



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 09-668
Released: March 24, 2009

COMMENT PROCEDURES ESTABLISHED REGARDING THE COMMISSION'S CONSULTATIVE ROLE IN THE BROADBAND PROVISIONS OF THE RECOVERY ACT

GN Docket No. 09-40

Comment filing date: April 13, 2009

Through this Public Notice, we establish procedures for parties wishing to provide written or oral comments on the Commission's consultative role in the broadband provisions of the Recovery Act.¹ In the Recovery Act, Congress assigned grant- and loanmaking responsibilities to the Department of Commerce's National Telecommunications and Information Administration (NTIA) and the Department of Agriculture's Rural Utilities Service (RUS). Specifically, NTIA will administer the Broadband Technologies Opportunities Program (BTOP), which will provide grants for developing and expanding broadband services,² and RUS will continue to administer its programs of broadband loans, loan guarantees, and grants with additional funds.³ The Commission has no funds under the Recovery Act for grant- or loanmaking. The Commission does, however, have an important role to play in providing expert, technical advice to NTIA as it establishes the BTOP,⁴ and the Commission may also provide expert, technical advice to RUS as it proceeds with its own programs.

Congress directed NTIA to consult with this Commission on five specific terms and concepts:

1. the definition of "unserved area,"⁵
2. the definition of "underserved area,"⁶

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

² Recovery Act § 6001(a).

³ Recovery Act, 123 Stat. at 118.

⁴ Recovery Act § 6001(a) ("The [Assistant Secretary at NTIA], in consultation with the Federal Communications Commission . . . shall establish a national broadband service deployment and expansion program . . .").

⁵ Recovery Act § 6001(b)(1) ("The purposes of the [BTOP] are to . . . provide access to broadband service to consumers residing in unserved areas of the United States."); *see also* Conf. Rep. 111-16, at 776 ("The [Recovery Act] does not define such terms as 'unserved area' 'underserved areas' and 'broadband.' The Conferees instruct the NTIA to coordinate its understanding of these terms with the FCC, so that the NTIA may benefit from the FCC's considerable expertise in these matters.").

⁶ Recovery Act § 6001(b)(2) ("The purposes of the [BTOP] are to . . . provide improved access to broadband service to consumers residing in underserved areas of the United States."); *see also* Conf. Rep. 111-16, at 776.

3. the definition of “broadband,”⁷
4. the non-discrimination obligations that will be contractual conditions of BTOP grants,⁸ and
5. the network interconnection obligations that will be contractual conditions of BTOP grants.⁹

Commission staff are attending the relevant hearings being held jointly by NTIA and RUS on the implementation of their Recovery Act programs, and will have access to the written filings made in response to those agencies’ Joint Request for Information.¹⁰ Some parties may wish to provide comment specifically to this Commission on its consultative role on the five definitions listed above.¹¹ Because we desire that all comments to the Commission on its consultative role be fully disclosed and accessible to the public, and because the Commission has a unique role with regard to consulting on the five definitions, we establish the following procedures for parties wishing to comment on the advice the Commission should offer on these terms. We do not here seek comment or intend to accept meetings on individual projects or requests for funding, which are within the purview of NTIA and RUS, but rather on the Commission’s consultative role with regard to the five points enumerated above.

First, parties wishing to submit written comments may file them on or before April 13, 2009. Comments should reference **GN Docket No. 09-40**. Parties are encouraged to limit their comments to the five definitional issues named above, and to include an executive summary if their comments exceed ten pages.

All filings must be addressed to the Commission’s Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Suite TW-A325, Washington, DC 20554. Parties should also send a copy of their filings to the Competition Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554, or by e-mail to CPDcopies@fcc.gov, and to the Spectrum & Competition Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, SW—Portals 1, Washington, DC 20554 or by e-mail to WTBPolicy@fcc.gov. Parties shall also serve one copy

⁷ See generally Recovery Act § 6001; see also Conf. Rep. 111-16, at 776.

⁸ Recovery Act § 6001(j) (“Concurrent with the issuance of the Request for Proposal for grant applications pursuant to this section, the Assistant Secretary shall, in coordination with the Commission, publish the non-discrimination and network interconnection obligations that shall be contractual conditions of grants awarded under this section, including, at a minimum, adherence to the principles contained in the Commission’s broadband policy statement (FCC 05-15[1], adopted August 5, 2005).”).

