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Memorandum To Clients and Other Interested Parties Regarding the FCC's National Broadband Plan

The American Recovery and Reinvestment Act of 2009 required the FCC to submit to Congress a National Broadband Plan ("Plan") to promote the availability of broadband (high-speed Internet) capability to all people of the United States. Congress directed the FCC to examine broadband deployment, adoption, affordability, and the use of broadband to advance solutions to national priorities, including health care delivery, energy independence, education, job creation, and economic growth.

The FCC released the Plan today. It sets an ambitious goal of the delivery of 100-megabit-per-second broadband service to 100 million households by 2020. To achieve this goal, the Plan makes a series of recommendations that would require action by Congress, the FCC, other federal agencies, and state and local governments. The Plan will likely spawn dozens of FCC rulemakings. The Plan further recommends that the White House coordinate the plan implementation.

Many of the Plan's recommendations directly or indirectly affect state and local governments, municipal electrical utilities and rural electrical cooperatives, schools, libraries, colleges, and a host of other non-profit sector entities. Given the size and breadth of the Plan, we only highlight a few aspects here.

I. Broadband Infrastructure Recommendations

The Plan identifies infrastructure costs – defined as right-of-way ("ROW") access, permitting, and pole attachments – as a significant impediment to broadband deployment and seeks ways to lower those costs.

A. *Right-of-Way Compensation and Management*

While the Plan does not recommend a specific ROW compensation formula, it does "lean" toward state laws that have made uniform and, in most cases, reduced the ROW compensation that local governments receive. The Plan also questions ROW fees that are based

on market value. The Plan recommends that the FCC establish an intergovernmental Task Force to (1) identify the types of federal, state and local ROW fees and practices that now exist, and (2) develop guidelines and best practices as to ROW fees. The Task Force is to deliver its recommendations to the FCC within six months of formation.

B. Pole Attachments

The Plan also identifies pole attachment rates as a significant broadband deployment cost. It recommends that the Congress amend the Pole Attachment Act, 47 U.S.C. § 224, to (1) eliminate the muni/co-op exemption, and (2) permit the FCC to establish pole attachment rates that are as low and close to uniform as possible.

II. Public Safety Recommendations

The Plan makes several public safety-related recommendations, including the following ones concerning a 700 MHz nationwide interoperable broadband wireless public safety network:

- A.** The FCC is to auction the 700 MHz D Block for commercial use.
- B.** Public safety users will have access not only to D Block spectrum, but also to the entire 700 MHz wireless broadband spectrum through roaming and priority access.
- C.** Public safety users will have choices, flexibility and control on how to deploy their own 700 MHz networks in coordination, or through contracts with, commercial wireless providers.
- D.** The Plan asks Congress to establish a federal grant program of \$16 to \$18 billion over 10 years for state and local public safety agencies, with \$6.5 billion for construction of the public safety broadband network, and \$6 to \$10 billion for operating and upgrading the public safety network.
- E.** The FCC will create an Emergency Response Interoperability Center (ERIC) as a coordination center to ensure nationwide interoperability, roaming, and uniform technical standards.

III. Energy and Environmental Recommendations

A. Integrating broadband into the Smart Grid

- The FCC will initiate a proceeding to explore the reliability and resiliency of commercial broadband communications networks.
- States should be required to reduce impediments and financial disincentives for utilities' use of commercial service providers for Smart Grid communications.

- The North American Electric Reliability Corporation (NERC) should clarify its Critical Infrastructure Protection (CIP) security requirements.
- Congress should consider amending the Communications Act to enable utilities to use a portion of the public safety 700 MHz wireless broadband network.
- NTIA and the FCC should continue their joint efforts to identify new uses for federal spectrum and should consider the requirements of the Smart Grid.
- The U.S. Department of Energy (“DOE”), in collaboration with the FCC, should study the communications requirements of electric utilities to better guide federal Smart Grid policy.

B. Promoting innovation in Smart Homes and Smart Building

- States should require electric utilities to provide consumers Internet access to, and control of, their own digital energy information, including real-time information from smart meters and historical consumption, price and bill data. If states fail to develop reasonable policies in the next 18 months, Congress should consider national legislation to require consumer Internet accessibility to their energy data, subject to privacy protections.
- FERC should adopt consumer digital data accessibility and control standards as a model for the states to follow.
- DOE should consider consumer data accessibility policies when evaluating Smart Grid grant applications, report on the states’ progress toward enacting consumer data accessibility and develop best practices guidance for states.
- The Rural Utilities Service (“RUS”) should make Smart Grid loans to rural electric cooperatives a priority, including integrated Smart Grid-broadband projects. RUS should favor Smart Grid projects from states and utilities with strong consumer data accessibility policies.

IV. Digital Inclusion (Broadband Adoption) and Education Recommendations

The Plan recommends spurring broadband to the 100 million Americans who lack broadband services by: (a) improving digital literacy through funding a Digital Literacy Corps and increasing the capacity of libraries and community centers for digital literacy training; and (b) making broadband more affordable by expanding the FCC’s current Universal Service Lifeline and Link-Up programs (which now cover only voice telephone service) to cover broadband, and by making some portion of newly auctioned wireless spectrum available to provide free wireless service.

The Plan further recommends upgrading the E-Rate for Schools and Libraries Program by: (1) increasing flexibility, bandwidth, and program efficiency; (2) fostering innovation with

pilot programs, including supporting wireless connectivity to devices on and off campus; (3) improving connectivity to community colleges, libraries, and community centers; and (4) allowing use of E-rate-funded broadband facilities in schools by the public after school hours.

V. Universal Service Recommendations

The Plan recommends reforming the current Universal Service Fund (“USF”) program, which deals only with voice telephone, to transition to broadband. The FCC proposes to accomplish this objective by:

- A. Transitioning, over the next ten years, the USF High-Cost Fund, which now funds voice telephony, to a Connect America Fund, which would fund broadband in rural and other high-cost areas.
- B. Creating a new targeted Mobility Fund to extend 3G wireless services coverage.
- C. Reforming intercarrier compensation gradually to phase out per-minute charges.
- D. Expanding broadband service without increasing the current USF’s \$8 billion annual size.

VI. Government Broadband Recommendations

A. Municipal Broadband

The Plan urges Congress to make clear that state, local and Tribal governments can build broadband networks.

B. Government Demand Aggregation

The Plan makes several recommendations intended to improve the broadband capability, at lower cost, of governments, schools, hospitals and other key anchor institutions. Among those recommendations are to (1) allow state and local governments to participate in federal contracts for communications service; and (2) facilitate demand aggregation through the use of state, regional and local broadband networks connecting governmental institutions and other anchor institutions.

VII. Spectrum Recommendations

The Plan is strongly focused on spectrum policy recommendations as key to unleashing mobile broadband and spurring job creation and economic growth. The Plan seeks to free up an additional 500 MHz of spectrum for mobile broadband use by various measures, including:

- A. An FCC “Mobile Future Auction,” permitting television broadcasters to voluntarily relinquish all or part of their spectrum in exchange for a share of spectrum auction proceeds.

- B. Giving Mobile Satellite Service (MSS) and Wireless Communications Service (WCS) licensees' the flexibility to use their spectrum towards mobile broadband use.
- C. Encouraging innovative ways of using spectrum, including by permitting increased unlicensed use of spectrum.

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