

NTIA AND RUS JOINT REQUEST FOR INFORMATION
COMMENTS OF
TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.

American Recovery and Investment Act Broadband Initiatives

Texas Statewide Telephone Cooperative, Inc. (TSTCI) offers these comments on the issues outlined in the joint request for information by the National Telecommunications and Information Administration (NTIA) and Rural Utilities Service (RUS) (Joint Request) regarding the broadband programs in the American Recovery and Reinvestment Act of 2009 (Recovery Act).

TSTCI is an association representing 38 small, rural incumbent telephone companies and cooperatives in Texas (see Attachment 1). Although these small companies and cooperatives serve less than 3% of Texas consumers, their service areas cover almost 50% of Texas' geographic area. The overall density of the TSTCI member companies' service areas range from a low of 0.8 customers per route mile up to six customers per route mile.

TSTCI believes that the fundamental objective of the broadband grants and loans should be to enhance infrastructure with a strong focus on the unserved and underserved rural areas of the country. By building upon the existing infrastructure, including middle-mile facilities, the limited amount of money available through the Recovery Act's broadband initiatives will be maximized.

TSTCI member companies and cooperatives have long realized the importance of broadband service to rural customers and are committed to deploying broadband services throughout their service areas. As providers of last-resort (POLRs) in accordance with Texas statutes, these companies are required to offer telecommunications service to all customers in their service areas. Through the assistance of federal universal service support, and in many cases RUS loans, these incumbent local exchange carriers (ILEC) have been able to construct

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and maintain high quality networks for their customers for telecommunications purposes in the many high cost rural areas of Texas. This assistance has been critical to providing an existing network infrastructure that is also used to provision certain levels of broadband and other advanced services in rural areas. NTIA and RUS grants available through the Recovery Act would enable these ILEC broadband providers to improve upon existing networks and thereby offer greater access to higher levels of broadband and other advanced services to customers.

As NTIA and RUS judge the applications for broadband grants and loans, TSTCI believes it will be important to consider any adverse affects such an award could have upon the rural ILEC already providing service in that territory and ultimately the customers they serve. The rural ILECs' POLR responsibility to offer service in all areas of their service territory, including rural and extremely high-cost areas with low-density populations, has made federal universal service support crucial to provisioning quality network infrastructure. Awarding grants or loans to competitive broadband providers who will serve only a portion of a small ILEC's service area (or overlay the whole service area) will adversely impact these ILECs whose subscriber base cannot sustain competition because of the limited number of subscribers and available revenue. This will ultimately deter future infrastructure investments. NTIA and RUS should be mindful of the goals of the existing federal universal service programs to bring affordable service to the rural, high-cost areas of the nation and do nothing that would undermine these programs.

TSTCI appreciates the opportunity to comment on the specific issues described below in accordance with the Joint Request.

National Telecommunications and Information Administration

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

- a. Should a certain percentage of grant funds be apportioned to each category?**
- b. Should applicants be encouraged to address more than one purpose?**
- c. How should the BTOP leverage or respond to the other broadband-related portions of the Recovery Act, including the United States Department of Agriculture (USDA) grants and loans program as well as the portions of the Recovery Act that address smart grids, health information technology, education, and transportation infrastructure?**

TSTCI Response:

TSTCI does not believe the grant funds should be apportioned based on the five purposes listed in Section 6001. The Recovery Act establishes four funded programs: 1) \$200 million for computer centers; 2) \$250 million for encouraging sustainable adoption of broadband services; 3) \$350 million for broadband mapping; and 4) approximately \$3.7 billion, excluding administration and oversight costs, for broadband infrastructure grants and other broadband based projects. TSTCI believes the purposes stated in Section 6001(b)(1),(2),(4) and (5) will be maximized by the infrastructure grant program while Section 6001(b)(3) will be maximized by the other grant programs; therefore, there is no need to apportion the funds any differently than apportioned by Congress. Congressional intent seems clear in that it maximizes the amount of the overall broadband grant programs to broadband infrastructure projects by establishing a limited amount of funds for other programs. From a public policy perspective, providing the broadband infrastructure to consumers that are unserved and underserved will benefit the nation as a whole. Priority should be given to existing broadband services providers such as the TSTCI member companies. By establishing a priority based on known service providers that have been operating and providing quality services for decades, NTIA can be assured the grants will be awarded to sustainable service providers.

