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## SUMMARY

The Recovery Act funding is a down payment on the significant investments that will be necessary to bring the promise of broadband to all Americans. As a result, NTIA and RUS should prioritize this funding to projects that will bring new broadband service to unserved (and, secondarily, underserved) areas. The funding should be provided, to the greatest extent possible, in the form of grants, because only grants will address the fundamental economic calculation in currently unserved areas – no facilities have been deployed in such areas because no business case can be made for doing so (in light of high costs and few potential customers). Only grants can address this problem effectively.

By prioritizing projects that will bring broadband connectivity to unserved and underserved areas, NTIA and RUS can maximize fulfillment of the statutory goals for the broadband stimulus program. At the same time, prioritizing projects to bring service to unserved areas also maximizes the extent to which the Recovery Act's other goals (including advancement of smart grid, intelligent transportation, and electronic medical records) also can be advanced because these other goals all depend upon the presence of broadband infrastructure. NTIA and RUS should prioritize grants to applicants with proven track records of deploying broadband facilities successfully in rural areas.

To meet the tight deadlines in the Recovery Act, it will be necessary for NTIA and RUS to coordinate closely. Definitions and criteria should be coordinated, to the extent possible, between the two agencies' programs. Providers should be able to apply to both agencies with the knowledge that the agencies will coordinate their decisions to avoid funding the same infrastructure twice (though the two programs might appropriately fund different infrastructure components within the same network or project). It also will be helpful for NTIA and RUS to coordinate, if possible, with other agencies funding and overseeing stimulus-related infrastructure projects, including the Departments of Energy, Transportation, and Health and Human Services. Nowhere is this more true than with regard to rights-of-way issues.

As indicated in the statute, NTIA and RUS should accept input from States on the prioritization of funding applications, but must appropriately weigh such recommendations in cases where the State or its subdivisions is itself a funding applicant. Ultimately, the selection of grant recipients is the federal agencies' responsibility.

The public interest and the purposes of the BTOP program will best be served by a rule that makes any current provider of broadband service eligible to apply for a grant. Broadband providers – including the members of ITTA – have extensive technical, operational, financial, and managerial experience and expertise in building broadband networks and providing broadband service. Specifically, NTIA should, as part of the Notice of Funds Availability, extend automatic eligibility to any provider that can demonstrate its provision of broadband service by declaring that its most recent FCC Form 477 indicates that it is providing broadband service to end users.

In implementing and administering BTOP, NTIA should focus on the program's statutorily prescribed goals – and especially the goal of reaching unserved and underserved areas of the country – rather than on the specific technology used to meet those goals. In particular, consideration of speeds offers an important, technologically neutral way of assessing user functionality offered by a broadband provider. Because of the challenges of providing

broadband in rural and hard-to-serve areas, NTIA must give special recognition to applications that would provide the greatest speed possible in these areas, so that consumers of these regions realize important benefits of broadband.

For the purposes of administering BTOP, NTIA should define an “unserved area” as an area in which no terrestrial (i.e., non-satellite) broadband provider offers broadband service at or above advertised speeds of 1.5 Mbps in one direction. Each applicant should be able to define its proposed service area, including aggregating both adjacent and non-contiguous clusters of unserved homes.

Likewise, an “underserved” area, for the purposes of administering BTOP, should be defined as an area lacking access to broadband at or above a specified advertised speed threshold. The application process should take care to ensure that BTOP funding is directed to the efficient provision of broadband service, including but not limited to augmenting existing systems in “underserved” areas, rather than unnecessary overbuilding. At a minimum, “underserved” areas should encompass all areas lacking access to terrestrial broadband at speeds of 3 Mbps in one direction.

NTIA should decline to adopt any single definition of the term “broadband.” NTIA should focus on the definition of unserved rather than endeavor to define broadband more generally. To the extent NTIA does define “broadband” it should do so only in the limited context of the purposes of the Recovery Act. NTIA should recognize that the term “broadband” has a broad, inclusive scope, and should rely on higher speed thresholds to define what sorts of services within the class of “broadband” offerings are eligible and should receive priority for funding. So that government dollars are spent wisely, NTIA, however, should give preference to applications proposing to deploy broadband services at advertised speeds at or greater than 3 Mbps in one direction. Broadband service offered at this level is capable of supporting standard-definition video, which enables core services like online education and remote conferencing.

When considering multiple applications for serving one region, NTIA also should prioritize applications that would provide greater speeds, as one of the factors. This measure would be consistent with Section 6001(h)(2)(b), which instructs NTIA, to the extent practical, to consider applications that “provide the greatest broadband speed possible to the greatest population of users in the area.”

The threshold speeds for broadband should be the same for all technologies and providers. The public interest demands that speed thresholds be based upon the quality and quantity of online services available to consumers, rather than the specific type of technology employed.

**Before the**  
**DEPARTMENT OF COMMERCE**  
**National Telecommunications and Information Administration**  
**and the**  
**DEPARTMENT OF AGRICULTURE**  
Rural Development  
Washington, DC

In the Matter of )  
 )  
American Recovery and Reinvestment Act of ) Docket No. 090309298-9299-01  
2009 Broadband Initiatives )  
 )

To: The Under Secretary of Agriculture for Rural Development and the Assistant Secretary of  
Commerce for Telecommunications and Information

**COMMENTS OF THE INDEPENDENT TELEPHONE AND  
TELECOMMUNICATIONS ALLIANCE**

The Independent Telephone and Telecommunications Alliance (ITTA), on behalf of itself and its member companies, submits these comments in response to the Joint Request for Information<sup>1</sup> in the above-captioned proceeding to determine how to distribute broadband-related funding appropriated in the Recovery Act.<sup>2</sup>

ITTA is an alliance of mid-size telephone and broadband providers that currently operate in 44 states and serve more than 30 million access lines.<sup>3</sup> ITTA companies are integrated

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<sup>1</sup> Department of Commerce, National Telecommunications and Information Administration; Department of Agriculture, Rural Utilities Service, Docket No. 090309298-9299-01, Joint Request for Information and Notice of Public Meetings, 74 Fed. Reg. 10716-21 (March 12, 2009) (the “Request for Information”).

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

<sup>3</sup> ITTA member companies include CenturyTel, Comporium Communications, Consolidated Communications, EMBARQ, FairPoint Communications, Frontier Communications, Iowa Telecom, Qwest Communications, TDS Telecom, and Windstream Communications. ITTA’s  
(continued on next page)

providers offering a broad range of services to their customers including local, long distance, and broadband Internet access. ITTA member companies are carriers of last resort for millions of customers in rural America, and have demonstrated a commitment to serving rural and high-cost areas. ITTA members strive to overcome the difficult economic realities inherent in providing service in high-cost rural areas, and recognize that stimulus funding can provide an important down payment on the task of bringing broadband to the remaining unserved customers. No rational economic basis can be identified for bringing broadband to the vast majority of these remaining customers absent supplemental support such as the stimulus funding. Existing federal and state loan, grant and universal service programs have been insufficient to bring advanced services to these often remote customers. ITTA's comments here are intended to set out a framework to ensure that the taxpayer dollars disbursed by NTIA and RUS best meet the goals for the funding set out by Congress. The rules that NTIA and RUS adopt should recognize that new broadband deployment in areas that lack access to broadband services will facilitate economic development and make it possible to achieve other goals specified in the Recovery Act. As the Administration itself has noted, the stimulus funding is only a down payment on the enormous task of increasing the number of Americans who have access to the job- and opportunity-creating power of broadband.<sup>4</sup> Accordingly, this "down payment" should primarily

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comments represent the position of the Association as the voice of mid-sized local carriers. Each of ITTA's member companies also may file individual comments in this proceeding.

<sup>4</sup> See, e.g., "Vilsack, Copps and Wade Kick Off American Recovery and Reinvestment Act's Broadband Initiative," Press Release, NTIA, USDA, and FCC (March 10, 2009) at 2 (Commerce Dept. Senior Advisor and Acting Chief of Staff Rick Wade: "President Obama believes in the power of broadband. Broadband deployment throughout the country will help drive the nation's economic recovery and growth. The grants represent a down-payment on President Obama's communications priority.")

be directed at introducing broadband to areas where it is not currently available; attention to enhancing existing service in “underserved” areas should be a secondary priority.

To facilitate review by NTIA and RUS, these comments follow the framework and respond to the questions set out in the Request for Information.

**A. NTIA**

**1. The Purposes of the Grant Program: Section 6001 of the Recovery Act establishes five purposes for the BTOP grant program.**

**a. Should a certain percentage of grant funds be apportioned to each category?**

The Recovery Act’s broadband funding will be most effective if NTIA maximizes the extent to which it can serve its primary goal of improving broadband access in unserved and underserved areas. In spite of great strides in deployment in recent years, several million Americans remain without access to broadband services. Policymakers must engage actively in order to bridge the remaining gaps in the Nation’s broadband reach. Moreover, by focusing BTOP funding on the deployment of broadband in unserved areas, NTIA can further other goals of the Recovery Act, such as facilitating consumer access to educational and health care institutions and promoting job growth. As explained below, broadband availability enhances, if not enables, many facets of local and National education, health care, and economic development. For these same reasons, the expansion of service in underserved areas should be a secondary purpose of successful applications for BTOP funding. Any apportioning of funds should further the primary goal of deploying broadband.

