

Before the
DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration

and the
DEPARTMENT OF AGRICULTURE
Rural Utilities Service

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

COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION

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EXECUTIVE SUMMARY

USTelecom represents a broad spectrum of the companies that are already building the nation's broadband infrastructure and are committed to doing their part in seeing the promise of the broadband grant and loan provisions of the ARRA fulfilled. The President and Congress assigned to NTIA and RUS both a tremendous responsibility and a momentous opportunity. The opportunity, of course, is to make significant progress toward the goal of ensuring that all Americans have access to high speed broadband services. The responsibility is to do so in a manner that fulfills the primary goal of the ARRA—the immediate stimulation of economic activity essential to re-invigorating the American economy.

In order to meet the fiduciary duty placed on them by Congress, the President and the American public, the agencies must target broadband stimulus funds toward projects that will immediately stimulate economic activity and in the reasonably short term provide high speed broadband service.

An essential decision that NTIA must make as soon as possible in this process is identifying the scope of entities that will be allowed to qualify for grants. The goals of this program and the ARRA generally make it essential to include, at a minimum, any private entity that is currently operating a broadband network as eligible to receive funding. Such companies are particularly well-positioned to fulfill the essential policy goals of the ARRA: immediate job creation leading to new broadband connections as soon as possible. Existing companies are demonstrably qualified to identify the areas where broadband investment is most needed; to have the operational know-how and infrastructure to undertake projects that will lead to the fastest possible creation of jobs; and to have the skills and experience to operate a continuing enterprise to provide broadband services to consumers.

A clear understanding of the role of the states in NTIA's BTOP will facilitate the timely and efficient implementation of the program. While the Explanatory Statement of the conferees notes the resources and familiarity the states have with respect to the local economic, demographic and market conditions relating to the success of the broadband grant program, it also recognizes the limits on the role of the states by noting that "...NTIA, at its discretion, will seek advice and assistance from the States in reviewing grant applications, as long as the NTIA retains the sole authority to approve the awards." [emphasis added] Because of the ability of states to both apply for grant funds and comment on grant fund applications from others, NTIA must insist that states be very circumspect in their commentary, particularly in situations where a state grant application competes with a proposal from an applicant not associated with the state. States can play a key role in facilitating the prompt construction of projects, once approved and funded by either NTIA or RUS, by expediting the various regulatory and permitting processes associated with construction projects, such as approvals of rights of way use and completion of environmental impact statements.

Both RUS and NTIA will face huge challenges in fairly and quickly evaluating the enormous number of funding applications that are expected under the programs authorized by ARRA. Because many applicants will seek funding from both RUS and NTIA for projects involving build out of broadband infrastructure, the two agencies should apply common scoring criteria for

those types of projects to the extent permitted by the statute. USTelecom has identified several factors that should be considered by both agencies in reviewing infrastructure projects:

- Providing service to unserved and underserved consumers
- Sustainability
- Timeliness of construction
- Broadband speed
- Affordability
- Impact on job creation and preservation and economic development
- Project cost
- Public interest projects

Timeliness of awarding grants and beginning construction are key elements of ARRA. Some have suggested that the award of infrastructure grant funds under ARRA should await the completion of statewide broadband maps in the states where maps have not yet been completed. But given the fragile state of the Nation's economy and the fact that millions of Americans lack access to core broadband services, it would be inconsistent with ARRA's primary purposes – the preservation and creation of jobs, and the promotion of rapid economic recovery – to wait that long for project funds to be disbursed. As NTIA implements the specific ARRA provision requiring that it develop and maintain a national inventory map, we urge the agency to not attempt “reinventing the wheel” or duplicating the efforts of grantees under the BDIA. BDIA grants should be given to public-private partnerships with the demonstrated capacity not only to map the states but also to create the collaborative organizational infrastructures at the state and local levels that can gain the trust of the public and private sector participants whose cooperation is necessary to the success of the effort.

Key to the administration of both the NTIA and RUS programs are the definition of the terms “unserved area,” “underserved area” and “broadband.” These terms are undefined in the statute but are inextricably intertwined, so they should be dealt with holistically. These terms should be viewed by the agencies within the relative continuums within which they currently exist in this country, and the agencies will need to consider the benefits of each application along a spectrum of availability levels, speeds to be offered, population densities and costs. Each of these criteria is important and will involve tradeoffs that will require the agencies to establish policy priorities for the limited funds. With this in mind, USTelecom urges the agencies to set priorities that are focused on bringing areas and communities most lacking in broadband infrastructure up to levels available to the majority of Americans.

