

**DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration**

**DEPARTMENT OF AGRICULTURE
Rural Utilities Service**

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

COMMENTS OF KODIAK KENAI CABLE COMPANY, LLC

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EXECUTIVE SUMMARY

Because unserved areas present the most difficult case for providing broadband services on a commercial basis, NTIA should give preference to projects that will serve these areas over underserved areas. Rural areas should be favored under BTOP, as well as under the RUS Recovery Act program, because rural areas remain today the most unserved and underserved in the country. NTIA and RUS, in consultation with the Federal Communications Commission (“FCC”), should define “unserved” to mean an area that lacks any broadband services or facilities, or one that is served only by dial-up or by satellite-delivered or –dependent Internet access.

The funding agencies should adopt a functional definition of “broadband” that is not tied to specific transmission speeds, but that is sufficient to accommodate real-time, full-motion, interactive HDTV video content in both a downstream and upstream mode to and from the end user. The definition should be applied equally to all technologies. The non-discrimination condition for grant awards should be applied to favor backbone networks operated on a carrier-neutral basis. In addition, the network interconnection condition should be applied to require and entitle all grant recipient telecommunications operators to interconnect their networks with all other carriers’ networks in accordance with the standards developed under Section 251 of the 1996 Telecommunications Act.

Backbone networks operated on a carrier’s carrier basis should receive preference in grant and loan funding under the Recovery Act, since they will deliver large broadband capacity to previously unserved areas and will enable last-mile competition for the provision of broadband services in these areas. Such backbone networks, operated on a carrier-neutral basis, advance the themes in the FCC’s 2005 Policy Statement on the Open Nature of the Internet,

because they enable end users to have access to content and applications of their choice offered by providers of their choice.

The funding agencies should also favor applicants that will make capacity on their networks available to users on “affordable” terms and conditions, particularly to public interest groups expressly identified in the Act. The funding agencies should also favor proposals that demonstrate they will create jobs in a number of different states. Proposals offering service to the largest number of unserved communities should also be preferred. Entities that are not automatically eligible for grants under the Act should not be allowed to compete with entities that are eligible with respect to similar projects or projects that serve the same area.

NTIA and RUS should permit applicants to combine BTOP grants with RUS loans and loan guaranties, provided that the applicant does not attempt to double-fund any area that it will serve and provided further that the applicant is not unjustly enriched from this combination of funding. The two agencies should standardize their application forms and procedures for Recovery Act funding in furtherance of this approach.

NTIA should consider increasing above 80 percent the federal share of projects funded by BTOP that serve the vast, unique unserved areas of western Alaska. Favorable consideration for such heightened federal funding should also be extended to projects serving tribal lands or sponsored by tribes or by tribally owned organizations. Alternatively, NTIA should recognize non-monetary exchanges of value, such as the grant of dedicated capacity to federal agencies or statutorily identified public interest groups, to calculate the 20 percent contribution from grantees.

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COMMENTS OF KODIAK KENAI CABLE COMPANY, LLC

Kodiak Kenai Cable Company, LLC (“KKCC”), by its undersigned counsel, hereby submits its written comments in response to the joint request of the National Telecommunications and Information Administration (“NTIA”) and the Rural Utilities Service (“RUS”) request for information issued on March 10, 2009¹ on the authority given to the NTIA and the RUS by the American Recovery and Reinvestment Act (“Recovery Act”) to make grants and loans for the deployment and construction of broadband systems (“Recovery Act Broadband Program”).²

I. INTRODUCTION

KKCC was formed in 2001 as a limited liability company by Old Harbor Native Corporation and the Ouzinkie Native Corporation for the purpose of designing and constructing the Kodiak Kenai Fiber Link.³ The Fiber Link is a 600-mile submarine fiber optic telecommunications system connecting the 60,000 people of Kodiak Island and the Kenai

¹ 74 Federal Register 10716, released March 12, 2009.

² See American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (Feb. 17, 2008).

³ Old Harbor Native Corporation and Ouzinkie Native Corporation are Native village corporations established by Congress in 1971 under the terms of the Alaska Native Claims Settlement Act (“ANCSA”).

