

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

The Commission’s Consultative Role in the        )  
Broadband Provisions of the American            )       GN Docket No. 09-40  
Recovery and Reinvestment Act of 2009        )

**COMMENTS OF THE CITY OF NEW YORK**

The City of New York (“City”) hereby submits the following comments in response to the Public Notice<sup>1</sup> regarding the Consultative Role of the Federal Communications Commission (the “Commission”) in the Broadband Provisions of the Recovery Act.<sup>2</sup> While Congress directed the National Telecommunications and Information Administration (“NTIA”) to consult with the Commission on five specific terms and concepts, the City’s comments will focus on what factors should be considered in the definition of “underserved areas.” Specifically, the City urges the Commission to go beyond any definition that focuses merely on the deployment or speed of broadband facilities, and instead develop a comprehensive definition that concentrates primarily on municipalities or other political subdivisions and population groups within those areas, with below average rates of broadband adoption.

The Recovery Act delineates two types of residential consumers: those that are “unserved” and those that are “underserved.” Unserved as a term is meant to cover areas that are lacking any broadband facilities or infrastructure of any type. The fact that the Recovery Act also required the Broadband Technologies Opportunity Program (“BTOP”) to address underserved consumers means that the term underserved must involve more

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<sup>1</sup> DA 09-668, released March 24, 2009.

<sup>2</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (the “Recovery Act”).

than just a lack of facilities or infrastructure, or availability of connections as in “unserved” communities. Most urban areas, and particularly New York City, have been successful through cable and other franchises in requiring telecommunications companies to deploy broadband facilities in every neighborhood and community. Consequently, the issue in the City and in many other parts of the country, rural and urban, regarding low broadband usage is not merely the lack of telecommunications facilities or infrastructure.

New York City commissioned its own study to help determine how well existing broadband capabilities serve its residents.<sup>3</sup> The Study found that City residents have ubiquitous *access* to broadband service, with virtually every household currently being “passed” by one or more broadband provider. The Study further found that Citywide broadband *adoption* stood at approximately 52 percent – a rate comparable to that of other major domestic cities.

At the same time, the Study found that broadband adoption among low-income consumers was disproportionately low. Specifically, in New York City, the broadband penetration gap between low-income and moderate-to high-income households was found to be approximately 28 percent in 2006; and this disparity was not projected to narrow significantly in the absence of programs targeted towards increasing broadband adoption rates among low-income households. The major reasons found for the low-level of adoption include not only the cost of broadband service, but also lack of computer ownership and computer literacy skills. Going forward, we believe, based on the Study, that the challenge facing both the City and the nation at large will primarily be one of adoption rather than availability. Accordingly, any definition of underserved

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<sup>3</sup>See New York City Broadband Landscape and Recommendations, July 2008, *available at* [http://www.nyc.gov/html/doitt/downloads/pdf/bac\\_presentation\\_7\\_30\\_2008.pdf](http://www.nyc.gov/html/doitt/downloads/pdf/bac_presentation_7_30_2008.pdf) (the “Study”).

should allow for grants that will immediately implement a number of digital inclusion initiatives focused on expanding access to, and adoption of, broadband among low-income consumers or within other vulnerable communities.

The \$4.2 billion of the Recovery Act that is dedicated to BTOP is a good start in solving the nation's broadband problems, but it is not a complete solution. It will not solve deployment gaps or adoption problems completely. In fact, merely building high-speed, high-capacity infrastructure with sophisticated technologies and applications will fail to solve the underlying broadband problems in this country, if the potential users passed by the network lack the resources, ability, or motivation to actually use otherwise available services. Mere broadband deployment without "demand drivers" or programs to increase adoption will create a "lose/lose" situation where low take-up rates may make the infrastructure investment economically unviable.

Other commentators and experts have noted that the main challenge in underserved areas is adoption. Experts from the public sector,<sup>4</sup> the private sector<sup>5</sup> and the not for profit sector<sup>6</sup> all made similar points supporting adoption efforts at various forums in connection with BTOP funding. A recent Pew Research Center's Internet and

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<sup>4</sup> In her comments to the NTIA forum on March 17, 2009 in Las Vegas, Emy Tseng, Director of Digital Inclusion Programs for the City and County of San Francisco noted that:

"[f]or urban areas, especially to address the needs of low income communities in urban areas, there is a real need to define underserved in this ... fashion, because major metropolitan areas such as San Francisco, New York, Minneapolis, Seattle have high broadband adoption rates compared to the national data but have also large underserved and low income populations.... [with] a larger broadband adoption gap."

Comments of Emy Tseng, BTOP Public Meeting transcript, March 17, 2009.

<sup>5</sup> Verizon, in its ex parte filing of April 2, 2009 in this docket, stated that underserved areas are areas that need to address "demand side" issues, such as lack of computer ownership or computer literacy rather than "supply side" issues. Ex parte filing of Dee May, Vice President, Federal Regulatory, Verizon, GN Docket 09-40, April 2, 2009.

<sup>6</sup> Testimony of Dr. Nicole Turner-Lee, Senior Vice President of One Economy Corp. before the Subcommittee on Communications, Technology and the Internet, April 2, 2009.

American Life Project report contains data showing that the primary reasons cited by over two-thirds of Americans who are not online are usability and relevance, not availability.<sup>7</sup>

Congress clearly recognized in the Recovery Act that adoption was a national problem. The purpose section of the Recovery Act where the term “underserved” is used talks of “improved access” for residential consumers, which implies that the problem is not one of availability, as it would be in unserved areas that lack any access.<sup>8</sup> The Recovery Act also specifically earmarks minimum, but not maximum, BTOP funding for adoption programs – *i.e.*, not less than \$250,000,000 must be available for competitive grants for innovative programs to encourage sustainable adoption of broadband service “in particular by vulnerable populations,” and not less than \$200,000,000 for “expanding public computer center capacity.”<sup>9</sup>

Recognizing the Congressional mandate to prioritize adoption-focused activity, any definition of underserved must focus primarily on adoption rather than the availability of physical network access or certain speeds. The barriers to adoption go beyond access to infrastructure. The lack of digital literacy skills, the lack of technical support and lack of awareness of the benefits of broadband are major factors in not realizing higher adoption levels in underserved communities. These are serious challenges which the Commission must take into account in determining how best to address the broadband needs of the U.S. population.

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<sup>7</sup> See Pew Internet & American Life Project, “Obama’s Online Opportunities II,” [http://www.pewinternet.org/~media/Files/Reports/2009/PIP\\_Broadband%20Barriers.pdf](http://www.pewinternet.org/~media/Files/Reports/2009/PIP_Broadband%20Barriers.pdf) (Jan. 21, 2009).

<sup>8</sup> Recovery Act, Sec. 6001 (b)(2).

<sup>9</sup> Recovery Act, Title II and Conference Report to Accompany H.R.1, House Report, 111 - 16 at 774, Feb. 12, 2009.

Underserved areas should be defined as those municipalities, or other political subdivisions, or geographic locations, with a significant number of low income residents, or members of other vulnerable communities (*e.g.*, disabled or elderly), in light of the significantly lower than average adoption rates among such low income and other vulnerable residents. Such status as an “underserved area” should be applicable irrespective of whether the relevant area includes physical infrastructure that can theoretically supply broadband service to the population.

Put another way, underserved areas should be looked at as areas that have systemic barriers to broadband penetration that go beyond the mere lack of facilities.

Respectfully submitted,

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