The highest value should be given to projects for areas that lack access to terrestrial (non-satellite) broadband services offering advertised speeds at or greater than 768 kbps in one direction. This is the low end of the range of services that the FCC defines as “basic broadband tier 1.” The next value should be given to projects for areas that lack access to terrestrial broadband service offering advertised speeds at or greater than 1.5 Mbps in one direction. This is the high end of the range of services that the FCC defines as “basic broadband tier 1.” The

lowest value should be given to projects for areas that lack access to terrestrial broadband service offering advertised speeds at or greater than 3 Mbps in one direction. At that level, certain applications, particularly standard definition video) that can have significant positive economic effects, such as supporting work-at-home and distance education, become usable.

The agencies should also separately examine and give weight to targeted deployment to strategic institutions with potentially higher broadband needs than discussed above, where such projects are likely to stimulate significant economic benefits to a particular community. Infrastructure projects that result in new or improved broadband services to institutions such as community colleges, regional hospital networks or other strategic entities can generate job creation, meet rural education or medical needs, and in other ways satisfy the economic goals identified by Congress.

The benefits of the broadband programs created by ARRA should not be diminished by an onerous requirement going beyond the current application of the Commission's broadband Policy Statement. NTIA should define the existing FCC Policy Statement as creating the sole non-discrimination and interconnection obligation to be placed on grant recipients. More than three years of experience under that Policy Statement has demonstrated its successful balancing of interests among stakeholders – consumers, cable and wireline broadband service providers, application and content providers and technology companies. Implementation of the Recovery Act should support, not hinder, the ability of providers to continue to expand and enhance services and speeds. NTIA should make the FCC Policy Statement, without any expansion, the sole criterion for non-discrimination and network interconnection obligations.

New Rural Utilities Service (RUS) program funding provided under ARRA should be used for grants to deploy broadband service in rural areas lacking sufficient access. Most of these areas remain unserved and underserved, not because of the absence or the price of credit, but due to the inability of broadband providers to demonstrate a feasible business case to bring service to very high cost, low density markets. Congress recognized the importance of grants for rural broadband deployment when it decided to create a new RUS broadband program, supplementing the preexisting RUS programs with a different financing model. The other RUS telecom programs are overwhelmingly based on a loan model (versus grants). But by allocating new funds that could be used for grants, ARRA recognized that the loan model is not sufficient to address the issue of the lack of broadband infrastructure in sizable portions of unserved rural America.

Clear, simple and streamlined procedures and definitions will best meet the goals of the broadband portion of the ARRA, stimulation of economic activity and the enhancement of the nation's broadband infrastructure. NTIA and RUS should promptly adopt such procedures and definitions, leverage the expertise of USTelecom members and others, and proceed to the important task at hand.

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COMMENTS OF
THE UNITED STATES TELECOM ASSOCIATION

USTelecom¹ is pleased to submit its comments in response to the Joint Request for Information (“Request”)² from the National Telecommunications and Information Administration (“NTIA”), an agency in the U.S. Department of Commerce, and the Rural Utilities Service (“RUS”), an agency in the U.S. Department of Agriculture. The Request outlines the categories of information with respect to which interested parties may submit comments on the broadband provisions of the American Recovery and Reinvestment Act of 2009 (“ARRA”).³ The Request divides the matters to be considered into sections – the first section requests information to assist NTIA in establishing and administering the Broadband Technology Opportunities Program (“BTOP”) and the second section requests information to assist RUS in implementing its expanded authority. These comments will address topics raised in the Request and will reference the relevant questions.

¹ USTelecom is the premier trade association representing service providers and suppliers for the telecommunications industry. USTelecom members provide a full array of services, including broadband, voice, data and video over wireline and wireless networks.

² See *Joint Request for Information and Notice of Public Meetings*, published in the Federal Register March 11, 2009, Docket No. 090303298-9299-01

³ Pub. L. No. 111-5, 123 Stat. 115 (2009) (ARRA)

In enacting the broadband grant and loan provisions of the ARRA, the President and Congress assigned to NTIA and RUS both a tremendous responsibility and a momentous opportunity. The opportunity, of course, is to make significant progress toward the goal of ensuring that all Americans have access to high speed broadband services. The responsibility is to do so in a manner that fulfills the primary goal of the ARRA—the immediate stimulation of economic activity essential to re-invigorating the American economy.

USTelecom represents a broad spectrum of the companies that are already building the nation’s broadband infrastructure. USTelecom member companies continue to invest tens of billions of dollars annually to deploy broadband services to unserved areas and upgrade broadband facilities throughout their service areas. Nonetheless, it is widely recognized that there are areas of the country where the costs of providing service will – at least in the foreseeable term – prevent the deployment of broadband services comparable to those available to the majority of Americans. In order to meet the fiduciary duty placed on them by Congress, the President and the American public, the agencies must target broadband stimulus funds toward projects that will immediately stimulate economic activity and in the reasonably short term provide high speed broadband service.

