

**Before the
UNITED STATES DEPARTMENT OF COMMERCE
BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM
Washington, DC 20230**

In the Matter of)
)
American Recovery and Reinvestment Act)
of 2009 Broadband Initiatives)
April 13, 2009)

Docket No. 090309298-9299-01

COMMENTS OF CRICKET COMMUNICATIONS, INC.

Robert J. Irving, Jr.
Senior Vice President and General Counsel
Cricket Communications, Inc.
10307 Pacific Center Court
San Diego, CA 92121
(858) 882-6048

April 13, 2009

TABLE OF CONTENTS

EXECUTIVE SUMMARY..... ii

I. OVERVIEW OF CRICKET’S SERVICES AND SUBSCRIBERS..... 1

II. HOUSEHOLDS THAT LACK AFFORDABLE ACCESS TO BROADBAND SERVICES SHOULD BE CLASSIFIED AS “UNDERSERVED”..... 3

III. THE NTIA SHOULD MAINTAIN THE FCC’S EXISTING DEFINITION OF “BROADBAND SERVICE”..... 8

CONCLUSION..... 9

EXECUTIVE SUMMARY

Cricket Communications, Inc. (“Cricket”), a leading provider of unlimited wireless voice and broadband services and a wholly owned subsidiary of Leap Wireless International, Inc., hereby submits these comments to the National Telecommunications and Information Administration (“NTIA”) in response to the Joint Request for Information regarding implementation of the Broadband Technology Opportunities Program (“BTOP”).¹

Cricket enthusiastically supports the goal of improving broadband access for consumers residing in unserved and underserved areas of the United States. In furtherance of that goal, Cricket encourages the NTIA to take into account whether households have the ability to pay for services that may otherwise be available in their area when defining “underserved.” Limited financial resources currently prevent millions of Americans from enjoying the myriad benefits that broadband service has to offer. BTOP funds should not be allocated solely to constructing and deploying broadband infrastructure in areas with limited or no coverage but should also be used to bridge the digital divide for those who cannot afford broadband service. Congress intended the BTOP to have the greatest impact in improving broadband availability for everyone, including low-income families and other demographic groups that have much to gain from broadband access.

The NTIA should keep the FCC’s existing standard of “broadband service” and refrain from imposing unnecessary restrictions relating to transmission speed that would only stymie broadband adoption and prevent innovative companies who are ideally situated to carry out the objectives of the BTOP from participating in this critically important program. A requirement that all fund recipients must offer broadband services at speeds in excess of those broadly

¹ Department of Commerce, National Telecommunications and Information Administration, Department of Agriculture, Rural Utilities Service, American Recovery and Reinvestment Act of 2009 Broadband Initiatives, Joint Request for Information and Notice of Public Meetings, 74 Fed. Reg. 10,716 (Mar. 12, 2009).

available and deployed by wireless telecommunications providers would (1) favor specific broadband technologies over others, and (2) prematurely foreclose innovative solutions that mobile and alternative grant applicants would bring to unserved and underserved consumers.

I. OVERVIEW OF CRICKET'S SERVICES AND SUBSCRIBERS

Cricket Communications, Inc. (“Cricket”) understands the needs of the underserved, because it has specifically tailored its wireless service plans to share the benefits of wireless telecommunications with underserved customers who have been left behind by other providers. Cricket offers unlimited voice and broadband service at affordable rates, without the typical strings attached (such as long-term commitments or credit checks) that otherwise prevent many economically disadvantaged customers from obtaining wireless services. Upon this foundation of simplicity and affordability as its business model, Cricket and its joint venture partners have built a network covering almost 85 million individuals in 30 states, and are steadily expanding into new markets where the telecommunications needs of the community are not being met by existing providers.

