
**Before the
Department of Commerce
National Telecommunications and Information Administration
And the
Department of Agriculture
Rural Utilities Service
Washington, DC**

In the Matter of)
)
American Recovery and Reinvestment Act of) 090309298-9299-01
2009 Broadband Initiatives)

COMMENTS OF SOUTHERNLINC WIRELESS

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EXECUTIVE SUMMARY

SouthernLINC Wireless offers recommendations into four areas of inquiry highlighted by the Joint NTIA and RUS Request for Information.

First, to ensure that Recovery Act funds provide the greatest benefit, NTIA and RUS should provide a preference for broadband projects that complement other Recovery Act priorities and programs. By doing so, NTIA and RUS will facilitate synergies that should result in coordinated job creation and economic development and ensure the public's dollars are wisely spent.

Second, NTIA and RUS should give due weight to State input and prefer State-endorsed project applications. States are best positioned to understand the broadband needs within their territories and amongst their citizens.

Third, flexible policies toward the matching requirements of State and local governmental authorities should be considered. Government authorities across the nation have suffered in today's difficult economic climate, and placing burdensome matching requirements on these entities could place the broadband programs out of reach.

Finally, meaningful non-discrimination and interconnection obligations should be applied to program grants. Such duties will ensure that the broadband services funded by the Recovery Act are made available to the most Americans.

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

COMMENTS OF SOUTHERNLINC WIRELESS

Southern Communications Services, Inc., d/b/a SouthernLINC Wireless

(“SouthernLINC”), submits these comments in response to the National Telecommunications and Information Administration (“NTIA”) and Rural Utilities Service (“RUS”) Joint Request for Information¹ regarding the Recovery Act² broadband initiatives. SouthernLINC welcomes the opportunity to provide input on efforts to improve the nation’s economic recovery through the development and enhancement of broadband opportunities for America’s unserved and underserved communities.

To help NTIA and RUS best realize the goals of the Recovery Act and its broadband programs,³ SouthernLINC offers recommendations on four principle issues outlined in the

¹ 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 (March 12, 2009) (“Request for Information”).

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

³ *See id.* at §§ 3, 6001(b).

Request for Information. First, preference should be accorded to coordinated proposals that leverage other Recovery Act priorities. Second, NTIA and RUS should recognize the knowledge and expertise that States can provide as consultants to the process, as well as the impact they could have as grant recipients. Third, NTIA and RUS should consider an open and flexible policy for State and local government contributions to project funding. Finally, with respect to the NTIA Broadband Technology Opportunities Program (“BTOP”), NTIA should adopt meaningful non-discrimination and interconnection policies.

I. BACKGROUND

SouthernLINC is uniquely qualified to provide comment on the implementation of the NTIA and RUS programs under the Recovery Act due in part to its primarily rural network and its diverse customer base. SouthernLINC is a wholly-owned subsidiary of the Southern Company, a registered holding company under the Public Utility Holding Company Act of 1935, as amended. A regional commercial mobile radio service (“CMRS”) carrier, SouthernLINC operates a digital 800 MHz ESMR system using Motorola’s proprietary iDEN technology and offers dispatch, interconnected voice, Internet access, and data transmission services. SouthernLINC provides these wireless services to more than 200,000 individuals, businesses, and public safety users over a 127,000 square mile service territory in the Southeast. Additionally, SouthernLINC provides communications services to the subsidiaries of Southern Company, including its four operating electric utility subsidiaries (collectively the “Operating Companies”), which provide retail and wholesale electric service to over 4 million customers throughout Georgia, most of Alabama, and parts of Florida and Mississippi. SouthernLINC’s wireless service territory generally encompasses the same rural and urban areas served by the Operating Companies, which includes many communities that likely will be considered

“unserved” or “underserved” by NTIA and RUS for purposes of distributing Recovery Act funds.

Because of SouthernLINC’s critical role in providing services to the Operating Companies, SouthernLINC’s infrastructure network was specifically designed to satisfy the requirements for highly reliable and available electric services in the area and, thus, it has been constructed to withstand the stressful weather conditions, from ice storms to hurricanes, common to the Southeast. As a result, SouthernLINC’s network is far more robust than a traditionally-designed, commercial-grade network incorporating some additional redundancy. Not surprisingly, given its hardened network design, customers, in particular public safety agencies, throughout SouthernLINC’s territory have relied on SouthernLINC for day-to-day and emergency operations since the network became operational in 1995. Today, Federal, State, and local agencies comprise over 24 percent of SouthernLINC’s customer base. As SouthernLINC considers the availability of Recovery Act funds to improve broadband deployment in unserved and underserved communities, the company will look to how best it can leverage its network to provide broadband service consistent with the quality of service for which it is known.