I. NTIA SHOULD ADOPT A RULE INCLUDING PRIVATE ENTITIES AS ELIGIBLE FOR BTOP FUNDING (NTIA QUESTION 3)

An essential decision that NTIA must make as soon as possible in this process is identifying the scope of entities that will be allowed to qualify for grants. The broadband provisions of the ARRA provide that, to be eligible for a grant, an applicant must be a state or local government or Indian tribe; a non-profit; or “any other entity, including broadband service or infrastructure provider, that the Assistant Secretary finds *by rule* to be in the public interest.”⁴

⁴ ARRA Section 6001(e)(1) (italics added).

The goals of this program and the ARRA generally make it essential to include, at a minimum, any private entity that is currently operating a broadband network as eligible to receive funding. Such companies are particularly well-positioned to fulfill the essential policy goals of the ARRA: immediate job creation leading to new broadband connections as soon as possible. Existing companies are demonstrably qualified to identify the areas where broadband investment is most needed; to have the operational know-how and infrastructure to undertake projects that will lead to the fastest possible creation of jobs; and to have the skills and experience to operate a continuing enterprise to provide broadband services to consumers. Section 6001(e)(1)'s explicit reference to "broadband service or infrastructure provider" confirms Congress' recognition that such companies are well-suited to the furtherance of the Act's goals. The Joint Explanatory Statement's directive that "as many entities as possible be eligible" further supports the inclusion of these companies. Whatever procedural approach the agency chooses to implement this provision, USTelecom respectfully urges that it inform private companies as soon as possible that they will be eligible, so that those entities can develop sound applications for broadband projects that will best meet program goals. NTIA must clearly define the scope of qualifying entities as early in this funding process as possible, and certainly no later than the issuance of the initial Notice of Funding Availability. It is important that all potential applicants know at the outset the rules of eligibility or else some entities may be advantaged over others to the detriment of the goals of the ARRA.

II. THE ROLE OF THE STATES (NTIA QUESTION 2)

The ARRA includes a significant role for states with regard to the NTIA BTOP. The RUS portion of ARRA does not make reference to a state role. Part of the state's role in BTOP is consultative – the Administrator of NTIA may consult a state with respect to the identification of

areas unserved or underserved by broadband as well as the allocation of grant funds within that state for projects in or affecting the state. States also have a direct role in one purpose of the BTOP; to provide broadband education, awareness, training, access, equipment, and support to job-creating strategic facilities located within a State-designated economic zone. States are also explicitly made eligible for grants made under the program. However, if a state applies for a grant it must demonstrate that it will unconditionally obligate, from non-Federal sources, the funds required to meet the 20 percent matching requirement.

We anticipate that USTelecom members will be requesting funding for “shovel ready” projects that can immediately expand the availability and quality of broadband service as well as spur economic activity. States can play a key role in facilitating the prompt construction of projects, once approved and funded by either NTIA or RUS, by expediting the various regulatory and permitting processes associated with construction projects, such as approvals of rights of way use and completion of environmental impact statements.

While the Explanatory Statement of the conferees notes the resources and familiarity the states have with respect to the local economic, demographic and market conditions relating to the success of the broadband grant program, it also recognizes the limits on the role of the states by noting that “...NTIA, at its discretion, will seek advice and assistance from the States in reviewing grant applications, as long as the NTIA retains the sole authority to approve the awards.” [emphasis added] Because of the ability of states to both apply for grant funds and comment on grant fund applications from others, NTIA must insist that states be very circumspect in their commentary, particularly in situations where a state grant application competes with a proposal from an applicant not associated with the state. Even though NTIA retains the ultimate authority to approve awards, state input certainly has the potential to be

persuasive. It would be patently unfair for a state to comment on situations in which applications from non-state applicants compete for funding with proposals from that state.

Although political subdivisions are eligible to apply for broadband grants under ARRA, priority in the disbursement of *infrastructure* funds should be given to service providers with a demonstrated track record of success in provisioning broadband networks. Funding start-up broadband infrastructure projects developed and managed by non-providers is not the most efficient manner for maximizing broadband deployment and access.

Even before the onset of the recession, the climate for government-owned networks had changed markedly. Ambitious municipal broadband plans have been scaled back drastically or abandoned outright due to rising costs, complex technological hurdles, and underwhelming consumer demand.

