

April 13, 2009

Via Electronic Delivery

Broadband Technology Opportunities Program
U.S. Department of Commerce
Room 4812
1401 Constitution Avenue, N.W.
Washington, DC 20230

Re: National Telecommunications and Information Administration and
Rural Utilities Service
Joint Request for Information
American Recovery and Reinvestment Act of 2009 Broadband Initiatives
Docket No. 090309298-9299-01
Comments of Hughes Network Systems, LLC, WildBlue Communications, Inc.,
Intelsat Corporation and National Telecommunications Cooperative

To Whom It May Concern:

Hughes Network Systems, LLC ("Hughes"), WildBlue Communications, Inc. ("WildBlue"), Intelsat Corporation ("Intelsat") and National Rural Telecommunications Cooperative ("NRTC") submit these comments in response to the Joint Request for Information ("RFI") issued by the National Telecommunications and Information Administration ("NTIA") at the Department of Commerce and the Rural Utilities Service ("RUS") at the Department of Agriculture.¹ Hughes and WildBlue are the largest satellite Internet access providers to the North American consumer market, providing satellite broadband connectivity to more than 800,000 consumer and small business subscribers in the U.S.

The American Recovery and Reinvestment Act of 2009 ("ARRA")² is the first step in creating a national broadband policy that will culminate with a formal policy developed by the FCC. This policy should take several key factors into account:

- Different technological solutions are more suitable for different areas of the country depending on the local characteristics, including population density, topography and socioeconomic status of the area.
- All proposals should demonstrate that they are economically viable, even after the federal funds are exhausted.
- Priority in awards should be given to unserved areas.
- The national broadband policy should recognize that, in general, the highly rural areas in the U.S. have the lowest broadband availability and adoption rates.

¹ "American Recovery and Reinvestment Act of 2009 Broadband Initiatives; Joint Request for Information; Docket No. 090309298-9299-01," 74 Fed. Reg. 47 (Mar. 12, 2009), pp 10716-10721) ("*RFI*").

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

With these principles in mind, Hughes, WildBlue, Intelsat and NRTC respond to the RFI as follows:

NTIA Questions:

1a. Should a certain percentage of grant funds be apportioned to each category?

Congress expressly identified a number of priorities in the statute, and some attempt should be made to address each of these purposes. It is within the agencies' discretion to set priorities among these purposes, but funding should be allocated across a broad number of projects addressing diverse geographic and technological needs.

2a. How should the grant program consider State priorities in awarding grants?

2b. What is the appropriate role for States in selecting projects for funding?

States must play an integral role in identifying the needs of their constituents, as States are in the best position to understand their local needs. Nonetheless, the means by which these needs are addressed must be consistent with the overall national broadband policy and demonstrate that they are an efficient use of taxpayer dollars. In other words, States should identify the needs and federal agencies should coordinate the overall strategy to meet these needs. It should also be recognized that some needs may be more efficiently met through a national or multi-state project. These types of projects should be funded solely at the federal level.

3. 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?

Both public and private entities, working alone or together, each have a role to play in meeting the goals of the statute. The public interest is best served by evaluating the efficacy of the proposed solution relative to the statutory intent, regardless of the classification of the applicant.

4a. 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 weighed?

NTIA should consider the following factors:

- Whether a proposal represents a viable economic investment with low financial risk, even after the federal funding is exhausted;
- Whether the proposed solution is tailored to the population being served;
- Whether the applicant has presented a comprehensive business plan for the project, demonstrating that each of its elements has been vetted;
- Whether the project represents the best value for the money, as evaluated on a variety of metrics, including cost per home passed;

- Whether the statutory purposes of providing access to unserved and underserved areas has been met, taking into consideration the difficulty of reaching the targeted area, the total number of homes passed and the size of the geographic area proposed to be served; and
- Whether the applicant itself is financially sound.

4g. *Should the fact that different technologies can provide different service characteristics, such as speed and use of dedicated or shared links, be considered given the statute’s direction that, to the extent practicable, the purposes of the statute should be promoted in a technologically neutral fashion?*

Due to the different population densities (and resulting economic differences), topographies, and demographic characteristics across the U.S., no single technology can optimally serve all geographic areas. Economic reality and the marketplace has borne out this fact, as evidenced by the variety of different technologies – wireline, wireless and satellite – currently serving the U.S. population. Each of these platforms has an important role to play in ensuring that every U.S. household can be reached by broadband services.