TSTCI believes NTIA should encourage applicants to address as many Recovery Act purposes as practical. However, infrastructure projects will inherently provide broadband facilities and upgraded broadband capabilities to all schools, hospitals, libraries, and businesses in the area.

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

- a. How should the grant program consider State priorities in awarding grants?**
- b. What is the appropriate role for States in selecting projects for funding?**

- c. How should NTIA resolve differences among groups or constituencies within a State in establishing priorities for funding?**
- d. How should NTIA ensure that projects proposed by States are well-executed and produce worthwhile and measurable results?**

TSTCI Response:

The National Association of Regulatory Utility Commissioners (NARUC) has filed a response to these questions and proposes the States have a significant role in ranking and reviewing the submitted grant applications. TSTCI agrees with NARUC's basic premise that the States generally have a better understanding of the broadband capabilities and deployment within a specific State. However, the States often have conflicting goals, particularly if a State network should apply for a grant. If NTIA or RUS allow the States to rank projects, qualitative ranking criteria should be required as well as a process that requires the State to disclose any potential conflicts of interest. In the alternative, the States could review the NTIA/RUS grants prior to the award being announced so that any problematic aspect could be discussed. For example, if the provider has not complied with existing State laws or if a certificate is required and the provider does not hold a certificate, the States can play a significant role in identifying issues prior to funds being released. TSTCI strongly believe the States should play a significant role in compliance after the grant has been awarded.

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

TSTCI Response:

This section of the Recovery Act is unclear and does not recognize the current public interest test that incumbent local exchange service providers are required to meet, nor does the language recognize the longevity of existing service providers. Congressional language reads that any entity that has a commonly known corporate structure, with the exception of partnerships, is eligible to apply for grants under the NTIA programs. The Act further groups infrastructure providers, like the TSTCI incumbent local exchange companies, in a distinctive class whereby a public interest finding is required for these companies to receive grants. Most incumbent local exchange infrastructure providers already hold certificates that are predicated on serving the public interest. TSTCI recommends that all incumbent local exchange carriers as defined by the Federal Communications Commission, and any entity that currently holds a certificate from a State regulatory agency, if required by law and is in good standing with the State and Federal compliance requirements, should automatically be eligible to apply for a grant. Wireless providers should automatically be eligible based on their federal licenses.

Other infrastructure providers such as competitive access providers, middle-mile transport providers, and Internet service providers that may not be required to hold a State certificate to operate within a State could be automatically included for eligibility if they have been conducting business for a designated time period. This criterion would allow sustainable business entities to be eligible for grants while start-up ventures would be required to undergo further due diligence by NTIA or RUS. TSTCI recommends that an entity should be operational for a minimum of five years for automatic eligibility. Otherwise, NTIA should be required to make a public interest finding that the business plans of the applicant are sustainable.

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

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

TSTCI Response:

NTIA is required by Section 6001(h) to consider, to the extent practical, whether the application to deploy infrastructure in an area will 1) increase affordability, subscribership to the greatest population in the area, 2) provide the greatest broadband speed to the largest population in the area, 3) enhance service to health care delivery, education, or children, and 4) not result in unjust enrichment when considering other federal programs. NTIA must also consider if the applicant is a socially and economically disadvantaged small business. NTIA must provide one award in each State. Additional factors for consideration relative to the sufficiency of the application are those outlined in:

- 1) Section 6001(e) (3) – time lines for project completion,
- 2) Section 6001(e) (3) – explanation of how amounts received will be used to carry out the purpose of the Act,
- 3) Section 6001(e)(4) – the capability of the applicant to carry out the project which should include business plans, resumes’ of management, qualification of management and technical staff, and whether the applicant has sufficient staff to carry out the project.,
- 4) Section 6001(e) (5) – sufficient information to demonstrate the availability of funding for additional required capital and on-going maintenance and operational expenses.
- 5) Section 6001(e) (6) – appropriate disclosures of any other Federal or State funding sources; and
- 6) Section 6001(e) (7) – assurance the applicant can meet compliance and reporting requirements.