Networks limited to town boundaries also encourage cherry-picking areas that are easiest and cheapest to serve, diminishing the economic feasibility of broadband service in the more costly and hard-to-reach outlying areas. This ultimately leads to less, not more, broadband deployment as the investment risk for private sector providers is increased and private capital flees from the uncertainty created by that increased risk.

To the extent that government-owned networks receive any stimulus funding at all for infrastructure build-out, such grants should contain a prohibition on municipal or State subsidization and similar devices, such as proffering the use of local rights of way in lieu of the required 20% non-federal share. Similarly, municipal governments that submit their own applications should be barred on conflict-of-interest grounds from commenting on any private sector applications to serve the same area.

III. ESTABLISHING SELECTION CRITERIA FOR GRANT AWARDS (NTIA QUESTION 4)

Both RUS and NTIA will face huge challenges in fairly and quickly evaluating the enormous number of funding applications that are expected under the programs authorized by ARRA. The BTOP poses an even greater challenge because of the variety of types of projects for which funding is made available. These include competitive grants for expanding public computer center capacity, competitive grants for innovative programs to encourage sustainable adoption of broadband service, funding pursuant to the BDIA including broadband mapping, as well as for build out of broadband infrastructure. In order to best evaluate requests for funding these varied goals, applications should be broken into groups and compared with other applicants for like projects.

Because many applicants will seek funding from both RUS and NTIA for projects involving build out of broadband infrastructure, the two agencies should apply common scoring criteria for those types of projects to the extent permitted by the statute. These criteria should be as objective as possible, which will enable the two agencies to process and rank the applications efficiently. USTelecom has identified several factors that should be considered by both agencies in reviewing infrastructure projects.

- Providing service to unserved and underserved consumers – Priority should be awarded to applications proposing to deploy broadband to unserved and underserved consumers, with the value of this priority corresponding to the degree to which consumers lack broadband access. The highest value should be given to projects for areas that lack access to terrestrial (non-satellite) broadband services offering advertised speeds at or greater than 768 kbps in one direction. This is the low end of the range of services that the FCC defines as “basic broadband tier 1.”

The second highest value should be given to projects for areas that lack access to terrestrial broadband service offering advertised speeds at or greater than 1.5 Mbps in one direction. This is the high end of the range of services that the FCC defines as “basic broadband tier 1.” The third highest value should be given to projects for areas that lack access to terrestrial broadband service offering advertised speeds at or greater than 3 Mbps in one direction. At that level, certain applications become usable, particularly standard definition video) that can have significant positive economic effects, such as supporting work-at-home and distance education.

- Sustainability –Sustainability is the likelihood that a project will be accomplished as proposed and that it will be sustainable after completion of the grant period. This involves consideration of an applicant’s broadband experience and its financial commitment to the project.
- Timeliness of construction –Projects that commence earlier and bring service to consumers sooner should score higher than those that begin later and bring service to consumers later.
- Broadband speed – The agencies should consider the broadband speed made possible by the project.
- Affordability – Affordability is a relative term based on both the demographics of the area to be served by the project and the costs inherent in providing service to extremely rural and remote areas. Applicants that commit to offer service at prices that are comparable to similar service offerings in areas with comparable

characteristics should score higher than applicants that do not make such a commitment. Evaluation of affordability should include not just the recurring amount charged for service but also factor in other consumer costs, such as an equipment purchase or lease, that add to the total amount the customer must pay to receive the service and that may serve as a barrier to adoption, as recognized in the Link-Up telephone program administered by the FCC.

- Impact on job creation and preservation and economic development – As between projects of comparable size, projects that save or create more jobs and/or increase the level of economic activity in an area should score higher than projects that save or create fewer jobs or stimulate a lower level of economic activity.
- Project cost – Projects that cost less per potential customer should score higher than those that cost more. Adjustments to the scoring (for example, adding a mileage or customer density component) are warranted to ensure that this factor does not work to the disadvantage of areas with geographic or topographic challenges.
- Public interest projects – Projects that include service to (i) schools, libraries, hospitals, public safety, and similar entities or (ii) consumers who reside in remote regions where broadband typically offers the only means of ready access to public interest institutions should score higher than projects that don't.

Many of these factors are geared primarily to business and residential “last mile” construction projects. They may need to be modified with respect to other types of projects such as those geared solely toward public interest projects and those involving “middle mile” facilities.

IV. BROADBAND MAPPING (NTIA QUESTION 8)

Broadband mapping and demand stimulation are universally recognized as important components of a comprehensive strategy for enhancing U.S. broadband deployment. The appropriation in ARRA to carry out the BDIA, together with the \$250 million appropriation for innovative programs to encourage sustainable adoption and the \$200 million for expanding public computer center capacity, are all integral to fulfilling that law's promise.

