

Before the
NATIONAL TELECOMMUNICATIONS & INFORMATION ADMINISTRATION
AND THE
RURAL UTILITIES SERVICE
Washington, D.C.

Joint Request for Information)
To: NTIA & RUS)

Docket No. 090309298–9299–01

**SUPPLEMENTAL EX PARTE COMMENTS OF SUNESYS, LLC
REGARDING THE DEFINITION OF “UNDERSERVED” AREAS**

Sunesys, LLC (“Sunesys”), by undersigned counsel, hereby submits these comments to supplement its previously-filed comments dated April 13, 2009 (“Initial Comments”) in the above-captioned proceeding.

In its Initial Comments, Sunesys demonstrated that the purposes of the ARRA and the intent of Congress require that **the definition of “underserved” areas in the BTOP include, at a minimum, those geographic areas defined by the boundaries of school districts eligible for at least an 80% discount under the federal e-rate program.**

This simple and effective definition ensures that

- Areas with very low income levels, which generally have weak broadband demand, will be defined as “underserved”;
- Prompt implementation within the BTOP’s deadlines will be enabled, because these boundaries are already defined and utilized by the FCC and RUS;
- Most or all schools, libraries, medical and health care facilities, and civic community centers in low income and rural areas (collectively, “Community Anchors”) will have an opportunity to benefit from the funding;
- The overriding purpose of Congress in the BTOP – to substantially increase the number of consumers actually using broadband service – will be fulfilled.¹

As demonstrated below, the key principals and policies underlying Sunesys’ definition of “underserved” have widespread support.

Sunesys' Definition Will Encompass Low Income Areas Where the Need to Stimulate Broadband Demand is Most Acute

Commenters agree with Sunesys that there is an urgent need for significant stimulus funds in low income areas where broadband access technically exists but in reality utilization is quite low due to affordability issues and a lack of perceived need for broadband.² Accordingly, to ensure that a significant focus of the funding is on low-income areas, the definition of “underserved areas” must include such low income areas.³ Such areas are certainly underserved given that relatively few people receive broadband service.

Sunesys' definition of “underserved” areas will appropriately encompass low income populations based on objective poverty statistics (i.e., the percentage of students eligible for the National School Lunch Program).⁴ Just as significant, for those school districts eligible for at least an 80% discount under the federal e-rate program, Sunesys' definition will include state-designated economic zones, Section 45D low income communities, Economic Development Districts, Renewal Communities/Empowerment Zones and Enterprise Communities, which areas many other commenters concluded

¹ Initial Comments of Sunesys, p.3-16.

² See, e.g., Comments of New York City to FCC (GN Docket 09-40) at 2-3 (broadband adoption among low-income consumers is very low, and the focus should be on areas with below average rates of broadband adoption); Comments of Boston to FCC (GN Docket 09-40) at 2-3 (for many areas “when it comes to broadband, it is not typically an ‘access’ issue, it is an affordability issue”); Comments of One Economy to FCC (GN Docket 09-40) at 3 (“issues related to adoption, and not deployment, constitute the most significant barrier to low-income Americans using the Internet to improve their lives”).

³ See, e.g., Comments of New York City to FCC (GN Docket 09-40) at 2-3 (“any definition of underserved should allow for grants that will immediately implement a number of digital inclusion initiatives focused on expanding access to, and adoption of, broadband among low-income consumers or within other vulnerable communities”); Comments of Boston to FCC (GN Docket 09-40) at 2-3; Comments of San Francisco to FCC (GN Docket 09-40) at 4; Comments of One Economy to FCC (GN Docket 09-40) at 1, 3, 5-6.