**b. Should applicants be encouraged to address more than one purpose?**

As noted above,<sup>5</sup> NTIA must focus the stimulus funding where the need is greatest, specifically, the task of extending broadband to unserved (and, to a lesser extent, underserved) areas. This task is a prerequisite to other of the Recovery Act's stimulus purposes. Broadband cannot improve education, health care, or public safety where citizens and other entities lack access to broadband; no jobs can be created by broadband deployment in an area (directly or indirectly) unless broadband is, in fact, deployed in that area. Accordingly, applicants proposing to extend service to currently unserved areas should be acknowledged in the review process as effectively advancing multiple Recovery Act purposes.

- c. How should BTOP leverage or respond to the other broadband-related portions of the Recovery Act, including the USDA grant and loan programs as well as the portions of the Recovery act that address smart grids, health information technology, and transportation infrastructure.**

The effectiveness of Recovery Act funding will be maximized if the agencies administering stimulus funding work with each other effectively and closely. As discussed in more detail in response to Question A.12, below, NTIA and RUS will need to work together closely in administering the broadband-specific programs, and by all appearances they already are doing so. This coordination will be necessary to prevent duplicative funding and unjust enrichment (as the statute rightfully prohibits) and to maximize the effectiveness of the funding. NTIA and RUS also may want to consider how they could coordinate their efforts with those of other agencies involved in implementation of Recovery Act programs. This will, of course, be more complicated; these agencies are not accustomed to coordinating this closely, and the scope

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<sup>5</sup> See *supra* response to Question A.1.a.

of the undertaking would create a logistical challenge even under the best of circumstances. There are, however, certain simple steps that NTIA and RUS can take to facilitate coordination.

First, by targeting broadband funding to unserved and underserved areas, NTIA and RUS will fulfill several conditions precedent to many of the other Recovery Act programs not directly related to broadband. The implementation of smart grid technology, for example, requires the availability of broadband capability all along the electrical grid, as well as at business and residential end-user premises. Similarly, intelligent transportation technology requires broadband connectivity for relaying information among myriad points along vast expanses of roadways, including in rural areas. The development of electronic medical records and telemedicine applications also requires the availability of broadband at rural doctors' offices and clinics, as well as major hospitals. Accordingly, by targeting stimulus funding to currently unserved areas, NTIA can maximize the extent to which the broadband funding will simultaneously advance other Recovery Act stimulus programs.

Another crucial coordination task facing NTIA and RUS involves access to rights of way. There are two rights-of-way issues in play. First, in order to ensure broadband projects can be completed in the tight deadlines that the Recovery Act establishes, NTIA and RUS must ensure that providers qualifying for broadband grants and loans are able to obtain timely access to the rights of way necessary to complete projects. The Forest Service at USDA and agencies at the Department of Interior including the Parks Service, Bureau of Land Management, and the Bureau of Indian Affairs, as well as the Department of Energy, need to be given clear guidance from the White House to expeditiously accommodate and resolve rights of way issues for broadband deployment. Any Federal power or prerogative available should be used to this end.

Second, NTIA and RUS should coordinate to the greatest extent possible with other agencies distributing Recovery Act funding to ensure that different agencies' Recovery Act

projects do not undermine other agencies' projects and the overall goals of the legislation. For example, ITTA member companies already have received numerous requests to relocate their existing telecommunications and broadband infrastructure from state and local governments preparing to implement road construction projects that state and local governments anticipate will be funded under the Recovery Act. The costs and resources necessary to implement these relocations will fall on the ITTA member companies themselves, diverting resources that could be used for broadband deployment – thus potentially undermining the very goal that the broadband provisions of the Recovery Act seeks to advance. By the same token, absent coordination, road trenching or pole placement to implement broadband stimulus-funded projects might interfere with transportation improvement projects funded by the Department of Transportation under the Recovery Act and future projects to be funded by the coming Highway bill. Ideally, multiple projects accessing the same rights of way would be coordinated for the benefit of all concerned parties and the overall goals of the statute. At the same time, this must be balanced with the goals of the Act to ensure that projects are funded and undertaken as soon as possible.

**2. The Role of the States: The Recovery Act states that NTIA may consult the States (including the District of Columbia, territories, and possessions) with respect to various aspects of the BTOP. The Recovery Act also requires that, to the extent practical, the BTOP award at least one grant to every State.**

**a. How should the grant program consider state priorities in awarding grants?**

NTIA should consider state priorities to the extent practicable in awarding grants. Ultimately, however, the Recovery Act charges NTIA with the responsibility for selecting the projects that are most meritorious under the statute. In addition, as NTIA management acknowledged in the roundtables, timing and logistical considerations will constrain NTIA's

practical ability to obtain and give effect to state priorities. The Federal agencies should abide by clear and consistent guidelines to ensure that funds are distributed pursuant to objective criteria across the states. Finally, NTIA must ensure that its process for obtaining state input is transparent and accessible to all grant applicants. Transparent practices pursuant to clear guidelines will enable a broad range of interested parties to respond to state priorities and assist federal agencies in fulfilling their responsibility to select projects that best meet the statute's goals and objectives.

**b. What is the appropriate role for States in selecting projects for funding?**

The appropriate role for states in NTIA's project-selection process is a consultative one. States can bring strengths to the process, such as, for example, confirming state-specific facts or assertions in an application, or helping verify if an area identified in a grant application is unserved.

At the same time, however, NTIA's state consultation process must balance appropriately the role of state government entities in situations where the state itself (or any of its political subdivisions) is also a grant applicant. In such cases, NTIA should treat state prioritization recommendations as the advice of a competing applicant. In addition, as noted above, NTIA should ensure that the state input process is structured in an open and transparent way. In all events, the Recovery Act requires that the final grant-making determination rest with NTIA.

**c. How should NTIA resolve differences among groups or constituencies within a State in establishing priorities for funding?**

While state entities commenting in this proceeding may have specific recommendations, ITTA notes that the statute gives NTIA ultimate and final decision-making authority in BTOP

grant-making, and charges it unequivocally with selecting projects that best accomplish the statute's goals. This must be the final touchstone in project selection.

**d. How should NTIA ensure that projects proposed by States are well-executed and produce worthwhile and measurable results?**

The funds allocated for BTOP are limited and valuable resources. NTIA's charge under the Recovery Act is to implement a process for selecting and monitoring projects that best furthers the statute's goals. The same standards for selecting and monitoring projects should apply to projects that states propose or endorse.<sup>6</sup> Standards that are properly crafted will ensure that all projects – whether or not proposed by states – are well-executed and produce worthwhile and measurable results. In particular, demonstrated experience in deploying successful, sustainable broadband projects by the applicant is a relevant and important consideration for private sector and public sector projects.

**3. Eligible Grant Recipients: The Recovery Act establishes entities that are eligible for a grant under the program. The Recovery Act requires NTIA to determine by rule whether it is in the public interest that entities other than those listed in Section 6001(e)(1)(A) and (B) should be eligible for grant awards. What standard should NTIA apply to determine whether it is in the public interest that entities other than those described in Section 6001(e)(1)(A) and (B) should be eligible for grant awards?**

The public interest and the purposes of the BTOP program will best be served by a rule that makes any current provider of broadband service eligible to apply for a grant. Broadband providers – including the members of ITTA – have extensive technical, operational, financial, and managerial experience and expertise in building broadband networks and providing

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<sup>6</sup> ITTA's proposals for selecting and monitoring projects are discussed in response to questions A.4, A.11, and A.14, below.

broadband service. Such providers are clearly capable of carrying out Recovery Act-funded broadband deployments “in a competent manner in compliance with all applicable Federal, State, and local laws” and in an “efficient and expeditious manner,” as the Recovery Act requires. In many cases, moreover, the most efficient way to reach unserved consumers will be to extend existing commercial networks. Existing providers are best positioned to ensure that Recovery Act broadband funds are put to use quickly and efficiently, stimulating economic growth in the short term while maximizing the long-term benefits to American consumers and otherwise fulfilling the statute’s core goals. The public interest, therefore, demands that existing broadband providers be eligible to apply directly for BTOP funding.

For these reasons, NTIA should find by rule that any existing broadband service provider is eligible to apply for a grant under the BTOP program. Specifically, NTIA should extend automatic eligibility to any provider that can demonstrate its provision of broadband service by declaring that its most recent FCC Form 477 indicates that it is providing broadband service to end users. Entities able to produce such documentation have already demonstrated their capability to provide broadband service, and NTIA would not need to conduct a separate inquiry into their capabilities.

NTIA should announce this eligibility framework when it issues its *initial* Notice of Funds Availability. Absent such action, the first tranche of funds could be distributed without the benefits, discussed above, that commercial broadband providers bring to the equation. In addition, absent clear eligibility rules before the first round, commercial broadband providers would be placed at a substantial disadvantage compared to other types of applicants. In any event, the goals of the Recovery Act would be undermined by extended uncertainty regarding the eligibility of existing commercial broadband providers. As indicated by the conference report

accompanying the passage of the Recovery Act, Congress expected private sector service providers would be eligible to apply for BTOP funds.<sup>7</sup>

**4. Establishing Selection Criteria for Grant Awards: The Recovery Act establishes several considerations for awarding grants under the BTOP. In addition to these considerations, NTIA may consider other priorities in selecting competitive grants.**

**a. What factors should NTIA consider in establishing selection criteria for grant awards? How can NTIA determine that a Federal funding need exists and that private investment is not displaced? How should the long-term feasibility of the investment be judged?**

As long as the principal goal of the BTOP is the delivery of broadband service to end users in unserved areas, and secondarily the enhancement of broadband service in underserved areas, underlying economic realities will ensure that grants are provided only where private investment is not displaced. In most areas of the United States where broadband is not yet available (including many of the areas served by ITTA members), the fundamental hurdle before deployment is that rational economics do not support build-out, given the substantial up-front deployment costs and the limited potential return that accrues from low population density. As a result, the provision of broadband service remains economically unviable absent external intervention. In these areas, BTOP grants could transform an uneconomic proposition into a viable business plan by defraying the significant up-front costs.