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Answers to the following questions are also important to any decision made regarding the award of BTOP grants: 1) does the applicant have a viable business plan that proves long-term use of the federal grants; 2) what *actual* broadband speeds are available based on the geographic areas served; 3) are sufficient middle-mile facilities available to allow access to the Internet during peak traffic periods; and 4) will the applicant be competing with another carrier that serves high costs areas of the nation.

NTIA should consider if an applicant is duplicating broadband infrastructure in the service area of an existing rural telecommunications carrier that currently receives funds from other federal programs such as RUS or FCC programs. The NTIA grant program should not put at risk any other government programs that are available to assist in providing support to either an existing infrastructure provider or any other consumer program such as the Link-Up or Lifeline programs. TSTCI does not believe that inserting a competitor into a geographic area that is already considered a high cost area to serve is in the public interest, particularly when the existing broadband service provider has already made significant capital investments and is likely using other federal programs.

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

TSTCI Response:

NTIA should adopt weighting criteria for each funded program. The infrastructure fund should establish the highest weighting factors for applications that address unserved and underserved areas. TSTCI does not believe the highest weighting should be given necessarily to unserved areas. TSTCI believes the best use of the small amount of available funds should go for infrastructure platforms designed for next generation broadband services and applications, such as fiber technologies. Infrastructure platforms include last mile and middle-mile transport facilities.

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

TSTCI Response:

NTIA should pay close attention to applications that maximize the available funds by providing broadband service to the greatest number of residential consumers, businesses and community anchor institutions. Unfortunately, the Recovery Act's available funds (only \$7.2 billion) are insufficient if the overriding objective is to provide broadband services to all unserved areas of the nation. Unfortunately our nation may have some remote geographic areas that have a lower quality service because it is uneconomical to provide the service. Even though the Recovery Act at Section 6001(e)(1)(C) promotes a technology neutral policy, some sparsely populated, remote areas may have to accept a lesser quality of service

provided with a technology that can not deliver the high speed services of the urban areas. NTIA should consider the most cost efficient technology for the geographic area served with the realization that the technology may not provide equivalent services to the urban areas. Many studies point to the fact that this nation is ranked seventeenth or lower when comparing broadband speeds offered to consumers; however, these studies fail to compare the geography and terrain barriers that prevent rural remote areas from receiving high speed service. TSTCI certainly does not support redlining any remote area however high speed services comparable to urban areas may not be realistic when a cost-benefit analysis is performed given today's technology.

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

TSTCI Response:

Yes, if practical. Applicants should be encouraged to collaborate with other anchor institutions in the area and coordinate applications if appropriate.

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

TSTCI Response:

Yes, if practical. As stated above, NTIA's priority should be on infrastructure investments. TSTCI submits that fiber infrastructure investments build platforms for next generation broadband services and applications that can ultimately benefit all populations identified in the Recovery Act. NTIA should shy away from short-term projects that have limited application.

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

TSTCI Response:

This question goes to what programs will ensure adoption of broadband services for those millions of low-income consumers, the aged population, and those populations that have other social barriers. Reasonable retail prices of broadband services and access to a computer seem to be a part of the solution. NTIA has heard many comments relative to Native Americans and the inner city populations that can not afford the price of a computer, much less the monthly charges for broadband services. Congress established two funds - \$200 million for computer centers and \$250 million for sustainable adoption – directed to economically distressed areas, and the low-income populations of the Nation. TSTCI recommends that these funds be directed to libraries, or equivalent community service centers, and non-profit entities that have a history in reaching out to the economically distressed populations. The criteria for awarding these funds should include: 1) the amount awarded for computers should be leveraged with other funds within the Recovery Act or with

funds from non-profit foundations or in-kind donations; 2) grantees should be required to report the success of the program and whether sustainable adoption has occurred; and, 3) if the computers are provided directly to consumers, the consumers should be required to show proof of income and that they have sufficient income to maintain access to the Internet.

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

TSTCI Response:

TSTCI member companies are price regulated companies at both the State and Federal jurisdictions, and the rates charged by TSTCI member companies for broadband access, such as DSL services, are filed and approved by a regulatory body. A basic regulatory principle applied when setting rates is that the rates should not be priced in a predatory or anticompetitive manner. Non-regulated providers that receive grants should not be allowed to use the funds as a competitive tool that puts private or public investments at risk. For example, grantees should not be required or allowed to offer broadband services to the general public at ‘no charge’ to the consumer.