⁴ See also, Comments of Boston to FCC (GN Docket 09-40) at 3 (Among other things, “[i]ndicia of unaffordable should include: % of schoolchildren eligible for free or subsidized school lunches”).

should be included in the definition of “underserved” areas.⁵ Yet, while including such areas is critical, such designated areas do not collectively form a single unified geographic boundary (i.e., there are gaps in coverage between certain areas). Therefore, a definition based solely on such designated areas will hinder the ability of grantees to seamlessly deploy BTOP-funded projects within and between low income areas, and will likely result in the inadvertent exclusion of important Community Anchors. By utilizing school district boundaries rather than relying solely on such designated areas, Sunesys’ definition will ensure that projects can be seamlessly deployed, and that all Community Anchors in eligible low income areas will have the opportunity to benefit from the BTOP funding.

Sunesys’ Definition Will Ensure That Community Anchors Are Utilized to Overcome the Barriers Impeding Broadband Utilization in Low Income Areas

Community Anchors are the most effective tool for stimulating demand for broadband service.⁶ Such conclusion is supported by the language of the BTOP itself.⁷

Community Anchors in low income areas are in the best position to overcome the barriers that are impeding broadband utilization in such areas (i.e., affordability and a lack of perceived need for broadband), and to provide the short term and long term job-creation benefits demanded under the ARRA.

⁵ See, e.g., Comments of Communications Workers of America to FCC (GN Docket 09-40) at 22; Comments of Fiber to the Home Council to FCC (GN Docket 09-40) at 9-10; Comments of XO Communications and Netlink to FCC (GN Docket 09-40) at 7; see also Comments of Free Press to FCC (GN Docket 09-40) (defining “underserved persons” to include persons who live in such areas);

⁶ See Initial Comments of Sunesys, p.7-14; Comments of Microsoft to FCC (GN Docket 09-40) 2-6; Comments of AT&T, Inc. to FCC (GN Docket 09-40) at 2-5; see also, Comments of American Library Association to FCC (GN Docket 09-40) at 1.

⁷ See Initial Comments of Sunesys, p.7-14; Comments of AT&T to FCC (GN Docket 09-40) at 3-5. Microsoft Corporation, one of the most innovative companies in the United States, so strongly believes in the importance of broadband to Community Anchors that it states that “if the US government were to accomplish just one goal in this process, it should be to ensure that all schools, libraries and hospitals across the nation are connected to future-proof broadband facilities, such as fiber-optic cable.” Comments of Microsoft to FCC (GN Docket 09-40) at 2-3.

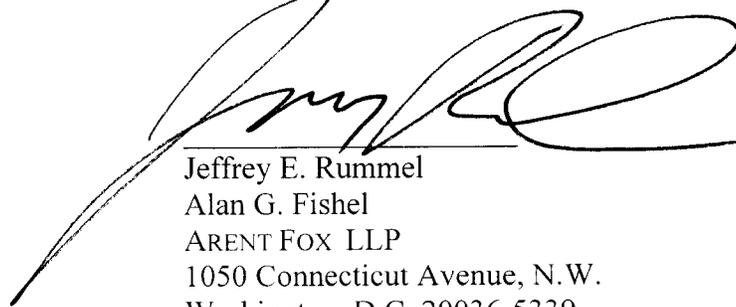
Yet these institutions are themselves burdened by affordability issues due to the anti-competitive nature of closed, incumbent networks. In low income areas, Community Anchors simply cannot afford service that will provide these multiple-user environments with the necessary broadband capabilities and Congressionally-mandated benefits contemplated under BTOP.⁸

Accordingly, the definition of “underserved” areas must be thoughtfully tailored so as to include most or all of the Community Anchors in a low income area. By utilizing school district boundaries for districts eligible for at least an 80% e-rate discount, Sunesys’ definition of “underserved” areas will ensure that most or all of the Community Anchors in a low income area will be eligible for BTOP funding.

For the foregoing reasons, rules implementing the BTOP should be adopted consistent with the Initial Comments of Sunesys, as supplemented herein.

Respectfully submitted,

SUNESYS, LLC

A large, stylized handwritten signature in black ink, appearing to read 'Jeffrey E. Rummel', is written over a horizontal line.

Jeffrey E. Rummel
Alan G. Fishel
ARENT FOX LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
(202) 715-8479

Its Attorneys

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⁸ See Initial Comments of Sunesys, p.7-8.