Peninsula with Anchorage. The system was completed on-time and within budget in 2006, was placed in service in 2007, and has since operated successfully and without any interruption in service.⁴

KKCC operates as a “carrier’s carrier” by offering the high-speed broadband capacity of the Fiber Link on a non-discriminatory basis to local and long distance exchange carriers, who then provide high-speed Internet, telephone, video and other data services to the rural communities of the Kenai Peninsula and Kodiak Island.⁵ KKCC is a socially and economically disadvantaged small business concern as defined under Section 8(a) of the Small Business Act, 18 U.S.C. § 637.

KKCC intends to replicate the success of the Fiber Link by bringing the same high-speed broadband connectivity to the rural communities of western and northern Alaska. KKCC has developed a business plan to construct a new submarine fiber optic cable system extending from Kodiak Island to the Aleutian Islands, to communities in the Bristol Bay region, then north to Bethel, Nome, Kotzebue, Barrow and Prudhoe Bay.⁶ Once completed, service providers will be able to utilize the cable with their existing infrastructure and bring reliable, high speed broadband connectivity to over 150 communities in western Alaska that currently are without such service, thereby for the first time connecting the region’s people, hospitals, medical clinics,

⁴ See KKCC’s website at <http://www.KKFL.info>.

⁵ In addition to bringing high-speed connectivity to the residents of these communities, the Fiber Link connects the Alaska Aerospace Development Corporation’s Launch Complex at Narrow Cape, minimizes the exposure of the Turnagain Arm communication corridor to earthquakes, landslides or terrorist acts; and connects the community’s schools, industry, and commerce to the world with real-time broadband Internet.

⁶ See <http://www.northernfiberlink.info/pages/routes.html>.

schools, remote university campuses, public safety offices, U.S. Coast Guard communications sites, commerce and industry with real-time telecommunications and Internet services.⁷

Nearly 40 percent of Alaska's land area (equal to approximately 16 percent of the land mass of the 48 contiguous states) – the entire western half of the state – does not have reliable, high speed broadband connectivity. If there is any Internet service at all, it is provided by sporadic satellite service which is plagued by limited capacity and frequent disruptions.⁸ Moreover, the western part of the state has some of the most remote and impoverished communities in the United States. Unemployment ranges up to 90 percent and the poverty rate is as high as 50 percent. The economy is primarily dependent on commercial fishing, and federal and state jobs, and many rural residents remain highly dependent on hunting and fishing for their everyday subsistence needs. The communities are isolated by rugged terrain, weather, and the lack of any road or rail system connecting them to any urban area.

Of the approximately 150 communities in western Alaska, many, if not most, are located either along the Yukon River, the Kuskokwim River, Bering Sea, the Chukchi Sea or the Arctic Ocean or obtain essential services from communities along those coasts or rivers. Other than the haul road to Prudhoe Bay, there are no roads to any of these communities. Instead, they are accessible only by boat or plane. Due to extreme weather, access by sea to these coastal communities is impossible most of the year, and aircraft are frequently grounded.

⁷ See <http://www.northernfiberlink.info/pages/projectscope/projectscope.html>.

⁸ Recent comments filed with the Federal Communications Commission by the Regulatory Commission of Alaska, General Communication, Inc. and KKCC all agree that satellite service to rural Alaska is inadequate. See Regulatory Commission of Alaska, Comments, *Report on Rural Broadband Strategy*, GN Docket No. 09-29 (March 25, 2009) at 5-6; General Communication, Inc., Comments, *Report on Rural Broadband Strategy*, GN Docket No. 09-29 (March 25, 2009) at 3; Kodiak-Kenai Cable Company, Comments, *Report on Rural Broadband Strategy*, GN Docket No. 09-29 (March 25, 2009) at 7-8.

II. COMMENTS

Reproduced below are the questions and requests for information of the NTIA and the RUS in this docket in response to which KKCC is offering its comments. KKCC will respond to the agencies' questions and requests for information in the order in which they appeared in the joint public notice, responding first to those of NTIA and thereafter to those of RUS.

A. **NTIA Questions and Requests for Information**

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?

The Recovery Act does not apportion the NTIA's appropriated grant funds among the five social policy and economic objectives identified in the legislation. Similarly, KKCC does not believe that apportionment would serve the public interest as it would cleave one policy objective from another, rather than treating them as a logical entirety directed at strengthening both the short- and long-term economic health of the nation's economy. Instead, KKCC believes the NTIA (and the RUS) should encourage grant applicants to address in their proposals the accomplishment of as many of these objectives as possible. Moreover, the grant awarding agencies should weight the competitive applications received on the basis of how many of these objectives are likely to be achieved by the proposed project.

b. Should applicants be encouraged to address more than one purpose?

