PUBLIC NOTICE

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COMMENT SOUGHT ON THE CONTRIBUTION OF FEDERAL, STATE, TRIBAL, AND LOCAL GOVERNMENT TO BROADBAND
NBP Public Notice # 7

PLEADING CYCLE ESTABLISHED

GN Docket Nos. 09-47, 09-51, 09-137

Comment Date: November 6, 2009

Government – at all levels – affects broadband deployment and adoption, and itself uses broadband to interact with its citizens. As the Commission develops a National Broadband Plan,[1] the Commission staff have heard about the many benefits of broadband deployment and effective use of digital technology.[2] For instance, Fort Wayne, Indiana has used wireless monitoring to improve the efficiency of its street sweepers,[3] and, like many states and cities,[4] has also used broadband solutions for better health resources, greater community connectedness, better educational opportunities, more efficient public safety measures, and greater energy efficiency.[5] We have also heard, however, of difficulties in obtaining required government licenses or permits or access to government assets, as well as restrictions in the use of government funding that hinder the pursuit of broader broadband goals.[6]

[1] *See* American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (Recovery Act).

[2] *See* Graham Richard, Presentation at the E-Government and Civic Engagement Broadband Workshop (Aug. 6, 2009) (presentation available at http://www.broadband.gov/docs/FCC_Wired_Inspired_Richards.pdf; transcript available at http://www.broadband.gov/docs/ws_01_egov_transcript.pdf); *see generally* National Broadband Plan Workshops: State and Local Governments: Toolkits and Best Practices (Sept. 1, 2009), http://www.broadband.gov/ws_state_and_local.html (including officials representing the states of Oregon, Colorado, Florida, Virginia, Mississippi, and North Carolina as well as officials representing Chicago, Illinois, New York City, Lafayette, Louisiana, El Paso, Texas, Howard County, Maryland, and San Francisco, California).

[3] *See* National Broadband Plan Workshops: Open Government and Civic Engagement (Aug. 6, 2009) (transcript at 31–32, available at http://www.broadband.gov/docs/ws_01_egov_transcript.pdf).

[4] *See, e.g.*, California Public Utilities Commission Comments at 4; Massachusetts Broadband Institute and the Massachusetts Department of Telecommunications and Cable Joint Comments at 1 n.1; Santa Barbara County Education Office Comments at 1; Montgomery County, Maryland Reply Comments at ii; Palo Alto Comments, WC Docket No. 09-40, at ii.

[5] *See* National Broadband Plan Workshops: Open Government and Civic Engagement (Aug. 6, 2009) (transcript at 32–38, available at http://www.broadband.gov/docs/ws_01_egov_transcript.pdf).

[6] *See, e.g.*, Bill Gurley, Presentation at the Technology: Applications and Devices Workshop (Aug. 27, 2009) (presentation available at http://www.broadband.gov/docs/ws_tech_applications/ws_tech_applications_gurley.pdf); National Broadband Plan Workshops: Wireless Broadband Deployment – General (Aug. 12, 2009) (transcript at 74, available at http://www.broadband.gov/docs/ws_03_deploy_wireless_transcript.pdf); National Broadband Plan Workshops:

We seek tailored comment about how governments at all levels promote broadband deployment and adoption, and how digital technologies and broadband deployment can improve civic engagement, government at all levels, and the lives and welfare of residents and businesses.[7]

1. **E-government and Civic Engagement.**

    a. What are the primary needs that broadband can help address in federal, state, tribal, and local government? Please provide specific examples of elements of government or community life that governmental broadband initiatives have attempted to address (e.g., employment, literacy, public safety, open government, physical plant, health, education)?
    b. What are the empirically demonstrable benefits or harms of federal, state, tribal, or local broadband solutions generally?
    c. What broadband solutions are governments underutilizing to their detriment?

2. **Government broadband initiatives.**

    a. Governments have engaged in various initiatives to increase broadband deployment and adoption in certain geographic areas. With regard to specific examples of federal, state, tribal, or local broadband initiatives, how did the initiatives come to fruition from start to finish? Please describe cost information, including planning, equipment, training, labor, and conclusion of the initiatives, as well as barriers that were overcome. What elements of the initiation, planning, or implementation were most critical to the success of the project? What factors impacted the technological choices made in the planning and implementation of the project? Were the projects sustainable, and have the projects continued beyond their initially conceived timeframes? What were the costs and the resulting empirically demonstrable benefits or harms of the implementation? How did costs and benefits differ from the original plan and why?
    b. What conclusions should be drawn from any particular experiences (e.g., what efforts or practices should be replicated or avoided)?
    c. Please provide examples of governments aggregating demand to encourage broadband deployment. Are such programs sustainable? Do these programs cause the deployment of network infrastructure that otherwise would not have occurred? Please provide data when possible.
    d. How can successful broadband solutions be more widely shared or publicized to enable other governments to benefit? What should be the role for the federal government (and specifically, this Commission) in fostering the widespread adoption of ideas and initiatives that have worked?

Technology/Wireless (Aug. 13, 2009) (transcript at 27, 91, available at http://www.broadband.gov/docs/ws_06_tech_wireless_transcript.pdf); Level 3 Comments at 17-19; Benton Foundation Comments at 30.

