

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

In the Matters of	)	
	)	
International Comparison and Consumer Survey Requirements in the Broadband Data Improvement Act	)	GN Docket No. 09-47
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51
	)	
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
	)	

**COMMENTS – NBP PUBLIC NOTICE #10**

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**SUMMARY**

The Media and Technology Institute of the Joint Center for Political and Economic Studies (“Joint Center”)<sup>1</sup> respectfully submits these comments in response to the Commission’s National Broadband Plan Public Notice #10.<sup>2</sup> Specifically, the Commission seeks comment on the development of a Broadband Clearinghouse (“Broadband Clearinghouse”) that could “reduce

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<sup>1</sup> The **Joint Center for Political and Economic Studies** is one of the nation's premier research and public policy institutions and the only one whose work focuses exclusively on issues of particular concern to African Americans and other people of color. For nearly four decades, our research and information programs have informed and influenced public opinion and national policy on behalf of the African American community and society at large.

The Joint Center's current research and analyses address critical issues in four key areas: media and technology, political participation; economic advancement; and health policy. In conducting research and policy analysis and in disseminating our products, we seek to build partnerships and coalitions with black elected and appointed officials at every level of government and with other organizations in order to broaden and strengthen the impact of our work.

<sup>2</sup> See *In the Matter of Comment Sought on Broadband Clearinghouse, NBP Public Notice #10, FCC GN Docket Nos. 09-47, 09-51, 09-137* (released October 2, 2009)(“Notice”).

information barriers for municipalities, agencies, businesses, and non-profits that want insights into more effectively utilizing broadband infrastructure or into broadband deployment or adoption projects”<sup>3</sup> and serve as an information resource and “forum for scholars and policymakers to gather and contribute data.”<sup>4</sup> The Joint Center applauds the Commission for taking this crucial step toward making the data-gathering process substantially more intuitive and transparent, improving civic engagement, and thus enhancing the quality of the Commission’s policies.

The heart of the Broadband Clearinghouse should be an emphasis on how unserved and underserved communities adopt and utilize broadband. To that end, the Broadband Clearinghouse should be a collaborative endeavor that actively seeks to stimulate participation from all stakeholders, including individual citizens.

The web interface of the Broadband Clearinghouse should reflect best practices in data collection and even new social media tools to ensure optimal participation by a variety of stakeholders interested in contributing data. The Commission, however, should avoid restricting, to Internet-based methods, their solicitation and acceptance of data to be included in the Broadband Clearinghouse. The inability to provide other mechanisms for contributing to the general pool might become an additional barrier to organizations and individuals seeking to offer information.

As the Commission is aware, data on unserved and underserved communities is severely lacking. Thus, the Commission should use the opportunity created by the Broadband

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

Clearinghouse to make gathering this information a top priority. The Joint Center Media and Technology Institute is committed to filling this apparent gap in data and data analysis by creating a new data set that will target African Americans, Latinos and other people of color.<sup>5</sup> As the Commission gathers more facts and information on programs focused on unserved and underserved communities, the Joint Center can and should be a primary resource to the Commission in this area.

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<sup>5</sup> The Joint Center is currently preparing the first national, minority broadband adoption study exploring the barriers to broadband adoption and use by African Americans, Latinos and other people of color. The data will also examine the extent to which these targeted groups use mobile technologies to access broadband-enabled applications. The results of this study will be released in January 2010.

## DISCUSSION

### **I. THE BROADBAND CLEARINGHOUSE SHOULD BE CONSUMER-ORIENTED AND SHOULD SHARE INFORMATION TO FACILITATE ADOPTION, ADVANCE RESEARCH, AND INFORM PROGRAMS AND POLICIES AFFECTING UNSERVED AND UNDERSERVED COMMUNITIES**

The Commission should anticipate that, because of the sheer magnitude of a broad-based Broadband Clearinghouse, it may find it necessary, at least initially, to tailor the Broadband Clearinghouse to address a single objective, or small set of objectives, rather than serve a more expansive set of purposes, thus attempting to “be all things to all people.” To the extent the Commission must focus upon a limited universe of objectives, it should design the Broadband Clearinghouse to serve Congress’ primary intent of addressing the broadband needs of unserved and underserved communities in the United States.<sup>6</sup> The means toward achieving that end should be consumer-oriented and, as such, focused upon advancing research that will accomplish ubiquitous broadband adoption and use, especially for current non-adopters and those that have been slow to market.

