

**Before the
DEPARTMENT OF COMMERCE
National Telecommunications And Information Administration**

and the

**DEPARTMENT OF AGRICULTURE
Rural Utility Service
Washington, D.C. 20230**

In the Matter of)
)
Implementation of Section 6001 of the American)
Recovery and Reinvestment Act of 2009)
)
Implementation of Title I of the American) Docket No. 090309298-9299-01
Recovery and Reinvestment Act of 2009)

COMMENTS OF IOWA HEALTH SYSTEM, INC.

April 13, 2009

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EXECUTIVE SUMMARY

Iowa Health System, Inc. (“IHS”) is an Iowa-based, not-for-profit regional health care provider that is the largest health care system provider in Iowa, and whose system of health care facilities serves a geographically dispersed population in Iowa, Nebraska, Illinois and South Dakota. IHS has already established a privately owned, 2,170 route-mile fiber optic network which is currently being extended to serve as a backbone for healthcare entities across the region.

IHS urges NTIA to adopt BTOP rules stemming from this Joint Request for Information (“RFI”) that will approve any qualified grant application that meets one of the statutory purposes of the Broadband Initiatives of the Recovery Act, which can be timely completed, is cost-effective, and will result in the sustainable adoption of broadband services. Broadband infrastructure that will enhance service for health care delivery by providing broadband access, equipment and support to medical and healthcare providers should be among the BTOP priorities. States should have an advisory role in the grant process, provided that it is consistent with the purposes of the Broadband Initiatives in the Recovery Act, and that NTIA will independently make any grant award decisions. NTIA must also recognize that States and State subdivisions are eligible applicants for grants, and therefore may have a competing interest to other eligible applicants in receiving grant funding. In addition, current and former RUS borrowers who will receive priority consideration for further RUS funding should be given secondary consideration for BTOP funding after BTOP grant applicants who are not current and former RUS borrowers.

NTIA should use existing funding mechanisms, including USAC, to meet the accelerated deadlines for grant awards and completion of grant projects.

Finally, NTIA should adopt rules which encourage in-kind contributions by grant recipients of access to privately-owned broadband infrastructure (such as access to long haul fiber optic backbone) to limit unnecessary use of taxpayer funds.

Adopting rules promoting broadband infrastructure to health care facilities in underserved and unserved areas will encourage delivery of more uniform and advanced health care, including promoting beneficial medical data transfer and telemedicine.

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COMMENTS OF IOWA HEALTH SYSTEM, INC.

Iowa Health System, Inc. (“IHS”), pursuant to the Joint Request For Information (“RFI”) issued by the National Telecommunications and Information Administration of the Department of Commerce (“NTIA”) and the Rural Utilities Service of the Department of Agriculture (“RUS”), submits its comments to assist NTIA in establishing and administering the Broadband Technology Opportunities Program (“BTOP”) and RUS in implementing its expanded authority.

I. ABOUT IOWA HEALTH SYSTEM

IHS is a not-for-profit regional health care provider serving a geographically dispersed rural population in the upper Midwest. Formed in 1995, IHS is the first and largest healthcare system in Iowa, consisting of 11 hospitals in seven large Iowa and Illinois communities, a network of rural hospitals in 14 other Iowa communities, and 128 physician clinics in more than 80 communities in Iowa, Illinois, Nebraska and South Dakota. IHS health care providers serve roughly 1 of every 3 patients in Iowa. IHS is a nonprofit corporation that it is an eligible BTOP grant recipient pursuant to Section 6001(e)(1)(B) of the Recovery Act.

At an early stage, IHS has recognized the importance of a broadband infrastructure to improved delivery of healthcare and access to medical records.¹ IHS has already invested in and activated a 2,170 route mile, private fiber optic network connecting affiliates and clinics. This network is now in use for IHS's system-wide internal traffic and provides a variety of data transmission services among more than 139 IHS health care facilities, at minimum 2 Gbps broadband speeds. Under the Rural Health Care Pilot Program, this network is currently being expanded to include additional nonprofit hospitals in relative close proximity to IHS' fiber backbone. IHS would like to expand broadband access connections to its state-of-the-art fiber backbone across a larger regional footprint extending from Iowa to Nebraska, South Dakota and Illinois to connect health care entities and other anchor institutions in areas unserved and underserved by broadband. IHS is uniquely positioned to do this given its experience acquiring, operating, and expanding its fiber backbone network connecting rural health care facilities, provided that NTIA-administered BTOP grants are properly structured to support an IHS grant proposal.

