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National Telecommunications and Information Administration

and the

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Rural Utilities Service
Washington, DC

In the Matter of)
American Recovery)
and Reinvestment Act of 2009) Docket No. 090309298-9299-01
Broadband Initiatives)

Comments of the
Communications Workers of America

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Executive Summary

The Communications Workers of America (CWA) represents more than 700,000 workers in communications, media, airlines, manufacturing, and public service. Two years ago, CWA launched our Speed Matters campaign to bring affordable, high-speed broadband to every American family, business, and community. The \$7.2 billion broadband initiative in the American Recovery and Reinvestment Act (ARRA) represents an important first step in closing our three broadband gaps: the lack of access to broadband networks by an estimated 10-12 million households; slow network connection speeds compared to our global competitors; and adoption barriers due to the cost or technological challenges people face in owning and using computers or subscribing to Internet access service.

CWA believes that the top priority of NTIA's Broadband Technologies Opportunity Program (BTOP) and the Rural Utilities Service broadband grant and loan program should be to invest in broadband projects that create and preserve good jobs, while jumpstarting the economy and promoting long-term U.S. competitiveness. With 13.2 million unemployed Americans, the first consideration in grant allocations must be putting Americans back to work.

In establishing the rules for the broadband grant programs, CWA recommends the following:

- Focus network deployment grants on unserved areas -- defined as an area without at least one non-satellite facilities-based provider of non-dial-up Internet service -- and networks serving community anchor institutions and government agencies, like libraries, schools, rural health centers and similar community centers.
- Focus grants on projects that will preserve and create good jobs.

- To ensure enforcement of Buy America provisions and prevailing wage requirements, require that grant recipients report the number of jobs created and the wages/compensation of those jobs.
- Ensure that projects can be started quickly and are sustainable, and that recipients have a track record of success and that grant-funded projects are scalable.
- Fund initiatives that support public computer centers, digital literacy programs, and subsidized purchase of computers and Internet access delivered through community-based organizations, libraries, or community colleges, with priority to “underserved” low-income and other vulnerable populations and disadvantaged businesses.
- Establish minimum speed requirements of 3 mbps down and 1 mbps up for network deployment, then rank grant proposals based on speed, number of new households and locations connected, number of jobs created, number of low-income households served.
- The NTIA and RUS should continue their close coordination efforts, and work closely with the states to identify priority projects.
- Preserve an open Internet by requiring grant recipients to abide by the Federal Communications Commission’s Open Internet principles and current Internet traffic exchange and peering norms.
- Promote broadband mapping by establishing a common format and data standard, encourage states to apply for funds to map broadband availability and capability and support public-private partnerships such as the successful ConnectedNation broadband demand-stimulation initiatives and mapping projects.

Table of Contents

Question 1. Purpose of Program.....	1
Question 2. The Role of the States.....	4
Question 3. Eligible Grant Recipients.....	6
Question 4. Establishing Selection Criteria for Grant Awards.....	7
Question 6. Grants for Expanding Public Computer Center Capacity.....	11
Question 7. Grants for Innovative Programs to Encourage Sustainable Adoption of Broadband Service.....	12
Question 8. Broadband Mapping.....	13
Question 9. Financial Contributions by Grant Applicants.....	17
Question 10. Timely Completion of Projects.....	18
Question 11. Reporting and Deobligation.....	19
Question 13. Definitions.....	21
Question 14. Measuring Success of the BTOP.....	26
Question 15. Other – Ensuring Compliance with Employment and Labor Protections.....	29

Question 1: Purposes of the Program

The top priority of the Broadband Technology Opportunities Program (BTOP) and the Rural Utilities Service (RUS) broadband grant and loan program should be to invest in broadband projects that create and preserve good jobs, jumpstart the economy, and promote long-term U.S. competitiveness. With 13.2 million Americans unemployed and the number of jobless growing each month, the first consideration in grant allocation must be putting Americans to work with these stimulus funds.

