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April 13, 2009

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 205554

Re: GN Docket No. 09-40

Dear Secretary Dortch:

These comments are submitted on behalf of the New York Public Service Commission and New York CIO/Office for Technology pursuant to the Public Notice in the captioned docket released on March 24, 2009. They respond to the request for comments "on the Commission's consultative role in the broadband provisions of the [American Recovery and Reinvestment Act of 2009]."

We have commented on the definitions as requested in the notice, but we wish to emphasize the definitions for unserved and underserved should be flexible. The definitions should allow for providing and enhancing connectivity to the broadest spectrum of users based on their service needs. Also, the definitions should not eliminate current technology at lower speeds in instances where no other service provider is willing to provide service at a higher speed to meet the threshold.

1. Unserved Area

"Unserved" is defined as any area with Internet service below 768 kbps. The threshold speed should, however, have flexibility to allow for applicants for funding who propose a build-

out in an unserved area at speeds less than threshold speed if there are no other providers offering internet service in the area of at least 768 kbps.

2. Underserved Area

“Underserved” should be defined broadly to address a variety of service issues and need for broadband as determined by the applicant. Areas may be underserved for a variety of reasons, such as not having sufficient speeds, unable to afford broadband or the hardware to access the Internet, lack of the skills to take advantage of the technology, or requiring education as to the benefits of broadband. Similarly, underserved can be based on a need for greater speeds and bandwidth to meet particular needs of a community such as for economic development, educational and institutional needs, and for libraries and community technology centers. Examples of applications that require higher speeds and greater bandwidth include, but are not limited to, the following: telemedicine; university research and supercomputing centers; technology centers; e-government applications being provided remotely through kiosks or satellite offices. Moreover, adoption rates need to be examined in local areas to identify segments of populations within the community that do not have the same broadband service as the overall community because they either require access or education.

3. Broadband Service

The threshold speed for broadband service should be a speed of more than 768 kbps. The speed should be measured by considering average and maximum speeds – to allow for usage impact on network speeds. The Commission should not establish different threshold speeds for different technology platforms.

4. Non-Discrimination Obligations

The Commission should define the nondiscrimination and network obligations in a technology neutral manner consistent with both the Commission’s four principles as contained in its September 23, 2005 Policy Statement for broadband networks.

We support the use of the FCC’s four principles for broadband networks to define applicants’ obligations for nondiscrimination and network management techniques. Consistent with the FCC’s four principles, a service provider cannot deliberately impede the flow of information between a content provider and a willing subscriber. Companies should provide

adequate capacity to content service providers and treat all similarly situated users in a non-discriminatory fashion.

In times of emergency or high volume use, the need to throttle high capacity users and applications might exist. This would be analogous to the network controls put on portions of the network infrastructure that support high volume calls to radio stations. If such controls are disclosed to subscribers then they could constitute reasonable network management practices.

5. Network Interconnection Obligations

Interconnection obligations should be consistent with existing federal statutory obligations for interconnection and traffic exchange. However, this should not be interpreted to mean a service provider must unbundle its proprietary network in order to make pieces of it available to other service providers.

With the flexibility inherent in these definitions, the Commission will maximize connectivity and support economic development, as well as support each state's broadband vision as set forth in its broadband strategy, policies and goals.

Respectfully submitted,



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