II. THE NTIA GRANT PROGRAM SHOULD MAKE FUNDS AVAILABLE TO ANY GRANT PROPOSAL THAT MEETS ANY OF THE PURPOSES OF THE PROGRAM, WHICH WILL BE TIMELY COMPLETED, IS SUSTAINABLE, AND IS COST-EFFECTIVE.

The RFI asks if a certain percentage of grant funds should be apportioned to each of the five purposes of Section 6001(b). NTIA should resist the temptation to micromanage and over-regulate the grant application process. A pre-determined allocation among various statutory purposes would only complicate and likely delay the grant review process, and would undermine the very objectives of the Recovery Act, to the detriment of qualified and deserving broadband

¹ As observed by the FCC in its recently released Notice of Inquiry on a National Broadband Plan, “[e]lectronic medical records are an important aspect of modernizing our healthcare system and stimulating our economy.” Notice of Inquiry, *In the Matter of A National Broadband Plan for Our Future*, GN Docket No. 09-51 (rel.’d April 8, 2009).

infrastructure proposals that serve any of purposes of the BTOP grant program. Apportionment of a pre-determined percentage of grant funds to each of the five identified statutory purposes necessarily assumes a weighting of the relative importance of each of these legislative priorities, an exercise that Congress itself did not undertake nor require. Congress did not rank these priorities and neither should rules implementing the ARRA.

More importantly, a pre-determined allocation of funds to each statutory purpose presupposes that timely, project-ready grant proposals will be equal in number, size and quality for each category. It must be remembered that the overall purpose of the Recovery Act is to provide economic stimulus and to create jobs. And the purpose of the BTOP is “accelerating broadband deployment in unserved and underserved areas and ensuring that strategic institutions that are likely to create jobs or provide significant public benefits have broadband connections.²” Any rigid funding allocation would also encourage applicants to mold their proposals to cover as many statutory purposes as possible, unintentionally creating incentives for applicants to stretch to fit within statutory priorities for which they are not well-suited. Such a scenario would only complicate and frustrate NTIA’s already significant task to promptly evaluate and approve qualifying grant proposals.

Certainly, applicants should be encouraged to address more than one statutory purpose, if the proposal fits within that purpose. However, whether applications satisfy multiple statutory purposes should not be a prerequisite for choosing successful applicants. Narrowly focused applications, such as proposals to provide broadband infrastructure to unserved or underserved strategic institutions (such as hospitals and medical and healthcare providers), which are likely to create jobs and to provide significant public benefits, may have a greater potential for meeting the overall goal of the ARRA.

² RFI, 74 Fed. Reg. 10717 (March 12, 2009).

As to how the BTOP program should leverage or respond to other broadband-related portions of the Recovery Act, including the RUS grants and loans program , as a threshold matter, to meet the statutory deadline that all stimulus money be awarded by September, 2010 (in seventeen months), the BTOP grant program should proceed on its own, at least through completion of the application process. RUS applications will be proceeding simultaneously, and applicants should still be required to disclose in BTOP grant applications if they are applying for RUS funding as well as BTOP funding (and vice versa) for all or a part of the same project. NTIA should be mindful that under the RUS broadband grant and loan program “priority shall be given for project applications from borrowers or former borrowers under title II of the Rural Electrification Act of 1936 and for project applications that include such borrowers or former borrowers.³” Accordingly, since the RUS must prioritize applications from current or former RUS borrowers, NTIA should be careful not to prioritize BTOP grant applications from such RUS borrowers applying for broadband stimulus funding to the detriment of qualifying BTOP grant applicants who lack the same priority access to RUS funding under the Recovery Act. Failure to do so will unfairly give access to BTOP funding to current or former RUS borrowers who already have priority access to additional RUS funding under an RUS application for broadband funding.

Finally, maintaining a firm commitment to a timetable under a cycle approach will also encourage applicants to focus their efforts on projects where they see the best chance of success, minimizing differences in the funding criteria and focus of each of the granting agencies.

³ *Id.* at 10720 (quoting Recovery Act “DISTANCE LEARNING, TELEMEDICINE, AND BROADBAND PROGRAM”).

III. THE APPROPRIATE ROLE OF THE STATES IN THE AWARD OF GRANTS

States can play a beneficial role in assisting NTIA and RUS in administering the Broadband Initiatives, to help objectively and impartially determine and weigh State priorities and the public benefits of broadband deployment. The need for State involvement may vary from state-to-state, based on the particular qualifications of each applicant and the merits of each application. For example, section 6001(b)(3) of the Recovery Act already establishes as a fundamental purpose of the BTOP program to “provide broadband education, awareness, training, access, equipment and support to...medical and healthcare providers.”⁴ In addition, the Recovery Act requires that NTIA “*shall, to the extent practical*” consider, in awarding grants, if an application “*will, if approved, enhance service for health care delivery, education or children to the greatest population of users in the area...*”⁵ Any State role must be consistent with this congressional mandate.