In allocating grants, the NTIA and RUS will have to select among many worthy applicants. The NTIA and RUS should give priority to projects that create and preserve good jobs; can be put in place quickly and completed within the two-year statutory requirement; serve the greatest number of possible recipients for funds expended; are sustainable after grant funds are no longer available; are initiated by entities with a proven record of success; and are able to serve as test beds for future scalable initiatives.

In selecting among the purposes established by the Recovery Act, CWA recommends the following be given highest priority:

First, the top priority of the BTOP and RUS broadband projects must be to invest in broadband projects that preserve and create good, career jobs. As noted in Section 3 of the Recovery Act, the purpose of the Act is to “preserve and create jobs and promote economic recovery.” Section 6001 of the Recovery Act established the Broadband Technology Opportunities Program (BTOP) with the purpose, among others, “to stimulate the demand for broadband, economic growth, and job creation.” Therefore, congressional intent coupled with the dire economic situation and growing unemployment in our nation compels the NTIA to make job preservation and creation the top priority for the BTOP program.

Second, BTOP and RUS infrastructure funding should prioritize projects providing access to consumers in *unserved areas*, defined as communities or neighborhoods in which a significant portion of the population has no terrestrial non-dial-up Internet access. Since the BTOP and RUS funding, although substantial, is not large enough to address all our broadband gaps, NTIA and RUS should place a priority on getting broadband to consumers, small businesses, industrial parks, and community institutions that are currently locked into a dial-up world.

Third, BTOP funding should be targeted to projects that upgrade networks serving state and local government agencies, public safety organizations, and community anchor institutions, such as schools, libraries, community centers, community colleges and other institutions of higher education, and medical and health care providers. Fiscally-strapped state and local governments can quickly put these funds to use improving their IT capacity, thereby improving the quality and efficiency of education, health care, public safety, and delivery of other public services. It is equally important and cost-effective to fund network upgrades to community anchor institutions. Sixty percent of libraries report that their broadband connections are too slow, and 80 percent of patrons must wait in line to use public computers.¹ While the E-rate program has achieved great success, two-thirds of school districts prohibit schools from streaming video because of bandwidth constraints.² Upgrading network capacity at schools, libraries, and community institutions can and should be coupled with community education and outreach initiatives targeted to underserved and vulnerable populations. These projects should also be encouraged to leverage Recovery Act funding for smart grid, health information technology, education, or transportation infrastructure projects.

¹ Testimony of Emily Sheketoff, American Library Association, NTIA/RUS Broadband Roundtable, March 16, 2009.

² Testimony of Erin Duncan, National Education Association, NTIA/RUS Broadband Roundtable, March 16, 2009.

Fourth, BTOP funding should prioritize projects that provide broadband education, awareness, training, access, equipment, and support to organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by underserved low-income, unemployed, aged, and otherwise vulnerable populations. According to the Pew Internet and American Life surveys, only 57 percent of American households subscribe to broadband, although many more have access to the technology. The Pew research finds that low-income households and the elderly are least likely to subscribe to broadband. There are multiple reasons: the high cost of computers or broadband access service, lack of digital literacy, or failure to see the value in broadband connections. The BTOP program should fund scalable and sustainable efforts to address these gaps.

Finally, Congress also included funding for projects in “underserved areas” in the BTOP program. We define “underserved areas” as areas in which broadband service is delivered at less than 3 mbps downstream and 1 mbps upstream. In many cases, it will make economic sense to support projects that upgrade networks in “underserved areas” that are adjacent to “unserved areas”. In other cases, it will make sense to support projects that deliver state-of-the-art fiber-to-the-home networks to communities that would not receive the benefits of these investments without public support. Such projects should be test beds to demonstrate the cost and viability of investment in these advanced high-speed networks in multiple communities. With the limited funding available to BTOP and RUS, BTOP and RUS grants should *not* support new, competing broadband networks in communities that already have broadband service.