Cricket’s customer base of approximately 4 million customers is quite unlike those of other wireless providers:

- Hispanics, African-Americans, and other minorities comprise nearly 60% of Cricket’s customers, compared to 17% of other wireless carriers’ customers.
- Cricket’s customers are younger than those of other providers—45% of Cricket subscribers are less than 35 years’ old, compared to the industry average of 39%.
- Approximately 80% of Cricket’s customers have annual household incomes of less than \$50,000 and 55% have annual incomes of less than \$30,000. In contrast, just 48% of other wireless carriers’ customers have annual household incomes of less than \$50,000.

The usage patterns of Cricket’s customers also differ from other carriers. Ninety percent of Cricket subscribers use the service for their primary phone; the industry average, by comparison, is only 50%. Cricket’s customers are also much more willing to “cut the cord”: 68% do not have a traditional landline phone service at home, compared to the industry average of 15%. Cricket’s customers also use almost twice as many minutes per month as the industry average. These figures reveal that Cricket reaches market segments that other carriers have

ignored, and its customers look to Cricket for all of their telecommunications needs, including an entrance to the online world. *In fact, nearly 50% of customers subscribing to Cricket's flat-rate wireless broadband service have never had Internet access at home—not even dial-up.*

Cricket has demonstrated its commitment to bring the advances of wireless technology to all individuals in other ways besides offering innovative and affordable services. For instance, Cricket recently partnered with the non-profit group One Economy to provide 100 low-income families in Portland, Oregon with computers, modems, and free Cricket wireless broadband service for two years. This pilot program has been tremendously successful, not only in promoting broadband access but also in increasing the digital literacy of those participating in the program. For example, one participant reported that he enrolled in an online English course; another said she started interacting with prospective employers by email; and a 13-year-old girl stated that she was able to learn more online about her kidney disease than her doctors could teach her. Cricket hopes to expand this program to reach many more households across the nation that could also benefit from broadband service.

Small and mid-sized wireless service providers such as Cricket fulfill a critical role in the marketplace by ensuring that many Americans who cannot qualify for, or afford, the services provided by other wireless providers can still enjoy the benefits of wireless telecommunications, including wireless broadband. Cricket's flat-rate, unlimited service model gives consumers affordability and predictability, which is ideal for many consumers on a limited budget; other carriers often impose hefty overage charges if consumers exceed their usage limit. Many consumers cannot even qualify for service from other providers because of bad credit or the inability to commit to a long-term contract.

The purposes of the BTOP will best be accomplished if the NTIA establishes rules and eligibility requirements that allow Cricket and other innovative carriers offering alternative service models to participate in the grant program. Cricket is in a unique position to expand broadband access to many low-income individuals and other disadvantaged groups and deliver to them the promises of the information age.

II. HOUSEHOLDS THAT LACK AFFORDABLE ACCESS TO BROADBAND SERVICES SHOULD BE CLASSIFIED AS “UNDERSERVED”

One of the stated purposes of the BTOP is to “provide improved access to consumers residing in underserved areas of the United States.”² To advance that purpose, some of the grant funds should undoubtedly be used to accelerate the construction and deployment of infrastructure in areas where the existing network is inadequate to serve everyone in the community. For millions of Americans, however, the problem is not network coverage, but affordability. For those consumers, both wireline and wireless broadband service options may be available just outside their door, but they nevertheless remains hopelessly out of reach at current prices or terms of service. Therefore, in order to ensure that BTOP funds have the greatest impact in improving broadband availability for everyone, the NTIA should take into account when defining “underserved” whether households have the ability to pay for services that may otherwise be available in their area.

