

Telecommunications Alert: FCC Seeks Comment on Definition of "Broadband"

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The Federal Communications Commission (FCC) is requesting "tailored" comments on how to define "broadband" for purposes of the National Broadband Plan. Comments are due August 31, 2009, and reply comments are due September 8, 2009. You can read the notice [here](#). The notice hints that there will be more requests for comments on targeted issues relating to the plan. The economic stimulus bill passed by Congress last February (the "American Recovery and Reinvestment Act") allocated about \$7 billion for broadband projects and directs the FCC to create a National Broadband Plan. The plan must seek to ensure that every American has access to broadband capability and establishes clear benchmarks for meeting that goal. The FCC must deliver the plan to Congress by February 17, 2010. The agencies responsible for awarding broadband stimulus funding have already adopted a definition of "broadband" for purposes of distributing grants and loans under the Recovery Act (see their Notice of Funds Availability), and the FCC itself has already received comments on how to define "broadband capability" in response to a May 2009 Notice of Inquiry. Nonetheless, the FCC wants more information. Its new request for comments seeks to help fill a need for "additional, focused comment on certain specific topics" that the FCC found necessary after reviewing comments submitted in response to the National Broadband Plan notice of inquiry (NOI), and from a series of staff workshops the FCC has been holding "to promote an open dialogue between the FCC and key constituents on matters important to the National Broadband Plan." The FCC considers an understanding of what constitutes "broadband" to be essential to evaluating the extent to which broadband capability is available, and informing evaluation of particular policy approaches intended to ensure access to broadband capability. The current notice therefore seeks targeted comment on the following three aspects of the definition of broadband: the general form, characteristics, and performance indicators that should be included in a definition of broadband the minimum thresholds that should be assigned to these performance indicators today how the definition should be reevaluated over time. The notice acknowledges that the Rural Utilities Service of the Department of Agriculture (RUS) and the National Telecommunications and Information Administration of the Department of Commerce (NTIA) have already included a definition of "broadband" in the information being used to distribute broadband grants and loans under the American Recovery and Reinvestment Act. The notice sets forth a list of specific questions pertaining to each of these three general aspects: Form, Characteristics, and Performance Indicators. The FCC seeks comment on: the form that a definition of broadband should take whether to develop a single definition, or multiple definitions whether an application-based approach to defining broadband would work, and how such an approach could be expressed in terms of performance indicators the key characteristics and specific performance indicators that should be used to define broadband what segment(s) of the network each performance indicator should measure, such as the local access link to the end user, or an end-to-end path how factors such as latency, jitter, traffic-loading, diurnal patterns, reliability, and mobility should specifically be taken into account whether different performance indicators or definitions should be developed based on technological or other distinctions, such as mobility or the provision of the service over a wired or wireless network the feasibility and verifiability of measuring different performance indicators. Thresholds. The FCC seeks comment on: what minimum

thresholds should be assigned to the performance indicators the minimum thresholds necessary for broad classes of applications to function properly whether the FCC should adopt multiple, escalating tiers of minimum thresholds. Updates. The FCC seeks comment on: what ongoing process should be put in place to update the definition, particularly the threshold levels how often such updates should occur what criteria should be used to adjust thresholds over time how modifications over time to the definition will affect the FCC's ability to collect and publish meaningful data on broadband deployment and adoption. Comments and reply comments filed in response to the notice should (1) refer to GN Docket Nos. 09-47, 09-51, and 09-137; (2) be titled "Comments [or Reply Comments] - NBP Public Notice #1"; and (3) adhere to the organization and structure of questions in the notice. The blog associated with the National Broadband Plan continues to be populated with new entries, the most recent of which discusses the most recent notice. "Blogband" can be accessed here. * * * Please contact your Mintz Levin telecommunications attorney, or any attorney listed in the left column of this Alert, for more information as we continue to follow development of the National Broadband Plan.

For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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