These economic realities should allay concerns that an applicant proposing deployment to such customers is seeking to substitute public funds for private funds that would otherwise have been used to construct the same network. Stated simply, if an economic case supported broadband deployment absent government funding, then for-profit firms would have already

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<sup>7</sup> Conference Report, H.R. 1, at 775.

entered the market to do so. And, displacing private investment in such cases is even less likely given the current troubled state of capital markets. Therefore, NTIA should determine that, absent direct evidence to the contrary, a certification by a corporate officer that the applicant would not have pursued the project at hand but for Recovery Act funding is sufficient to demonstrate that a grant would not simply “displace” private investment.<sup>8</sup>

Because the Recovery Act funding is intended to bring the benefits of broadband to all Americans, the selection criteria should be designed to ensure that funding recipients deliver access to broadband service sufficient to accommodate bandwidth-sensitive applications such as Voice over Internet Protocol (VoIP), distance learning, and remote conferencing. Selection criteria must not create competitive advantages for one type of carrier over another, so all applicants must be judged on their ability to offer service, without providing a lesser standard for certain types of technology. To expedite the application review process, the selection criteria also should be clear and objective wherever possible.

The long-term feasibility of investments should be judged primarily by looking at the track record of the applicant. Funding applicants should address in their application their experience in deploying broadband networks of the type proposed in the application, in the types of geographic areas described in the application. By limiting grants to applicants with proven track records of deploying broadband infrastructure in rural areas, NTIA can best shepherd taxpayer dollars to worthy broadband deployment projects.

**b. What should the weighting of these criteria be in determining consideration for grant and loan awards?**

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<sup>8</sup> See *supra* questions A.1.a, A.4.a.

As discussed above, the principal goal of BTOP should be to bring broadband service to unserved or, secondarily, underserved areas. This is a fundamental pre-condition to the achievement of the other statutory purposes of the Recovery Act broadband funding – and indeed of the other stimulus programs in the Recovery Act.<sup>9</sup> Thus, this priority should be weighted most heavily vis-à-vis other considerations

Among the other factors discussed above, the second most important would be the long-term feasibility of the investment, focusing on the track record of the applicant. Finally, but still importantly, NTIA should consider the applicant's ability to provide the type of service necessary to support the broadband applications favored by the Recovery Act.

**c. How should the BTOP prioritize proposals that serve underserved or unserved areas? Should the BTOP consider USDA broadband grant awards and loans in establishing these priorities?**

As just discussed, BTOP should give the highest priority to proposals that serve unserved and, secondarily, underserved areas. While RUS and NTIA should work together in awarding funds, the potential for RUS funding for broadband deployment should not cause NTIA to place a lesser priority on funding unserved and underserved area projects. There is a significant need for NTIA to provide grants for deployment in areas that lack access to core broadband services, even taking into account resources dedicated to RUS. As noted above, broadband services should be sufficient to accommodate increasingly high-bandwidth core offerings, such as VoIP, streaming media, and should facilitate distance-learning endeavors as well.

Given the economic dynamics that have undermined deployment efforts to date, NTIA also should urge RUS to focus its efforts on grants rather than loans and loan guarantees. As

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<sup>9</sup> See *supra* question A.1.a.

explained above, the principal reason that the unserved areas within ITTA members' territories remain unserved is that there is no economically viable business case for the deployment of broadband in those areas.<sup>10</sup> Grants (whether administered by NTIA or RUS) can play a critical role in eliminating the systemic barrier to investment, and can thus help ensure service to unserved and underserved populations.

**d. Should priority be given to proposals that leverage other Recovery Act projects?**

It is critical for NTIA to recognize that the best way to facilitate other Recovery Act projects – those relating to the deployment of smart grids or intelligent transportation networks or electronic health records infrastructure – is to focus on bringing broadband facilities to unserved and underserved end users. Broadband networks are designed to facilitate joint use of middle-mile and backbone facilities, with traffic from individual users joining other traffic on higher-capacity links that themselves join with other links on still-higher-capacity facilities. By promoting deployment in currently unserved areas, NTIA will not only bring the benefits of broadband to consumers and businesses in such areas, but will also help generate traffic aggregation sufficient to enable the economic deployment of fiber rings and other high-capacity facilities to areas where such deployment would otherwise have been economically unviable. The presence of these facilities will, in turn, make it possible to deploy (and dramatically cut the costs of deploying) smart power grids, intelligent transportation networks, and electronic health records infrastructure. Accordingly, NTIA need not choose between serving the core goals of BTOP and facilitating the goals of other Recovery Act programs; rather, it can best serve these

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<sup>10</sup> See *supra* questions A.1.a, A.4.a.

other programs' needs by ensuring broadband build-out to unserved and underserved populations.

Beyond that, however, NTIA and RUS should not over-complicate the application or analysis process by attempting to make funding decisions contingent on decisions from other agencies with Recovery Act responsibilities. The RUS and NTIA should not import scoring criteria from other projects. Blending and borrowing criteria from other programs would make the funding, administration, and application tasks unnecessarily complex. The goals of inter-agency cooperation should be avoiding frustration of each other's objectives, eliminating pre-existing barriers to investment, and preventing double-recovery of support.

- e. Should priority be given to proposals that address several purposes, serve several of the populations identified in the Recovery Act, or provide service to different types of areas?**

Many of the stated purposes of BTOP overlap. As such, well-chosen projects aimed at deploying infrastructure to unserved and underserved areas will, by design, serve multiple BTOP ends. For example, a proposal that extends broadband to unserved areas will also likely create jobs, expand economic development opportunities, and improve access for public safety, schools, libraries, and health-care facilities. In addition, increasing availability in unserved areas is likely to stimulate demand. Thus, just as a focus on deploying facilities to unserved and underserved areas will promote the Recovery Act's objectives with respect to energy, transportation, and health-care, it will also help ensure that the Recovery Act's communications-related goals are served in concert.

- f. What factors should be given priority in determining whether proposals will encourage sustainable adoption of broadband service?**

The ARRA provides that at least \$250 million is to be allocated for innovative programs that increase consumer demand for broadband. Long-term adoption of broadband will be critical to the success of applications that receive funding under ARRA. However, funding for demand stimulation programs should not take money away from that available for funding of deployment in areas lacking core broadband services. Demand proposals should not be rated ahead of investment, and funding for such proposals should be limited to the \$250 million carve-out for demand stimulus.

- g. Should the fact that different technologies can provide different service characteristics, such as speed and use of dedicated or shared links, be considered given the statute's direction that, to the extent practicable, the purposes of the statute should be promoted in a technologically neutral fashion?**

The statute's mandate that BTOP grants be administered in a technologically neutral manner is good policy. In implementing and administering BTOP, NTIA should focus on the program's statutorily prescribed goals – and especially the goal of reaching unserved and underserved areas of the country – rather than on the specific technology used to meet those goals. If an applicant is able to provide end users with a robust broadband experience that permits use of core online services, such as remote conferencing and distance education, and allows those consumers without access to broadband today to realize the many opportunities and advantages broadband provides, at a cost comparable to that of other providers, that applicant should be eligible for BTOP funding, irrespective of the technology it uses.

In particular, consideration of speeds offers an important, technologically neutral way of assessing user functionality offered by a broadband provider. Preference should be given to applicants that provide faster speeds and rely upon “expandable” technology that has the longest expected technological life-span among applicants competing for support in a single area.

Because of the challenges of providing broadband in rural and hard-to-serve areas, NTIA must give special recognize to applications that would provide the greatest speed possible in these areas, so that consumers of these regions realize important benefits of broadband. By measuring applications based on the speed of service provided, NTIA and RUS will be consistent with the Act's call that the purposes of the statute be promoted in a technologically neutral fashion.

**h. What role, if any, should retail price play in the grant program?**

BTOP is intended to expand the availability of broadband offerings, but the availability of service means little if prospective customers cannot afford the rates charged. If the projects funded cannot win sufficient customers at the prices demanded, the facilities deployed will not be used, and the purposes behind BTOP will have gone unfulfilled. Thus, while ITTA is concerned that a specific maximum price for broadband services offered could fail to account for project-specific factors such as a given area's topography or its demand characteristics – it does urge NTIA to consider rate levels (for equipment as well as service charges) in evaluating projects, just as it would consider anticipated speeds and other characteristics of proposed deployments. Specifically, NTIA may wish to import the standard that rates in supported rural areas should be “reasonably comparable” to those in urban areas, which is a guiding principle for universal service programs under the Telecommunications Act.<sup>11</sup>

**5. Grant Mechanics: The Recovery Act requires all agencies to distribute funds efficiently and fund projects that would not receive investment otherwise.**

**a. What mechanisms for distributing stimulus funds should be used by NTIA and USDA in addition to traditional grant and loan programs?**

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<sup>11</sup> 47 U.S.C. § 254(b)(3).

