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**CLIENT ALERT**<sup>1</sup>

**FCC SEEKS COMMENT ON DEVELOPMENT OF A NATIONAL BROADBAND PLAN**

April 22, 2009<sup>2</sup>

In response to the American Recovery and Reinvestment Act of 2009<sup>3</sup> (the “Recovery Act”), the Federal Communications Commission (“FCC” or “Commission”) has released a Notice of Inquiry<sup>4</sup> (“NOI”) seeking public input on various questions related to the creation of a national broadband plan. The Recovery Act instructs the Commission to develop the national broadband plan, which must be delivered to Congress by February 17, 2010.<sup>5</sup> The plan is to act as a “roadmap” to achieving the goal of ensuring all Americans have access to broadband services.

The national broadband plan must include an analysis of several specific elements of broadband deployment including:

1. The most effective and efficient mechanisms for ensuring broadband access by all people of the United States;
2. A detailed strategy for achieving affordability of such service and maximum utilization of broadband infrastructure and service by the public;

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<sup>1</sup> This client alert, while accurate to the best of our knowledge, is provided complimentary to clients and friends of Sapronov & Associates, P.C. for tutorial purposes only and is not to be construed as a legal opinion or legal advice. Please contact us at 770-399-9100 or 202-223-0646, or at [info@wstelecomlaw.com](mailto:info@wstelecomlaw.com) if you have specific questions about this alert – or if you wish to be removed from our mailing list.

<sup>2</sup> Subsequent to the publication of this alert, the FCC issued its National Broadband Plan. See Executive Summary Attached. For a copy of entire text of the plan, please contact us.

<sup>3</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“Recovery Act”).

<sup>4</sup> *In Re: A National Broadband Plan for Our Future* (GN Docket No 09-51) (FCC 09-31), Notice of Inquiry (Released April 8, 2009) (“NOI”).

<sup>5</sup> Recovery Act § 6001(k)(2).

3. An evaluation of the status of deployment of broadband service, including progress of projects supported by grants made pursuant to the Recovery Act ; and
4. A plan for use of broadband infrastructure and services in advancing a broad array of public interest goals, including consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, worker training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes.<sup>6</sup>

In sum, the plan must show an understanding of the problem, create clear goals, outline a route to achieve such goals, and establish appropriate benchmarks, all while allowing for future modification as needs and services develop. In furtherance of these objectives, the FCC asks the following questions of stakeholders:

- How can the FCC implement a plan that will ensure that all Americans have access to broadband capability, including the establishment of benchmarks to meet this goal?
- How should “broadband capability” be defined and what does it mean to have access to it?
  - Should the Commission combine existing definitions,<sup>7</sup> or keep them separate?
  - Should the speeds that define broadband be raised?
  - Should broadband be defined by bandwidth and latency, and what portion of the network should it apply to?
  - Should definitions utilized by other organizations and governmental agencies be considered?
  - Should the definition be permanent or flexible, and able to change with evolving technologies? Should it be based on the type of technology? Geography?
  - Should price be a factor in deciding if a consumer “has access” to broadband?
- How can the Commission provide an analysis of the most efficient/effective ways of ensuring all Americans have access to broadband?
  - How, if at all, can existing data collections assist in measuring progress? Can they be improved and if so, how?

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<sup>6</sup> See NOI at ¶ 9.

<sup>7</sup> The Commission currently uses the term “advanced telecommunications”, defined in §706 of the 1996 Act, which states, “The term ‘advanced telecommunications capability’ is defined, without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.” 47 U.S.C. § 157 nt (d), “broadband” and “high-speed Internet.” See *Section 706 Fifth Report*, 23 FCC Rcd at 9716, para.2.

- Have other countries implemented a measurement plan/program that has been successful?
- How can the Commission ensure that all data collected is accurate?
- How can the FCC create strategies for achieving affordability and maximum utilization of broadband infrastructure and services?
  - What costs should be considered? Cost of build out? To the consumer? Universal Service Programs?
- How should the FCC evaluate the status of broadband deployment, including the progress of related grant programs?
  - What methods currently exist and are they effective? Are there additional mechanisms or changes that can be made to existing ones that should be considered?
- How can the Commission develop a plan for utilizing broadband infrastructure and services to promote achievement of a number of goals, including 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, entrepreneurial activity, job creation, and economic growth, and other national purposes?
- Should additional elements be included in the plan?
- How can the Commission work with other agencies, organizations, consumers and the private sector in developing and implementing the national broadband plan?

Parties interested in filing comments must do so by June 8, 2009; reply comments are due July 7, 2009. Any filings related to the NOI should refer to GN Docket No. 09-51.

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Should you have any questions regarding this Alert, or need assistance in filing comments, please do not hesitate to contact us.