II. PREFERENCE SHOULD BE GIVEN TO BROADBAND PROJECTS THAT COMPLEMENT OTHER RECOVERY ACT PRIORITIES

To ensure that the Recovery Act broadband funds provide the greatest benefit to the American people, NTIA and RUS should provide a preference for broadband projects that complement other Recovery Act priorities and projects. The Request for Information inquires whether “priority [should] be given to proposals that leverage other Recovery Act projects.”⁴ SouthernLINC strongly believes the answer is yes. By adopting rules that prioritize

⁴ See Request for Information, NTIA Question 4(d), 74 Fed. Reg. at 10718.

complementary Recovery Act projects, NTIA and RUS will maximize efficiencies consistent with the “prudent management” required by the Act.⁵

In acknowledging that the broadband programs can also advance other priorities of the Recovery Act, NTIA and RUS are promoting the kind of transformative thinking that will bring innovation, efficiency and both short- and long-term job creation. Broadband connectivity undeniably offers consumers numerous benefits (*i.e.*, communication, commerce and entertainment); however, it would be short-sighted for NTIA and RUS to focus just on these aspects of broadband. Broadband is an important input and complement to many other areas funded by the Act such as smart grid technologies, intelligent transportation, and healthcare solutions, including telemedicine and electronic health records (“EHRs”). The development of infrastructure, including broadband, to support these applications will not only assist those affected by the current economic downturn but will also offer long-term economic, social and environmental benefits.⁶

For example, significant funding is allocated in the Recovery Act for health information technology, including EHRs.⁷ Particularly in rural areas, the utility of telehealth programs depends on fast and reliable broadband connectivity. Typical bandwidth requirements and file sizes for applications like X-rays make telehealth services virtually impossible without adequate

⁵ Recovery Act at §3(b).

⁶ See *e.g.*, Robert Crandall et al., *The Effects of Broadband Deployment on Output and Employment*, ISSUES IN ECONOMIC POLICY, THE BROOKINGS INSTITUTION (July 2007), at http://www.brookings.edu/~media/Files/rc/papers/2007/06labor_crandall/06labor_crandall.p (estimating that for every one percentage point increase in broadband penetration in a state, employment is projected to increase by 0.2 to 0.3 percent per year). Also, note that Section 3(a)(4) of the Recovery Act states that one of the Act’s purposes is to “invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits.”

⁷ See Recovery Act at Div. A, Title VIII.

network infrastructure. Without robust broadband services, rural clinics and hospitals are unable to offer a level of care commensurate with urban facilities, especially where specialists are not on site. Funding for EHRs in many parts of rural America will be of only nominal immediate value if a local clinic cannot transmit the health records to the nearest regional hospital. To that end, broadband projects that facilitate and enable other critical services such as smart grid, EHR, or intelligent transportation should be recognized and awarded throughout the grant process.

Broadband will also play an important role in the deployment of smart grid technologies, another key advancement to be funded by the Recovery Act. Without broadband backbones, for example, electric utilities cannot engage in activities such as wide-spread advanced metering or demand response device use. A broadband backbone enables the large scale deployment of integrated applications, monitoring and control systems, including those that are interactive with customers, by linking all of them into centralized control centers. In turn, broadband is a vital component to realizing the vision of efficient use of all energy resources.

III. NTIA AND RUS SHOULD RECOGNIZE THE VALUABLE ROLE THAT STATES WILL PLAY IN BRINGING BROADBAND OPPORTUNITIES TO THEIR CITIZENS

State participation will be a key component to the success of the Recovery Act broadband initiatives. Congress recognized the importance of State input to the initiatives by providing that (1) States can be partners in a consultation with NTIA and RUS, and (2) States will be eligible recipients for grant funding. In the Request for Information, NTIA asks for input surrounding the State role in the BTOP program.⁸ In response, SouthernLINC urges NTIA to accord due

⁸ See Request for Information, NTIA Question 2(a)-(d), 74 Fed. Reg. at 10717.

weight to State knowledge and expertise and provide the utmost consideration for State-endorsed projects.

a. State Input Should be Given Due Weight

State advice will serve as a valuable resource to NTIA and RUS in order to ensure the success of the broadband initiatives. The Recovery Act provides that NTIA may consult the States with respect to the identification of unserved and underserved areas and the allocation of grant funds.⁹ Although Congress expressly reserved ultimate grant-making authority to NTIA, States can provide expert insight into the specific broadband availability and adoption challenges facing their citizens. Many have already undertaken efforts at least to begin identifying the extent of deployment within their borders.¹⁰ Indeed, States are best positioned to understand both the topographic and demographic features of their regions and to understand and implement policies and processes that can facilitate quick deployment.