Nevertheless, because a State or a State political subdivision(s) can be a potential eligible applicant for BTOP grant and RUS funding, NTIA and RUS should be wary of giving undue weight to a State ranking of priorities in those situations when either a State or a State subdivision is itself seeking approval of a competing grant proposal. State involvement should be limited to an advisory role, and not serve as a gating or rating mechanism for grant approval. There are three reasons why this is appropriate. First, as mentioned, a State or State subdivision applicant already is an entity that is an eligible grant recipient under the BTOP grant program. As such, it will be unfair to expect a State or State subdivision that is itself applying for grant funding to provide NTIA with impartial advice about the relative merits of competing grant applications in the same state. Second, Congress could have but did not establish a State role in awarding and disbursing BTOP grant funds, instead making the grant award the specific

⁴ Section 6001(b)(3)(A) (quoted at 74 Fed. Reg. 10717 n.2).

⁵ Section 6001(h)(2)c. (quoted at 74 Fed. Reg. 10718 n.6)(emphasis added).

responsibility of NTIA. This authority cannot be delegated by NTIA to the States. Finally, NTIA and RUS have a statutory obligation to evaluate “sustainable adoption of broadband service”, and must comply with a quarterly reporting requirement on the recipient’s use of grant funds and progress in fulfilling the objectives of the grant proposal.⁶

Inevitably, there will be differences among groups or constituencies within a State applying for the same NTIA grant funding, simply because funding is limited, the Recovery Act’s public policy goals are broadly framed, and the public need is great. However, winning applications should be based on merit, not political influence, and NTIA should approve applications which (1) satisfy one or more purposes of the BTOP program; (2) will, among other goals, “enhance service for health care delivery, education, or children to the greatest population of users in the area;”⁷ (3) are likely to be timely completed; and (4) will meet other requirements of the grant program, including financial contributions and sustainability of the broadband proposal.

The NTIA grant program does not prescribe different oversight rules for public and private applicants once the grants are made. However, to ensure that projects proposed by States and State subdivisions are well designed and will produce measurably beneficial results, including a showing of “sustainable adoption” of broadband service once the project is completed, project timelines and milestones should be implemented under the Recovery Act’s quarterly reporting requirement concerning the use of grant funds and grant recipient progress in meeting the objectives of the grant proposal.⁸ These reporting requirements should assist NTIA in meeting its own reporting requirements to Congress.

⁶ Section 6001(i)(1).

⁷ Section 6001(h)(2)c. (quoted at 74 Fed. Reg. 10718 n.6).

⁸ Section 6001 (i)(1).

IV. WHAT TEST SHOULD ENTITIES OTHER THAN SECTION 6001(e)(1)(A) & (B) ENTITIES MEET TO BE ELIGIBLE GRANT RECIPIENTS?

The RFI asks what standard NTIA should 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. As discussed above, IHS is a Section 6001(e)(1)(B) nonprofit corporation, so this issue does not apply directly to IHS, though it will likely influence what other entities can submit competing proposals.

There will likely be many proposals seeking to limit participation to whatever group is advocating their position, but the only statutory limitation is “public interest” and that any rule promulgated “promote the purposes . . . in a technologically neutral manner.”⁹ The simplest approach would be to:

- i. Automatically determine eligibility to apply to any “other” entity making a joint application with an entity described in Section 6001(e)(1)(A) and (B).
- ii. Allow all other applicants to file with a requirement that they show how their application is in the “public interest” and is “technologically neutral.”
- iii. Rank applications giving priority to joint public/nonprofit/private applications that serve the public interest.

This approach, if adopted as a rule, would probably encourage most “other” private entity applicants to seek public partners, making it more likely that grant proposals will serve the public interest and therefore be entirely consistent with the Recovery Act.

V. ESTABLISHING SELECTION CRITERIA FOR GRANT AWARDS

1. The Factors NTIA Should Consider in Awarding BTOP Grants

The RFI asks what factors NTIA should consider in establishing selection criteria for grant awards. First and foremost, selection criteria should focus upon new broadband

⁹ Section 6001(e)(1)(C).

infrastructure creation and evaluate the long-term public interest impact of creating that additional broadband infrastructure. All applicants should also be required to submit 10 to 15 year sustainability plans as part of the application process to ensure that taxpayer funds are not wasted on “white elephant” projects.