Grants will best achieve the goal of quickly extending broadband service into unserved areas. By contrast, loans or loan guarantees will not address the fundamental economic problems that have thus far prevented broadband deployment projects in currently unserved areas from receiving investment. Providers serving these areas (such as ITTA members) generally have access to capital at levels that are typical for stable firms with historic presences in their communities. The challenge, however, is that no business case can be made to deploy broadband in the vast majority of remaining areas – as the deployment costs are too high and the potential revenues are too low (generally as a function of low population density). Accordingly, broadband stimulus funds (including RUS funds) should be dedicated primarily, if not entirely, to grants. If loans are used, they should recognize the economic realities of unserved areas by providing the maximum assistance possible, such as through below-market (or even zero) interest rates.

In any event, the process should be streamlined as much as possible. This will help both applicants and the reviewing agencies meet the tight deadlines that the statute sets for selection, commencement, and completion of projects. This is also another reason why RUS should prioritize funding for grants rather than loans or loan guarantees, as the financial showing necessary for a grant will be less extensive than for a loan that must be repaid over a period of years. For either loans or grants, the application should be as short as possible, consistent with the information that the agencies must gather under the statute. An application like the current 65-page RUS loan application is clearly overly burdensome (as problems in that program have demonstrated). Ideally, the application might be as simple as 3-4 pages, identifying the salient characteristics of the applicant's proposed project:

- Identity of the applicant
- Geographic area covered by the proposed project, including the extent to which the area is unserved or underserved

- Description of the facilities to be purchased and deployed with the stimulus funding, including a budget and a certification that the project will be completed by the deadline
- Description of the services to be provided with the funded facilities (including speed)
- Description of the potential customers to be served
- Description and certification of financial, managerial and technical ability
- Certification that the applicant is not receiving other Federal funding directly related to the provision of broadband for the same facilities (and any relevant discussion if, for example, the applicant is receiving such Federal funding for an adjacent or related project).<sup>12</sup>

The *minimum* application requirements should not foreclose carriers from supplementing the basic criteria with documentation and supporting data that create a more comprehensive portrait of their proposals. As NTIA management pointed out in the first roundtable meeting, the statutory criteria are not complicated. The application process should not be either. Additional documentation can be provided if necessary in the grant contract negotiation.

**b. How would these mechanisms address shortcomings, if any, in traditional grant or loan mechanisms in the context of the Recovery Act?**

As discussed in response to the previous question A.5.a., shortcomings in loans as a broadband deployment stimulus vehicle can be addressed by distributing the funding as grants. Shortcoming in prior application processes can be addressed by adopting here a streamlined application process that requires the submission of only the information that is necessary to determine whether a project is eligible for funding and to rank it relative to other proposed projects.

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<sup>12</sup> Universal service support is not available to fund broadband deployment, and thus is not relevant to this consideration. 47 U.S.C. § 254(c) (defining universal service as an evolving level of “telecommunications services”); 47 C.F.R. § 54.101 (listing the services supported by universal service; broadband is not among them).

**6. Grants for Expanding Public Computer Center Capacity: The Recovery Act directs that not less than \$200,000,000 of the BTOP shall be awarded for grants that expand public computer center capacity, including at community colleges and public libraries.**

**a. What selection criteria should be applied to ensure the success of this aspect of the program?**

[No response.]

**b. What additional institutions other than community colleges and public libraries should be considered as eligible recipients under this program?**

[No response.]

**7. Grants for Innovative Programs to Encourage Sustainable Adoption of Broadband Service: The Recovery Act directs that not less than \$250,000,000 of the BTOP shall be awarded for grants for innovative programs to encourage sustainable adoption of broadband services.**

**a. What selection criteria should be applied to ensure the success of this program?**

As with funding for public computing centers, ITTA believes that applications for sustainable adoption programs should be considered separately from the broadband deployment grants. The selection criteria for grants awarded for broadband adoption programs should focus on cost-effective programs that reach large populations of end users efficiently and broadly spur adoption rates. Also there is no reason for NTIA to devote more than the mandatory \$250 million to sustainable adoption programs: Though demand stimulation is extremely important, the chief problem facing most unserved and underserved Americans is the absence of adequate infrastructure, and NTIA should devote as much funding as possible to remedying this problem.

RUS should work with the FCC, NTIA, and the states to leverage existing programs to promote adoption in served areas. For example, the Broadband Data Improvement Act<sup>13</sup> includes provisions designed to enable states to identify and address factors inhibiting broadband adoption. Similarly, and the NTIA perhaps in coordination with the FCC, should institute time-limited pilot programs to assess the efficacy of using government funds to subsidize broadband service to low-income consumers. These mechanisms, combined with the deployments funded by the Recovery Act, could do a great deal to alleviate shortfalls in demand.

**b. What measures should be used to determine whether such innovative programs have succeeded in creating sustainable adoption of broadband services?**

The most logical measure for assessing whether a program has spurred demand for broadband offerings is the broadband adoption rate in the area or among the consumers to which a program is offered. Efforts to measure the success of uptake initiatives and the sustainability of service should focus on subscription rates over time, as measured by the FCC's Form 477 data.

**8. Broadband Mapping: The Recovery Act directs NTIA to establish a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State.**

**a. What uses should such a map be capable of serving?**

At a minimum, the map developed pursuant to this provision should be able to identify areas lacking access to core broadband services, as such areas are the central focus of NTIA's grant-making responsibility under the Recovery Act. It should also provide information

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<sup>13</sup> Pub. L. 110-385, 122 Stat. 4100 (2008).

necessary for RUS to successfully implement the new eligibility metrics created for the RUS broadband loan program by the 2008 Farm Bill. Likewise, it should serve as a neutral source of data for RUS's broadband grant programs, which are independent of the Recovery Act and include Community Connect and the Community Facilities program. The map must present the broadband deployment information in a way that NTIA, RUS, and the FCC all can monitor the progress of their efforts under the Recovery Act and other relevant legal mandates. The map will also be a useful tool for state and local efforts to spur demand, such as pursuant to the Broadband Data Improvement Act.

**b. What specific information should the broadband map contain, and should the map provide different types of information to different users (e.g., consumers versus governmental entities)?**

The map should identify number and types of broadband providers offering service within each geographic area. The inventory map should be based on information that is compiled from other sources, including public-private partnership mapping efforts supported by NTIA with Recovery Act funds. NTIA should not require broadband providers to submit data directly to NTIA or to collect or compile new information (e.g., data on households passed) for purposes of creating the map. Any data collected should supplement, but not duplicate, the data collected from providers on FCC Form 477. NTIA should also be sensitive to the competitive nature of the broadband marketplace, and protect any competitively sensitive and company proprietary information it obtains.

**c. At what level of geographic or other granularity should the broadband map provide information on broadband service?**

The needs of the broadband mapping project<sup>14</sup> must be balanced against the burdens on the entities that may be required to provide information and the important need to protect proprietary and competitively sensitive information about individual companies' broadband coverage. For these reasons, the broadband map should not disclose any business information that is individually identifiable and not otherwise publicly disclosed. This non-disclosure requirement is consistent with the standards for data collection for broadband mapping under the Broadband Data Improvement Act.<sup>15</sup> The broadband map also should reduce mapping burdens and time required for data production by focusing data collection efforts on existing data sets, such as the information collected by nonprofit organizations and commercial market research firms.

- d. What other factors should NTIA take into consideration in fulfilling the requirements of the Broadband Data Improvement Act, Pub. L. No. 110-385 (2008)?**

[No response.]

- e. Are there State or other mapping programs that provide models for the statewide inventory grants?**

A number of states have collected information and produced useful broadband maps and inventories. Working in partnership with public and private entities, Connected Nation, in particular, has worked in a number of states to produce meaningful maps and inventories. An advantage of the public-private partnership model, of which Connected Nation is one example, is the ability to protect proprietary information of the companies, which must be considered in

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<sup>14</sup> See *supra* response to question A.8.a.

<sup>15</sup> 47 U.S.C. § 1304(h)(2).

planning the data-gathering effort for the mapping project. The public-private partnership approach is a useful model for national replication.

**f. Specifically what information should states collect as conditions of receiving statewide inventory grants?**

Consistent with the recommendation above, the public-private partnership model should be replicated in other states, and data should be gathered only by neutral third parties that have committed to safeguarding its confidentiality, and not directly by states.

**g. What technical specifications should be required of state grantees to ensure that statewide inventory maps can be efficiently rolled up into a searchable national broadband database to be made available on NTIA's website no later than February 2011?**

[No response.]

**h. Should other conditions attach to statewide inventory grants?**

Consistent with the recommendation above, the public-private partnership model should be replicated in other states. Grants should be conditioned on the collection of data only by neutral third parties that have committed to safeguarding its confidentiality, and not directly by states.

**i. What information, other than statewide inventory information, should populate the comprehensive nationwide map?**

[No response.]

**j. The Recovery Act and the Broadband Data Improvement Act (BDIA) imposes duties on both NTIA and FCC concerning the collection of broadband data. Given the statutory requirements of the Recovery Act and the BDIA, how should NTIA and FCC best work together to meet these requirements?**

As discussed above, a key to successful coordination between NTIA and the FCC is consistency in definitions and information collected. The agencies must continue to

communicate with each other and to work with service providers to develop data collection and mapping procedures that produce meaningful and useful results. Another advantage of this coordination will be to minimize the impact on broadband providers, which helps to preserve valuable resources that can be directed at broadband deployment, rather than responding to multiple, inconsistent requests for information. For this reason, primary responsibility for mapping efforts should rest with a single agency, NTIA.