Congress also recognized the important role that States can play in bringing interested parties together to drive successful broadband projects. As the Conference Report stated, States can “coalesce stakeholders and partners, assess community needs, aggregate demand for services, and evaluate demand for technical assistance.”¹¹ States may thus provide effective and timely guidance as to the viability of projects, applicants and operations, and their advice should

⁹ See Recovery Act at § 6001(c).

¹⁰ For example, on May 22, 2008, by Executive Order, Alabama Governor Bob Riley established the Alabama Broadband Initiative. The Initiative has worked to identify and map broadband service in the state, identify a vision for Alabama’s broadband future and encourage technological adoption. See Office of Governor Bob Riley, Connecting Alabama, <http://governor.alabama.gov/special/connectingalabama/default.aspx> (last visited Apr. 7, 2009).

¹¹ H. R. Rep. No. 111-116 at 775 (2009).

be accorded due weight as NTIA and RUS begin to evaluate the tsunami of applications that current interest in the programs portends.

b. State-Endorsed Projects Should Be Preferred

SouthernLINC believes that, pursuant to the Recovery Act, NTIA and RUS should give preference to and prioritize State-endorsed grant applications. As noted above, States are uniquely knowledgeable about areas within their borders that will benefit from the economic development, including job creation, which can result from the deployment of broadband services. The Recovery Act’s Conference Report “recognize[s] that States have resources and a familiarity with local economic, demographic, and market conditions that could contribute to the success of the broadband grant program.”¹² Indeed, many States have existing initiatives focused on broadband development.¹³ Moreover, States can bring together project ideas and stakeholders that can best serve their citizens and the public interest. In the Recovery Act, Congress provided that NTIA could consult with States with regard to “the allocation of grant funds within that State for projects in or affecting that State.”¹⁴ Congress thus expressed a preference for States to play an important role in broadband programs. NTIA and RUS should heed this Congressional directive and work closely with States.

State-endorsed applications, including public-private partnerships, are also contemplated by the Recovery Act. Congress provided that NTIA may, by rule, find that entities including broadband service and infrastructure providers are eligible to receive grant funding.¹⁵ Here,

¹² *Id.*

¹³ *See supra* note 10.

¹⁴ Recovery Act at § 6001(c)(2).

¹⁵ *Id.* at § 6001(e)(1)(C).

Congress intended for “as many eligible entities as possible be eligible to apply for a competitive grant, including wireless carriers, wireline carriers, backhaul providers, satellite carriers, *public-private partnerships*, and tower companies.”¹⁶ Indeed, private parties may offer States the vision, expertise and other resources necessary to launch a project.

SouthernLINC does not suggest that any undeserving projects receive grant funding merely because of State-sponsorship or endorsement; nor does it believe that stand-alone private sector projects should not be funded. Rather, as they begin to evaluate a myriad of applications, NTIA and RUS should recognize that a State’s imprimatur upon an application can help attest to the viability of that project. To that end, such applications should be given the utmost consideration.

IV. NTIA AND RUS SHOULD ADOPT FLEXIBLE POLICIES TOWARD THE MATCHING REQUIREMENTS FOR STATE AND LOCAL GOVERNMENTAL AUTHORITIES

In today’s challenging economic climate, flexibility will be essential as NTIA and RUS evaluate all programs seeking their funding, regardless of the size or nature of the applying party. In particular, NTIA and RUS should adopt flexible policies to assess any matching or other funding requirements applicable to State and local governments. Specifically, NTIA and RUS should consider waivers for State-sponsored programs and allow for creative matching contributions such as the use of rights-of-way or commitments to subsidize service for vulnerable populations. To do so would be consistent with the intent of the Recovery Act and acknowledges the realities of the fiscal crises facing many States. With governments across the

¹⁶ H. R. Rep. No. 111-116 at 775. (*italics added for emphasis*)

country confronting dismal fiscal outlooks, flexible policies are essential to realize Congress' vision and preference for funding new infrastructure investments through the Recovery Act.

Under the BTOP, “[t]he Federal share of any project may not exceed 80 percent” unless a waiver is granted.¹⁷ Likewise, for RUS funding, “priority for awarding such funds shall be given to project applications that demonstrate that, if the application is approved, all project elements.”¹⁸ Yet, matching and other fiscal requirements are not appropriate in the case of State-sponsored programs. A requirement of cash contributions from State and local government applicants would contravene one of the central purposes of the Recovery Act – “to stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.”¹⁹ State and local governments should either be exempted from the 20 percent matching requirement or be allowed to offer in-kind contributions.