[7] As Acting Chairman Copps previously acknowledged in the Rural Broadband Report, the difficulties referenced above appear to be especially acute with respect to American Indian/Alaskan Native governments for a host of reasons. *See* MICHAEL J. COPPS, ACTING CHMN., FCC, BRINGING BROADBAND TO RURAL AMERICA: REPORT ON A RURAL BROADBAND STRATEGY (May 22, 2009) (RURAL BROADBAND REPORT), *attached to Acting Chairman Copps Releases Report on Rural Broadband Strategy*, GN Docket No. 09-29, Public Notice, DA 09-1211 (rel. May 29, 2009). For this reason, and to ensure proper focus on issues and barriers to broadband deployment and adoption on tribal lands, we released a separate Public Notice specifically designed to solicit information, data and potential solutions for the unique or special broadband-related challenges faced by Indian Country. *See Comment Sought on Broadband Deployment and Adoption on Tribal Lands; NBP Public Notice #5 Pleading Cycle Established*, GN Docket Nos. 09-47, 09-51 and 09-137, Public Notice, DA 09-2093, (rel. Sept. 23, 2009). Tribal governments are nonetheless invited and encouraged to file comments and submit data responsive to this Public Notice.

e. Is there a role for non-profit or private sector partnerships in governmental broadband solutions? Please provide examples from real-life initiatives.

3. **Use of Government Assets and Policies to Support Broadband Deployment.**

a. How can existing federal, state, tribal, and local governmental assets be best leveraged to support broadband deployment? Please provide examples of how the ability (or inability) to use government assets (e.g., rights of way, federal lands, government buildings) has facilitated or hindered broadband deployment. Please quantify the relationship between such access (or lack of or delayed access) to governmental assets and the cost and timing of deploying broadband. In any responses, please identify (1) whether the government process increased or decreased the cost or timing of deployment; (2) whether use of government assets has hindered deployment in certain areas and not others; and (3) what solutions, rules or procedures regarding the use of government assets could facilitate broadband deployment in the future.

b. How can existing governmental processes for obtaining access to government assets better support broadband deployment? For example, how well do state processes accommodate fiber optic or wireless communications facilities on Interstate or other freeways and, if so, how? Are there any current surveys or reviews of state or local policies and fees for access to highway and other rights of way, model legislations or ordinances, or best practices? Can the federal government's approach to rights of way and facilities access management, which currently spans over several agencies including the Department of Interior and Department of Transportation, be improved, and if so, specifically how? Please provide examples of government processes (e.g., permitting, local zoning processes, rights of way access) that work well and those that do not. Using data when possible, please describe how the governmental approvals and rights of way access process affect network deployment decisions, particularly in rural, unserved and underserved areas.

c. How can government better coordinate its approach to facilitate the construction of broadband on unserved or underserved areas? Can government help lower the cost of network deployment, for example, by providing notice of infrastructure projects, allowing ready access to public rights of way, poles, ducts and conduit, and facilitating joint trenching? Are there best practices or models adopted by state or local governments or agencies that could help inform the National Broadband Plan?

d. Are there steps that the Commission, other federal agencies, such as the Department of Energy, Department of Transportation, and Department of the Interior, and states can take to facilitate access to poles, ducts, conduit, and rights of way by broadband service providers? Should government consider incentive regulation that would encourage those that control access to poles, ducts, conduit, and rights of way to make them more readily available for broadband services, such as pro-actively linking program eligibility to pole, duct, conduit, and rights-of-way policies that facilitate broadband deployment?

e. To date, the Commission has taken a case-by-case approach to resolving rights of way and zoning disputes under Sections 253 and 332(c)(7) under the Act. How have this approach and court interpretations of those provisions affected the cost and pace of broadband deployment? Please provide examples and data showing any such effect. Can the process for resolving disputes under those provisions be improved, and would doing so speed the deployment of broadband services to all Americans?

f. Are there Commission or other federal government policies that interfere with state and local government efforts to expand and support broadband availability? For example, do the requirements in section 254 of the Communications Act or the Commission's universal service rules limit the ability of governmental E-rate and rural health care universal service support recipients to utilize their networks in creative ways that would jump start the access and availability of broadband in local communities?

g. How can the federal government, especially this Commission, facilitate cooperation and best practices across and among all levels of government to encourage deployment?

4. **Use of Government Programs and Policies to Support Broadband Adoption.**

a. How can existing federal, state, and local governmental policies and programs related to broadband deployment and adoption best be leveraged to support broadband adoption? Please provide examples of how the use of government facilities and programs (e.g., schools, universities, libraries, clinics, community centers) have facilitated broadband adoption.
b. How can existing federal, state and local government programs and policies that are not directly related to broadband deployment or adoption be leveraged to increase broadband adoption? For example, could expanding New Market Tax Credits to include broadband access help alleviate price barriers for low-income non-adopters?[8] Please provide examples of specific programs or policies that could be changed.
c. Please describe the relationship between various governmental policies and programs and the rate of broadband adoption, with data when possible.
d. What existing federal, state and local government programs and policies have most effectively encouraged broadband adoption, and why?
e. How can the federal government, especially this Commission, encourage collaboration, partnership, and best practices across all levels of government to support broadband adoption?

This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. *See* 47 C.F.R. §§ 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required. *See* 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

All comments should refer to GN Docket Nos. 09-47, 09-51, and 09-137. Please title comments responsive to this Notice as "Comments – NBP Public Notice # 7." Further, we strongly encourage parties to develop responses to this Notice that adhere to the organization and structure of the questions in this Notice.

Comments may be filed using (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies.[9] Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/cgb/ecfs/ or the Federal eRulemaking Portal: http://www.regulations.gov.[10] Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing.

[8] *See, e.g.,* Comments of One Economy Corporation at 23.

[9] *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24121 (1998).

[10] Filers should follow the instructions provided on the Federal eRulemaking Portal website for submitting comments.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, S.W., Washington, D.C. 20554.

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For further information about this Public Notice, please contact Randy Clarke at (202) 418-1500.

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