**9. Financial Contributions by Grant Applicants: The Recovery Act requires that the Federal share of funding for any proposal may not exceed 80 percent of the total grant. The Recovery Act also requires that applicants demonstrate that their proposals would not have been implemented during the grant period without Federal assistance. The Recovery Act allows for an increase in the Federal share beyond 80 percent if the applicant petitions NTIA and demonstrates financial need.**

**a. What factors should an applicant show to establish the “financial need” necessary to receive more than 80 percent of a project’s cost in grant funds?**

The Recovery Act’s 20 percent matching requirement for BTOP grants should only be waived where the business case for broadband deployment does not support even that level of investment, as will be the case in the most rural, high-cost areas. This matching requirement can serve several important public-policy ends. It helps to ensure that grant recipients are committed to the project and are serious about its completion, for even a 20 percent outlay will be quite significant in the context of broadband deployment. During the challenging economic times facing the United States, NTIA must work to identify and fund projects that can actually be completed so that the intended benefits of the Recovery Act – healthcare, education and jobs – can be realized. The matching requirement also helps to ensure that the recipient has the financial wherewithal to survive and surmount unexpected developments, from construction delays to short-term gaps in post-deployment demand. Perhaps most significantly, the matching

requirement best permits NTIA to leverage the \$4.3 billion allocated for BTOP, such that those funds may facilitate up to \$5.375 billion in broadband investment that otherwise would not occur. Given the above, NTIA should be extremely reluctant to waive the 80 percent matching requirement. Thus, it should consider waivers only in the last round of funding, and only for unserved areas for which no applications without waivers have been received.

**b. What factors should the NTIA apply in deciding that a particular proposal should receive less than an 80 percent Federal share?**

To further leverage BTOP funds, there may be instances when NTIA considers funding less than 80 percent of a project. Because most areas lacking broadband services are uneconomic to serve today, however, NTIA must ensure that any Federal match is sufficient to actually create a positive business case in these areas to ensure that projects actually are completed.

**c. What showing should be necessary to demonstrate that the proposal would not have been implemented without Federal assistance?**

As discussed above, most areas that would be suited for BTOP funding remain unserved or underserved today precisely because there is no viable means of economically extending (or improving) service. Given this fact, certification by an applicant's corporate officer that the applicant had no plans to pursue the proposed project during the grant period absent the grant should be sufficient to satisfy this requirement. Such certification would identify when Federal funds are needed to move projects from planning to implementation, especially in the near term.

**10. Timely Completion of Proposals: The Recovery Act states that NTIA shall establish the BTOP as expeditiously as practicable, ensure that all awards are made before the end of fiscal year 2010, and seek assurances from grantees that projects supported by the programs will be substantially completed**

**within two (2) years following an award.<sup>10</sup> The Recovery Act also requires that grant recipients report quarterly on the recipient's use of grant funds and the grant recipient's progress in fulfilling the objectives of the grant proposal. The Recovery Act permits NTIA to de-obligate awards to grant recipients that demonstrate an insufficient level of performance, or wasteful or fraudulent spending (as defined by NTIA in advance), and award these funds to new or existing applicants.**

- a. What is the most efficient, effective, and fair way to carry out the requirement that the BTOP be established expeditiously and that awards be made before the end of fiscal year 2010?**

The most important thing that NTIA can do to ensure that the Recovery Act's tight deadlines are met is to establish clear and streamlined application and processing standards, and to establish them expeditiously. As discussed above,<sup>16</sup> the application and scoring standards should track the statute closely. This is important for applicants, but perhaps even more important for the agencies administering the Recovery Act. A complex application will strangle agency resources. Even if agencies employ contractors to assist in the scoring and evaluation of projects, those contractors have to be trained by over-strained federal staff. Simplicity and objectivity serve the agencies and public well. Any program regulations that unnecessarily increase the regulatory burden associated with the grant process will only work to frustrate Congress's intent that funds be put to work as soon as practical, and no later than September 30, 2010. In addition to regulatory standards, the agency must commit to recruit and retain skilled staff sufficient to review and score the applications.

- b. What elements should be included in the application to ensure the projects can be completed within two (2) years (e.g., timelines, milestones, letters of agreement with partners)?**

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<sup>16</sup> See *supra* question A.5.

As discussed more fully below, the threat of de-obligation of funds provides a sufficient incentive for grantees to complete projects on time and consistent with other obligations.<sup>17</sup> Moreover, NTIA should impose a sliding scale of de-obligation that would permit the agency to impose graded penalties, beyond de-obligation, on firms that do not meet their commitments and the applicable requirements. Beyond that, NTIA must resist the urge to impose unnecessary and burdensome requirements on BTOP grantees. Companies should be required to certify in their applications that they intend to complete the project by the deadline, and should be subject to quarterly reporting requirements per the statute.<sup>18</sup> No additional requirements are needed to ensure that broadband providers complete projects on a timely basis. In particular, it would be problematic if NTIA required a timeline for project completion before it made determinations on all of the applicant's grant applications, as an applicant may try to coordinate separate projects within the same region to maximize efficiency and reduce the total time required to deploy new broadband facilities.

**11. Reporting and De-obligation: The Recovery Act also requires that grant recipients report quarterly on the recipient's use of grant funds and progress in fulfilling the objectives of the grant proposal. The Recovery Act permits NTIA to de-obligate funds for grant awards that demonstrate an insufficient level of performance, or wasteful or fraudulent spending (as defined by NTIA in advance), and award these funds to new or existing applicants.**

**a. How should NTIA define wasteful or fraudulent spending for purposes of the grant program?**

If properly designed, the application, award, and reporting processes should guard effectively against wasteful and fraudulent spending. Grant applications should include a budget

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<sup>17</sup> See *infra* question A.11.

<sup>18</sup> See *infra* question A.11.

and a description of the facilities to be funded, which will inevitably be refined in the award process and made definitive in the final award document.<sup>19</sup> The statute requires quarterly reporting on expenditures and progress, with a more detailed report upon completion of a project.<sup>20</sup> Any material spending not authorized in the budget would be revealed in the periodic reports, and would warrant further investigation as potentially wasteful or fraudulent. Additional regulatory requirements would impose additional burdens without any meaningful additional safeguards, and thus should be avoided.

**b. How should NTIA determine that performance is at an “insufficient level?”**

If properly designed, the application, award, and reporting processes will guard effectively against insufficient performance levels. Applications will clearly specify the facilities to be installed, the services to be provided, and the customers to be served, which will inevitably be refined in the award process and made definitive in the final award document.<sup>21</sup> Any material failure to meet these performance criteria will be revealed in the quarterly reports, and would warrant investigation as potentially insufficient. Additional regulatory requirements would impose additional burdens without any meaningful additional safeguards, and thus should be avoided.

**12. Coordination with USDA’s Broadband Grant Program: The Recovery Act directs USDA’s Rural Development Office to distribute \$2.5 billion dollars in loans, loan guarantees, and grants for broadband deployment. The stated focus of the USDA’s program is economic development in rural areas. NTIA has broad authority in its grant program to award grants throughout the United States. Although the two**

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<sup>19</sup> See *supra* question A.5.a.

<sup>20</sup> See *supra* question A.11.

<sup>21</sup> See *supra* question A.5.a.

**programs have different statutory structures, the programs have many similar purposes, namely the promotion of economic development based on deployment of broadband service and technologies.**

- a. What specific programmatic elements should both agencies adopt to ensure that grant funds are utilized in the most effective and efficient manner?**

Close coordination between the two agencies will of course be crucial for the success of both programs. To the extent possible under the statute, elements of the programs should be conformed to one another to facilitate the process for applicants and agency staff. Common application processes, evaluation criteria, and relevant definitions should be adopted across both programs.

- b. In cases where proposals encompass both rural and non-rural areas, what programmatic elements should the agencies establish to ensure that worthy projects are funded by one or both programs in the most cost effective manner without unjustly enriching the applicant(s)?**

This issue will be addressed by the application, award, and reporting processes, if properly designed. Grant applications should include a description of the areas to be served, along with a budget and a description of the facilities to be funded, which will be refined in the award process and made definitive in the final award document.<sup>22</sup> In this way, the application and award process will clearly set out how the funds are to be targeted to the rural, unserved, or underserved areas where they are intended to stimulate economic development, and will also clearly delineate the funded infrastructure to avoid “double-dipping.”<sup>23</sup> Further, the statute

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<sup>22</sup> See *supra* question A.5.a.

<sup>23</sup> Universal service support is not available to fund broadband deployment, and thus is not relevant to this consideration. 47 U.S.C. § 254(c) (defining universal service as an evolving (continued on next page))

requires quarterly reporting on expenditures and progress, with a more detailed report upon completion of a project.<sup>24</sup> Thus, any diversion of funds away from the intended areas or facilities would be revealed in the periodic reports, and would warrant further investigation. Additional regulatory requirements would impose additional burdens without any meaningful additional safeguards, and thus should be avoided.

**c. If such spending is detected, what actions should NTIA take to ensure effective use of investments made and remaining funding?**

If NTIA detects problems identified in any of the sub-parts to this question, the rules should provide for a brief period for the grantee to respond, followed by a brief but reasonable period to correct the default. If the issue is not corrected within the time permitted, NTIA must de-obligate and recapture the funds so they can be put to a use consistent with the Recovery Act.