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

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

TSTCI Response:

TSTCI believes that any institution that offers a computer center for public use should be considered for grants. For example, some tribal areas have “Chapter Houses” that function like a library and community center. The institution should certify that the computer center is available for public use and that other funds are not available for the purpose of purchasing computers.

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

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

- c. At what level of geographic or other granularity should the broadband map provide information on broadband service?
- d. What other factors should NTIA take into consideration in fulfilling the requirements of the Broadband Data Improvement Act, Public Law 110-385 (2008)?
- e. Are there State or other mapping programs that provide models for the statewide inventory grants?
- f. Specifically what information should states collect as conditions of receiving statewide inventory grants?
- g. What technical specifications should be required of State grantees to ensure that statewide inventory maps can be efficiently rolled up into a searchable national broadband database to be made available on NTIA's Web site no later than February 2011?
- h. Should other conditions attach to statewide inventory grants?
- i. What information, other than statewide inventory information, should populate the comprehensive nationwide map?
- j. The Recovery Act and the Broadband Data Improvement Act (BDIA) imposes duties on both NTIA and FCC concerning the collection of broadband data. Given the statutory requirements of the Recovery Act and the BDIA, how should NTIA and FCC best work together to meet these requirements?

TSTCI Response:

TSTCI believes the States should play a significant role in the national mapping process. However, technical specifications and minimum data requirements should be consistent for all States. NARUC's comments point out the States' knowledge of the environment, services provided, service providers, and the terrain. Given that statutory deadlines allow NTIA more time to accomplish this task, TSTCI recommends NTIA work through the States and request their assistance in conducting meetings with service providers within each State as necessary. Consequently, the States can submit minimum data collection requirements to NTIA for their consideration. TSTCI also believes that the States should be allocated a portion of the \$350 million to accomplish the task.

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

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

TSTCI Response:

A simple showing of the projected capital planning budgets of a broadband service provider is all that is necessary. NTIA should require the applicants to file an affidavit stating the project would not have occurred or been completed within the two-year time frame without the added capital investment funds of the Recovery Act.

Question 10: Timely Completion of Proposals: The Recovery Act states that NTIA shall establish the BTOP as expeditiously as practicable, ensure that all awards are made before the end of fiscal year 2010, and seek assurances from grantees that projects supported by the programs will be substantially completed within two (2) years following an award. The Recovery Act also requires that grant recipients report quarterly on the recipient's use of grant funds and the grant recipient's progress in fulfilling the objectives of the grant proposal. The Recovery Act permits NTIA to de-obligate awards to grant recipients that demonstrate an insufficient level of performance, or wasteful or fraudulent spending (as defined by NTIA in advance), and award these funds to new or existing applicants.

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

TSTCI Response:

NTIA has a formidable task before them. TSTCI recommends that NTIA simplify the application process and request only pertinent information to allow for an expeditious review of the application. Elaborate and complex scoring systems will only serve to delay the approval process. It is reasonable for NTIA to establish timeframes for certain types of applications to be filed. It seems logical that the applicants be encouraged to coordinate filings with infrastructure providers in the service area. For example, it is not unreasonable for a library to receive grant funds for additional computers when access to the Internet is congested or additional Internet capacity is not available to the facility. It is also reasonable for NTIA to coordinate the approval process for all grants within a geographic area. This would allow NTIA to determine if requests were duplicated.

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

TSTCI Response:

All of the listed elements should be included in the initial application. However, the process should be flexible to allow changes to timelines and milestones based on events that are not under the control of the broadband service provider. For example, right-of-way and environmental approvals often hold up construction projects beyond the control of the service provider. Grantees should be encouraged to timely file any amended timelines.

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

- a. How should NTIA define wasteful or fraudulent spending for purposes of the grant program?
- b. How should NTIA determine that performance is at an "insufficient level?"
- c. If such spending is detected, what actions should NTIA take to ensure effective use of investments made and remaining funding?