Across the country, States are facing unprecedented fiscal challenges. Recent reports suggest that even “under optimistic assumptions” the Recovery Act “is not large enough or sustained enough to eliminate the need for significant State spending cuts or tax increases.”²⁰ The National Governors Association (“NGA”) has noted that the revenue outlook in the States “continues to deteriorate rapidly” with several States reporting that February revenue collections are 10 – 20% less than they were at during same time last year.²¹ In establishing the rules to

¹⁷ Recovery Act at § 6001(f).

¹⁸ Recovery Act at Div. A, Title I.

¹⁹ Recovery Act at § 3(a)(5).

²⁰ Donald J. Boyd, *What Will Happen to State Budgets When the Money Runs Out?* 6 (Nelson A. Rockefeller Institute of Government Feb. 2009).

²¹ National Governors Association, *State Economic Review* 1 (Mar. 2009).

guide the broadband programs, NTIA and RUS should be sensitive to the precarious financial position of many States. In times when States are forced to cut essential services, such as healthcare, education, public safety and transportation, and are relying on funds provided under the Recovery Act to plug some of those budget gaps, finding matching or other funds for broadband buildout simply may not be realistic. Thus, absent flexibility, the Congressional preference that NTIA grant funds to assist infrastructure investments “that would not otherwise be made available by the entity applying or secondarily, that might not be made as quickly” will go unrealized.

As a result, NTIA and RUS should consider waivers of State and local government matching contributions or, alternatively, allow for other means of contribution. For instance, in-kind contributions for rights-of-way usage or the provision of subsidized service for low income and other vulnerable populations could be used to count toward government’s share of matching requirements. To provide for waivers or in-kind alternatives would both be consistent with the purposes of the Recovery Act, and provide an incentive for State and local governments to be innovative in their approach to broadband deployment and adoption.

V. NON-DISCRIMINATION AND INTERCONNECTION OBLIGATIONS ARE IN THE PUBLIC INTEREST AND WILL HELP TO FURTHER BROADBAND ACCESS UNDER THE RECOVERY ACT

The Recovery Act commits significant taxpayer dollars for use in building out networks; thus, the public interest demands that NTIA and RUS adopt fair interconnection and non-discrimination obligations, including roaming, which will make broadband services under the Recovery Act available to more Americans. In the Request for Information, NTIA notes that it must coordinate with the Federal Communications Commission (“FCC”) to “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.”²² SouthernLINC encourages NTIA to work with the FCC to establish meaningful non-discrimination and interconnection duties for broadband networks deployed with Recovery Act funds. First, such conditions will help promote broadband competition. Second, strong conditions will ensure that broadband networks paid for with public funds will create the most value for the greatest number of American citizens and companies. And finally, such conditions comport with Congressional goals in the Recovery Act in support of broadband deployment.

The rules guiding the BTOP program should be designed to promote, not hinder, competition. To that end, BTOP non-discrimination and interconnection obligations will drive competition because they create more opportunities for providers and allow carriers to compete on the terms that consumers most care about (*i.e.*, pricing and services), whether or not they received Recovery Act funds. In addition, duties of non-discrimination and interconnection will provide some semblance of regulatory parity between different providers and technological platforms that are funded, presumably at different levels, by the Recovery Act. Meaningful interconnection and non-discrimination rules also will avoid the regulatory and market distortions that could arise from the deployment of closed networks. For instance, the extension of interconnection obligations to include data roaming would be entirely appropriate to ensure that small and rural companies can access broadband networks built with Recovery Act funds. Otherwise, the result of the Recovery Act could very well be the creation of isolated islands of broadband service, particularly in rural and remote areas, preventing residents from truly benefiting from the technology and innovation of the information age.

²² Request for Information, NTIA Question 13, 74 Fed. Reg. at 10719.

NTIA can responsibly protect the public's investment and further integrate unserved and underserved areas into a nationwide network of networks by attaching meaningful non-discrimination and interconnection requirements. For large scale public investments like the Recovery Act broadband programs, the public deserves to receive a fair return in the form of functional, advanced services. For middle and last-mile projects, the goals of the programs would be frustrated by the deployment of closed and discriminatory networks. Finally, non-discrimination and interconnection obligations will advance Congress' public policy goals and objectives in establishing the BTOP program to provide and improve access to broadband services.²³

²³ See Recovery Act at § 6001(b).

