

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
International Comparison and Consumer)	
Survey Requirements in the Broadband Data)	GN Docket No. 09-47
Improvement Act)	
Inquiry Concerning the Deployment of)	
Advanced Telecommunications Capability to)	
All Americans in a Reasonable and Timely)	
Fashion, and Possible Steps to Accelerate)	GN Docket No. 09-137
Such Deployment Pursuant to Section 706 of)	
the Telecommunications Act of 1996, as)	
Amended by the Broadband Data)	
Improvement Act)	

**COMMENTS OF
THE
NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES
ON NBP PUBLIC NOTICE NO. 1**

On August 20, 2009, the Federal Communications Commission (“FCC” or “Commission”) sought “tailored comment on defining ‘broadband’ for purposes of the Commission’s development of a National Broadband Plan (Plan) pursuant to the American Recovery and Reinvestment Act of 2009 (Recovery Act), and for related purposes.”¹ This comment is sought despite the fact that the Commission has twice

¹ Public Notice DA 09-1842 (rel. August 20, 2008) at 1, citing American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (Recovery Act).

sought comment on the definition of broadband in the last six months.² Indeed, the comments on the *Broadband Deployment NOI* have yet to be filed.³ There was also no rationale given for the expedited comment schedule in this Public Notice.⁴

Without any insight into how the relevant portions of the comments on the *Plan NOI* were inadequately “tailored,”⁵ and under the pressure of the expedited schedule, the National Association of State Utility Consumer Advocates (“NASUCA”)⁶ is at a bit of a loss how best to respond to the Public Notice. At this point, it appears most efficient to refer the Commission to the pertinent sections of NASUCA’s previous comments.⁷ And in the one area of the Public Notice that was not significantly addressed in those

² *A National Broadband Plan for Our Future*, GN Docket No. 09-51 (“09-51”), Notice of Inquiry, FCC No. 09-31, 24 FCC Rcd 4342 (rel. April 8, 2009) (“*Plan NOI*”), ¶¶ 15-22; 09-51 and *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 09-137 (“09-137”), Notice of Inquiry, FCC 09-65 (rel. Aug. 7, 2009) (“*Broadband Deployment NOI*”), ¶¶ 4, 35.

³ Per the *Broadband Deployment NOI*, initial comments are due September 4, 2009 and reply comments are due October 2, 2009.

⁴ DA 09-1842 puts initial comments as due on August 31, 2009 (eleven days after the Public Notice was issued) and reply comments due September 8, 2009, six business days later.

⁵ The Commission merely states, “In light of the record received in response to the *National Broadband Plan NOI* and the discussions at the workshops that have been held to date, we recognize that we must seek additional, focused comment on certain specific topics.” *Id.* at 2.

⁶ NASUCA is a voluntary association of advocate offices in more than 40 states and the District of Columbia, incorporated in Florida in 1979 as a non-profit corporation. NASUCA’s members are designated by the laws of their respective jurisdictions to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General’s office). NASUCA’s associate and affiliate members also serve utility consumers but are not created by state law or do not have statewide authority.

⁷ This includes comments submitted by NASUCA to the National Telecommunications Infrastructure Administration and Rural Utilities Service (“NTIA” and “RUS”) on April 13, 2009 in Docket No. 090309298-9299-01 (accessible at <http://www.nasuca.org/Comments%20%20NTIA%20RUS%204-13-09.pdf>).

comments, that is, updating the definition of broadband,⁸ suffice it to say that it is not necessary to address these issues at this point, and certainly not on this truncated timeline. NASUCA submits that the Commission should adopt definitions, and see how they work. Then (and only then) should the Commission decide when to update those definitions.

The Commission states, “An understanding of what constitutes ‘broadband’ ... is essential to evaluating the extent to which ‘broadband capability’ is available, and informs the evaluation of particular policy approaches intended to ensure access to broadband capability.”⁹ NASUCA fully agrees, and submits these comments to assist the Commission. The Commission “now seek[s] more targeted comment on three aspects of this issue: (1) the general form, characteristics, and performance indicators that should be included in a definition of broadband; (2) the thresholds that should be assigned to these performance indicators today; and (3) how the definition should be reevaluated over time.”¹⁰ As noted above, we will not be commenting on “reevaluation” at this time.¹¹ Otherwise, as requested by the Commission,¹² these comments follow the structure outlined in the Public Notice.

1. Form, Characteristics, and Performance Indicators.

The Commission states,

Much of the discussion of any proposal to define “broadband” tends to center on download and upload throughput. Download and upload throughput are important, but neither is precise or diverse enough to describe broadband satisfactorily. For example, advertised throughput

⁸ DA 09-1842 at 3.

⁹ DA 09-1842 at 2.

¹⁰ Id.

¹¹ We do reserve the right to reply on this issue.

¹² DA 09-1842 at 3.

rates generally differ from actual rates, are not uniformly measured, and have different constraints over different technologies. In addition, it is unclear what the end points of the connection are over which throughput is measured or whether the performance of the end points is reflected in the stated throughput. Moreover, there are network characteristics – such as latency, reliability, and mobility – that are relevant for certain applications but not others.¹³

To begin, it should be clear that the crucial factor here is the experience of the end user.