The American Recovery and Reinvestment Act of 2009 (ARRA) addresses broadband mapping in two respects. Section 6001(l) of the Act requires NTIA to "develop and maintain 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." Separately, within the \$4.7 billion appropriated for the Broadband Technology Opportunity Program (BTOP), up to \$350 million was made available for implementation of the Broadband Data Improvement Act (BDIA) (Public Law 110-385) and for the purpose of developing and maintaining the NTIA map described above.

The BDIA authorizes grants to certain eligible entities for various initiatives to improve broadband. The centerpiece of the program involves the creation of state-level maps that identify the broadband speeds available across the state and the areas with low levels of broadband service deployment. For that reason, the BDIA has come to be known colloquially as "the mapping bill," but it actually provides for much more than maps alone. Through the creation and support of local technology planning teams, Congress contemplated a sustained effort by grantees to set community-level goals for improved technology use and to develop workable business plans to stimulate broadband demand and deployment. Viewed holistically,

mapping is but one means, albeit an important one, to a much broader end, best summarized in this statutory direction to eligible entities for the use of grant funds:

“[W]ork collaboratively with broadband service providers and information technology companies to encourage deployment and use, especially in unserved areas and areas in which broadband penetration is significantly below the national average, through the use of local demand aggregation, mapping analysis, and the creation of market intelligence to improve the business case for providers to deploy.”

Some have suggested that the award of infrastructure grant funds under ARRA should await the completion of statewide broadband maps in the states where maps have not yet been completed. But given the fragile state of the Nation’s economy and the fact that millions of Americans lack access to core broadband services, it would be inconsistent with ARRA’s primary purposes – the preservation and creation of jobs, and the promotion of rapid economic recovery – to wait that long for project funds to be disbursed. There will still be enormous amounts of infrastructure work to do after the broadband mapping efforts under the BDIA are completed. In the meantime, we believe that NTIA -- working in close collaboration with states, eligible entities, and industry applicants, and using appropriate selection criteria -- can target ARRA grants to those areas where the absence of broadband service is well-known or clearly documented.

Finally, as NTIA implements the specific ARRA provision requiring that it develop and maintain a national inventory map, we urge the agency to not attempt “reinventing the wheel” or duplicating the efforts of grantees under the BDIA. Indeed, at several key junctures in the legislation’s history a diverse coalition of 30 organizations and companies, including labor, education, and business groups coalesced together to remind Congress the bill should included

on any short list of “must pass” legislation. On December 22nd of last year that coalition came together again in a letter to the Appropriations Committees calling for full funding of the legislation as part of the ARRA.

BDIA grants should be given to public-private partnerships with the demonstrated capacity not only to map the states but also to create the collaborative organizational infrastructures at the state and local levels that can gain the trust of the public and private sector participants whose cooperation is necessary to the success of the effort. Most specifically, Congress worked very closely with broadband providers to develop confidentiality language in the BDIA to protect sensitive business information. The prospects for the most successful implementation of both the BDIA and ARRA therefore lie in reading the two statutes together, with NTIA establishing a template and then acting as the aggregator and repository of the maps produced through the BDIA’s cooperative mapping efforts. In addition, should the FCC complete its analysis of recently submitted Form 477 data in a time frame that comports with the mapping process, that aggregated analysis may be incorporated into the appropriate maps by BDIA grantees and NTIA.

V. DEFINITIONS OF “UNSERVED AREA,” “UNDERSERVED AREA” AND “BROADBAND” (NTIA QUESTION 13a, 13b and RUS QUESTIONS 2 and 3)

While the Recovery Act itself does not directly instruct the Assistant Secretary to coordinate the definitions of “unserved area,” “underserved area” and “broadband” with the Commission, the Joint Explanatory Statement of the Committee on Conference explicitly does, by stating “The substitute does not define such terms as ‘unserved area’ ‘underserved area’ and ‘broadband.’ The Conferees instruct the NTIA to coordinate its understanding of these terms with the FCC, so that NTIA may benefit from the FCC’s considerable expertise in these matters.”

Although the consultative role played by the Commission applies only to terms included in the portion of the Recovery Act establishing BTOP, in the interests of uniformity and ease of administration, the definitions resulting from this process should also apply to the RUS broadband grant program established under the Recovery Act as well, within the bounds of the statutory differences between the two programs. Consistency of basic definitions will also help ease the process for entities applying to both the NTIA and RUS programs.