Yes, for the same reasons as stated in the response to Question (a) above. Moreover, applications should be weighted in accordance with how many of the five objectives they can realistically accomplish if funded.

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?

KKCC urges that NTIA permit grant recipients to receive Recovery Act funded loan and loan guaranty support under the RUS Broadband Program. Because both the BTOP and the RUS Recovery Act Broadband Program target support for providers of broadband facilities and services, it would be neither logical nor efficient to set up artificial administrative barriers between these Recovery Act programs in implementing the legislation. This is particularly important for projects designed to bring broadband services into currently unserved areas, where private enterprise has been unable to mount the business case for effective broadband deployment. In these areas, NTIA and RUS should work together to pool their resources in a complementary manner to provide a complete and effective package of support.

KKCC recognizes that Recovery Act appropriation for the RUS Broadband Program states that “no area of a project funded with amounts made available under this paragraph may receive funding to provide broadband service under the Broadband Technologies Opportunities Program....” Based on the plain language, this prohibition does not apply to any project that receives support from the RUS under its broadband loan and loan guaranty program before passage of the Recovery Act. In addition, KKCC submits that the purpose of this provision was not to prohibit constructive cooperation between the RUS and NTIA – as they have already undertaken through the sponsorship of this joint docket – but instead to prevent the double funding of the same facility or equipment of a broadband development project by both agencies.

Therefore, so long as the applicant is able to demonstrate to RUS and NTIA that its application of funds from the two agencies will not result in duplicative funding or otherwise in unjust enrichment of the applicant, the applicant should be permitted to pursue funding from both sources to support different elements of its demonstrated requirement. In fact, combining a

RUS loan and/or loan guaranty with a BTOP grant replicates the mix of investment and loan financing that characterizes commercial business ventures. The loan component will require repayment, thereby ensuring that the applicant must be able to demonstrate a sound business case for its proposal in order to qualify for funding on a combined basis by the two agencies. Further, the allowance of a combined funding approach enables NTIA funds to be leveraged even more for expanded use and deployment throughout the country.

Another program under the Recovery Act that NTIA should consider leveraging with BTOP, given its target constituency, is the national tribal economic development bond appropriation found in Division B Title I, Section 1402 of the Recovery Act. As tribally owned entities, like KKCC, are statutorily eligible for BTOP grants, KKCC believes it is sensible for NTIA to consider the use of tribal economic development bonds in a supportive role for projects qualifying for BTOP grants. Such bonds, for example, might be offered to help fulfill the applicant's share of financing a project selected for BTOP support and furthers the opportunities for NTIA to creatively leverage its resources to maximize broadband deployment.

With regard to other broadband-related components of the Recovery Act identified by NTIA – such as smart grids, health information technology, education and transportation infrastructure – KKCC does not believe that formal coordination of BTOP with these programs would be in the interest of expeditious implementation of NTIA's Recovery Act Broadband Program. Each of these other programs is delegated under the Act for administration by other departments of the Executive Branch, and the timing and rules for release of those funds is not easily predictable. Therefore, the administrative coordination that would be required to implement a consolidated or coordinated program integrating, to some extent, BTOP with them would be potentially overwhelming and would not be in keeping with Congress' directive in the

Act that the NTIA and RUS programs be developed and implemented as quickly as possible and all appropriated funds committed by September 2010. The entities eligible for funding under these separate programs are, unlike those that will be BTOP grant recipients and beneficiaries of the RUS Recovery Act Broadband Program, representatives of different sectors of the economy, such as electrical service providers and health care providers. While commercial collaboration between such entities and providers of broadband capacity will no doubt be possible and could even be advantageous at some point, the development of such cross-sector liaisons is, again, likely to take time that is simply not available under Congress' contemplated schedule for deploying broadband Recovery Act funding. Therefore, while the objectives of these other programs merit consideration by NTIA when evaluating the objectives of applicant projects, it does not appear that more formal leveraging of these programs with BTOP would be practical within the time constraints available.

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?