Second, if a geographical area is found to meet either the “unserved” or “underserved” statutory test, then that should presumptively establish that the project would not have been built without federal funding, and that private funds are not being displaced by federal funding because they have not been invested before now.

Third, applicants should be required to attest that the infrastructure project being proposed has not previously been budgeted for deployment through the use of non-federal funding.

2. How should these criteria be weighted in determining grant and loan awards?

First, the greatest weight should be given to applications that clearly meet at least one of the stated purposes of the Broadband Initiatives in the ARRA. Second, broadband projects that demonstrate (a) adequate local funding and/or in-kind contribution; (b) which can be substantially completed within two years of a grant, and (c) are sustainable (both in terms of capital investment and ongoing operational costs), should receive the highest ranking for grant approval.

3. BTOP Should Prioritize Broadband Infrastructure Proposals In Underserved Or Unserved Areas From Eligible Applicants Other Than Current And Former RUS Borrowers.

Initially, as noted above, providing broadband infrastructure to “unserved” and “underserved” areas should be a threshold screening criterion. If this test is not met, then the proposal should be rejected.

Second, RUS broadband infrastructure grants and loans are subject to different criteria, requiring proposals to serve a 75% rural area that is without sufficient high speed broadband access for economic development.¹⁰ Depending on how “unserved” and “underserved” areas are defined, priority should be given to applications meeting that test, as opposed to applicants who are current and former RUS borrowers. As discussed above, because current and former RUS borrowers applying for RUS funding will already receive “priority” for RUS broadband infrastructure funding, NTIA should prioritize grant applicants that are not current and former RUS borrowers. Furthermore, NTIA grant funding should resist prioritizing proposals that seek other Recovery Act funding (i.e. RUS funding), if that would only complicate or delay the funding of other deserving broadband infrastructure projects by requiring time for interagency coordination to ensure that no duplicative or overlapping funding has occurred. Since speedy economic stimulus is a priority of the Recovery Act, proposals that seek multiple sources of funding, while not improper, will likely require greater scrutiny at both the award and audit phases of the grant process. At the same time, priority should be given to proposals that can quickly and efficiently leverage existing broadband infrastructure assets that can help ensure sustainability of new and expanded broadband infrastructure development under the Broadband Initiatives.

¹⁰ “[A]t least 75 percent of the area to be served by a project receiving funds from such grants, loans or loan guarantees shall be in a rural area without sufficient access to high speed broadband service to facilitate rural economic development, as determined by the Secretary of Agriculture....” Rural Utilities Service, Distance Learning, Telemedicine and Broadband Program of the Recovery Act, Division A, title I (quoted at RFI, 74 Fed. Reg. 10719-10720 n.17).

4. Priority Should Not Be Given To Proposals Simply Because They Address Several Recovery Act Purposes, Serve Several Target Populations Identified In The Recovery Act, Or Provide Service To Different Types Of Areas

NTIA should not give priority to proposals that may facially satisfy multiple purposes for broadband funding, because this would oversimplify important eligibility considerations for funding and likely encourage applicant gaming of the process that could undermine targeted but highly qualified proposals from eligible applicants that may serve a single statutory purpose. Such an approach would require arbitrarily weighing the relative importance of public policy objectives (or a combination of them versus a single one) each of which Congress felt should be prioritized. Prioritizing multiple purpose applications would simply encourage applicants to stretch their qualifications by claiming possibly dubious multiple public interest benefits in the hopes of improving the success of their application. Emphasis should instead be given to delivering the greatest public interest benefit for the funding involved, which is timely, is sustainable long term, and for the least possible cost.

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

Much like the rate of wireless service penetration in the U.S. over the past 10 years, increased adoption of broadband is directly related to cost of service and quality of service. Open, carrier-neutral, competitive networks will help drive down the cost of broadband, stimulating higher broadband adoption rates such as seen in other countries. For the purpose of evaluating the sustainability of a BTOP grant proposal, a 10-15 year sustainability plan should be requested of each grant applicant, projecting a business case for who the unserved and underserved users of the new broadband infrastructure will be, whether the infrastructure will generate sufficient revenues to cover ongoing capital costs and operating expenses, and whether

and when the broadband infrastructure network will be self-sustaining in terms of operational costs on an ongoing basis.

VI. NTIA AND RUS SHOULD USE EXISTING GRANT DISBURSEMENT MECHANISMS TO THE EXTENT PRACTICAL TO FACILITATE THE SPEEDY DISTRIBUTION OF STIMULUS FUNDS.