The current economic climate has underscored a need for an improved consumer protection regulatory infrastructure and has led to proposed legislation for the creation of a Consumer Protection Agency.<sup>7</sup> While the urgency for enhanced consumer protection regulation has most visibly played itself out in the financial services and consumer credit arenas,<sup>8</sup> there is

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<sup>6</sup> See American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“Recovery Act”) at §6001(b).

<sup>7</sup> See Consumer Financial Protection Agency Act of 2009, available at <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.3126>: (last visited November 12, 2009).

<sup>8</sup> See Congressional Oversight Panel, *Special Report on Regulatory Reform: Modernizing the American Financial Regulatory System: Recommendations for Improving Oversight, Protecting Consumers, and Ensuring Stability* (January 2009) available at <http://cop.senate.gov/documents/cop-012909-report-regulatoryreform.pdf> (last visited November 12, 2009); See also Edmund L. Andrews, Banks Balk at Agency Meant to Aid Consumers, N.Y. TIMES (June 30, 2009) available at <http://www.nytimes.com/2009/07/01/business/economy/01regulate.html?dbk> (last

also a need for a regulatory framework that prioritizes consumer protection in the areas of the Commission's jurisdiction.<sup>9</sup> Commissioner Michael Copps has stated, "Consumers cannot be expected to make informed choices without information that truly informs."<sup>10</sup> Developing a robust Broadband Clearinghouse is the first step toward well-informed policies producing tangible and direct results to consumers.

A. The Broadband Clearinghouse Should Be a Repository of Information from a Variety of Sources and the Commission Should Avoid Onerous Rules that Stifle its Very Purpose

The question of how the Commission, a government agency, will be able to balance its role as a regulator, serving as the arbitrator that determines which information remains in the database and which does not, while still encouraging open engagement, is a difficult one to answer. In one respect, the Broadband Clearinghouse could prove useful for grassroots engagement and civic participation. In another, however, there is a risk the Commission would begin to stifle the original purpose of the Broadband Clearinghouse, and indeed the First

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visited, November 12, 2009); *See also* Adam J. Levitin, *Hydraulic Regulation: Regulating Credit Markets Upstream* 26 *YALE J. ON REG.* 143 (2009)).

<sup>9</sup> *See* William E. Kennard, *A New Federal Communications Commission for the 21<sup>st</sup> Century* available at <http://www.fcc.gov/Reports/fcc21.html> (last visited November 12, 2009)(stating that the new FCC's core functions "would revolve around universal service, consumer protection and information."); *See also* Kevin Ryan, *Comment: Communications Regulation—Ripe for Reform*, 17 *COMMLAW CONSPECTUS* 771, 775 (2009)(stating, "In light of technological convergence and shifting regulatory paradigms, the Commission's organizational structure and the regulatory framework it applies need to adapt to address the needs of industry and consumers adequately.")

<sup>10</sup> *See* Statement of Commissioner Michael J. Copps, Re: In the Matter of Fostering Innovation and Investment in the Wireless Communications Market, GN Docket No. 09-157; A National Broadband Plan For Our Future, GN Docket No. 09-51; In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless including Commercial Mobile Services, WT Docket No. 09-66 Consumer Information and Disclosure, CG Docket No. 09-158; Truth-in-Billing and Billing Format, CC Docket No. 98-170; IP-Enabled Services, WC Docket No. 04-36 available at [http://www.fcc.gov/Daily\\_Releases/Daily\\_Business/2009/db0827/FCC-09-67A3.pdf](http://www.fcc.gov/Daily_Releases/Daily_Business/2009/db0827/FCC-09-67A3.pdf) (last visited, November 12, 2009).

Amendment,<sup>11</sup> by taking on a more coercive posture, by either compelling data production or erecting onerous barriers to prevent the inclusion of data it finds undesirable. In striking an appropriate balance, the Commission's Broadband Clearinghouse rules should preclude the Commission from engaging in coercive behavior or overly burdensome data inclusion requirements.