⁹ *Id.*

¹⁰ Department of Commerce, National Telecommunications and Information Administration, Department of Agriculture, Rural Utilities Service, American Recovery and Reinvestment Act of 2009 Broadband Initiatives, Joint Request for Information and Notice of Public Meetings, 74 Fed. Reg. 10716, 10719 (Mar. 12, 2009) (inviting written comment on topics including the definitions of “unserved area,” “underserved area,” “broadband,” and “nondiscrimination and network interconnection obligations” and announcing a series of six public meetings about their Recovery Act programs).

¹¹ We note that the Commission has established a separate procedure for parties wishing to comment on a rural broadband strategy. See Public Notice, *Comment Date Established for Report on Rural Broadband Strategy*, DA 09-561, GN Docket No. 09-29 (rel. Mar. 10, 2009). In addition, the Acting Chairman of the Commission has stated his intention to initiate a proceeding in April providing an opportunity to submit comments on the national broadband plan required by the Recovery Act. See News Release, *FCC Announces Tentative Agenda for April 8, 2009 Open Meeting* (rel. Mar. 19, 2009).

with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

In addition, Commission staff will make themselves available for *ex parte* meetings with interested parties during the week of **March 30 through April 3, 2009**. Parties wishing to schedule an *ex parte* meeting should contact Ginny Kennedy, Wireline Competition Bureau, at (202) 418-2328, or by email at Ginny.Kennedy@fcc.gov, or Morasha Younger, Wireless Telecommunications Bureau, at (202) 418-1203, or by email at Morasha.Younger@fcc.gov. Any registered lobbyists requesting meetings should identify themselves as such at the time of requesting meetings. Because of the potential volume of meeting requests, meetings will be scheduled for twenty minutes with Commission staff members. Parties are also strongly encouraged to provide staff a one- to two-page handout summarizing their points. Staff will attempt to accommodate requests for *ex parte* meetings on other dates but interested parties are strongly encouraged to schedule any meetings for the dates mentioned above.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

- Electronic Filers:
 - Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs/>. Filers should follow the instructions provided on the website for submitting comments.
 - In completing the transmittal screen, filers 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, filers should send an e-mail to ecfs@fcc.gov and include the following words in the body of the message: get form <your email address>. A sample form and directions will be sent in response.
 - Brief comments can be filed using ECFS Express: <http://fjallfoss.fcc.gov/ecfs/Upload/>.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Parties are strongly encouraged to file comments electronically using the Commission's ECFS.

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, Marlene H. Dortch, 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, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 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, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (tty).

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone (202) 488-5300, facsimile (202) 488-5563, or via e-mail at fcc@bcpiweb.com.

In the interest of developing a full record that is accessible to the public as well as to Commission staff, 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).

It is the intent of the Commission that contacts with the Commission pursuant to this Public Notice also comply with the March 20, 2009 White House Memorandum for the Heads of Executive Agencies: Ensuring Responsible Spending of Recovery Act Funds ("Memorandum").¹² Under the Memorandum, an executive department or agency official shall not consider the view of a lobbyist registered under the Lobbying Disclosure Act of 1995, 2 U.S.C. 1601 et seq., concerning particular projects, applications, or applicants for funding under the Recovery Act unless such views are in writing. An executive department or agency official may communicate orally with registered lobbyists concerning general Recovery Act policy issues, provided that such oral communications shall not extend to or touch upon particular projects, applications, or applicants for funding, and further that the official must contemporaneously or immediately thereafter document in writing: (i) the date and time of the contact on policy issues; (ii) the names of the registered lobbyists and the official(s) between or among whom the contact took place; and (iii) a short description of the substance of the communication. This written summary will be posted publicly on the Commission's website within 3 business days of the communication.

For further information, contact Ian Dillner or Claude Aiken, Wireline Competition Bureau, (202) 418-1580, Jennifer Salhus, Wireless Telecommunications Bureau, (202) 418-1310, Kevin Holmes, Wireless Telecommunications Bureau, (202) 418-2487, or Jeff Cohen, Public Safety and Homeland Security Bureau, (202) 418-1300.

-FCC-

¹² See http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-20-09/ (last visited Mar. 24, 2009).