Given the need for speed and the limited window for funding availability, existing disbursement mechanisms should be used. Use of outside agencies (e.g., USAC) experienced in federal agency grant disbursement and reporting/auditing requirements may be helpful.

Existing federal agency funding mechanisms can be slow and complex. But they are also familiar processes to applicants. Again, given the limited window of time available, designing and implementing new loan/grant mechanisms after the process has already begun will probably not be possible, and would likely only cause further delays. However, considering both an aggressive 2 year deadline to substantially complete the build of new broadband infrastructure, and the goal of the Recovery Act to provide rapid economic stimulus, and the need to pay vendors promptly for services provided, NTIA and RUS should adopt a streamlined, monthly reimbursement mechanism providing for disbursement of funds to a grant recipient within ten business days of receipt of a reimbursement or payment requisition.

VII. FINANCIAL CONTRIBUTIONS BY GRANT APPLICANTS

Section 6001(f) of the Recovery Act provides that the Federal share of funding for any BTOP grant proposal not exceed 80 percent of the total grant. But the RFI does not seek comment on permissible sources of non-Federal funding, commonly referred to as the 20 percent “local match”. In the past, the NTIA has approved the issuance of grants with local matching or cost sharing by means of non-cash contributions. The Department of Commerce’s regulations, specifically 15 C.F.R. §24.24 “Matching or cost sharing”, provide an existing mechanism for in-

kind contributions, which, as a starting point, IHS encourages NTIA to apply to grant proposals submitted under the BTOP program.

However, the existing NTIA “Matching or cost sharing” rule does not go far enough to promote in-kind contributions, which, if allowed, could greatly promote timely completion of state-of-the-art advanced fiber broadband networks. In particular, some applicants may own and operate existing fiber optic networks, access to which should be an in-kind contribution as it will accelerate deployment of broadband infrastructure while avoiding the construction of possibly duplicative network construction at taxpayer expense. For example, IHS owns and operates a 2170 route mile, fiber optic backbone networks that is used solely today for one of the key goals of the BTOP program: to promote healthcare services by facilitating telemedicine and the rapid sharing of data between health care facilities with access to the network. This broadband infrastructure, acquired and operated by IHS, is interconnected with public and private networks of all kinds including National Lambda Rail (NLR) and Internet2 via the Metropolitan Research and Education Network (MREN) located at Northwestern University. If applicants such as IHS are allowed to leverage the value of in-kind contributions such as access to an existing regional intrastate fiber backbone connecting an interdependent network of hospitals and health care facilities as in-kind contributions satisfying a 20% matching funds requirement, this could greatly broaden the reach of broadband infrastructure to unserved and underserved areas, while conserving precious taxpayer funds. In order to connect healthcare facilities or other strategic institutions to broadband service (a specific statutory purpose of the BTOP grant program), these institutions would otherwise have to pay to construct or lease long term access to such a fiber network as a legitimate project cost.

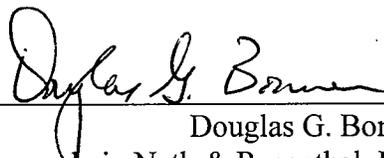
Furthermore, given the current volatile state of credit markets and the difficulties applicants face in securing financing in a weak economy, reasonable in-kind contributions of access to a grantee's fiber network and related facilities as part of a grant proposal, even on a depreciation or use allowance basis, should be encouraged by NTIA rule to promote broadband deployment using existing infrastructure. At the same time, NTIA should not impose any regulatory restrictions on management of the privately-owned fiber optic network or the recovery of future operating expenses and capital costs through negotiated agreements with broadband users, which would only discourage such in-kind contributions.

Finally, BTOP regulations should avoid imposing any common carrier regulation or network management rules on privately owned, non-common carrier networks, such as fiber backbone networks, to include any requirement that certain applications must be allowed to operate on these networks, or otherwise intruding upon the network management and operation of these private networks for the purposes their owners intend. Any such regulation would be a disincentive to in-kind contributions by private owners of fiber optic networks to promote broadband deployment to strategic institutions.

VIII. CONCLUSION

NTIA should adopt rules for the BTOP grant program that encourage eligible grant recipients such as IHS, a nonprofit regional health care provider serving a geographically dispersed population in several midwestern states, to build and deploy expanded broadband infrastructure to unserved and underserved rural areas. IHS, which is already operating a 2170 mile fiber optic network among participating healthcare facilities, has the technical capability and experience to expand this network to reach other healthcare facilities

and community anchor institutions in multiple states provided that the NTIA adopts rules that encourage IHS to apply for grant funding and to leverage its existing fiber optic network to advance health care delivery and broadband deployment to more Americans.



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