The Broadband Clearinghouse should be a centralized repository of information from a variety of sources external to the Commission. Further, the Commission should limit the extent to which it plays a direct role in data submitted to the Broadband Clearinghouse. As such, the Commission should seek to engage a contractor or otherwise subsidize the administration of the Broadband Clearinghouse by a third party administrator on behalf of the Commission. The submission of the management for the Clearinghouse to a third party administrator should be done to decrease potential regulatory bias, and not to deter other viable data sources from contributing information.

B. The Broadband Clearinghouse Should Be a Collaborative Endeavor of all Stakeholders Designed to Optimize Consumers' Best Interests

The Broadband Clearinghouse should encourage ongoing and active collaboration from a variety of stakeholders. Community anchor institutions can play a pivotal role between citizens and the Commission.<sup>12</sup> For example, the Commission should create partnerships with Historically Black Colleges and Universities, Hispanic Serving Institutions, Native American Serving Institutions, Asian American Institutions and other such organizations, including the

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<sup>11</sup> See *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964) (stating that the core of the First Amendment is to foster "uninhibited, robust, and wide-open" debate on public issues).

<sup>12</sup> See e.g. Comments of the Broadband Diversity Supporters, *In the Matter of Joint National Telecommunications and Information Administration-Rural Utilities Request for Information*, Docket No. 090309298-9299-01, filed April 13, 2009 ("BDS' NTIA/RUS Comments") at p.25 (advocating for the deployment of national intermediary nonprofit organizations and community institutions, including creative new entrants, to build awareness and foster demand for broadband).

Joint Center, to solicit data from people residing in unserved and underserved communities.<sup>13</sup>

The Commission should also seek to obtain market research and other relevant data from Small and Disadvantaged Businesses (SDBs) and Minority Business Enterprises (MBEs) with close ties to these neighborhoods.<sup>14</sup> As stated in the previous section, data collected from the entities can be submitted to a third party administrator that would be responsible for posting and/or sharing facts about their respective programs without bias or favoritism.

## **II. THE BROADBAND CLEARINGHOUSE SHOULD PROMOTE BROADBAND ADOPTION BY IMPLEMENTING SOCIAL MEDIA BEST PRACTICES BUT ALSO USING TRADITIONAL MEDIA TO INCLUDE PERSPECTIVES OF NON-ADOPTERS**

The United States Government has already implemented several strategies on other government agency websites that can serve as good models for the Broadband Clearinghouse's web interface. For example, The White House, U.S. Government Printing Office, and National Archives recently converted into Extensible Markup Language (XML) the entire text of the Federal Register since 2000.<sup>15</sup> XML effectively makes otherwise voluminous data easy to manipulate, thereby improving individuals' ability to arrange it in ways that suit their individual needs.<sup>16</sup> Similarly, the Commission could use XML in coding Broadband Clearinghouse data, thereby allowing organizations and individuals who rely on the Broadband Clearinghouse data to receive regular updates via RSS feeds.

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See Press Release, The White House GPO and National Archives Achieve Open Government Milestone (October 5, 2009), available at [http://www.federalregister.gov/documents/XML\\_Federal\\_Register.pdf](http://www.federalregister.gov/documents/XML_Federal_Register.pdf) (last visited November 12, 2009).

<sup>16</sup> *Id.*

Amongst other best practices currently implemented by government agencies,<sup>17</sup> the Commission's own National Broadband Plan website<sup>18</sup> allows users to share their ideas with the Commission by clicking a link redirecting to an externally-hosted website.<sup>19</sup> On the external site, users are permitted to contribute, discuss, and vote on ideas regarding the Commission's National Broadband Plan. This framework allows the Commission to review submitted ideas, without necessarily seeing the identity of each contributor or even making a judgment call as to which information is or is not posted to the site. An analogy might be an externally hosted website collecting data. Users could vote on the usefulness of data and the algorithm of the site could rank the most popular data. To avoid the problem of data that is not highly ranked, but which some users may find useful, all submitted data could be searchable by keyword and placed within broad interest categories.