TSTCI Response:

States can play a significant role in monitoring wasteful and fraudulent use of the funds. In addition, TSTCI believes the quarterly reporting requirements will play a significant role in monitoring fraudulent use of the funds. We also suggest that the States, because of their closer proximity to the grantees than NTIA, could perform on-site inspections, as necessary.

TSTCI assumes NTIA will use a process similar to the one used by RUS which allows "draw downs" of available funds only after the service provider presents sufficient documentation of completion before additional funds are drawn. The RUS process has worked well over the past 50 years. For de-obligation purposes, if agreed-to project plans and timelines are not being met after sufficient warnings, a grantee should be referred to OIG for investigation. TSTCI recommends that all reporting requirements and enforcement expectations be clearly defined in NTIA's rules prior to any grants being awarded. In other words, if NTIA or any other governmental agency expects certain requirements, it is only fair those requirements be clear, predictable and available for review prior to grants being filed.

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

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

TSTCI Response:

TSTCI agrees with comments made by the National Telecommunications Cooperative Association that "unserved" means a geographic area that has no broadband services or has only dial-up capability. For purposes of the Recovery Act funds, a geographic area is

“underserved” if the actual broadband service provided is less than 768 kilobits per second during peak busy hour.

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

- (1) Should the BTOP establish threshold transmission speeds for purposes of analyzing whether an area is “unserved” or “underserved” and prioritizing grant awards? Should thresholds be rigid or flexible?**
- (2) Should the BTOP establish different threshold speeds for different technology platforms?**
- (3) What should any such threshold speed(s) be, and how should they be measured and evaluated (e.g., advertised speed, average speed, typical speed, maximum speed)?**

TSTCI Response:

Thresholds should be flexible, and minimum speeds should be objectives but not requirements based on the cost of providing service to some remote and sparsely populated areas. For example, the TSTCI companies provide service to less than 400,000 consumers of Texas; however, they provide service to almost 50% of the geographic area of Texas. The overall density of the TSTCI member companies’ service areas range from a low of approximately 0.8 customers per route mile up to six customers per route mile. Often times the costs to serve the one customer that is several miles from current facilities is prohibitive. On the other hand, similarly situated carriers should be required to offer comparable speeds and services at comparable rates.

TSTCI recommends that if broadband thresholds are used, then actual speeds during peak time periods are a more appropriate measure. Advertised speeds are attractive to consumers and based on optimum conditions that seldom exist in the real world. In addition, TSTCI recommends that grants not be provided to service providers that offer a lesser quality of service than the current providers offer. Having a second provider in the service area should not be an NTIA objective if that second provider offers an inferior service to the incumbent. Competitive providers should be required to offer a higher quality of service if grants are being used in competition with private or other government programs.

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

- (1) In defining nondiscrimination obligations, what elements of network management techniques to be used by grantees, if any, should be described and permitted as a condition of any grant?**
- (2) Should the network interconnection obligation be based on existing statutory schemes? If not, what should the interconnection obligation be?**

TSTCI Response:

The TSTCI companies are ILECs as defined by the Federal Telecommunications Act of 1996. The 1996 Act contains interconnection obligations for ILECs. TSTCI believes the existing interconnection rules for small carriers are sufficient to meet the Recovery Act standard. NTIA should not establish any higher interconnection obligations than required by State and Federal regulatory bodies. However, cable, wireless, CLECs, and ISPs do not have the same interconnection obligations as ILECs. Interconnection obligations for these providers should be based on the same obligations required for the ILECs.

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

TSTCI Response:

No. Interconnection obligations are not generally based on the technology used by a service provider but are based on competitive principles and use of the network components by other providers. For example, ILECs are required to wholesale their network components and allow a competitive carrier to resale services. These basic interconnection obligations could be expanded to other non-incumbent service providers.

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

TSTCI Response:

Yes.

- c. **(5) In the case of infrastructure paid for in whole or part by grant funds, should the obligations extend beyond the life of the grant and attach for the useable life of the infrastructure?**

TSTCI Response:

If interconnection obligations are extended to grantees, the obligations should extend for the life of the infrastructure. However, this does not imply that NTIA's reporting requirements continue for the life of the infrastructure. As stated above, the TSTCI companies have interconnection obligations based on existing rules and regulations that resulted from the 1996 Act. In addition, the Texas Public Utility Commission, like many other State utility commissions, has its own set of interconnection rules. Assigning certain interconnection obligations for a specific timeframe is illogical and could result in negative impacts to consumers. In other words, it is illogical to require a service provider to resale its

infrastructure to another provider for a specified period of time when the service provider's consumers could be impacted once the time frame expired.