As suggested by the language of the Recovery Act, and stated explicitly in the House-Senate Conference Report, NTIA should give consideration to the "advice and assistance" of states regarding the merits of proposals for projects in their territories, "as long as the NTIA retains the sole authority to approve the awards."⁹ As BTOP is a federally funded program, it is both appropriate and important that the responsibility for awarding grants remain in the federal

⁹ See H.R. Conf. Rep. No. 111-16 (Feb. 12, 2009) at 775. In Section 6001(c) of the Recovery Act, Congress stated that NTIA "may" consult with states, thereby leaving the final decision-making authority in the agency.

agency charged with that responsibility by the Congress. The states can play particularly useful roles in helping identify for NTIA those areas within their respective jurisdictions that qualify as unserved or underserved. Before considering the views of a state, NTIA should require that the state has clearly designated an official, agency or other public organization to speak for it in this process, so that NTIA will not subject itself to receiving conflicting or divergent views from within a single state. For projects that would create jobs in several states, it is particularly important for NTIA to reserve the responsibility for assessing the merits of the project, since each individual state will be naturally inclined to demonstrate preference for projects that are both developed and deployed fully within its own boundaries.

c. How should NTIA resolve differences among groups or constituencies within a State in establishing priorities for funding?

Mark Seifert, the Senior Adviser to the Assistant Secretary for NTIA, testified recently before the House Subcommittee on Communications, Technology and the Internet that the Administration is committed to using funding in the Recovery Act to extend high-capacity pipes closer to users in rural, remote and underserved communities, as deployment of such backbone capacity will spur competition and service to consumers and businesses.¹⁰ KKCC embraces this view that chronically unserved rural parts of the country can most efficiently and effectively be provided access to broadband services by concentrating Recovery Act funding on backbone networks that will deliver large pipes of broadband capacity to these regions.

In particular, if such networks are operated on a carrier's carrier basis, serving as wholesale "highways" of broadband capacity to multiple retail providers, residents and enterprises in previously unserved areas will, for the first time, enjoy the benefit of competitive

¹⁰ Prefiled testimony of Mark G. Seifert, Hearing on "Oversight of the American Recovery and Reinvestment Act of 2009: Broadband," April 2, 2009, at 2.

Internet access services, thereby making substantial progress to fulfilling the promise of the Telecommunications Act of 1996 that rural users be provided access to broadband services reasonably comparable to users in urban areas and on terms and at rates reasonably comparable to urban areas.¹¹ KKCC submits that, where the NTIA faces competing proposals to serve the same area of a state, it should favor the applicant that will provide service on a carrier-neutral basis. In so doing, the NTIA will effectively embrace, for funded telecommunications networks, the objectives of the Federal Communications Commission's ("FCC's") August 2005 Statement of Policy on the Open Nature of the Internet.¹² In addition, as will be addressed in further detail below, priority should be given to entities expressly recognized as eligible for NTIA grants in the Recovery Act over the competing proposals of applicants whose eligibility must be administratively found to be in the "public interest."

d. How should NTIA ensure that projects proposed by States are well-executed and produce worthwhile and measurable results?

The NTIA should ensure that proponents for grant funding have a track record as experienced providers of the services for which they seek support. Each applicant should be required to submit in support of its proposal a sound business plan outlining in detail not only the applicant's experience in developing and operating such networks, but the financial terms that will make the project, once funded by NTIA, sustainable. The Recovery Act directs that the NTIA ensure that all projects that are funded will be completed, and a sound business plan is the first step toward fulfilling that statutory requirement. NTIA will also have to put in place effective oversight resources to ensure that funded projects are completed in accordance with the business terms on which they were proposed and approved.

¹¹ 47 U.S.C. § 254(b).

¹² FCC 05-151, released Sept. 23, 2005.

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?

In implementing this standard, the first test the NTIA should apply is that, where an entity that is eligible for funding under Section 6001(e) of the Act and demonstrates the necessary qualifications proposes to provide infrastructure and/or services, a substantially similar proposal for the same coverage area by an otherwise ineligible entity should not be considered. In this provision of the Act, Congress established the basic policy tenet that the listed entities and groups should be provided preferential access to the limited appropriated broadband grant funds. Congress was well aware that for-profit entities, in a largely deregulated environment, permitted the “Digital Divide” between served and unserved or underserved areas to persist. The clear purpose of the Recovery Act, therefore, is to jump start access to truly meaningful broadband capacity in areas that have long been overlooked by incumbent providers. It is only logical, therefore, that these otherwise ineligible entities should not be permitted to compete for Recovery Act grant funds for substantially similar projects,, in the absence of aligning themselves with eligible interests, unless no eligible and qualified party presents itself to provide infrastructure and/or services in a specific area.