In seeking Broadband Clearinghouse input from individual citizens, the Commission should enhance its outreach efforts with traditional media, such as radio,<sup>20</sup> which are often effective in reaching individuals with limited internet access. Further, third parties managing the Broadband Clearinghouse should staff individuals who can input data and other information submitted by mail.

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<sup>17</sup> See e.g. Regulations.gov, available at <http://www.regulations.gov> (last visited November 12, 2009)(allowing users to "find, read, and comment" on notices, rules, and proposed rules); See e.g., Data.gov, available at <http://www.data.gov/> (last visited November 12, 2009)(allows users to search government data sets in a variety of policy areas).

<sup>18</sup> See The Federal Communication Commission's National Broadband Plan Website available at <http://www.broadband.gov/>(last visited November 12, 2009).

<sup>19</sup> *Id.* (linking to <http://broadband.ideascale.com/>) (last visited November 12, 2009).

<sup>20</sup> See Press Release, The Nielsen Company, New Nielsen Radio Results Find Strong Radio Usage, Particularly Among Younger Demos (Sept. 23, 2009)(stating that "African Americans and Hispanics [in 51 markets covered by Nielsen Radio] tune in more than the average population at 26.5 hours and 25 hours per week respectively.") available at <http://blog.nielsen.com/nielsenwire/wp-content/uploads/2009/09/Radio-Ratings-Press-Release.PDF> (last visited November 14, 2009).

### **III. THE COMMISSION SHOULD USE THE OPPORTUNITY PRESENTED BY THE BROADBAND CLEARINGHOUSE TO OBTAIN NEEDED INFORMATION ON UNSERVED AND UNDERSERVED COMMUNITIES**

In many ways, the Commission's lack of reliable broadband data has caused many organizations to, instead of being able to identify and precisely target specific constituents, engage in a game reminiscent of "Pin the Tail on the Donkey," marshalling a dizzying array of sometimes conflicting information, hoping their resulting policy recommendations are sufficiently targeted.<sup>21</sup> Commissioner Copps has also acknowledged that the current database is insufficient, stating that prior data "lacked a plausible definition of broadband, employed stunningly meaningless zip code measurements concerning its geographic distribution, ignored the prices people paid for broadband completely, and for years failed to look at what other countries were doing to get broadband to their people."<sup>22</sup>

The Broadband Clearinghouse is an opportunity for the Commission to finally not only create regulatory infrastructure that supplies missing information, but also provides a way to gather programmatic and individual input that will lead to expanded broadband services and

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<sup>21</sup> See BDS' NTIA/RUS Comments at pp. 39-40 (citing Networked Nation: Broadband in America 2007, Department of Commerce ("the Department of Commerce found that 36.4% of black households and 35.2% of Hispanic households had broadband, compared to 54.9% of White households and 38.8% of households in rural areas had broadband, compared to 53.7% of households in urban areas"); citing Pew Internet and American Life Project, Home Broadband Adoption 2007, June 2007, available at <http://www.pewinternet.org/Reports/2007/Home-Broadband-Adoption-2007.aspx> (last visited June 7, 2009) ("showing gaps in broadband subscription rates based on race, ethnicity, income and education level")(stating, "In the same year as the Commission's findings that broadband adoption was "reasonable and timely," only 30% of households with income under \$30,000 had access to broadband.))

<sup>22</sup> *Id.* (citing *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, Fifth Report and Order*, 23 FCC Rcd 11 (2008)(dissenting statement of Commissioner Michael J. Copps).

benefits to various constituencies. The subject areas where more information is needed include, inter alia:

- Underserved groups in urban and rural areas.
- Groups of various demographics with more data on minorities that tend to be non-adopters or slow adopters of broadband.
- Mobile usage.
- State by state broadband penetration.
- Universal Service.
- Economic development.
- Grant information.

### **CONCLUSION**

The Internet has the potential to put innovation and life enhancing technology in the hands of every American. Without the right data, well-intentioned policies often miss the mark. If done correctly, the Broadband Clearinghouse can be accessible, locally relevant, and vibrant. The Clearinghouse can also accept and share data on individuals, organizations and programs that help the engagement of citizens from unserved and underserved communities.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'RBE', is written over a horizontal line.

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