate availability of Current Generation Broadband Services, NTIA can move towards ensuring that that such areas do not remain technological backwaters.

C. The FCC should address interconnection and non-discrimination obligations as part of a general rulemaking and not impose specific obligations upon participants in the broadband initiatives.

The FCC can and should act to address interconnection and non-discrimination obligation issues. The USA Coalition strongly believes consumers are best served when all mobile broadband service providers offer reasonable interconnection opportunities at technically feasible points. Similarly, consumers are best served when all mobile voice and broadband service providers provide reasonably priced roaming services (for both voice and data) to all customers within reach of their network. Deploying networks only to have competition frustrated by closed and discriminatory network policies would run contrary both to the intent of

the Recovery Act and to the pro-competition bent of Communications Act of 1934, as amended. In light of competitive concerns, the USA Coalition recognizes that regulation likely will be necessary to achieve these important goals for consumers. However, rushed or poorly considered interconnection and non-discrimination obligations would create additional uncertainty among applicants, which likely would harm consumers by reducing participation in both the NTIA and RUS programs. Rather than rushing to impose interconnection and non-discrimination obligations upon participants in the broadband initiatives included in the Recovery Act, the FCC should instead take time to fully examine these issues and develop rules of general applicability that will apply to all carriers, regardless of the carrier's funding source.

CONCLUSION

For the reasons set forth above, the USA Coalition urges the FCC and the Agencies to ensure that broadband grants are provided on a fair and technologically neutral basis. Such policies will ensure that all consumers receive the benefit of broadband technologies, regardless of where they live and work.

Respectfully submitted,

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