**13. Definitions: The Conference Report on the Recovery Act states that NTIA should consult with the FCC on defining the terms “unserved area,” “underserved area,” and “broadband.” The Recovery Act also requires that NTIA shall, in coordination with the FCC, publish nondiscrimination and network interconnection obligations that shall be contractual conditions of grant awards, including, at a minimum, adherence to the principles contained in the FCC’s broadband policy statement (FCC 05-15, adopted August 5, 2005).**

**a. For purposes of the BTOP, how should NTIA, in consultation with the FCC, define the terms “unserved area” and “underserved area?”**

*Unserved.* For the purposes of administering BTOP, NTIA should define an “unserved area” as an area in which no terrestrial (i.e., non-satellite) broadband provider offers broadband service at or above advertised speeds of 1.5 Mbps in one direction. Each applicant should be

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level of “telecommunications services”); 47 C.F.R. § 54.101 (listing the services supported by universal service; broadband is not among them).

able to define its proposed service area, including aggregating both adjacent and non-contiguous clusters of unserved homes. This measure will increase focus on unserved homes and maximize incremental broadband deployment. Only the applicant’s proposed service area (and not some larger area) should be considered when determining whether the area identified in the application is unserved.

When developing the definition of “unserved,” NTIA must balance the need for speeds sufficient to deliver the manifold benefits that broadband offers to the American people (including economic development, health care, education, and entertainment) against the financial limitations of the funds in the BTOP program. A speed threshold that is too *high* could deplete BTOP funds by subsidizing new deployments in areas already enjoying service more than adequate for the use of core online offerings. In contrast, a threshold that is too *low* could result in little or no funding being awarded to upgrading facilities in areas that lack access to core broadband services, such as remote conferencing and online education. By adopting the 1.5 Mbps threshold proposed here and giving preference to applicants that offer new service at advertised downstream speeds of at least 3 Mbps, NTIA would avoid these pitfalls, ensuring the deployment of high-capacity networks while targeting funds to areas in need.

***Underserved.*** Likewise, an “underserved” area, for the purposes of administering BTOP, should be defined as an area lacking access to broadband at or above a specified advertised speed threshold. This definition may contemplate a range of degrees to which an area is deemed underserved corresponding to varying levels of broadband speed. The application process should take care to ensure that BTOP funding is directed to the efficient provision of broadband

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<sup>24</sup> See *supra* question A.11.

service, including but not limited to augmenting existing systems in “underserved” areas, rather than unnecessary overbuilding. At a minimum, “underserved” areas should encompass all areas lacking access to terrestrial broadband at speeds of 3 Mbps in one direction.<sup>25</sup>

**b. How should the BTOP define “broadband service?”**

**Broadband.** NTIA should decline to adopt any single definition of the term “broadband.” NTIA should focus on the definition of unserved rather than endeavor to define broadband more generally. To the extent NTIA does define “broadband” it should do so only in the limited context of the purposes of the Recovery Act. NTIA should focus on the definition of unserved rather than endeavor to define broadband more generally.

As recognized by the FCC, the term “broadband” can be used to describe service at speeds of 200 kbps or above, but can also describe services offering speeds many, many times as great.<sup>26</sup> As discussed above, there are of course many reasons for NTIA to distinguish among these various offerings on the basis of speed (and other factors). But NTIA need not and should not effectuate such distinctions by defining the term “broadband” narrowly. Rather, NTIA should recognize that the term “broadband” has a broad, inclusive scope, and should rely on

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<sup>25</sup> To the extent NTIA is interested in establishing various degrees of “underservedness,” ITTA also would support funding for an additional tier of “underserved areas” that include those areas lacking access to terrestrial broadband service at advertised speeds at or above 6 Mbps. If it adopts this approach, NTIA should place a greater priority on deployment projects in areas lacking 3 Mbps service as compared to those lacking access to 6 Mbps service.

<sup>26</sup> See, e.g., *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691, 9701 (2008) (“We will use the terms ‘first generation data’ to refer to those services with information transfer rates greater than 200 kbps but less than 768 kbps in the faster direction, and ‘basic broadband tier 1’ to refer to services equal to or  
(continued on next page)

higher speed thresholds to define what sorts of services within the class of “broadband” offerings are eligible and should receive priority for funding. This approach is especially important given that technology and consumer expectations in this area are constantly evolving; a definition of broadband that relies upon a specified speed would inevitably become outdated as technology and consumer expectations march forward. In a dynamic environment of this sort, attempts to define “broadband” based on speed are bound to backfire, and should be avoided.

So that government dollars are spent wisely, NTIA, however, should give preference to applications that offer broadband services to be deployed at advertised speeds at or greater than 3 Mbps in one direction. Broadband service offered at this level is capable of supporting standard-definition video, which enables core services like online education and remote conferencing. NITA should be sensitive, however, to the instances where geographic challenges may make deployment above 1.5 Mbps economically infeasible.

When considering multiple applications for serving one region, NTIA also should prioritize applications that would provide greater speeds, as one of the factors. This measure would be consistent with Section 6001(h)(2)(b), which instructs NTIA, to the extent practical, to consider applications that “provide the greatest broadband speed possible to the greatest population of users in the area.”

- (1) Should the BTOP establish threshold transmission speeds for purposes of analyzing whether an area is “unserved” or “underserved” and prioritizing grant awards? Should thresholds be rigid or flexible?**

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greater than 768 kbps but less than 1.5 mbps in the faster direction.... These terms are evolving definitions that could change over time based on advances in technology.”).

Yes. As discussed above, BTOP should establish specified threshold speeds for broadband service when determining if an area is unserved or underserved. Areas should qualify as “unserved” if they lack access to terrestrial (i.e., non-satellite) broadband at advertised speeds at or greater than 1.5 Mbps in one direction, whereas areas should qualify as “underserved” if they lack access to terrestrial broadband at advertised speeds at or greater than 3 Mbps in one direction. If NTIA views “underserved” areas along a spectrum, it also would be appropriate to consider an additional threshold for “underserved” areas at 6 Mbps in one direction. Establishing thresholds at these levels is consistent with how the FCC collects broadband data from broadband providers in the Form 477.

**(2) Should the BTOP establish different threshold speeds for different technology platforms?**

No. The threshold speeds for broadband should be the same for all technologies and providers. The public interest demands that speed thresholds be based upon the quality and quantity of online services available to consumers, rather than the specific type of technology employed. A different approach would be inconsistent with the Congressional intent that NTIA promote the purposes of BTOP in a “technologically neutral manner.”

**(3) What should any such threshold speed(s) be, and how should they be measured and evaluated (e.g., advertised speed, average speed, typical speed, maximum speed)?**

NTIA should consider speeds currently offered in regions separately from speeds that will be delivered from applicants receiving BTOP funding. All areas benefiting from BTOP funding should be able to access broadband at least at or above advertised speeds of 3 Mbps in one direction, independent of the level of service previously offered to the area. Specific

recommendations for speeds required of new broadband service providers and how to delineate “unserved” and “underserved” areas are set forth in response to Questions 13.a. and 13.b. above.

Any measure and evaluation of speeds should be based on advertised speeds, which are reliable metrics of the quality of the connection. Although peak load conditions can tax backbone capacity, reducing actual speeds somewhat, such conditions are variable and unpredictable. Thus, advertised speed provides a metric that is both reliable and meaningful for comparison.

**(4) Should the threshold speeds be symmetrical or asymmetrical?**

Whatever speeds are chosen, NTIA should only look at asymmetrical thresholds and, thereby permit providers to qualify for support by offering asymmetrical service. This approach is consistent with the preferences expressed by consumers and providers alike through their behavior in the market. Broadband providers using all types of technological platforms must determine how best to allocate finite transmission resources between “downstream” communications (those sent to the user) and “upstream” communications (those sent *by* the user). To ITTA’s knowledge, providers of residential services have *universally* chosen to allocate transmission capacity asymmetrically, favoring higher “downstream” rates and lower “upstream” rates. The reason is simple: most residential users transmit relatively low volumes of information upstream, often consisting of mouse clicks and typed content. These transmissions require very little bandwidth. In contrast, many users utilize substantial downstream transmission as they view content-laden websites, view streaming media, download songs and television programs, and so forth. In this environment, a symmetrical threshold would effectively force providers to *cut* downstream capacity in order to increase upstream capacity, in

defiance of consumers' preferences and needs. This outcome would be inimical to the public interest, and should be rejected.

**(5) How should the BTOP consider the impacts of the use of shared facilities by service providers and of network congestion?**

NTIA should recognize that the broadband Internet ecosystem is extremely complex and sophisticated. As the question suggests, providers use infrastructure to serve multiple purposes, rely on a host of critical traffic-management techniques, and are party to many (mostly unregulated) business-to-business agreements designed to facilitate the exchange of data traffic. This complex web of business relationships and technological tools has developed over time to ensure that providers can respond to customer needs. NTIA should strive to ensure that any requirements it adopts in conjunction with BTOP funding do not unwittingly disrupt these practices, which are meant to optimize the end user's broadband experience.

**c. How should the BTOP define the nondiscrimination and network interconnection obligations that will be contractual conditions of grants awarded under Section 6001?**

The nondiscrimination and interconnection grant conditions should be limited to the terms of the FCC's Broadband Policy Statement, adopted on August 5, 2005. Subscribers and providers alike have widely conformed their practices and expectations to the Policy Statement, which provides a sound basis for providing and receiving broadband service. Additional obligations need not and should not be imposed in the context of grants, and would serve to discourage participation and investment by injecting uncertainty, undermining the Recovery Act's stimulative objectives and depressing broadband deployment.

