

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Broadband Provisions of the	)	GN Docket No. 09-40
Recovery Act	)	
	)	

**COMMENTS OF TIME WARNER CABLE INC.**

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## EXECUTIVE SUMMARY

Time Warner Cable Inc. (“TWC”) has long been a leading innovator in the broadband arena, and the provision of broadband service to residential and commercial users is central to TWC’s current operations and future plans. Accordingly, TWC has a strong interest in the broadband stimulus funding programs under the American Recovery and Reinvestment Act of 2009 (“ARRA”), and it looks forward to working with the Commission as well as with the National Telecommunications & Information Administration (“NTIA”), the Rural Utilities Service (“RUS”), and other interested parties to ensure that the stimulus funds are used in a manner that best promotes broadband deployment and adoption without undermining other critical communications policies.

To that end, TWC respectfully urges the Commission to advise NTIA (and, to the extent appropriate, RUS) to adhere to the following key principles when administering the broadband funding programs:

- Refrain from imposing additional nondiscrimination mandates beyond the Commission’s *Broadband Policy Statement*;
- Enforce existing network interconnection obligations;
- Rely on the Commission’s Form 477 broadband speed categories;
- Apply a straightforward definition of “unserved” that reflects the statute’s text and structure; and
- Avoid subsidizing competition through an overly broad definition of “underserved.”

TWC recognizes that implementing the broadband funding programs will be an ongoing task, and it anticipates being an active participant in those efforts. At this preliminary but critical stage, TWC believes that adopting the above principles will help create a predictable and rational

framework for facilitating the distribution of funds in the near future, consistent with the statute's clear aims.

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Time Warner Cable Inc. (“TWC”) respectfully submits these comments in response to the Public Notice issued by the Commission in the above-referenced docket.<sup>1</sup> The Commission seeks comment on its consultative role under the broadband provisions of the American Recovery and Reinvestment Act of 2009 (“ARRA”),<sup>2</sup> with respect to certain definitional issues left open by that legislation. As discussed below, TWC urges the Commission in its advisory capacity to support five key principles that, if established at the outset, will create a basic framework for implementing successful broadband funding programs without undermining other critical communications policies.

**BACKGROUND**

TWC, the nation’s second-largest cable operator, owns or manages cable systems passing nearly 27 million homes. In addition to its basic and digital cable services, TWC offers broadband Internet access and facilities-based VoIP services over its nationwide broadband network.

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<sup>1</sup> Public Notice, *Comment Procedures Established Regarding the Commission’s Consultative Role in the Broadband Provisions of the Recovery Act*, DA 09-668, GN Docket No. 09-40 (rel. Mar. 24, 2009).

<sup>2</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“ARRA”).

The provision of broadband service to residential and commercial users is central to TWC's current operations and future plans. TWC has long been a leading innovator in the broadband arena. It was one of the first service providers to launch a broadband Internet access service, and its Road Runner service was available years before most telecommunications carriers offered DSL. TWC's broadband infrastructure not only has brought market-leading Internet access to millions of consumers, but also has enabled TWC to deploy VoIP services throughout its geographic footprint.<sup>3</sup> In fact, TWC was the first cable operator—and one of the first service providers—to introduce a mass-market facilities-based VoIP service, Digital Phone, bringing a reliable, feature-rich, competitive voice alternative to millions of residential consumers. More recently, TWC launched its Business Class Phone service to small and medium-sized businesses in the majority of its operating areas, and it expects to complete the rollout of this service to all of its service areas in 2009. Given its history of innovation and the centrality of broadband to its future competitiveness, TWC has a strong interest in the ARRA's broadband stimulus initiatives.

## DISCUSSION

The Commission seeks comment on its consultative role in resolving five definitional issues presented by the ARRA. TWC commends the Commission for soliciting public input on these issues, and it respectfully urges the Commission to advise NTIA (and, to the extent appropriate, RUS) to adhere to the following key principles when administering the broadband funding programs.

**1. Refrain From Imposing Additional Nondiscrimination Mandates Beyond the Commission's *Broadband Policy Statement*.** The ARRA conditions funding grants on

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<sup>3</sup> As discussed below, the Commission has repeatedly recognized the nexus between promoting VoIP and promoting broadband more generally. *See infra* at 6-7.

compliance with “nondiscrimination and network interconnection obligations” to be developed and published by NTIA in coordination with the Commission, and such obligations must include the principles set forth in the Commission’s 2005 *Broadband Policy Statement*.<sup>4</sup> The Commission should advise NTIA that no additional steps beyond mandating compliance with the *Broadband Policy Statement*, as the ARRA suggests, are needed to address the statute’s nondiscrimination directive while encouraging maximum participation in the funding application process by prospective broadband providers.