Moreover, NTIA should establish standards to ensure that non-eligible entities do not circumvent the statutory preference for eligible entities by teaming or joint venturing with eligible entities under terms which reduce the eligible entity to a mere façade or shell for the non-eligible entity. Under such joint venture or consortia arrangements, statutory eligible entities should be required to hold substantial equity positions and play substantive ownership and

managerial roles, including final decision making for the disposition of assets funds through the Recovery Act.

Toward this end, grant applicants should also be required to disclose any pre-sales of capacity or similar pre-existing agreements for capacity, or for options or similar arrangements to acquire an ownership interest in the applicant. Such arrangements merit being subjected to public scrutiny since they could reveal the real party in interest to the proposal, one that might prove to be an ineligible entity. Failure to disclose any such background arrangements should be treated as a lack of candor which can result in disqualification of the applicant.

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?

NTIA should prioritize awards to projects proposing to bring broadband capacity to the largest number of unserved communities possible. Section 6001(b)(1) of the Recovery Act lists broadband access for consumers in unserved areas as Congress' first objective in making the Recovery Act grant money available. Unserved areas deserve priority consideration because they are the most difficult to make a business case for to supply broadband on a commercial basis. If there was an opportunity for profit, the areas would have true broadband service now. Recovery Act grants should prioritize areas that, because of their size, location, remoteness, sparse population and cost to serve, would not have access to broadband but for Recovery Act funds. Moreover, public funds targeted to unserved areas provide assurance that private investment is not being displaced, since by definition such private investment has never been made in these areas. Among unserved areas, NTIA should also prioritize projects that are able to

support the largest number of specifically identified objectives in the Recovery Act located across the largest unserved geographic areas of the country. The Recovery Act BTOP grant program provides a rare opportunity for the “Digital Divide” at last to be bridged in areas that would otherwise remain inaccessible for years to come.

In addition, the NTIA should prioritize grants to projects that will enable the deployment of backbone delivery networks, or “highways” of broadband capacity. These networks will enable the delivery of broadband at the greatest speeds possible, as called for in the Recovery Act. They will also enable the evolution of competitive last-mile broadband services in previously unserved areas, particularly if funding is directed to networks that are operated on a wholesale, carrier-neutral basis. The NTIA should give preference to those projects that would make broadband facilities, once deployed, available to public interest entities designated in the Act on an affordable basis.¹³ Finally, the NTIA should consider favorably, when assessing the overall worth of an application, other public interest factors that are not necessarily identified in the legislation, but that might also be supported by the project application. These would include such factors as homeland security implications and support for scientific research, including but not limited to climate change.

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

KKCC recommends that the salient evaluation criteria be weighted in the following order of priority:

1. Projects serving the largest number of unserved communities.

¹³ For this purpose “affordable” can be defined in a variety of ways. For example, KKCC is considering providing indefeasible rights of use (“IRUs”) to a number of public interest groups in Alaska at no cost, and assessing them only for operations and maintenance charges for their use.

2. Backbone systems providing the largest capacity possible in order to facilitate next-generation broadband applications.

3. Systems operated on a carrier's carrier, wholesale and carrier-neutral basis, in order to facilitate competition among last-mile Internet service providers that will be customers of such networks.

4. Systems that will provide broadband capacity to public interest groups identified in the legislation on an affordable basis.

5. Systems that would not have been constructed but for funding available under the Recovery Act.

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?

As stated above, unserved areas should be prioritized over underserved areas in the consideration for broadband grants and, among unserved areas, the largest and most difficult to access areas of the country should receive first priority. The NTIA should not give priority to entities that are existing or prior recipients of RUS broadband loans or loan guaranties, because the Congress has signalled its intention to encourage a new and more expanded group of providers to compete for broadband funding support. On the other hand, KKCC believes, as stated above, the NTIA should cooperate with RUS in supporting qualified broadband projects that are funded by a combination of RUS loans and loan guaranties and NTIA grants, provided that the funding from these two sources do not result in duplicative funding for the same area or element of a project and that the applicant is not otherwise unjustly enriched by its use of both funding sources. In unserved areas, KKCC urges the NTIA to permit a federal contribution, through a combination of grants and loans and loan guaranties, of over 80 percent of the

project's demonstrated cost. A model could be the 90/10 public/private share currently permitted under the RUS broadband loan program. In addition, in tribal areas or with respect to proposals sponsored by tribes, consideration could be given to increasing the federal portion of funding to as much as 100 percent of the project cost, in recognition of the historical low penetration rates among tribes of both voice and broadband services.