Moreover, the process available in this proceeding – particularly given the Recovery Act's timetable – simply does not afford parties and NTIA with a sufficient basis for establishing

wide-ranging interconnection and nondiscrimination requirements. The FCC has been considering these issues for two years in its *Broadband Industry Practices* proceeding, and has been evaluating related issues for even longer in a host of other dockets. These ongoing FCC proceedings have afforded an opportunity for extended debate and deliberation that are simply not available here. While ITTA opposes the imposition of additional nondiscrimination and interconnection requirements on broadband networks, it believes that such requirements should be imposed – if at all – in the context of these ongoing proceedings.

In addition, NTIA should place a time limit, or “sunset” period, on any non-discrimination or network interconnection obligations that it imposes, to avoid retaining obligations that are sure to become archaic and counter to the public interest given technological and market evolution. A logical sunset point would be at the end of the build-out period for any given grant. This recommendation is consistent with term limits placed on merger commitments where broadband providers have certified to comply with the FCC’s Broadband Policy Statement.<sup>27</sup>

Finally, any obligations should not extend to other parts of a broadband service provider’s networks that were not built as the result of a grant under BTOP, or they may serve only to dissuade existing network owners from participating.

**(1) In defining nondiscrimination obligations, what elements of network management techniques to be used**

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<sup>27</sup> ITTA notes that this recommendation is consistent with term limits placed on merger commitments where broadband providers have certified to comply with the FCC’s Broadband Policy Statement. *See, e.g., SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18350 ¶ 108 & Appendix F (2005); *Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, 18509 ¶ 143 & Appendix G (2005).

**by grantees, if any, should be described and permitted as a condition of any grant?**

As explained above, NTIA should not impose conditions other than those set forth in the FCC's Broadband Policy Statement.

**(2) Should the network interconnection obligation be based on existing statutory schemes? If not, what should the interconnection obligation be?**

As explained above, NTIA should only impose the conditions set forth in the FCC's Broadband Policy Statement.

**(3) Should there be different nondiscrimination and network interconnection standards for different technology platforms?**

No, all providers and technologies should be treated the same. This is consistent with NTIA's mandate to address private sector broadband providers in a technologically neutral manner under the Recovery Act.<sup>28</sup>

**(4) Should failure to abide by whatever obligations are established result in de-obligation of fund awards?**

Failure to abide by the interconnection and nondiscrimination obligations should be dealt with on a case-by-case basis that could ultimately lead to de-obligation of the funds. However, any de-obligation should result only from behavior completely within the grantee's control. Delays or other failures to satisfy the term of a grant may result from Acts of God, customer abuses, or other factors not directly related to the service provider's actions. In these cases, de-obligation of funds would be both unfair and contrary to the public interest.

**(5) In the case of infrastructure paid for in whole or part by grant funds, should the obligations extend beyond**

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<sup>28</sup> Recovery Act § 6001(e)(1)(C).

**the life of the grant and attach for the useable life of the infrastructure?**

The obligations should not extend beyond the build-out period for a given grant. The broadband ecosystem is evolving quickly as providers consistently strive to satisfy customer needs. Any conditions placed on Recovery Act-funded infrastructure will necessarily distort these efforts, limiting provider freedom to compete against their rivals. Such distortion will only become magnified over time, as market and technical structures evolve away from the snapshot view reflected in any bright-line requirements adopted in 2009. Thus, regulations adopted here should sunset at the end of the grant-making period.<sup>29</sup>

- d. Are there other terms in this section of the Recovery Act, such as “community anchor institutions,” that NTIA should define to ensure the success of the grant program? If so, what are those terms and how should those terms be defined, given the stated purposes of the Recovery Act?**

[No response.]

- e. What role, if any, should retail price play in these definitions?**

Retail price should be a factor in determining the affordability of broadband in a project area. NTIA may want to place higher priority on applications submitted by entities indicating that they will charge reasonable service and equipment prices. NTIA has sufficient authority under its requirement to avoid “unjust enrichment” to decide not to fund a project with exceptionally high rates or profit margins given the size of the grant. An application that will

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<sup>29</sup> ITTA notes that this recommendation is consistent with term limits placed on merger commitments where broadband providers have certified to comply with the FCC’s Broadband Policy Statement. *See, e.g., SBC Communications Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18290, 18350 ¶ 108 & Appendix F (2005); (continued on next page)

result in pricing that is comparable to what the applicant offers for similar service to currently served individuals in comparable regions should presumably be considered to be reasonable.<sup>30</sup>

**14. Measuring the Success of the BTOP: The Recovery Act permits NTIA to establish additional reporting and information requirements for any recipient of grant program funds.**

- a. What measurements can be used to determine whether an individual proposal has successfully complied with the statutory obligations and project timelines?**
- b. Should applicants be required to report on a set of common data elements so that the relative success of individual proposals may be measured? If so, what should those elements be?**

*(Response to 14.a. and 14.b.)* Measurement issues will be addressed by the application, award, and reporting processes, if these are properly designed. Grant applications should include a description of the areas to be served, along with a budget and a description of the facilities to be funded, which will be refined in the award process and made definitive in the final award document.<sup>31</sup> In this way, the application and award process will clearly set out the measurements that should be used to determine whether the project is meeting statutory goals. Further, the statute requires quarterly reporting on expenditures and progress, with a more detailed report upon completion of a project.<sup>32</sup> Additional regulatory requirements would impose additional burdens without any meaningful additional safeguards, and thus should be avoided.

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*Verizon Communications Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, 20 FCC Rcd 18433, 18509 ¶ 143 & Appendix G (2005).

<sup>30</sup> See *supra* note 11 and associated text.

<sup>31</sup> See *supra* question A.5.a.

<sup>32</sup> See *supra* question A.11.

**15. Please provide comment on any other issues that NTIA should consider in creating BTOP within the confines of the statutory structure established by the Recovery Act.**

It is urgent that NTIA and RUS clarify the “made in America” provision in the Recovery Act.<sup>33</sup> This provision should be implemented in the same way that RUS has implemented a similar provision in the Rural Electrification Act, looking at manufactured products as a whole, and avoiding a “component-level analysis” that would preclude virtually any provider from complying with the requirement. For certain types of broadband network infrastructure, there are no American suppliers; for others, there is only a single American supplier that could not meet the demand for all of the projects that will be funded under the Recovery Act. Alternatively, NTIA’s and RUS’s rules implementing the Recovery Act should set out a clear and streamlined waiver process to ensure that the statute’s aggressive timelines are met.

NTIA and RUS also should do everything in their power to protect Recovery Act funding recipients from price gouging by contractors in the rush of projects that the stimulus implementation will create. To the extent possible, NTIA and/or RUS should impose Federal contracting protections on the rates that contractors charge to funding recipients, to ensure that stimulus funds are spent wisely.

Both agencies should avoid imposing mandatory or automatic bonding requirements for coverage of equipment that is protected by a reasonable warranty. In the 2008 Farm Bill, the Congress instructed the RUS to review its bonding requirements because of concerns that loan recipients were requesting bond coverage for equipment as well as labor. RUS should quickly

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<sup>33</sup> Recovery Act § 1605.

clarify its current policy that performance bonds are not required to cover equipment costs that are protected by warranties.

**B. Rural Utilities Service**

**1. What are the most effective ways RUS could offer broadband funds to ensure that rural residents that lack access to broadband will receive it?**

Grants will best achieve the goal of quickly extending broadband service into unserved areas. By contrast, loans or loan guarantees will not address the fundamental economic problems that have thus far prevented broadband deployment projects in currently unserved areas from receiving investment. Providers serving these areas (such as ITTA members) generally have good access to capital; the problem is that no business case can be made to deploy broadband in the remaining areas – the deployment costs are too high and the potential revenues are too low (generally as a function of low population density). Accordingly, RUS program funds should focus primarily on grants, rather than loans or loan guarantees.

In any event, the process should be streamlined as much as possible. This will help both applicants and the reviewing agencies meet the tight deadlines that the statute sets for selection, commencement, and completion of projects. This is also another reason why RUS should prioritize funding for grants rather than loans or loan guarantees, as the financial showing necessary for a grant will be less extensive than for a loan that must be repaid over a period of years.

For either loans or grants, the application should be as short as possible, consistent with the information that the agencies must gather under the statute. An application like the current 65-page RUS loan application is clearly overly burdensome (as problems in that program have demonstrated). The application form should track the statute and gather no more information

than necessary.<sup>34</sup> Also broadband providers should be afforded significant flexibility in how they delineate the geographic boundaries of an area to be served.

**For a number of years, RUS has struggled to find an effective way to use the Agency's current broadband loan program to provide broadband access to rural residents that lack such access. RUS believes that the authority to provide grants as well as loans will give it the tools necessary to achieve that goal. RUS is looking for suggestions as to the best ways to:**

- a. Bundle loan and grant funding options to ensure such access is provided in the projects funded under the Recovery Act to areas that could not traditionally afford the investment?**

As discussed above, grants are preferable to loans in areas that are uneconomic to serve.<sup>35</sup> RUS must make grants only available in the largest proportion possible, rather than loans or bundles of grants and loans, in order to address the fundamental economic problems that have prevented broadband deployment in currently unserved areas.<sup>36</sup> The RUS application process also should seek assurance from the applicant that, consistent with the Recovery Act, the proposed project would not be undertaken at the present time absent funding.