Question 2. The Role of the States

The Recovery Act instructs the NTIA to consult with states in determining unserved areas and more generally in evaluating grant applications. Under an ideal process, states would first establish a designated entity to coordinate state broadband planning; map their broadband infrastructure, speeds, and adoption barriers at a granular level and in a comprehensive manner; develop a state plan in coordination with stakeholders to fill their broadband gaps; and then apply for stimulus funding for priority projects where the private market has failed or is too slow to deliver. A substantial number of states have taken these steps, and are well-positioned to play a meaningful consultative role to the NTIA in evaluating grant applications.³ Some localities and regions have collected substantial data and engaged in broadband planning, and can provide this information to state agencies in their consultative process. Other states will look to the stimulus funds to help finance their data collection and planning efforts.

The NTIA should encourage states that have not begun their data collection and planning efforts to apply for stimulus funding to undertake such efforts. For infrastructure projects, the NTIA may want to consider prioritizing grant applications from states that have completed their mapping in the first round of grant awards. Given the urgency of our current economic situation, the NTIA should not adopt a hard and fast rule that requires state data collection and planning before funding broadband deployment or adoption projects in a state.

The NTIA should design a meaningful consultative role for states. This is consistent with the Conference Report which noted that “states have resources and a familiarity with local economic, demographic, and market conditions.” The Conference Report also encouraged states

³ See Testimony of The Honorable Rachelle Chong, Commissioner of the California Public Service Commission, before the House Subcommittee on Communications, Technology, and the Internet, April 2, 2009 (available at http://energycommerce.house.gov/Press_111/20090402/testimony_chong.pdf).

to “coalesce stakeholders and partners, assess community needs, and aggregate demand for services, and evaluate demand for technical assistance.” The Conference Report concluded with an expectation that the NTIA “seek advice and assistance from the States in reviewing grant applications, so long as the NTIA retains the sole authority to approve the awards.”

The NTIA should request that each governor designate an entity to evaluate grant applications in their state based on criteria provided by the NTIA. (For multi-state applications, each impacted state should provide an evaluation.) These state evaluations should then be attached to the grant application for final review by the NTIA. The NTIA should award points to the grant application based on the state evaluation.

Question 3. Eligible Grant Recipients

The Recovery Act identifies state or political subdivisions or non-profit organizations as eligible entities to receive BTOP funding. The Recovery Act also allows the NTIA to determine by rule whether it is in the public interest to allow other entities, such as for-profit companies and organizations, to receive BTOP funding.

The NTIA should allow private entities to apply for BTOP funding, provided they meet the following criteria that the NTIA and RUS should apply to *all* applicants:

- The Applicant has the financial, technical, managerial, and operational qualifications to begin the project quickly and to complete the project in a timely manner and within the two-year statutory mandate.
- The Applicant has the capacity and business plan to continue operations of any grant-funded infrastructure project after the grant funds are expended.
- The Applicant shall demonstrate that it has no past record of material violation of federal, state, or local laws or regulations.
- The Applicant shall demonstrate that the projects will result in sustainable and quality job creation and economic development.
- The Applicant shall provide, at a minimum, the 20 percent match from its own sources.
- Priority shall be given to private entities that are hold federal, state, or local certification, licenses, or franchise to provide a communications service.

Question 4. Establishing Selection Criteria for Grant Awards

The NTIA and RUS should require grant applicants to demonstrate that a Federal funding need exists. Third-party mapping data provides the best evidence that the project connects an unserved area (an area without a terrestrial non-dial-up Internet service) or an underserved area (an area without broadband delivered at 3 mbps downstream/1 mbps upstream service). Third-party speed tests provide evidence of broadband speeds as a mechanism to identify underserved areas. Where such data does not exist, the applicant must provide evidence that the area is either unserved or underserved, subject to challenge. Letters of support from community stakeholders can document the need for a project. For infrastructure projects, applicants should provide, under strict confidentiality, capital budgets and plans to demonstrate that the project either was not planned or would not have taken place as quickly without grant funds.