The consumer’s use of broadband services that should drive evaluations of broadband, and thus should drive the definition used.¹⁴

a. The form that a definition of broadband should take

In this respect, the Public Notice lacks precision: It is unclear what the Commission means by “the form of” a definition of broadband. NASUCA suggests that the definition of broadband should be a statement that sets forth its characteristics, and allows observers (consumers, regulators and industry) to say that a service offered by a particular provider at a particular location is, or is not, “broadband.”

b. Whether to develop a single definition, or multiple definitions

See NASUCA Initial NBP Comments at 12-15.¹⁵

c. Whether an application-based approach to defining broadband would work, and how such an approach could be expressed in terms of performance indicators

Here again, it is unclear what the Commission means by an “application-based” approach. Possibly the reference is to the earlier statement that “there are network

¹³ Id. at 2 (footnotes omitted).

¹⁴ This also means that “advertised” through-put rates are virtually useless in gauging the consumer’s experience.

¹⁵ NASUCA Initial Comments on National Broadband Plan (filed June 8, 2009) (accessible at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=6520220247).

characteristics – such as latency, reliability, and mobility – that are relevant for certain applications but not others.”¹⁶ It may be true, for example, that mobile broadband currently has inherent limitations that, apart from mobility, make it inferior to fixed broadband.¹⁷ Thus an acceptable level of performance for wireless broadband would be unacceptable for wireline (DSL or cable modem) broadband. There may be other distinctions within the wireline broadband concept, and indeed within wireless broadband. But NASUCA urges against a too-granular definition of broadband, which will prevent accurate comparisons.¹⁸

d. The key characteristics and specific performance indicators that should be used to define broadband

See NASUCA Initial NBP Comments at 15-21.

e. What segment(s) of the network each performance indicator should measure, such as the local access link to the end user, or an end-to-end path

As discussed above, the crucial factor in all this is the experience of the end user. Therefore, all performance indicators should measure the entire path ending with the link to the consumer.

f. How factors such as latency, jitter, traffic loading, diurnal patterns, reliability, and mobility should specifically be taken into account

These factors are basically specific to the technology through which the broadband service is provided. See responses to c., above and g., below.

¹⁶ DA 09-1842 at 2.

¹⁷ Likewise, satellite broadband has limitations that should not bind a definition applicable to wireline broadband.

¹⁸ This is distinguished from reporting of broadband deployment, as to which the more granular the better.

- g. Whether different performance indicators or definitions should be developed based on technological or other distinctions, such as mobility or the provision of the service over a wired or wireless network**

See NASUCA Initial NBP Comments at 19-21.

- h. The feasibility and verifiability of measuring different performance indicators**

NASUCA reserves comment on this issue.

2. Thresholds.

The Commission seeks comment on:

- a. What minimum thresholds should be assigned to the performance indicators**

See NASUCA Initial NBP Comments at 15-19.

- b. The minimum thresholds necessary for broad classes of applications to function properly**

NASUCA reserves comment on this issue.

- c. Whether we should adopt multiple, escalating tiers of minimum thresholds.**

Again, it is not clear what the Commission is referring to on this issue. If the question refers to different thresholds for different technologies, NASUCA responds in the affirmative. We would note, however, consistent with our comments on the NBP, there should be an absolute minimum for all technologies, below which the service should not be considered “broadband,” regardless of technology. As we stated, that should be

768 kbps, corresponding to the lower limit of “basic broadband tier 1 service” defined by the FCC. NASUCA’s proposed definition establishes the absolute minimum service that can reasonably, at this point in time, be

considered “broadband,” consistent with both Congress’ legislation, as well as the Commission’s prior rulings or statements on the subject.¹⁹

If the Commission was also referring to tiers where the minimum level increases over time (“escalate”), this may, in part, be a matter for the “update” discussed above. As NASUCA stated, “[E]stablishing a minimum level of service that can be properly considered ‘broadband’ does not prevent the Commission (or Congress or States) from ramping up broadband services and capabilities in the future.”²⁰ Indeed, that “ramping up” should definitely occur: “NASUCA views the FCC’s National Broadband Plan as merely the first step in a long-term process to stimulate and encourage ever greater broadband capability and availability in the United States.”²¹ Further,

What will be critical in finally reaching Congress’ goals will be the extent to which the National Broadband Plan developed by the FCC, and indeed broadband programs being implemented by other federal agencies and States, will encourage deployment of easily scalable advanced telecommunications services that can be “ramped up” over time, both in response to increased demand and government prodding. In this respect, any definition of “advanced services” adopted by the FCC should – indeed must – be dynamic rather than static. Broadband providers’ investment and innovation on the one hand, and broadband consumers’ demand on the other, should result in ever greater broadband speeds and capabilities being offered and subscribed to.²²

In this respect, any standards adopted by the Commission should, indeed, “escalate.”

NASUCA appreciates the opportunity to comment (again) on these important issues. We look forward to the opportunity to work with the Commission, state regulators, and the industry to ensure that the promise of broadband is brought to fruition

¹⁹ NASUCA Initial NBP Comments at 16; see also NASUCA/New Jersey Division of Rate Counsel NBP Reply Comments (July 211, 2009) at 54-55 (accessible at http://fjallfoss.fcc.gov/prod/ecfs/retrieve.cgi?native_or_pdf=pdf&id_document=7019917603).

²⁰ NASUCA Initial NBP Comments at 17.

²¹ Id. at 17-18.

²² Id. at 18.

for consumers throughout the Nation.

Respectfully submitted,

/s/

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