A 2008 study by the Pew Internet & American Life Project confirms that limited income is one of the most important factors in determining whether a household currently subscribes to

² American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“Recovery Act”), § 6001(b)(2).

broadband service.³ Ethnic groups also reported significantly lower broadband adoption. Here are a few of the key findings from that study:

- Even though home broadband adoption increased from 47% to 55% nationwide, the percentage of low-income Americans—those whose annual household incomes are \$20,000 or less—who reported having broadband in the home actually *decreased* from 28% in March 2007 to 25% in April 2008 (reflecting an 11% decline). This was the only reported demographic group showing a decline.
- Among those living in households with annual incomes in excess of \$100,000, broadband adoption grew from 82% to 85% over the same time frame.
- The share of African-Americans with broadband in the home remained largely the same (from 40% to 43%, within the margin of error for the survey).
- When respondents with dial-up service were asked what would motivate them to switch to broadband, 35% answered that prices would have to fall. This was by far the most often cited reason for not subscribing to broadband service. Only 10% responded that lack of availability was the reason for not subscribing.
- There is a significant income gap between dial-up users and broadband users: 29% of dial-up users live in households with annual incomes below \$30,000 compared to 14% of broadband users in that income range.

The NTIA's own data show an even greater disparity among income and ethnic groups.

According to a report released in January 2008, 64% of American households with an annual income greater than \$25,000 had broadband service in the home, whereas only 31% of households with an income less than \$25,000 used broadband service at home.⁴ Approximately 55% of Caucasian respondents subscribed to broadband, compared to only about 35% of Hispanics and African-Americans. The group Internet for Everyone recently released a study focusing on broadband issues in urban America, in which it reported that over 16 million

³ Pew Internet & American Life Project, *Home Broadband Adoption 2008* (July 2008), available at http://www.pewinternet.org/pdfs/PIP_broadband_2008.pdf.

⁴ NTIA, *Networked Nation: Broadband in America 2007*, appendix (Jan. 2008), available at http://www.ntia.doc.gov/reports/2008/Table_HouseholdInternet2007.pdf.

Californians across the state do not have high-speed Internet, and more than 240,000 residents in Washington, DC are not connected to the Internet at home.⁵

Providing greater accessibility to broadband service for low-income families would lead to a host of benefits for those individuals directly affected. As FCC Acting Chairman Michael Copps recently observed, “people throughout this nation enjoy an array of benefits derived from broadband—education, news, health care, entertainment, and innovation to name a few.”⁶ And as One Economy CEO Rey Ramsey noted, broadband adoption would allow low-income people to use the service “for finding jobs and information on health.”⁷ There are of course other well-documented social and economic benefits to Internet use generally, including lower prices for consumer goods and greater networking capabilities.⁸ Equally important, however, increased broadband subscribership would provide a significant boost to the overall economy. A 2008 study estimated that, with a 7 percent increase in broadband adoption, the U.S. would gain \$92 billion in new wages from the 2.4 million jobs created through this broadband growth.⁹

In creating the BTOP, Congress plainly did not intend for NTIA to focus solely on broadband coverage to the exclusion of all other crucial factors to broadband accessibility, such as affordability. The Recovery Act specifically instructs the NTIA to award grants that “facilitate access to broadband service by low-income, unemployed, aged, and otherwise

⁵ See Internet for Everyone, *Wired Less: Disconnected in Urban America*, available at <http://www.internetforeveryone.org/americaoffline/urban>.

⁶ Letter from FCC Acting Chairman Michael J. Copps to Congressmen Joe Barton and Cliff Stearns (Mar. 31, 2009) (“Copps Mar. 31 Letter”) at 2.

⁷ Communications Daily, Notebook, Mar. 24 2009.

⁸ See, e.g., Austan Goolsbee and Peter Klenow, *Evidence on Learning and Network Externalities in the Diffusion of Home Computers*, 45 J. Law and Econ. 317 (2002); Fiona Scott Morton et al., *Consumer Information and Discrimination: Does the Internet Affect the Pricing of New Cars to Women and Minorities?*, 1 Quantitative Marketing and Economics 65 (2003); Jed Kolko, *Why Should Governments Support Broadband Adoption?*, Public Policy Institute of Calif., Working Paper #2007.01 (2007).