Consumer surveys can document adoption barriers. Applicants should provide demographic evidence for the community to be served such as median income and poverty rate, unemployment rate, elderly or disability status, or documentation that the community to be served is one of the low-income communities or vulnerable populations identified in the Recovery Act or a disadvantaged business as defined under section 8(a) of the Small business Act (15 U.S.C. 637). Community anchor institutions can demonstrate that current service is inadequate to meet the needs in a number of ways, including computer sign-in waiting lists; current bandwidth capacity compared to usage or potential usage; number of school children or classrooms unserved; the lack of existing community computing centers in the area to be served compared to the population; etc.

The NTIA and RUS should establish an objective set of criteria by which it evaluates grant applications, giving points to applications along a continuum. The following criteria should get special weight:

For Infrastructure Projects (data should be reported as absolute numbers and per dollar expended)

- Number of good jobs created or preserved as a result of the project; separate categories for job creation/preservation during construction and job creation/preservation after construction
- Economic impact of the project, determined according to a recognized input-output model
- Evidence that applicant can hire a skilled workforce to implement and sustain the project;
- Number of new households, small businesses, and locations that will be connected as a result of the project (e.g. priority to unserved areas);
- Number of institutions and people that will be impacted by connecting or upgrading health care, education, government, library, community center, or other community anchor institutions;
- Viability of business plan, including: rapid engagement; viability of timeline and certainty of completion; sustainability of the project after grant funds are expended
- Financial, technical, managerial and operational qualifications of applicant, with evaluation based on past experience and track record;
- Actual broadband download and upload speeds to be delivered; with separate calculations for cost/mbps delivered; cost/household or location served;
- Number of new broadband subscribers;

- Project that addresses multiple BTOP and ARRA purposes and serves one or more of the populations identified in the Recovery Act.

For adoption and digital literacy projects (data should be reported as absolute numbers and per dollar expended)

- Financial, technical, managerial and operational qualifications of applicant, with evaluation based on past experience and track record;
- Viability of business plan, including: rapid engagement; viability of timeline and certainty of completion; sustainability of the project after grant funds are expended;
- Number of good jobs created or preserved as a result of the project;
- Number of people to be served; and number of low-income, unemployed, elderly, or otherwise vulnerable people served; number of people to be served that live in one of the federally-identified low-income communities identified in the Recovery Act or a disadvantaged business as defined under section 8(a) of the Small business Act (15 U.S.C. 637) served;
- Number of new subscribers; and number of new subscribers who are low-income, unemployed, elderly, or otherwise vulnerable categories of population of new subscribers;
- Number of people and number of people who low-income, unemployed, elderly, or otherwise vulnerable categories who are provided digital literacy or other services to increase broadband adoption;

- Number of people and number of people who low-income, unemployed, elderly, or otherwise vulnerable categories who receive subsidized computers or subsidized Internet access;
- New community-based services provided as a result of the project;
- New applications developed as a result of the project;
- Project scalability to close one or more broadband adoption gaps: digital illiteracy, lack of computer ownership, broadband affordability, or value creation;
- Project that addresses multiple BTOP and ARRA purposes and serves several of the populations identified in the Recovery Act.

Question 6. Grants for Expanding Public Computer Center Capacity

There are some communities, particularly in rural or impoverished areas, in which the closest library or community college is simply too far away. Therefore, in addition to libraries and community colleges, the NTIA should include schools and non-profit community-based organizations as eligible recipients under this program. Community-based organizations operating public computer centers in low-income housing developments, senior centers, recreation facilities, community technology centers, churches and other religious institutions, after-school youth programs, schools, and mobile units can expand the number of public computer centers reaching the low-income and vulnerable populations identified in the Recovery Act.

The selection criteria listed under Question 4 should be applied to evaluating applicants for expanding public computer center capacity.

Question 7. Grants for Innovative Programs to Encourage Sustainable Adoption of Broadband Service

The selection criteria listed under Question 4 should be applied to evaluating applicants for expanding public computer center capacity.

Benchmarks for success include number of people served by the project; number of new subscribers to broadband; new community-based services provided as a result of the project; new applications developed as a result of the project.

Question 8. Broadband Mapping

The Recovery Act directs the NTIA to establish a comprehensive nationwide inventory map of existing broadband service capability and availability that depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State within two years. The NTIA should develop a two-step process, working with the states and the Federal Communications Commission (FCC), to meet this statutory obligation as quickly as possible.