Now is not the time, nor is this the appropriate proceeding, to engage in a debate about the need for net neutrality obligations. The clear, overarching purpose of the ARRA is to jumpstart the deployment of broadband facilities in unserved areas and to expand broadband availability generally, thereby creating jobs immediately and extending the near-term economic, educational, social, and other benefits of broadband services. Debates in this proceeding about new net neutrality regulations would only divert attention from these important goals, delaying the distribution of funds while generating considerable contention when the Commission should instead be fostering a spirit of collaboration. That delay would be exacerbated by the need to comply with the requirements of the Administrative Procedure Act in connection with the adoption of any new nondiscrimination rules.

Although the ARRA conditions funding grants on compliance with the *Broadband Policy Statement*, the Commission should carefully consider whether imposing additional net neutrality obligations would be counterproductive to the statute’s goals. In particular, as TWC and other commenters in other proceedings have emphasized, given the dynamic competition that

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<sup>4</sup> ARRA § 6001(j); see *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Policy Statement, 20 FCC Rcd 14986 (2005) (“*Broadband Policy Statement*”).

characterizes the broadband marketplace, the tremendous growth in broadband that has occurred in the absence of intrusive regulation, and the disincentives against investment that such regulation can cause, the Commission should be especially loathe to recommend the application of net neutrality regulations in connection with programs that are intended to spur additional investment.<sup>5</sup>

As TWC has explained at length elsewhere, robust competition in the broadband marketplace ensures that service providers will act in consumers' best interests.<sup>6</sup> In particular, broadband providers must adopt reasonable pricing practices and traffic management policies or consumers will defect to a competitor that better meets their needs. The threat of such defections will prevent abusive practices.

Moreover, further regulatory mandates would threaten to undercut the important goals embodied in the ARRA. TWC and other network owners have explained that the prospect of stringent net neutrality requirements would deter broadband platform providers from investing in new facilities, meaning that some of the entities most capable of expanding broadband capabilities would be forced to the sidelines.<sup>7</sup> Particularly in this troubled economic climate, where capital is scarce and risks are magnified, the government should take great care to avoid creating additional barriers to infrastructure investment; it should instead focus on ways to eliminate such barriers.

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<sup>5</sup> See generally Reply Comments of Time Warner Cable Inc., WC Docket No. 07-52 (filed Feb. 28, 2008); Comments of Time Warner Cable Inc., WC Docket No. 07-52 (filed Feb. 13, 2008) ("TWC 2008 Net Neutrality Comments"); Comments of Time Warner Inc., WC Docket No. 07-52 (filed June 15, 2007).

<sup>6</sup> See TWC 2008 Net Neutrality Comments at 4-9.

<sup>7</sup> See *id.* at 21-24.



Finally, the Commission should remind NTIA that, even under the *Broadband Policy Statement*, broadband providers are permitted to undertake reasonable network management practices in order to manage the ever-increasing flow of traffic over their networks and thereby address the root causes of network congestion.<sup>8</sup> As with the issues noted above, there is a voluminous record demonstrating the need for such flexibility, which should not be limited through the broadband funding programs.

**2. Enforce Existing Network Interconnection Obligations.** While the Commission should counsel NTIA against the adoption of new regulations that will deter investment, it should at the same time vigorously support the strict enforcement of interconnection obligations already established by law.

As an initial matter, the stimulus legislation’s reference to “network interconnection obligations” should be given the same meaning embodied in Sections 201 and 251 of the Communications Act. In contrast to “net neutrality,” those interconnection obligations are well established in statutes and rules and have been widely implemented. The Commission has recognized the central importance of interconnection as a building block in establishing local telephone competition, and, with the emergence of IP-enabled services, the Commission has emphasized the right of wholesale carriers to interconnect with incumbent LECs for the purpose of exchanging traffic on behalf of VoIP providers.<sup>9</sup> As the Commission has observed, such

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<sup>8</sup> *Broadband Policy Statement* ¶ 5 n.15.

<sup>9</sup> *See Time Warner Cable Request for Declaratory Ruling that Competitive Local Exchange Carriers May Obtain Interconnection Under Section 251 of the Communications Act of 1934, as Amended, to Provide Wholesale Telecommunications Services to VoIP Providers*, Memorandum Opinion and Order, 22 FCC Rcd 3513 ¶ 8 (WCB 2007) (“*TWC Interconnection Order*”) (reaffirming that “telecommunications carriers are entitled to interconnect and exchange traffic with incumbent LECs . . . for the purpose of providing wholesale telecommunications services” to VoIP providers); *Implementation of the Local Competition Provisions in the Telecommunications Act of*

wholesale relationships are also essential to allowing VoIP providers to port telephone numbers,<sup>10</sup> and to provide their customers with E911 functionality.<sup>11</sup>