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

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?

The following responds to Questions (d) and (e) collectively. KKCC agrees that priority for grant awards should be given to proposals that address multiple objectives of the Recovery Act; the more objectives that a proposal can successfully address, the higher priority that the proposal should be accorded. In evaluating grant applications, favorable credit should, therefore, be accorded to proposals that support:

(a) The educational, health care and public safety purposes specified in the Recovery Act.

(b) The largest number of unserved communities.

(c) Vulnerable populations specifically identified in the Act. In particular, preference should be given to proposals that will help build sustainable rural communities by enabling the delivery of distance learning and telehealth/telemedicine capabilities into rural communities that will, in turn, facilitate economic growth.

(d) Other public interest objectives not specifically identified in the Act, such as homeland security and geopolitical strategic concerns, as well as providing the platform for critical scientific research on climate change and fisheries.

Priority should, of course, be accorded to proposals submitted by qualified entities specifically listed in the Act, such as Indian tribes, as well as socially and economically disadvantaged small businesses, as specifically called for by the Recovery Act.

g. 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?

No. KKCC is of the view that, once a meaningful broadband definition is decided upon, it should be made applicable to all technologies and modes of delivery. Otherwise, the commitment to achieving the agreed broadband goal will be diluted, and the definition will not be applied on a technologically neutral basis.

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

As stated above, KKCC believes the priority focus of the Recovery Act Broadband Program should be on backbone systems operated on a carrier-neutral basis. Once the backbone facility is constructed and funded by the Recovery Act, telecommunications companies will be able to offer their last-mile broadband services on a competitive basis, thereby permitting the marketplace to drive the establishment of retail prices. By encouraging competition among last-mile broadband service providers, the Recovery Act will help bring to rural, unserved communities broadband access on rates and terms "reasonably comparable" to urban areas, as called for in Section 254 of the 1996 Telecommunications Act. In addition, as noted above, KKCC believes that NTIA should favor applicant systems that will commit to providing broadband capacity to public interest groups designated in the law that is affordable.

5. Grant Mechanics: The Recovery Act requires all agencies to distribute funds efficiently and fund projects that would not receive investment otherwise.

a. What mechanisms for distributing stimulus funds should be used by NTIA and USDA in addition to traditional grant and loan programs?

In KKCC's view, the most straightforward and logical mechanism for NTIA to employ in distributing Recovery Act funds for infrastructure deployment is that which has been time-tested in the commercial sector: the establishment of project milestones and the use of installment payments when such milestones are met. This use of this funding mechanism promotes effective management of public funds and oversight of successful project completion.

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.

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)?

In order for the results of such mapping exercises to be useful, KKCC recommends that, at a minimum, the data produced by such efforts must include the specific capacities at which broadband is provided on a community-by-community basis, and the delivery technologies employed in each community.

c. At what level of geographic or other granularity should the broadband map provide information on broadband service?

As suggested above, data produced by the mapping program must be available on a community basis so that service providers will be able to determine if their services can be provided by means of existing infrastructure.

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.¹⁴ The Recovery Act also requires that applicants demonstrate that their proposals would not have been implemented during the grant period without Federal assistance.¹⁵ The

¹⁴ Section 6001(f).

¹⁵ Section 6001(e)(3).

Recovery Act allows for an increase in the Federal share beyond 80 percent if the applicant petitions NTIA and demonstrates financial need.

- a. What factors should an applicant show to establish the “financial need” necessary to receive more than 80 percent of a project’s cost in grant funds?

Among the factors that NTIA should consider are the special needs of projects that would bring broadband capacity to the vast unserved areas of Alaska. The immense geographic breadth of the unserved area and the exceedingly short construction season make Alaska a unique challenge among all environments in the United States for the deployment of broadband capacity. The unserved portions of the state are estimated to be equal in geographic scope to approximately 16 percent of the entire land mass of the lower 48 states.¹⁶ KKCC submits that qualified broadband projects serving the State of Alaska should, therefore, qualify for Recovery Act funding in excess of 80 percent. This exceptional level of public support is justified by the fact that these areas will never have broadband service without Recovery Act funds. The area’s geographic vastness, poverty, fiercely challenging terrain and weather, sparse population, lack of roads, and high costs, simply make it impossible to recover the capital costs required to construct a broadband network. Consequently, but for Recovery Act funds, a backbone network in rural Alaska will never be constructed.