First, the NTIA should build on the current state data collection efforts. The NTIA should publish a list of the information that must be collected as part of any federally-supported broadband data collection program. This list should be published at the time the NTIA publishes its Notice of Fund Availability for the BTOP grants. States that apply for broadband data collection grants under the Broadband Data Improvement Act (BDIA) would therefore collect the same information according to similar methodologies, thereby creating national uniformity in the data collection effort. This data can then be rolled up into a national broadband inventory map. State-level data collection will facilitate rapid collection of broadband data that can be used for a variety of purposes, including determination of unserved and underserved areas for BTOP and RUS grant selection purposes; community-based planning and demand stimulation efforts; and policy analysis in developing the Commission's national broadband strategy.

At a minimum, the NTIA and Commission should require the collection of the following information:

- The location of broadband infrastructure at the address-level, by technology type.
- The actual speed of broadband infrastructure, using an online speed test tool.

- Posting of the address-level information on broadband availability by technology and provider online, with an online tool so that consumers can submit additions or corrections.

Second, the NTIA, in consultation with the states and the Federal Communications Commission (Commission), shall establish a mechanism for data collection that fills the gaps in state data collection efforts. The Commission and NTIA may determine that it would be best to require broadband availability reporting as part of the Form 477 data collection, with adequate protection for competitively sensitive data. The Commission should be cognizant that many small providers do not have an accurate inventory of broadband availability, and that on-the-ground assistance from public-private partnerships should be factored in to ensure accurate national data collection.

In designing its broadband data collection program, the NTIA can learn a great deal from successful broadband mapping projects in the states, such as those conducted by the ConnectedNation public-private partnerships in Ohio, Kentucky, Tennessee, Minnesota, West Virginia, and South Carolina and the broadband mapping project of the California Broadband Task Force in the state of California. These programs collected address-level information from broadband providers on the availability of broadband service by technology type. The broadband providers shared their broadband information under non-disclosure agreements. The broadband availability information (by technology type and broadband provider) at the address-level was next made available to the public via an online tool, allowing for full transparency and reporting back from consumers to make corrections, as needed.

The California Broadband Task Force collected and published upload and download speed information based on self-reporting from broadband providers based on the highest-available speed tier offered. The Tennessee and Minnesota speed maps are based on an aggregation of data transmission speeds gathered from a sampling of consumers volunteering to utilize online speed testing tools that measure the actual speeds delivered, including the CWA speedmatters.org speed test. These maps aggregate speed data at the county level, using the Federal Communications Commission's (FCC) Form 477 speed tiers.⁴ The CWA speedmatters.org maps aggregate the data online at the zip code level, with real-time updating as more consumers take the speed test.⁵

In its *Broadband Data Order* adopted in March 2008, the Commission stated that it would “design and implement a voluntary system that households may use to report availability and speed of broadband Internet access service at their premises.” The Commission noted that the registry “would enable households to use the telephone, mail, email, or the Internet to report apparent unavailability of broadband service for their location and information about existing services, such as they type and actual speed of Internet access service they use.”⁶ To date, the Commission has not implemented its own recommendation.

The Commission should move forward expeditiously to implement the voluntary broadband registry that it announced over a year ago in the *Broadband Data Order*. Working with states and community-based organizations, as well as CWA's speedmatters.org website, the

⁴ Connected Nation has completed broadband mapping in Kentucky, Ohio, Tennessee, West Virginia, South Carolina, and Minnesota. They are currently under contract to conduct broadband mapping in other states. See http://www.connectednation.org/state_programs/

⁵ See speedmatters.org

⁶ Federal Communications Commission, Report and Order, In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership, para 18, June 12, 2008 (rel) (“Broadband Data Order”).

Commission could take the lead in collecting data on the actual upload and download Internet access speeds that consumers experience. The Commission should also implement the voluntary consumer registry as a valuable tool to test the accuracy of public-private partnership broadband data collection programs.