⁹ See Connected Nation, *The Economic Impact of Stimulating Broadband Nationally* (Feb. 21, 2008), available at http://www.connectednation.com/_documents/Connected_Nation_EIS_Study_Executive_Summary_02212008.pdf.

vulnerable populations in order to provide educational and employment opportunities to members of such populations.”¹⁰ Congress also required NTIA to consider whether an application would, among other things, “increase the affordability of, and subscribership to, service to the greatest population of users in the area.”¹¹

Statements by agency officials reflect the understanding that affordability is an important factor that should be taken into account. For instance, Acting Chairman Copps recently stated in response to an inquiry from several Congressmen about how “underserved” should be defined that the NTIA and FCC may consider “important factors in addition to the number of providers in an area, such as affordability, competition, ubiquity of service . . . , quality of service . . . , and how other policies could improve broadband availability or encourage further deployment in an area.”¹²

In public meetings that the NTIA has held over the past several weeks, there was wide support for the notion that affordability must be taken into account when defining “undeserved,” and several proposals have been raised to accomplish that objective.¹³ The following quotes illustrate the sentiment expressed by many individuals attending those meetings:

- “[T]he definition of underserved [should] focus[] on adoption rather than necessarily physical access, speed, or cost, because while these are factors, the barriers to adoption go beyond access to infrastructure and affordability.”¹⁴

¹⁰ Recovery Act § 6001(g)(4).

¹¹ *Id.* § 6001(h)(2)(A).

¹² Copps Mar. 31 Letter at 3.

¹³ One such proposal is to define an “underserved” area as a population census tract with either a poverty rate of at least 20% or a median family income at least 20% less than the median family income for the greater metropolitan area. *See, e.g.*, Transcript, NTIA BTOP Public Meeting on Definition of Underserved Areas and Reaching Vulnerable Populations, at 41 (Mar. 19, 2009) (remarks of Betty Anne Kane, National Association of Regulatory Utility Commissioners) (“Betty Anne Kane Remarks”), *available at* http://www.ntia.doc.gov/broadbandgrants/090319/NTIA_031909_1300_1430_session.pdf.

¹⁴ Transcript, NTIA Broadband Technology Opportunities Program (“BTOP”) Public Meeting on Definitions of Broadband, Underserved, Unserved, at 33 (Mar. 17, 2009) (remarks of Emy Tseng, Director of Digital Inclusion

- “A broader definition for underserved of adoption ensures that seniors, the disabled, low-income and other statistically proven low adopters will be helped.”¹⁵
- “What a state considers underserved could be a geographic area, rural areas, [or] it could be a demographic definition where particularly in an urban area you may have an area like public housing and other pockets of poverty that are underserved because it is not affordable”¹⁶
- “[U]nderserved is the people that have a hard time accessing broadband because of costs.”¹⁷

To be clear, Cricket does not dispute that geographic areas without adequate broadband coverage should be classified as “underserved,” and NTIA should devote some of the available funds to promote the construction and deployment of broadband infrastructure to promote broadband availability in those areas. It would be a colossal mistake, however, for the NTIA to limit the scope of the BTOP grant program to address only broadband coverage in areas with limited or no broadband coverage. A single urban area (such as Cook County, Illinois) likely contains more “underserved” individuals than some rural states, and funds should be used to address this population as well, ensuring that more Americans will have increased broadband availability and the chance to reap the rewards of advancing technology. As Acting Chairman Copps recently stated, “we need to work to bring these benefits to those Americans who remain out of reach of these services, whether they are in rural or urban areas, and to those Americans for whom the services are not adequate or not affordable.”¹⁸

Programs for San Francisco), *available at* http://www.ntia.doc.gov/broadbandgrants/090317/NTIA_031709_1730_1900_session.pdf.

¹⁵ Transcript, NTIA BTOP Public Meeting on Selection Criteria and Weighing Priorities, at 27-28 (Mar. 18, 2009) (remarks of Betty Buckley, Communities Connect Network), *available at* http://www.ntia.doc.gov/broadbandgrants/090318/NTIA_031809_2000_2130_session.pdf.

¹⁶ Betty Anne Kane Remarks at 41.