By requiring that the statute be administered in a technology-neutral fashion, Congress understood that each technology has a place in a comprehensive national broadband plan. Each technology’s service characteristics must be considered against the cost of the deployment and the number of households covered. Providing a 50Mbps service may not be the best solution if it costs ten times the amount of a 5 Mbps service and covers fewer households. For example, highly rural areas do not lend themselves to widespread use of terrestrial solutions. The inability of these providers to aggregate the middle mile or backhaul services across large geographic areas has made this type of service uneconomic.

In following Congress’s directive to consider applications on a technology-neutral basis, NTIA should avoid inadvertently excluding certain technologies by creating unnecessary requirements that only certain platforms are able to meet.

4h. *What role, if any should retail price play in the grant program?*

An evaluation of the effectiveness of any proposed project must take into account the price to the end user. The rate of adoption is directly correlated to the price charged. One of the goals of the statute is to increase adoption of broadband services. Moreover, gold-plated solutions that no one can afford are a waste of federal dollars.

7. *What selection criteria should be applied to ensure the success of the [sustainable adoption] program?*

Studies have shown that an impediment to adoption is the initial cost of the broadband service. Proposed projects that lower the upfront cost to consumers will stimulate demand and create jobs. These projects, including subsidies of upfront costs passed directly to consumers, should have priority in funding, as they directly increase the adoption rate of broadband in targeted markets.

8. *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)?*

For each census tract, the broadband maps must accurately identify (i) each broadband technology available (including speeds offered and pricing), (ii) the number of households, and (iii) the number of households that have subscribed to each technology (including take rates for each service or speed tier). Service provider competitive data should be protected from public disclosure. Ultimately, such maps should also identify the presence of broadband stimulus funded projects. Consistent with the intent of ARRA, however, the broadband mapping project should not slow the funding of projects aimed at increasing broadband adoption in unserved and underserved areas.

9c. *What showing should be necessary to demonstrate that the proposal would not have been implemented without Federal assistance?*

Projects underway and substantially funded prior to the enactment of BTOP clearly do not qualify for funding. Programs in the pipeline (i.e., pre-construction) for which their sponsors have attempted but failed to attract private financing due to the meltdown of the public and private financial markets demonstrably meet the statutory requirement. As this is an unequivocal eligibility requirement, an applicant must clearly show that this condition has been satisfied. Economic analysis of price sensitivity of demand should be considered when available.

13a. *For purposes of the BTOP, how should NTIA, in consultation with the FCC, define the terms “unserved area” and “underserved area”?*

Definitions that focus on broadband adoption necessarily will further the Congressional mandate to increase subscribership, affordability and service to the greatest number of Americans. Specifically, those areas in which the adoption rate is in the lowest one-third of the nation would be considered “unserved.” Those areas in which the adoption rate is in the middle one-third of the nation would be considered “underserved.” Ultimately census tract data should be used for this purpose. Until the data is available in this way, we suggest using the most recent data from the FCC’s Form 477, which until recently was collected by zip code. We note that studies such as the Pew Internet & American Life Project, released in July, 2008, indicate that rural areas have dramatically lower rates of broadband adoption. To avoid any delay in the commencement of projects aimed at accelerating adoption in rural areas, at least until the broadband mapping project is completed, all rural areas of the country should be deemed unserved.

13b. *How should the BTOP define broadband service?*

The FCC’s definition of 768 kbps in at least one direction is an acceptable starting point for the “broadband” definition, provided that the fact a service provider offers lower speeds at a reduced retail price should not exclude the technology. A consumer should have the choice to select a more economical service, if the provider offers a service meeting the broadband

definition. A one-size fits all definition with artificially high speed thresholds or an arbitrary requirement that speeds be symmetrical could inhibit buildout of systems in areas most in need of access. Moreover, and worse, it could lead to the construction of costly systems promising high speeds that come with unreasonably high upfront and/or monthly costs to consumers, making it difficult if not impossible for these consumers to subscribe. This digital bridge to nowhere serves neither the intent of Congress nor the consumers' need to access the internet at something other than dial-up speeds.

RUS Questions

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?

RUS's program must be consistent with the goals, objectives and application process adopted by the NTIA. The focus, however, should be on projects serving rural markets. Regulations under other RUS programs inadvertently have precluded nationwide or multi-state projects, effectively eliminating a technology neutral implementation of the programs. Specifically, one loan per market limitations or rules that disqualify services capable of serving both rural and urban markets have the effect of precluding the eligibility of satellite providers. A community-by-community approach eliminates the type of technology platform that, to date, has been the only-large scale economic solution for highly rural areas. Satellite broadband addresses numerous, if not all, rural needs with a single deployment. RUS must not be bound by its prior regulations and should adopt the letter and spirit of Congress' technology neutral mandate.

Respectfully submitted,

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