Nevertheless, some rural incumbents have defied those unequivocal rulings and refused to interconnect with competitive carriers that provide wholesale services to facilities-based VoIP providers (in some cases with the acquiescence of state commissions), while others have professed confusion regarding interconnection obligations in the VoIP context even though the Commission has been abundantly clear on the matter.<sup>12</sup> These debates continue to play out before state commissions and federal and state courts. Such conduct threatens to hamper VoIP's development, which in turn would adversely impact broadband deployment—an outcome that of course is precisely the opposite of what the ARRA envisions. The nexus between VoIP and broadband is well established.<sup>13</sup> The Commission has frequently recognized that promoting the

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*1996, Order on Remand and Report and Order, 16 FCC Rcd 9151 ¶ 11 (2001) (stating that Internet service providers are entitled to access the public switched telephone network by purchasing telecommunications services from competitive carriers).*

<sup>10</sup> *Telephone Number Requirements for IP-Enabled Services Providers, Report and Order, Declaratory Ruling, Order on Remand, and Notice of Proposed Rulemaking, 22 FCC Rcd 19531 ¶ 20 (2007) (“VoIP LNP Order”)* (noting that interconnected VoIP providers “may make numbers available to their customers through commercial arrangements with carriers (*i.e.*, numbering partners)”); *see also TWC Interconnection Order* ¶ 16 n.46 (“Because our number portability rules apply to all local exchange carriers, customers effectively are able to port numbers to VoIP providers today by virtue of their relationship with a wholesale local exchange carrier.”).

<sup>11</sup> *IP-Enabled Services; E911 Requirements for IP-Enabled Service Providers, First Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 10245 ¶ 52 (2005) (“VoIP 911 Order”)* (stating that interconnected VoIP providers “often enlist a competitive LEC partner in order to obtain interconnection to the Wireline E911 Network”) (citation omitted).

<sup>12</sup> *See Vermont Telephone Company, Petition for Declaratory Ruling Whether Voice over Internet Protocol Services Are Entitled to the Interconnection Rights of Telecommunications Carriers, WC Docket No. 08-56 (filed Apr. 11, 2008).*

<sup>13</sup> *Availability of Advanced Telecommunications Capability in the United States, Fourth Report to Congress, 19 FCC Rcd 20540, 20578 (2004)* (“[S]ubscribership to broadband services will increase in the future as new applications that require broadband access,

availability of VoIP services, which require a broadband connection, necessarily promotes broadband deployment more generally as contemplated by Section 706.<sup>14</sup> As the Commission has expressly stated, the causal connection is particularly evident in connection with interconnection rights: “[A]ffirming the rights of wholesale carriers to interconnect for the purpose of exchanging traffic with VoIP providers will spur the development of broadband infrastructure.”<sup>15</sup>

Given this clear nexus between VoIP and the promotion of broadband, the Commission should recommend that NTIA condition funding grants—particularly those awarded to incumbent local exchange carriers—on compliance with existing requirements to interconnect regardless of whether the ultimate end user purchases a circuit-switched or IP-enabled voice offering.

In addition to seeking strict compliance with interconnection requirements by telecommunications carriers, the Commission should recommend requiring providers of

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*such as VoIP*, are introduced into the marketplace, and consumers become more aware of such applications.”) (emphasis added).

<sup>14</sup> See 47 U.S.C. § 157 note (a). The Commission has consistently found that actions intended to “spur consumer demand” for VoIP services will “in turn driv[e] demand for broadband connections, and consequently encourage[e] more broadband investment and deployment consistent with the goals of section 706.” *VoIP LNP Order* ¶ 29; see also, e.g., *Implementation of the Telecommunications Act of 1996; Telecommunications Carriers’ Use of Customer Proprietary Network Information and Other Customer Information*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927 ¶ 59 (2007); *VoIP 911 Order* ¶ 31; *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691 ¶ 28 (2008) (“*Broadband Reporting R&O*”) (requiring interconnected VoIP providers to report information about their subscribers, consistent with the Commission’s responsibilities under Section 706 to encourage broadband deployment).

<sup>15</sup> *TWC Interconnection Order* ¶ 13.

information services to interconnect any facilities they construct directly or indirectly with other broadband networks under currently applicable regulations and industry practices.

**3. Rely on the Commission’s Form 477 Broadband Speed Categories.**

Regarding the definition of “broadband,” the Commission should recommend speed tiers—both for determining funding eligibility and for evaluating grant applications—that are consistent with the broadband speed categories set forth in the Commission’s newly revised Form 477. Those speed categories have been thoroughly vetted and reflect current broadband technologies,<sup>16</sup> making them a logical basis for defining broadband in connection with the distribution of funding. They also permit sufficient flexibility to account for technical differences between networks and other factors that affect broadband speeds, furthering Congress’s intent that the funding programs be administered in a technologically neutral manner.