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

- a. What measurements can be used to determine whether an individual proposal has successfully complied with the statutory obligations and project timelines?**

TSTCI Response:

Many of the factors used to approve the grant application can be used to monitor the success of the project. For example, the grant application should contain a timeline for build-out of facilities. A significant measurement point is whether the applicant is meeting its construction timeline. Perhaps a measurement could be based on the number of new broadband consumers. Each grantee should be required to provide data related to how the funds were used. In addition, each grantee should be required to keep appropriate accounting records as to the use of the funds, and NTIA's rules should be clear that audits of accounting records will occur.

TSTCI recommends that NTIA prescribe a timeframe for any reporting requirements. By law the broadband grant projects should be completed within a two-year timeframe once the grant is awarded. Once the project has been successfully completed, TSTCI recommends by rule that quarterly reporting requirements can be discontinued. Otherwise, the service provider may be providing unnecessary and burdensome reports for many years.

- b. Should applicants be required to report on a set of common data elements so that the relative success of individual proposals may be measured? If so, what should those elements be?**

TSTCI Response:

As stated above, the type of reporting data should be supportive of the purposes of the grant. The TSTCI companies are highly regulated and provide many monthly, quarterly, and annual reports to regulatory agencies. We recommend NTIA keep reporting to a minimum and not burden the grantees with unnecessary questions. In addition, reporting deadlines and the duration of reporting requirements should be clearly defined.

Rural Utilities Service (RUS)

The provisions regarding the RUS Recovery Act broadband grant and loan activities are found in Division A, title I under the heading Rural Utilities Service, Distance Learning, Telemedicine and Broadband Program of the Recovery Act.

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

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

- a. Bundle loan and grant funding options to ensure such access is provided in the projects funded under the Recovery Act to areas that could not traditionally afford the investment;
- b. Promote leveraging of Recovery Act funding with private investment that ensures project viability and future sustainability; and
- c. Ensure that Recovery Funding is targeted to unserved areas that stand to benefit the most from this funding opportunity.

TSTCI Response:

Many current RUS borrowers also struggle with the financial aspects of providing broadband service to those last few customers where geographic conditions make the service cost prohibitive. Often times customer are required to provide aid-to-construction to help defray the significant costs. It seems reasonable that grants be used to defray the costs of providing broadband services to the unserved areas first, while grants and loans are leveraged for upgrading existing facilities for the underserved areas.

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

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

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

TSTCI Response:

TSTCI does not believe the language of the RUS and NTIA BTOP provisions of the Recovery Act should be reconciled. The simple reading of RUS' grant provisions is that serving only 75% of a rural area is sufficient to obtain RUS grant funds if the application supports economic development. TSTCI believes that any company that meets the definition of a rural company in accordance with RUS' standards, as well as the definition contained in the 1996 Act, should be eligible for a RUS grant. It also seems that any application from a current borrower that aspires to increase broadband capabilities within their rural service area would qualify for a grant.

One of the most significant aspects of rural economic development is access to broadband services. Economic development for the TSTCI companies means keeping sustainable businesses within the area, keeping schools connected, keeping hospitals and clinics operational and attracting new businesses to the area. Offering high-speed broadband services goes to meeting all of these objectives. More importantly, creating opportunities for the younger generation to stay in the area or return to the area after furthering their education is vital to rural economic development. The TSTCI companies take every opportunity to work with the local community and economic development organizations to further the goals of sustaining their communities.

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

TSTCI Response:

TSTCI recommends any applicant seeking funds from both agencies should be required to disclose this information at the time grant requests are filed. A disclosure statement will allow the two agencies to validate that applicants are not requesting duplicate resources. However, a grantee should be allowed to request funds from both agencies for the same project. Duplication of resources can be controlled with disclosure and required affidavits.

