

State of California

Public Utilities Commission
San Francisco

MEMORANDUM

Date : May 1, 2009

To : The Commission
(Meeting of May 7, 2009)

From : Helen Mickiewicz
Assistant General Counsel

Subject: Filing of Comments in Response to FCC's Notice of Inquiry Regarding
FCC Development of a National Broadband Plan
(GN Docket No. 09-51)

RECOMMENDATION: The Commission should file comments in response to the Federal Communications Commission's (FCC) Notice of Inquiry (NOI), adopted April 8, 2009, seeking public input to inform the development of a national broadband plan. The Commission should urge the FCC to adopt an interim plan which concludes:

- 1) Completion of nationwide mapping is necessary before any national broadband deployment plan can be finalized;
- 2) Immediate action should focus on --
 - (i) adoption,
 - (ii) deployment of critical public infrastructure, such as public safety networks,
 - (iii) targeted deployment in unserved areas where mapping is already completed;
- 3) Adoption incentives should include creation of a federal Lifeline/Link-up Pilot Program to subsidize Internet access service and equipment;
- 4) The FCC should consider the success or failure of projects funded by the ARRA program to inform it as it develops a final deployment plan after nationwide mapping is completed, and
- 5) The initial plan should be revisited regularly for modification as necessary.

The staff recommends that CPUC responses to specific questions raised in the NOI be consistent with California's formal filing with the U.S. National Telecommunications and Information Agency on the economic stimulus broadband grant program (NTIA filing)¹, CPUC filings with the FCC, our formal testimony before Congress, and with NARUC resolutions. Staff further recommends that the Commission share lessons learned from our experience with mapping broadband data, and provide the FCC with valuable information on the costs and benefits of public subsidies for broadband deployment and adoption based on our experience with state-wide programs, such as CASF, CTF and CETF. Comments are due June 8, 2009.

BACKGROUND: In addition to providing \$7.2 billion in broadband economic stimulus funds to develop and expand broadband, the American Recovery and Reinvestment Act of 2009² (ARRA or Recovery Act), requires the FCC to create and deliver a national broadband plan to Congress by February 17, 2010.

The national broadband plan must seek to ensure that all people of the United States have access to broadband capability and must establish benchmarks for meeting that goal. The plan shall also include-

- (A) an analysis of the most effective and efficient mechanisms for ensuring broadband access by all people of the United States;
- (B) a detailed strategy for achieving affordability of such service and maximum utilization of broadband infrastructure and service by the public;
- (C) an evaluation of the status of deployment of broadband service, including progress of projects supported by the ARRA NTIA broadband grants; and
- (D) a plan for use of broadband infrastructure and services in advancing consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, worker training, private sector investment,

¹ "Comments of California Governor Arnold Schwarzenegger and the People of the State of California," *In the Matter of: American Recovery and Reinvestment Act of 2009 Broadband Initiatives; Broadband Technology Opportunities Program; Rural Utilities Service, Distance Learning, Telemedicine and Broadband Program*, Docket No. 090309298-9299-01, April 13, 2009

² American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (ARRA or Recovery Act) §§ 6001(k).

entrepreneurial activity, job creation and economic growth, and other national purposes.³

The Recovery Act also requires NTIA to develop and maintain a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State. Not later than February 17, 2011, NTIA must make this broadband inventory map accessible by the public on its website in a form that is interactive and searchable.

DISCUSSION: The FCC NOI contains over 35 pages of questions on which it seeks public input as it begins development of a national broadband plan. Below is a list of key subject areas on which the FCC seeks input and CPUC staff recommendations for the general direction of CPUC comments. Staff recommends that the CPUC comments focus on those questions where the California experience and the Commission’s expertise can bring the most value to the discussion and on issues of key importance to California. California and the Commission already have public positions on some of these issues. [numbering below reflects the NOI document].

Overview of FCC NOI

B. Establishing Goals and Benchmarks

2. Defining Access to Broadband -- the FCC seeks comment on how it should define “access to broadband.”⁴ Staff Recommendation: “Access” should be defined in terms of availability of the infrastructure. As a long term goal, “access” should be an Internet connection to every household, business, public facility etc. For purposes of the initial national plan, community access -- reasonable access to a library, school, community center, etc. that has free internet access for public use – may be the most effective and least costly method for delivering this service to certain unserved communities.

Para. 28: Access for People with Disabilities -- the FCC specifically seeks comment on what it means for a person with disabilities to “have access” to broadband capabilities. Staff Recommendation: FCC should define accessibility in such a way as to accommodate the widest possible range of users and in conformance with the congressional mandates.⁵

³ Recovery Act §§ 6001(k) (2).

⁴ *Id* at ¶¶ 23 -28.

⁵ *See, e.g.*, The Assistive Technologies Act of 2004, Pub. L. No. 108-364, 118 Stat. 1707 (2004) (codified at 29 U.S.C. §§ 3001-07); and The Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327, Title IV (1990) (codified at 47 U.S.C. § 225).

3. Measuring Progress -- the FCC seeks comment on what metrics it should use to measure progress, with emphasis on data collection.⁶ Staff Recommendation: Mapping should be used to track and measure progress in deployment, access and affordability, with a strong state role. CPUC's comments should be consistent with California's NTIA filing.