Companies were required to submit broadband availability information using the revised Form 477 speed categories on March 16, 2009, and the Commission currently is reviewing that data.<sup>17</sup> Based on the actual data collected with respect to each of the Commission’s specified broadband tiers, TWC submits that the Commission has before it empirical data demonstrating “current generation” and “next generation” broadband speeds for funding purposes. Relying on that data would allow the Commission, if it so desired, to tailor its recommended definitions in

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<sup>16</sup> *Broadband Reporting R&O ¶¶ 19-21.*

<sup>17</sup> *See Letter from Michael J. Copps, Acting Chairman, FCC, to the Honorable Joe Barton, Ranking Member, Committee on Energy and Commerce, and the Honorable Cliff Stearns, Ranking Member, Committee on Energy and Commerce, at 2 (Mar. 31, 2009).*

light of factors that may affect broadband speeds, including variations in technology and geography.<sup>18</sup>

Finally, the Commission should counsel NTIA to be mindful of the problems that could result from an approach premised on “actual” speeds and, more broadly, to adopt rules that can be easily implemented. While TWC supports the use of maximum available speeds to determine funding eligibility, as in other contexts,<sup>19</sup> any alternative must be feasible as a practical matter.

**4. Apply a Straightforward Definition of “Unserved” That Reflects the Statute’s Text and Structure.** The Commission should recommend that NTIA give the term “unserved” its plain meaning—that is, an “unserved” area should be defined as one in which there is *no* broadband of any kind available (*i.e.*, neither current-generation nor next-generation).<sup>20</sup> Such an approach will ensure that funding is directed to those areas most in need of some type of broadband. Otherwise, such areas may be foreclosed from obtaining any broadband capability in the reasonably foreseeable future. Parties that recommend defining “unserved” so broadly as to include an area where current-generation broadband capabilities are available to a significant portion of the population would threaten to undermine the statutory distinction between unserved and underserved. The ARRA clearly contemplates that “unserved” areas are those that lack access to broadband altogether, whereas “underserved” areas are those

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<sup>18</sup> See *A National Broadband Plan for Our Future*, Notice of Inquiry, GN Docket No. 09-51 (rel. Apr. 8, 2009), Statement of Acting Chairman Michael J. Copps, at 3 (noting need for broadband policy to be based on concrete data).

<sup>19</sup> See Comments of Time Warner Cable Inc., WC Docket No. 07-38, at 7-8 (filed Aug. 1, 2008) (“TWC Broadband Reporting Comments”) (explaining that actual broadband speeds can vary due to many factors outside the provider’s control).

<sup>20</sup> See, *e.g.*, Letter from Senator Jeanne Shaheen *et al.* to Michael J. Copps, Acting Chairman, FCC, at 1 (Mar. 9, 2009) (urging Commission to prioritize funding for unserved areas, described as those that only have access to dial-up connections).

that enjoy some access but warrant proactive efforts by government to increase availability, awareness, and/or demand.

**5. Avoid Subsidizing Competition Through an Overly Broad Definition of “Underserved.”** Finally, the Commission should advise NTIA to define the term “underserved” in a manner that avoids giving artificial advantages to particular competitors in areas where broadband service already is available from at least one provider. Subsidizing competition in that manner could have the opposite impact intended by Congress, as it would retard, rather than promote, the investment of private capital. Service providers that have expended billions of risk capital to build out broadband networks naturally will be wary of making further investments if the government pays for a competitor to construct overlapping facilities. The Commission should work with NTIA to ensure that the stimulus program supports long-term investment by the private entities who will be counted on to commit substantially more than the available public funds in deploying next-generation capabilities.

One way to promote this objective is to focus on improving access to broadband services in underserved communities through programs targeted to adoption or affordability. Reliance on locally oriented efforts undertaken by private-public partnerships to identify such areas would be useful.<sup>21</sup> Congress ensured that funding would be available not only for supply-side initiatives (presumably concentrated in unserved areas), but also for demand-side efforts aimed at the factors that have limited adoption rates even where broadband services are generally available today. The Commission should work with NTIA to ensure that such barriers are well-understood and aggressively addressed.

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<sup>21</sup> See TWC Broadband Reporting Comments at 4-6.

## CONCLUSION

TWC recognizes that implementing the broadband funding programs will be an ongoing task, and it anticipates being an active participant in those efforts as well as in other Commission efforts to accomplish federal goals and objectives in connection with broadband. At this preliminary but critical stage, so aptly described by many as the “jumpstarting” phase, TWC believes that adopting the principles described above will help create a predictable and rational framework for the distribution of funds in the near future, consistent with the ARRA’s clear aims.

Respectfully submitted,

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