¹⁷ Transcript, NTIA BTOP Public Meeting on Definitions of Broadband, Underserved, Unserved, at 15 (Mar. 18, 2009) (remarks of Jamescita Peshlakai, Developing Innovations in Navajo Education), *available at* http://www.ntia.doc.gov/broadbandgrants/090318/NTIA_031809_1730_1900_session.pdf.

¹⁸ Copps Mar. 31 Letter at 2.

III. THE NTIA SHOULD MAINTAIN THE FCC’S EXISTING DEFINITION OF “BROADBAND SERVICE”

The FCC currently defines “basic broadband” to refer to services that have transmission speeds of at least 768 kilobits per second in the faster direction (upload or download).¹⁹ The NTIA should not adopt a more rigorous standard as part of the definition of “unserved” and “underserved” or as a threshold criterion to qualify for BTOP funds, particularly one that exceeds the speeds that are broadly available and deployed by wireless telecommunications providers. Doing so would (1) favor specific broadband technologies over others, and (2) prematurely foreclose innovative solutions that mobile and alternative grant applicants would bring to unserved and underserved consumers. And a more rigorous speed requirement would not produce any meaningful benefits to the public.

For most consumers and businesses, the speed provided in the FCC’s existing broadband standards will provide them robust access to the Internet and will meet their business and personal needs. This is especially true for wireless services, which are delivered at different speeds than the services offered by DSL and cable operators but reach businesses and households that lack wireline connections. Wireless also provides convenience and mobility to customers by unshackling them from fixed connections and allowing broadband service to travel with them. Cricket subscribers report that low monthly price and mobility are two of the most significant reasons why they chose wireless broadband service over other options. In fact, millions of consumers rely on the 3G service that Cricket and other wireless providers currently offer to meet their Internet needs, such as accessing email, viewing websites, and downloading online media. In addition, many business professionals use wireless broadband when working outside

¹⁹ See *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improved Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, Report and Order and Further Notice of Proposed Rulemaking, FCC 08-89, WC Docket No. 07-38 (rel. June 12, 2008) at ¶ 20 & n.66.

the office. And as more advanced technologies (such as LTE, UMB, and WiMax) are deployed over the next several years, wireless broadband service will be able to achieve increasingly faster speeds.

Demanding faster transmission speeds than those set forth in the FCC's definition of "basic broadband" would impede the goals of the BTOP. Cricket is ideally situated to reach low-income and ethnically diverse groups that face some of the most daunting barriers to broadband access, and the NTIA should avoid unnecessary restrictions that would prevent Cricket (and similarly situated providers) from being part of the broadband solution. Rigorous speed requirements would also unfairly favor certain broadband technologies (such as fiber and cable), contrary to Congress's express instruction that the NTIA "shall to the extent practicable promote the purposes of this section in a technologically neutral manner."²⁰ And such requirements would further distort the competitive landscape, which is already dominated by only a few providers. In short, creating artificial and unnecessary barriers will not help to ensure that the broadband funds are used most efficiently to bring broadband services to those who currently lack it.

CONCLUSION

For the reasons explained above, Cricket urges the NTIA to embrace the needs of low-income and other slow-to-adopt demographic groups when defining the "underserved areas," so that BTOP funds may be used not only to accelerate the construction and deployment of infrastructure in areas where the existing network is inadequate, but also to increase the accessibility of broadband service for the millions of Americans who cannot currently afford it. Low-income families and ethnic minorities should not be left stranded on the wrong side of the

²⁰ Recovery Act § 6001(e)(1)(C).

digital divide. Cricket also encourages the NTIA to retain the FCC's existing definition of "broadband service" to ensure that the providers who are best situated to promote the objectives of the BTOP are able to participate in this important national endeavor.

Respectfully submitted,

/s/

Robert J. Irving, Jr.
Senior Vice President and General Counsel
Cricket Communications, Inc.
10307 Pacific Center Court
San Diego, CA 92121
(858) 882-6048

April 13, 2009