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

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

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

TSTCI Response:

The most important factor for RUS when reviewing applications for the rural areas is whether the grant funds will ‘sustain’ jobs for an area. In today’s economy it may be difficult to ‘grow’ jobs in the rural areas. Many rural area businesses are financially pressured by current economic conditions. As a result, TSTCI believes the most important factor is sustaining the same level of jobs for the rural area. This requires having broadband services that can attract new types of home-based businesses and creating an environment that allows schools and other community- based services to remain viable. TSTCI recommends that RUS be flexible in setting standards and not establish standards that are unrealistically high.

- (b) **What speeds are needed to facilitate “economic development?” What does “high speed broadband service” mean?**

TSTCI Response:

TSTCI recommends RUS and NTIA remain flexible when defining broadband speeds. Establishing a specific standard or speed may not be reasonable for remote sparsely populated areas. Certainly the goal should be as high a speed as practical for the service area, but NTIA and RUS should be flexible and not etch a specific speed in stone. In addition, a specific broadband speed should not be required throughout the service area. The NTIA and RUS rules should allow for the most cost effective service for the area served.

Question 4: In further evaluating projects, RUS must consider the priorities listed below. What value should be assigned to those factors in selecting applications? What additional priorities should be considered by RUS?

Priorities have been assigned to projects that will: (1) Give end-users a choice of Internet service providers, (2) serve the highest proportion of rural residents that lack access to broadband service, (3) be projects of current and former RUS borrowers, and (4) be fully funded and ready to start once they receive funding under the Recovery Act.

TSTCI Response:

TSTCI recommends that priority be given to unserved areas and to the project that provides services with the most efficient technology for the area being served. TSTCI points out most small ILECs currently provide broadband services through the National Exchange Carrier Association (NECA) Switched and Special Access Services Tariff. This tariff is filed at the FCC on behalf of the small ILECs and contains a wholesale broadband service option as part of the Special Access section. If an ILEC has the broadband infrastructure capability, other

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Internet service providers can provide access to the Internet over the ILECs infrastructure. This tariff option provides a tariff mechanism for providing end-users a choice of Internet service providers without the Internet service providers having to incur significant costs of underlying infrastructure. TSTCI submits that these tariff options be encouraged versus creating incentives for a second provider to build infrastructure in high-cost rural areas. As stated above, the NTIA and RUS rules should not be used to encourage inefficient competition; the small amount of grant funds available should be used in the most cost effective manner.

Respectfully submitted,

A handwritten signature in cursive script that reads "Cammie Hughes".

Texas Statewide Telephone Cooperative, Inc.

By: Cammie Hughes
Authorized Representative

TEXAS STATEWIDE TELEPHONE COOPERATIVE, INC.

Alenco Communications, Inc.
Big Bend Telephone Company, Inc.
Brazos Telecommunications, Inc.
Brazos Telephone Coop., Inc.
Cameron Telephone Company
Cap Rock Telephone Coop., Inc.
Central Texas Telephone Coop., Inc.
Coleman County Telephone Coop., Inc.
Colorado Valley Telephone Coop., Inc.
Community Telephone Company, Inc.
Cumby Telephone Coop., Inc.
Dell Telephone Coop., Inc.
E.N.M.R. Telephone Coop., Inc.
Eastex Telephone Coop., Inc.
Electra Telephone Company
Etex Telephone Coop., Inc.
Five Area Telephone Coop., Inc.
Ganado Telephone Company, Inc.
Hill Country Telephone Cooperative, Inc.
Industry Telephone Company, Inc.
La Ward Telephone Exchange, Inc.
Lake Livingston Telephone Company
Lipan Telephone Company, Inc.
Livingston Telephone Company
Mid-Plains Rural Telephone Coop., Inc.
Nortex Communications, Inc.
Panhandle Telephone Coop., Inc.
Peoples Telephone Coop., Inc.
Poka Lambro Telephone Coop., Inc.
Riviera Telephone Company, Inc.
Santa Rosa Telephone Coop., Inc.
South Plains Telephone Coop., Inc.
Tatum Telephone Company
Taylor Telephone Coop., Inc.
Wes-Tex Telephone Coop., Inc.
West Plains Telecommunications, Inc.
West Texas Rural Tel. Coop., Inc.
XIT Rural Telephone Coop., Inc.