Question 9. Financial Contributions by Grant Applicants

The Recovery Act requires grant applicants to provide at least 20 percent of project funding. This ensures that grant applicants have “skin in the game,” and is one indicator that the grantee has the financial strength to sustain the project once grant funding expires. The NTIA, therefore, should require a strong showing of financial need in order to waive this requirement. There should be a presumption in favor of the 20 percent match by for-profit entities and for infrastructure projects. Imminent bankruptcy by an established provider that would result in substantial job loss and delay in broadband deployment to unserved areas could serve as one example of demonstration of financial need. Applicants should be required to provide confidential financial information and capital plans to demonstrate financial need and evidence that the proposal would not have been implemented without Federal assistance.

Question 10. Timely Completion of Proposals

Applicants should be required to provide timelines, milestones, letters of agreement with partners, commitments to abide by prevailing wage and Buy America requirements, evidence that they can hire the skilled workers needed to implement the project quickly, and other supporting information to demonstrate that they will be able to launch the project quickly and complete it within the two year statutory time frame. The best evidence that an applicant will be able to begin the project quickly, be able to hire and retain skilled employees, and will be able to complete the project effectively, efficiently, and expeditiously is the past record of the grant applicant.

Question 11. Reporting and Deobligation

The Recovery Act requires grant applicants to report on a quarterly basis on the use of the assistance and progress fulfilling the grant objectives. Each grant applicant should report the following to ensure that the grantee meets the Recovery Act and BTOP objectives to preserve and create jobs and complies with the Recovery Act's Buy America and prevailing wage requirements.

For infrastructure projects

- Number of full-time equivalent (FTE) jobs created and retained during construction and installation of broadband facilities, including
 - Job titles of jobs created/retained
 - Average wage and average total compensation of each job title for the jobs created/retained
 - Number of full-time and part-time jobs created/retained
 - Union status of jobs created/retained
- Number of full-time equivalent (FTE) jobs created and retained to operate, maintain, and service the broadband facilities. This information shall be provided for five years after the infrastructure is deployed, and shall include job titles, average wage and average total compensation for each job title, number of full-time and part-time jobs, and union status.
- Number of jobs created or retained in locations connected to the grant-funded broadband facilities (e.g. industrial parks, small or home businesses, government agencies, community anchor institutions). This information shall be provided for five years after the broadband facilities are deployed.

Non-infrastructure projects

- Number of jobs created or retained as a result of the BTOP or RUS grant
- Number of low-income, unemployed, elderly, or otherwise vulnerable individuals provided educational and employment opportunities as a result of the BTOP or RUS project.

In addition, the NTIA should require reporting on progress toward the benchmarks provided in response to question 14.

Question 13. Definitions

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

The NTIA and RUS do not know which technology or approach will most efficiently and cost-effectively address the objectives of the BTOP program in a particular community. Therefore, the NTIA and RUS should adopt definitions that set a floor for grant applications, ranking competing applications based on the criteria discussed in response to question 4. The definitions the NTIA and RUS adopt to implement the broadband stimulus initiatives may not be the same as those the Commission adopts in its more comprehensive rulemaking to establish a national broadband plan.

The following definitions will ensure that the objectives of the Recovery Act to invest in broadband to create and retain jobs and stimulate the economy are realized in an expeditious and cost-effective manner:

1. Unserved Area

An “unserved area” is an area without at least one non-satellite facilities-based provider of non-dial-up Internet service. A significant portion of the population of the territory to be served by the grant applicant must meet this definition of “unserved area.”

Rationale: We do not include satellite-delivered broadband in our definition because satellite service is too slow for many applications, is a shared architecture, and poses latency issues that make such applications as telemedicine, teleconference, and VoIP service difficult to provide. Further, if Congress had meant to include satellite, it would not have used the term “unserved areas,” since satellite serves virtually all of the lower 48 states.

The NTIA should allow providers to define a service territory. An “unserved area” need not conform to a census block, tract, or any other pre-defined geographic area. It is likely that “unserved areas” will be contiguous with “underserved areas,” and providers should be allowed to identify these areas. The definition of facilities-based should conform to the definition used in Form 477.