As the term “area” is common to defining both unserved and underserved geography, it is important to specify how an area will be determined for measurement under the criteria ultimately adopted by NTIA and RUS. Each applicant should determine its own project area and not be restricted by political, regulatory or other predetermined boundaries. This would not only help focus funding on those areas most in need of investment, but would support the goal of technological neutrality, in that a wireless company’s license area may differ from the local franchise area of a cable company which may differ from the telephone company’s certificated area.

The terms “unserved area,” “underserved area” and “broadband” in the BTOP portion of the Recovery Act are undefined in the statute but are inextricably intertwined, so they should be dealt with holistically. Similarly, the section of the Recovery Act authorizing the RUS broadband grant, loan and loan guarantee program does not define broadband service but mandates “That at least 75 percent of the area to be served by a project receiving funds from such grants, loans or loan guarantees shall be in a rural area without sufficient access to high speed broadband service to facilitate rural economic development....” It then lists as a “priority” (but not a requirement) “That priority for awarding funds made available under this paragraph shall be given to projects that provide service to the highest proportion of rural

residents that do not have access to broadband service.” It is thus reasonable to infer that the new RUS program, like the BTOP, is permitted under the statute to provide funding along a spectrum of “unserved” and “underserved” areas. Also like BTOP, the RUS program does not define “broadband.”

The BTOP provisions of the ARRA provide funds for developing and expanding the availability of broadband services. Section 6001(b) of the statute details the purposes for which these program funds may be used, and includes both supply and demand side purposes. In particular, the statute states that program funds should be used to support broadband infrastructure projects in unserved and underserved areas of the country. NTIA and RUS, in consultation with the FCC, are tasked with defining the scope of proposals that may qualify for funding pursuant to the statute.

From an aspirational standpoint, virtually any community could be considered “underserved” with respect to the availability of “broadband”—short of all consumers having ready access to ultra-high bandwidth levels. Acting Chairman Copps recognized as much when he recently stated that one could “probably make the case as a country that we are underserved.” What these aspirational goals should be, and what it would take to get there in terms of time and investment, are essential topics for public policy dialog. Indeed, an important step in that dialog was initiated just last week when the Commission issued its NOI for developing a national broadband strategy.

The purpose of the exercise here, however, is much more narrowly defined by both the goals and constraints of BTOP. Specifically, NTIA and RUS, in consultation with the FCC, are tasked with trying to identify the best and highest use for a very limited pot of money. Stated

another way, how do the agencies make sure they get the most “bang for the buck” in satisfying the broadband deployment goals laid out by Congress in the statute?

In this context, the terms “unserved,” “underserved,” and “broadband” should be viewed by the agencies within the relative continuums within which they currently exist in this country, and the agencies will need to consider the benefits of each application along a spectrum of availability levels, speeds to be offered, population densities and costs. And while each of these criteria is important, they also involve tradeoffs that will require the agencies to establish policy priorities for the limited funds.

With this in mind, USTelecom urges the agencies to set priorities that are focused on bringing areas and communities most lacking in broadband infrastructure up to levels available to the majority of Americans. By doing so, the agencies can ensure that these communities can benefit from the economic and social advantages created by vibrant broadband connectivity, including furthering Congress’ primary goal of job creation.

Consistent with this approach, USTelecom recommends that the agencies establish the following relative priorities when assessing funding applications:

1. Current Broadband availability:
 - a. The highest value should be given to projects for areas that lack access to terrestrial (non-satellite) broadband services offering advertised speeds at or greater than 768 kbps in one direction. This is the low end of the range of services that the FCC defines as “basic broadband tier 1.”
 - b. The next value should be given to projects for areas that lack access to terrestrial broadband service offering advertised speeds at or greater than 1.5 Mbps in one

direction. This is the high end of the range of services that the FCC defines as “basic broadband tier 1.”

- c. The lowest value should be given to projects for areas that lack access to terrestrial broadband service offering advertised speeds at or greater than 3 Mbps in one direction. At that level, certain applications, particularly standard definition video) that can have significant positive economic effects, such as supporting work-at-home and distance education, become usable.
2. Strategic Institutions: The agencies should also separately examine and give weight to targeted deployment to strategic institutions with potentially higher broadband needs than discussed above, where such projects are likely to stimulate significant economic benefits to a particular community. Infrastructure projects that result in new or improved broadband services to institutions such as community colleges, regional hospital networks or other strategic entities can generate job creation, meet rural education or medical needs, and in other ways satisfy the economic goals identified by Congress.

