



May 26, 2009

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FCC Launches Development of National Broadband Plan

The Federal Communications Commission opened a proceeding last month to develop a national broadband plan (“Plan”) as required by the American Recovery and Reinvestment Act of 2009. Under the Act, the Commission is required to deliver its Plan to Congress by February 17, 2010. Simultaneously, the National Telecommunications Information Administration and Department of Agriculture’s Rural Utility Service must distribute \$7.2 billion in grants, loans and loan guarantees for national broadband expansion. These funds must be distributed by September 30, 2010.

Through a *Notice of Inquiry*, the FCC is seeking comments on broadband deployment and use, including current status, strategies for achieving affordability and maximum utilization of broadband infrastructure and services, and effective and efficient ways to ensure universal broadband access. The Commission is focused on enabling the build-out and utilization of high-speed broadband infrastructure, with the goal of eventually providing broadband access to every American and establishing clear benchmarks to meet this goal.

The Commission seeks comments on the elements that should go into a national broadband plan, including definitions of “high-speed,” “access,” and “broadband.” In addition to these key definitions, the Act requires the Commission to:

- Analyze the most effective and efficient mechanisms for ensuring universal broadband access.
- Include a detailed strategy for achieving affordability of such service and maximum utilization of broadband infrastructure and service by the public.
- Include an evaluation of the status of deployment of broadband service, including progress of projects supported by the grants.
- Include a plan for the 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.

On May 11, 2009, representatives from the American Petroleum Institute’s Telecommunications Committee met with members of the Commission’s Wireline Competition Bureau regarding the Plan. Among other things, API highlighted the major distinction between the energy industry’s broadband requirements and those of residential, small business and educational institutions. API explained that reliability, quality of service and security concerns associated with process control, management and security preclude the use of the public Internet for the industry’s operational and critical infrastructure requirements. API also emphasized that the energy industry shares the interest of all broadband customers in seeing more robust broadband infrastructure deployed by carriers, particularly in rural areas where such infrastructure is lacking and where the energy industry’s current and future exploration, production and gathering activities are concentrated.

Environmental Groups Petition FCC on Migratory Birds

On April 14, 2009, American Bird Conservancy, Defenders of Wildlife, and National Audubon Society (“Petitioners”) filed a Petition for Expedited Rulemaking and Other Relief with the Commission. The Petition is the latest in a series of filings by environmental groups dating back several years seeking to persuade the Commission to reduce alleged migratory bird deaths from tower collisions.

On February 19, 2008, a federal court ruled that the FCC violated the National Environmental Policy Act (“NEPA”) and the Endangered Species Act (“ESA”) when it denied a petition from environmental groups seeking to reduce collisions of migratory birds with communications towers in the Gulf Coast region. On the heels of this ruling, the FCC was required to assess the environmental effect of approximately 6,000 cellular, radio, television and other towers in the Gulf Coast region.

On April 29, 2009, the FCC issued a Public Notice requesting comment on the Petition. Specifically, the Commission sought comment on whether it is required to:

- Amend its regulations that implement the National Environmental Protection Act to modify the antenna structure registration procedure.
- Prepare a programmatic environmental impact statement addressing the environmental consequences of the Commission’s antenna structure registration program on migratory birds, their habitats and the environment.
- Promulgate rules to clarify the roles, responsibilities and obligations of the Commission, applicants, and non-federal representatives in complying with the ESA.
- Consult with the U.S. Fish and Wildlife Service on the antenna structure registration program regarding all effects of towers and antenna structures on endangered and threatened species.
- Adopt measures to reduce migratory bird deaths in compliance with the Migratory Bird Treaty Act.

The U.S. Fish and Wildlife Service estimates that communications towers contribute to four to five million birds deaths each year. It is believed that birds become disoriented when flying near lit communications towers at night and end up circling the towers and dying of exhaustion or collisions with the tower, its support structures or other birds. Comments are due by May 29, 2009, and Reply Comments are due by June 15, 2009.

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