- b. Promote leveraging of Recovery Act funding with private investment that ensures project viability and future sustainability?**

As discussed above, in many cases, a loan or loan guarantee will not overcome the economic case against investment in very low-density and hard-to-serve areas.<sup>37</sup> Moreover, RUS already has substantial loan programs that are not being fully utilized, which indicates that additional loan programs may not have much impact on broadband deployment or job

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<sup>34</sup> *Cf supra* question A.5.

<sup>35</sup> *See supra* question B.1.

<sup>36</sup> *Id.*

creation/preservation. Therefore, RUS should avoid using Recovery Act funding to develop additional loan programs.

The RUS section of the Recovery Act does not reference matching funds or leveraging, likely because of the more challenging economics of broadband deployment in rural, unserved areas. As with BTOP grants, RUS funding will best achieve the statutory goals if it is targeted to currently unserved and, secondarily, underserved, areas. Thus, the application selection process should explicitly prioritize applications to serve such areas.

**c. Ensure that Recovery Funding is targeted to unserved areas that stand to benefit the most from this funding opportunity?**

As with BTOP grants, RUS funding will best achieve the statutory goals if it is targeted to currently unserved and, secondarily, underserved, areas. Thus, the application selection process should explicitly prioritize applications to serve such areas.

**2. In what ways can RUS and NTIA best align their Recovery Act broadband activities to make the most efficient and effective use of the Recovery Act broadband funds?**

Close coordination between the two agencies will of course be crucial for the success of both programs. Most significantly RUS, like NTIA, should award supply-side funding in the form of grants. A common focus on grants would simplify preparation and coordinated review of applications – and ensure that federal funding is awarded expeditiously to worthwhile projects for areas lacking core broadband services. Also, to the extent possible under the statute, individual elements of the programs should be conformed to one another to facilitate the process for applicants and agency staff. Common application processes and relevant definitions should

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<sup>37</sup> See *supra* question B.1.

be adopted across both programs, to the extent practicable, consistent with the distinct requirements for the two programs.

**In the Recovery Act, Congress provided funding and authorities to both RUS and the NTIA to expand the development of broadband throughout the country. Taking into account the authorities and limitations provided in the Recovery Act, RUS is looking for suggestions as to how both agencies can conduct their Recovery Act broadband activities so as to foster effective broadband development. For instance:**

- a. RUS is charged with ensuring that 75 percent of the area is rural and without sufficient access needed for economic development. How should this definition be reconciled with the NTIA definitions of “unserved” and “underserved?”**

As discussed above, the agencies should apply consistent definitions in both programs. RUS, accordingly, should find that an area lacks “sufficient access needed for economic development” when it is an “unserved area,” i.e., when it is an area in which no terrestrial (i.e., non-satellite) broadband provider offers broadband service at or above advertised speeds of 1.5 Mbps in one direction. Such an area also should qualify as “rural” if it meets the definition of “rural area” included in the 2008 Farm Bill.<sup>38</sup>

- b. How should the agencies structure their eligibility requirements and other programmatic elements to ensure that applicants that desire to seek funding from both agencies (i) do not receive duplicate resources and (ii) are not hampered in their ability to apply for funds from both agencies?**

Joint funding issues can be addressed through proper design of the application, award, and reporting processes. Applications should include a description of the areas to be served, along with a budget and a description of the facilities to be funded, which will be refined in the

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<sup>38</sup> Public L. 110-246, 122 Stat. 1651 (Jun. 18, 2008) (“2008 Farm Bill”).

award process and made definitive in the final award document.<sup>39</sup> In this way, the application and award process will clearly delineate the funded infrastructure to avoid “double-dipping.” Further, the statute requires quarterly reporting on expenditures and progress, with a more detailed report upon completion of a project.<sup>40</sup> Thus, NTIA and RUS can monitor funding recipients’ allocation of funds in the periodic reports.

**3. How should RUS evaluate whether a particular level of broadband access and service is needed to facilitate economic development?**

See response to Question 2.a, above.

**Seventy-five percent of an area to be funded under the Recovery Act must be in an area that USDA determines lacks sufficient “high speed broadband service to facilitate rural economic development.” RUS is seeking suggestions as to the factors it should use to make such determinations.**

**a. How should RUS define “rural economic development?” What factors should be considered, in terms of job growth, sustainability, and other economic and socioeconomic benefits?**

ITTA member companies work closely as partners with state, regional and local economic development entities to deploy state-of-the art telecommunication services essential for job growth and retention. That said, ITTA believes that state and local governmental entities and rural development groups are better positioned to respond to this question.

**b. What speeds are needed to facilitate “economic development?” What does "high speed broadband service" mean?**

See response to question A.13.b, above.

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<sup>39</sup> See *supra* question A.5.a.

<sup>40</sup> See *supra* question A.11.

- c. **What factors should be considered, when creating economic development incentives, in constructing facilities in areas outside the seventy-five percent area that is rural (i.e., within an area that is less than 25 percent rural)?**

The factors should be the same as those applied to the overall project. Also as stated throughout these comments, ITTA urges NTIA and RUS to give priority in all cases to applications proposing to serve unserved (and, secondarily, underserved) areas.

4. **In further evaluating projects, RUS must consider the following priorities for projects that will: 1) give end-users a choice of internet service providers, 2) serve the highest proportion of rural residents that lack access to broadband service, 3) be projects of current and former RUS borrowers, and 4) be fully funded and ready to start once they receive funding under the Recovery Act. What value should be assigned to those factors in selecting applications? What additional priorities should be considered by RUS?**

As with BTOP funding, funds distributed by RUS should be focused on bringing broadband offerings to unserved and underserved communities. As described in more detail above, these proposals will help to put users in rural and other hard-to-serve areas on more equal footing with other citizens, opening economic opportunity and expanding access to information, education, health care, and other public goods. In addition, the deployment of broadband infrastructure to serve end users will have second-order effects, facilitating the development of smart energy grids, electronic medical record capability, intelligent transportation networks, and the like. Thus, RUS should place the highest priority on proposals that “serve the highest proportion of rural residents that lack access to broadband service.”

RUS should also place significant emphasis on proposals that will “be fully funded and ready to start once they receive funding under the Recovery Act.” The Recovery Act aims generally to infuse funds into the economy as quickly as possible, and its broadband provisions aim to bring service as quickly as possible to areas without broadband access. RUS should

therefore focus on proposals that can be effectuated quickly. In particular, RUS should consider the applicant’s experience and record of service in deploying broadband to end users. Applicants that have served hard-to-reach populations before – and have demonstrated the ability to develop a feasible business model permitting such service over the long term – can best serve the Recovery Act’s goals, and RUS should prioritize proposals from such providers.

RUS should also accord preference to applications from previous RUS borrowers, consistent with the statute. The preference should apply to applications from subsidiaries and the parent company in a corporate family if the parent company or any other affiliate is a previous RUS borrower.

Finally, ITTA urges care in applying the Recovery Act’s language prioritizing projects that would “give end-users a choice of internet service providers.” The Recovery Act’s aims can best be served by spreading funding out to bring infrastructure to areas that lack service (or lack adequate service). Thus, RUS should interpret the Act’s “choice of internet service providers” language to state a preference for networks that will permit users of a choice of ISPs, not to demand the immediate deployment of multiple networks in now-unserved areas.

- 5. What benchmarks should RUS use to determine the success of its Recovery Act broadband activities? The Recovery Act gives RUS new tools to expand the availability of broadband in rural America. RUS is seeking suggestions regarding how it can measure the effectiveness of its funding programs under the Recovery Act. Factors to consider include, but are not limited to:**
  - a. Businesses and residences with “first-time” access.**
  - b. Critical facilities provided new and/or improved service:**
    - (i) Educational institutions.**
    - (ii) Healthcare providers.**
    - (iii) Public service/safety.**
  - c. Businesses created or saved.**

- d. Job retention and/or creation.**
- e. Decline in unemployment rates.**
- f. State, local, community support.**

Benchmarks can be built into the application, award, and reporting processes, if designed properly. Grant applications should include discussions of all statutory criteria, which will inevitably be refined in the award process and made definitive in the final award document. In this way, each project's benchmarks towards meeting the statutory goals will be built into the grant award itself. Further, the statute requires quarterly reporting on expenditures and progress, with a more detailed report upon completion of a project. Thus, progress towards achievement of the goals will be measurable through the periodic reporting process. Additional regulatory requirements would impose additional burdens without any meaningful additional safeguards, and thus should be avoided.

**CONCLUSION**

ITTA urges NTIA and RUS to expeditiously adopt clear and streamlined rules to implement the Recovery Act provisions. These rules should focus primarily on identifying and funding projects that will bring broadband service to unserved (and, secondarily, underserved) areas.

Respectfully submitted,

**INDEPENDENT TELEPHONE AND  
TELECOMMUNICATIONS ALLIANCE**

By: \_\_\_\_\_

Curt Stamp  
President  
Joshua Seidemann  
Vice President, Regulatory Affairs  
**INDEPENDENT TELEPHONE AND  
TELECOMMUNICATIONS ALLIANCE**  
1101 Vermont Avenue NW, Suite 501  
Washington, DC 20005  
(202) 898-1520  
www.itta.us

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