4. Role of Market Analysis -- the FCC asks if it should undertake a traditional market analysis with respect to any market related to broadband.⁷ Staff Recommendation: Mapping should be viewed as a kind of market analysis.

C. Effective and Efficient Mechanisms for Ensuring Access

1-3. Market Mechanisms, Determining Costs and Universal Service -- the FCC seeks comment on what mechanisms are currently working and what might be expanded, including discussions of market mechanisms, the role of regulation, and of the cost to bring broadband to 100 percent of the country.⁸ Of particular importance, the FCC seeks comment on the role of universal service programs in ensuring access.⁹ Staff Recommendation: Inform the FCC about our experience with the CASF, CTF, and CETF programs. Recommend adoption of a limited federal Lifeline/Link-up Pilot Program to subsidize Internet access service and equipment for low-income consumers to determine the feasibility of a permanent program.

5. Open Networks -- the FCC seeks comment on the value of open networks as an effective and efficient mechanism for ensuring broadband access for all Americans, and specifically on how the term "open" should be defined. For example, should it incorporate access, interconnection, nondiscrimination, or infrastructure sharing principles?¹⁰ Staff Recommendation: At a minimum, "open network" should include the four principles already adopted by the FCC in its Internet Policy Statement¹¹ and should also require interconnection among providers.

6. Competition -- The FCC seeks comment on the extent to which competition should be evaluated as an effective and efficient mechanism to ensure access.¹² Staff

⁶ NOI at ¶¶ 29-34.

⁷ *Id* at ¶ 35.

⁸ *Id* at ¶¶ 36-41.

⁹ *Id* at ¶¶ 39-41.

¹⁰ *Id* at ¶ 47

¹¹ Policy Statement, 20 FCC Rcd 14987-88, para. 4 (2005) (*Internet Policy Statement*).

¹² NOI at ¶ 49.

Recommendation: Staff recommends using the goals set forth in DIVCA to explain why evaluating competition is important. Increased competition will improve service, encourage broadband deployment, and help drive prices lower for consumers.

7. Other Mechanisms -- the FCC seeks comment on other policies or programs that it should review as a part of its analysis of effective and efficient mechanisms to achieve the goals of the Recovery Act.¹³ The FCC also asks whether policies contained in any current federal, state, or local broadband grant or loan programs act as strong incentives or disincentives for the deployment of broadband. Staff Recommendation: Among other comments, the CPUC should again recommend that FCC require 477 broadband data collection at the street address-level and that the data be available to States. CPUC should also inform the FCC of relevant experiences with CASF, CTF, and DIVCA programs.

D. Affordability and Maximum Utilization and Broadband Privacy – the FCC seeks comment on the requirement that plan include a detailed strategy for achieving affordability of such service and maximum utilization of broadband infrastructure and service by the public.¹⁴ Staff Recommendation: CPUC should recommend a limited federal Lifeline/Link-up Pilot Program for low-income customers. CPUC should discuss the success of the CETF program and its continuing efforts to increase adoption and use of broadband services and the Internet. CPUC should strongly support efforts to ensure subscriber privacy and secure networks.

E. Status of Deployment

1. Subscribership Data and Mapping -- the FCC seeks comment on how it can use broadband subscribership data, collected via Form 477 at the census tract level, to report on the status of broadband deployment, including any benefits and limitations inherent in these data, and how broadband availability data and mapping would help the FCC to accurately assess the status of broadband deployment.¹⁵ Staff Recommendation: CPUC should state that completion of nationwide mapping is necessary before any national broadband deployment plan can be finalized. Other CPUC comments under this section would be consistent with California's NTIA filing.

F. Specific Policy Goals of the National Broadband Plan -- the FCC seeks comment on the Recovery Act requirement that the FCC include a plan for the use of broadband infrastructure and services in advancing a series of public policy goals – including advancing consumer welfare, civic participation, public safety, community

¹³ *Id* at ¶¶ 50-51.

¹⁴ *Id* at ¶¶ 52-60.

¹⁵ *Id* at ¶ 61.

development, health care delivery, energy efficiency, education, worker training, private sector investment, and job growth.¹⁶ Staff Recommendation: The Commission should inform the FCC of our efforts through CETF and the CPUC's own programs to address these public policy goals. The CPUC should urge the FCC to make deployment for public safety, health care, education, and community development purposes a priority under the plan. The CPUC should also urge that the plan give high priority to adoption by the nation's urban poor.

G. Improving Government Performance and Coordination with Stake holders – the FCC seeks comment on how a coordinated effort among federal departments and agencies; tribal, state, and local governments; and interested groups and individuals may enable the nation to achieve Congress's goal that all Americans have access to broadband.¹⁷ Staff Recommendation: The CPUC should urge the FCC to give states a large role in developing and carrying out the plan. State governments are in a better position to address broadband mapping, grant allocation, etc., than the Federal government. This advantageous position is based on a state government's superior knowledge of the technical needs, geography, and financial landscape of their unique jurisdictions. The CPUC should also provide examples of how public/private partnerships can collaborate to advance common broadband objectives.

HMM:nas

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¹⁶ Id at ¶¶ 63-105

¹⁷ Id at ¶¶ 112-122.