VI. THE NON-DISCRIMINATION AND NETWORK INTERCONNECTION OBLIGATIONS THAT WILL BE CONTRACTUAL CONDITIONS OF BTOP GRANTS SHOULD NOT EXCEED THE REQUIREMENTS OF THE FCC’S BROADBAND POLICY STATEMENT (NTIA QUESTION 13c)

Congress intended the Recovery Act “to preserve and create jobs and promote economic recovery” and to do so “as quickly as possible.” The funds provided to NTIA and RUS are intended to accomplish these goals through improving broadband access and adoption in order to “stimulate demand for broadband, economic growth and job creation.” Within this framework, NTIA must publish non-discrimination and network interconnection obligations including, “at a minimum, adherence to the principles contained in the Commission’s broadband policy statement” concurrent with the issuance of the request for proposal for grant applications.

Although the RUS portion of the Recovery Act has no such requirement, it does state “That priority for awarding such funds shall be given to project applications for broadband systems that will deliver end users a choice of more than one service provider.” While this language can be read in many different ways, one reasonable interpretation is that this priority is similar to the non-discrimination requirement in BTOP, and therefore should be addressed in a similar fashion – that is – by awarding a priority to those applicants for RUS funding that agree to adhere to the Commission’s broadband Policy Statement.

The FCC broadband Policy Statement referred to in the Recovery Act defines key FCC policies designed to “encourage broadband deployment” and to “preserve and promote the open and interconnected nature of the public Internet.” The four principles provide that consumers are entitled to access the lawful content of their choice, run applications and use services of their choice, connect any legal device that does not harm the network and are entitled to competition among network providers, applications and service providers and content providers, all subject to reasonable network management.⁵ This FCC policy statement explicitly builds on Congress’s determination that it is the policy of the United States “to preserve the vibrant and competitive free market that presently exists for the Internet.”⁶

NTIA should define the existing FCC Policy Statement as creating the sole non-discrimination and interconnection obligation to be placed on grant recipients. More than three years of experience under that Policy Statement has demonstrated its successful balancing of interests among stakeholders – consumers, cable and wireline broadband service providers, application and content providers and technology companies. Since the 2005 statement was issued, consumer adoption of broadband has skyrocketed with consumer connections roughly

⁵ FCC Policy Statement, August 5, 2005 at 3

⁶ Communications Act of 1934, as amended, Section 230(b)(2).

doubling to over 80 million. Consumers are increasingly moving to higher speeds and trying innovative new service offerings, and competition continues to increase. Over the same time period, broadband providers have consistently increased speeds and offered innovative new services that consumers demand and innovation in Internet content and applications continues to explode. Implementation of the Recovery Act should support, not hinder, the ability of providers to continue to expand and enhance services and speeds.

And, although constrained by recent economic developments, the broadband ecosystem under the Policy Statement has been thriving -- providing high-quality jobs and investment. About one million people are directly employed in telecommunications, with the information tech sector providing over 5.5 million total jobs. All sectors of the broadband ecosystem -- network providers, content and application providers and technology companies are pushing investment in new and improved services, applications and content to higher and higher levels. Last year alone, carriers invested almost \$70 billion to improve their broadband networks with the entire information technology sector investing over \$450 billion in technology and new applications and services.

Altering this virtuous cycle -- high-quality jobs, investment and innovation -- by expanding the reach of the Policy Statement or imposing new obligations as conditions for grants and loans would be unwise. Threats to the cycle that has characterized the Internet under the Policy Statement could produce harm that would easily outweigh the potential benefits of the program at issue here. Creating additional obligations would pose at least two additional threats. First, the time necessary to formulate new obligations and assess their likely affects on the complex Internet eco-system and the broad array of potential grant recipients seeking support for demand and supply side projects will take substantial time. Because the statute requires final

completion of this task before a request for grant proposals may be issued, the process would delay program implementation, contravening the basic thrust of the Recovery Act and the pressing need for jobs and economic stimulus. Second, expanding interconnection and non-discrimination conditions beyond the Policy Statement, will add cost, complexity and risk to each application and the broad array of potential projects including the construction and operation of broadband networks. Given that these projects and networks are likely to serve the most challenging areas of the country, where no current business case may exist to, for example, build and operate a broadband service, every effort should be made to minimize raising the costs and difficulty of undertaking these projects and building and operating these networks.

Given the pressing need to translate program dollars into jobs, broadband infrastructure and connections and the proven success of the FCC's Policy Statement at "promoting the open and interconnected nature of the public Internet," NTIA should make the FCC Policy Statement, without any expansion, the sole criterion for non-discrimination and network interconnection obligations.

VII. RUS FINANCING STRUCTURE (RUS QUESTION 1)

New Rural Utilities Service (RUS) program funding provided under ARRA should be used for grants to deploy broadband service in rural areas lacking sufficient access. Most of these areas remain unserved and underserved, not because of the absence or the price of credit, but due to the inability of broadband providers to demonstrate a feasible business case to bring service to very high cost, low density markets. Grants are capable of significantly changing this business case, because as the grants offset capital costs, broadband providers are able to recoup their investment and attain a reasonable return.