2. Underserved

a. “Underserved area” includes:

- (1) An area where non-satellite facilities-based service is available, but where the level of services is below 3 mbps downstream and 1 mbps upstream.
- (2) Any state-designated economic zone, Economic Development District designated by the Department of Commerce, Renewal Community or Empowerment Zone designated by the Department of Housing and Urban Development, or Enterprise Community designated by the Department of Agriculture [ARRA section 6001(b)(3)(C)]
- (3) An economically disadvantaged small business, as defined under the Small Business Act [ARRA, Section 6001(h)(3)]

Rationale: The NTIA definition of “unserved area” should be based on the average speed of this generation broadband service. According to CWA’s 2008 speed test, the median download speed in the United States was 2.3 mbps.⁷ Current generation DSL or cable modem service

⁷ Communications Workers of America, “A Report on Internet Speeds in All 50 States,” 2008. available at <http://www.speedmatters.org/pages/state.html>

typically delivers at least a 3 mbps download speed. Moreover, when Congress considered a tax credit provision in the stimulus bill, it identified speed of 3 mbps down as current generation wireless service. Thus, this definition is technology neutral. Finally, the California Public Utilities Commission (CPUC) adopted a 3 mbps download/1 mbps upload speed as its base definition for grant making purposes.

b. “Underserved persons”

For purposes of broadband adoption programs, the NTIA should define “underserved persons” as residents or small businesses in a low-income community identified above, or households with a median income below 150 percent of poverty. (\$33,075 for a family of four in 2009)

Rationale:

According to the Pew Internet and American Life Project, the majority of households with an income below \$40,000 a year do not subscribe to broadband. The federal Universal Service Fund provides subsidies to families with an income below 135 percent of poverty (\$29,858 for a family of four), while some states such as Michigan set the USF income threshold at a higher level. Broadband access and computer purchase is clearly more expensive than voice telephony and handsets; therefore, a 150 percent of poverty benchmark as a definition of low-income seems appropriate.

3. Definition of “broadband service”

For grant making purposes, broadband service shall be defined as a service that enables the end user to receive information from and send information to the Internet at information transfer rates of at least 3 mbps downstream and 1 mbps upstream.

Rationale: For grant making purposes, the NTIA should set a definition that requires applicants to provide a stretch beyond the Commission’s current definition, yet serves as a floor to allow applications using different technologies to compete on the basis of cost-effectiveness, price, and speed (among other factors). The California PUC definition of 3 mbps down/1 mbps upstream meets this balance, the definition is technology neutral, and it corresponds to the definition the Senate used in the tax credit provisions of its version of the stimulus bill.

4. Nondiscrimination obligations

All grant recipients shall adhere to the principles contained in the Commission’s broadband policy statement (FCC 05-15, adopted Aug. 5, 2005)

Rationale: There is a consensus among all stakeholders that the Commission’s broadband policy statement is working to protect an open Internet. The Recovery Act puts these principles into statute, with full enforcement authority. Adopting these principles facilitates the objectives of the Recovery Act to create and retain jobs and stimulate the economy. Expanding upon these principles in the context of BTOP rulemaking would serve to delay implementation of the Recovery Act, and could result in costly and time-consuming litigation. It would undermine the objectives of the Recovery Act, since some broadband providers who possess the experience, resources, and skilled employees to implement sustainable and scalable projects quickly may

choose not to apply for funding due to the uncertainty of new and untested open Internet access requirements. In addition, imposing complicated and contentious new requirements raises many questions regarding grant-funded networks for public safety or telemedicine, purposes that would require prioritization and special security considerations.

It is clear from the Conference Report on the Recovery Act that Congress did not want to impose unnecessary restrictive conditions on the flow of stimulus dollars. The Conference Committee changed the more restrictive open access requirements in the House version of the bill to the Senate language due to concerns that stronger language would delay and undermine the objectives of the Recovery Act.

