Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Policies to Promote Rural Radio Service and to Streamline Allotment and Assignment Procedures	)	GN Docket Nos. 09-47, 09-51, 09-137
	)	
NBP Public Notice #1: Defining Broadband	)	

To: The Commission

JOINT REPLY COMMENTS OF

THE MEDIA CENTER OF NEW YORK LAW SCHOOL

AND THE CENTER FOR MEDIA LAW, INC.

ON NBP PUBLIC NOTICE #1

New York Law School ("NYLS") and the Center for Media Law, Inc. ("CML") hereby jointly reply to the various comments to the Commission's Public Notice in General Dockets 09-47, 09-51 and 09-137 seeking to establish a definition of broadband.

Established in 1983, CML is a New York non-profit corporation formed to promote the discussion, research and writing about media and its regulatory environment. NYLS' Media Center ("Media Center" or "Center") is the oldest academic media studies center associated with any U.S. law school, having been founded in 1977. It has been actively involved with a variety of media and telecommunications issues over the years, ranging from public broadcasting to indecency and now to broadband. On the broadband issue, it has presented conferences,

publications, and streaming video in partnership with other institutions, such as the Council of Europe. www.nyls.edu\broadband. Its contributions include two symposium issues of its student-run journal, *Media Law & Policy*. The Center thus has demonstrated its conviction that development of broadband policy is one of the paramount issues in telecommunications today.

For this reason, the definition of broadband is important; although it does not make policy, it shapes it by impacting on regulation and standards. *Comments of National Cable and Telecommunications Association on NBP Public Notice #1* in General Docket 09-47. For this reason, many commenters legitimately have been at "a bit of a loss" in structuring responses to the Commission's *Public Notice* in this proceeding. E.g., *Comments of National Association of State Utility Consumer Advocates on NBP Public Notice #1* in General Docket 09-47 at 2.

Because of broadband's current developmental nature, there is a real value to loosely structuring a definition as well as ensuing policy. For example, imposition of minimum upstream and downstream transmission speeds, as suggested by Verizon, Clearwire, and Hughes, may not be wise. Broadband is in an evolutionary stage, and today's state of the art will likely be obsolete in a few years. Instead is may be wiser to adopt a variety of possible configuration, as suggested by the National Congress of American Indians, and see how the medium evolves. *Joint Comments of Native Public Media and The National Congress of American Indians* in General Docket 09-47. Along similar lines, the National Association of State Utility Advocates proposed definition of "services having the capacity to enable users of the service to originate and receive high-quality voice, data, graphics, and video" has a useful flexibility to it. *Comments of National Association of State Utility Consumer Advocates on NBP Public Notice #1* in General Docket 09-47.

For similar reasons, there is no reason to require symmetrical upstream and downstream transmission speeds at this time. Although these very well might be necessary in an environment emphasizing high-quality video conferencing among all users, this does not exist at present and it is less than clear that it will develop in the near term future. After all, the Commission currently is examining the issue of symmetry in a related rulemaking, *Report & Order*, 23 FCC Rcd. 9691 (2008), so there is no need to deal with it here as well.

Similarly, a definition at this point need not incorporate an extremely high bandwidth requirement, as Covad proposes with a minimum of 10 Mbps upstream and 100 Mbps downstream. *Comments of Covad Communications Company* General Docket 09-47. It is less than clear that such high capacity is necessary for many daily applications, such as email, web searches, and the like. Indeed, European countries have used very modest upstream speeds—a few hundred Kbps—for many consumer uses with apparent success.

Moreover, locking in precise definitions—which may lead to similarly stringent standards—at this relatively early stage in broadband's development may be inefficient and even anti-competitive. A potential cautionary tale lies with the recently development of two major new telecommunications systems, AT&T's Lightspeed and Verizon's FIOS. Both of these systems can deliver radically greater amount of video programming than any existing medium—but through completely different means. Lightspeed and its "Uverse" programming is an Internet Protocol technology, which gives consumers a wide choice of material through switched video at a headend-style router, and delivers individual content through a type of video on demand. On the contrary, FIOS transmits a traditional cable television selection of hundreds of channels, from which a subscriber accesses a channel via a digital set-top converter box. Each system offers significantly more material than conventionally available, but through completely different

transmission systems—IP for Lightspeed and ubiquitously available material through FIOS. As a result, their switches, routers, and other active electronics are totally different. A telecommunications system cannot offer both services over the same lines at the same time.

If a definition of broadband were to adopt either one of these systems, it necessarily would be to the exclusion of the other. Therefore, any such definition must be technologically neutral. As to competition between AT&T and Verizon, this might not be significant; each operation already is *de facto* limited to its franchise territories for economic reasons. This effect might, however, prevent an independent telephone of cable company from offering either one of the systems if it did not have a compatible infrastructure. In order to avoid this type of situation, there thus would be some value to a definition or standard which is technologically neutral and is generally capable of encompassing a wide range of information services. At this stage it naturally is difficult to plan for such an operation, since the potential range of players and technologies is not yet clear. The more flexible a definition, however, the greater would be the long-term possibility of accommodating different broadband systems.

To increase flexibility, it also might be wise to vest oversight on the definitions and standards process in a private organization, akin to the many standard-setting bodies in the global economy. This might take the form of a newly created organization, in order to avoid any existing industry biases. It could also be the function of a joint public-private group, such as the International Telecommunications Union, which has done a consistently responsible job over the years of overseeing international spectrum use. However done, there would be value in separating regulatory and operational functions.

A general definition of broadband clearly is valuable in dealing with a host of policy issues to come. It should not, however, be used as a means to regulate the various means of connecting to the Internet.

Respectfully Submitted,

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