Loans, in contrast, are irrelevant if the government intends to spur broadband deployment in areas where there is no business case for building out new facilities. It makes no economic sense for a company to borrow money, even at low rates, to fund projects that will not at least cover their costs. And of course, the lack of a clearly feasible business case either doesn't allow the government to make a loan at all or results in the government taking on excessive risk to its loan security.

Congress recognized the importance of grants for rural broadband deployment when it decided to create a new RUS broadband program, supplementing the preexisting RUS programs with a different financing model. The other RUS telecom programs are overwhelmingly based on a loan model (versus grants). But by allocating new funds that could be used for grants, ARRA recognized that the loan model is not sufficient to address the issue of the lack of broadband infrastructure in sizable portions of unserved rural America.

Moreover, the broadband funding process will be far more streamlined and efficient if both RUS and NTIA focus on providing grants. RUS should emulate the NTIA grant structure by limiting its grant amount to 80 percent of the cost of a project absent clear and convincing demonstration of financial need. The two entities can develop a common grant application that by and large considers similar factors (within the constraints of the statute). This measure would simplify and accelerate consideration of applications for those not seeking RUS loans or loan guarantees by avoiding financial analysis beyond a finding of project sustainability.

If RUS nevertheless decides to allocate some ARRA funding from provision of grants to funding loans and loan guarantees, USTelecom recommends that RUS limit use of these loans and guarantees to instances in which the prospective broadband provider requires financing above the 80 percent grant level to serve unserved areas. Use of the same 80/20 ratio as the

NTIA BTOPS program streamlines the program for applicants applying to both RUS and NTIA for the same project. RUS should prioritize applications in which non-federal sources, and particularly the grantee's own funds, make up the remaining 20 percent of required project funding. Then RUS should next fund applications which require the use of loans or loan guarantees for the remaining 20 percent. Finally, RUS should consider funding projects requiring 100 percent grants.

VIII. CONCLUSION

Clear, simple and streamlined procedures and definitions will best meet the goals of the broadband portion of the ARRA, stimulation of economic activity and the enhancement of the nation's broadband infrastructure. USTelecom recognizes the immense challenges involved in working with a new statute, coordinating policy development among three agencies and program execution between two executive branch departments, and starting up parallel multi-billion dollar programs. There is no need to make the job for either the agencies or prospective applicants that much harder by attempting to resolve here long standing policy debates or by not taking advantage of uniform definitions and procedures where the statute permits.

States have an opportunity to play a significant, useful and supportive role with regard to the NTIA BTOP. However, NTIA retains the sole authority to approve the awards and will bear the sole responsibility when the success or failure of this program is evaluated.

The goals of the NTIA BTOP and the ARRA generally make it essential to include, at a minimum, any private entity that is currently operating a broadband network as eligible to receive funding. This decision should be done as soon as possible in the process so that all potential applicants know at the outset the rules of eligibility.

Because both RUS and NTIA will face huge challenges in fairly and quickly evaluating the enormous number of funding applications that are expected under the ARRA broadband programs, the two agencies should apply common scoring criteria to the extent permitted by the statute, and the criteria should be as objective as possible.

Broadband mapping and demand stimulation are universally recognized as important components of a comprehensive strategy for enhancing U.S. broadband deployment. Nevertheless, NTIA, working in close collaboration with states, eligible entities, and industry applicants, and using appropriate selection criteria, can target ARRA grants to those areas where the absence of broadband service is well-known or clearly documented, even in the absence of a fully completed mapping project.

Both the NTIA and RUS programs authorized in the Recovery Act will benefit from a nuanced and holistic approach to the definitions of “unserved area,” “underserved area” and “broadband.” Such an approach will make the optimal use of the scarce resources available in the Recovery Act to bring the greatest benefit in terms of jobs, economic development, improvements in distance learning, telemedicine, e-government and overall quality of life to the greatest number of Americans. Those benefits should not be diminished by a new onerous requirement going beyond the Commission’s broadband Policy Statement that would add unnecessary cost, complexity and risk to each application and the challenge of constructing and operating broadband networks in difficult to serve areas.

Finally, RUS should focus its new ARRA funding on grants to deploy broadband service in rural areas lacking sufficient access. Most of these areas remain unserved and underserved, not because of the absence or the price of credit, but due to the inability of broadband providers to demonstrate a feasible business case to bring service to very high cost, low density markets.

Respectfully submitted,

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