BTOP rulemaking is not the place to try to resolve a complicated, contentious issue, one that has to date eluded congressional and Commission consensus. The Commission has opened a proceeding to develop a national broadband plan, and this provides all stakeholders the appropriate mechanism to develop consensus on the issue. Therefore, the NTIA should adopt the Commission's broadband principles in defining the nondiscrimination obligations of grant recipients.

5. Interconnection obligations

All grant recipients shall abide by current Internet traffic exchange and peering norms.

Rationale: Under current norms, providers enter into voluntary contractual agreements to exchange traffic on the Internet. The current mechanisms are working. The issues are complex; wireless technologies raise issues of spectrum constraints; and any change in the current regime would have broad implications, including internationally. It is not appropriate radically to alter the current interconnection regime on the Internet in the context of Recovery Act rulemaking.

Question 14. Measuring the Success of BTOP and RUS broadband initiatives

Grantees should be required to report on a set of common data elements so that the relative success of individual proposals may be measured. The grant award criteria that we discussed in Section 4 and the job reporting benchmarks that we discussed in Section 11 should be used as BTOP and RUS benchmarks. They include:

For Infrastructure Projects

- Number of full-time equivalent (FTE) jobs created and retained during construction and installation of broadband facilities, including:
 - Job titles of jobs created/retained
 - Average wage and average total compensation of each job title for the jobs created/retained
 - Number of full-time and part-time jobs created/retained
 - Union status of jobs created/retained
- Number of full-time equivalent (FTE) jobs created and retained to operate, maintain, and service the broadband facilities. This information shall be provided for five years after the infrastructure is deployed, and shall include job titles, average wage and average total compensation for each job title, number of full-time and part-time jobs, and union status.
- Number of jobs created or retained in locations connected to the grant-funded broadband facilities (e.g. industrial parks, small or home businesses, government agencies, community anchor institutions). This information shall be provided for five years after the broadband facilities are deployed.

- Economic impact of the project, determined according to a recognized input-output model
- Number of new households, small businesses, and locations connected as a result of the project per dollar expended;
- Number of people and facilities impacted by connecting or upgrading health care, education, government agency, or other community anchor institutions per dollar expended;
- Success in meeting project timelines, benchmarks, and project completion date;
- Sustainability of the project after grant funds are expended
- Actual broadband download and upload speeds to be delivered; with separate calculations for cost/mbps delivered; cost/household or location served;
- Number of new broadband subscribers per dollar expended;
- Price of broadband connection

For adoption and digital literacy projects

- Success in meeting timeline, benchmarks, and project completion;
- Sustainability of the project after grant funds are expended;
- Number of good jobs created or preserved as a result of the project per dollar expended;
- Number of people served by the project per dollar expended; number of those who are low-income, unemployed, elderly, or otherwise vulnerable people served by project per dollar expended; number of people served that live in one of the federally-identified low-income communities identified in the Recovery Act or a disadvantaged business as defined under section 8(a) of the Small business Act (15 U.S.C. 637) served by project per dollar expended;

- Project scalability to close one or more broadband adoption gaps: digital illiteracy, lack of computer ownership, broadband affordability, or value creation;
- Number of jobs created or retained as a result of the BTOP or RUS grant;
- Number of low-income, unemployed, elderly, or otherwise vulnerable individuals provided educational and employment opportunities as a result of the BTOP or RUS project.

Question 15. Other – Ensuring Compliance with Employment and Labor Protections

The NTIA should require all grant recipients to provide assurance to the Assistant Secretary that none of the grant funds shall be used to assist, promote, or deter union organizing. This requirement is consistent with other federal grant programs, including the Workforce Investment Act (29 U.S.C. 2937 (b)(7)); National Community Service Act (42 USC 12643(b)(1)); Head Start Programs Act (42 U.S.C. 9838(e)); and Medicare (U.S.C. 1395 x (V1N)).

The NTIA should establish a complaint and adjudication process to enforce the employment provisions of the Recovery Act, including the Buy America, prevailing wage, and labor protections.

Finally, the NTIA should establish by rule that any material violation of federal, state, or local labor statutes constitutes a violation of obligations under the BTOP program.

Respectfully submitted,

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