KKCC further submits that an applicant should be permitted to fulfill its 20 percent “match” for proposals involving unserved areas of Alaska by means of local, state or tribal bonds and also in the form of credits given for the applicant’s commitment to make capacity on its proposed system available to Statutory Public Interest Groups at “affordable” levels.

- b. What factors should the NTIA apply in deciding that a particular proposal should receive less than an 80 percent Federal share?

¹⁶ In its comments filed recently in FCC Docket GC 09-29, concerning the establishment of a national rural broadband strategy, KKCC erroneously calculated this percentage at only 10% of the entire land mass of the contiguous 48 states. Upon further analysis, this proportion is closer to 16%.

The NTIA should reserve its discretion to award less than an 80 percent federal share to underserved areas. Due to their extreme needs, no unserved area should receive less than an 80 percent federal share under the Recovery Act Broadband Program.

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

Where an applicant has announced its intention to construct or otherwise deploy its project without the need for public assistance through public or private announcements, including through regulatory filings, audit reports or reports to shareholders, such projects should be automatically removed from consideration as they do not meet a tenet of the Recovery Act that they would not have gone forward but for the use of the Act's funding. The disqualification of a proposal on this basis should not prevent a competitive applicant proposing to build or deploy a substantially similar project from qualifying for funding.

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.

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)?

NTIA should require applicants to submit proposals that include a reasonably detailed narrative description of the project for which funding is requested. The proposal should be supported by a business plan demonstrating all sources of funding for completion of the project, a detailed schedule for construction and completion, and financial projections showing the long-term sustainability of the project, once funded. The proposal should be sufficiently detailed to enable the NTIA to evaluate the feasibility of its completion within the allotted two-year time period, and should include letters of agreement with vendors and written evidence of

commitments from prospective customers for use of the planned system. NTIA and RUS should look to the experience and ability of the contractors, suppliers, engineers and other key parties when making a determination of whether a project is likely to succeed.

11. Reporting and Deobligation: 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.¹⁷ 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?

The detailed business plan, including proposed budget and schedule, will become the benchmark for monitoring the grantee's performance. Funds that are not applied by the grantee in the manner approved at the time of grant award would be deemed "wasteful" expenditures. In order to establish that such misuse of public funds was fraudulent, the NTIA would have to demonstrate that the grantee never intended to use the Recovery Act funds in the manner proposed and, therefore, deliberately misled the funding agency. In order to ensure that both wasteful and fraudulent spending are detected and eliminated, the NTIA will have to put in place an effective auditing mechanism, presumably under the jurisdiction of an inspector general.

b. How should NTIA determine that performance is at an "insufficient level?"

As suggested above, the NTIA should establish an installment payment mechanism against agreed-upon project milestones based on a construction loan model from the private sector. As an experienced administrator of loan and loan guaranty programs, including for broadband and other infrastructure projects, RUS should be able to serve as a useful consultant to NTIA in establishing these processes. Under this approach, the agency would disburse

¹⁷ Section 6001(i)(1).

installment payments upon receipt of certification, as well as any other form of verification it establishes, that pre-established milestones have been met. The grantee's failure to meet a milestone in a timely manner would constitute insufficient performance, and would result in withholding of the corresponding installment payment. The agency should hold back a portion of the committed and earned funds – approximately 5 percent – at every milestone until completion of the entire project has been satisfactorily demonstrated.

12. Coordination with USDA's Broadband Grant Program: The Recovery Act directs USDA's Rural Development Office to distribute \$2.5 billion dollars in loans, loan guarantees, and grants for broadband deployment. The stated focus of the USDA's program is economic development in rural areas. NTIA has broad authority in its grant program to award grants throughout the United States. Although the two programs have different statutory structures, the programs have many similar purposes, namely the promotion of economic development based on deployment of broadband service and technologies.

- a. What specific programmatic elements should both agencies adopt to ensure that grant funds are utilized in the most effective and efficient manner?

Although NTIA BTOP funds are not restricted to rural areas, NTIA should nevertheless favor the use of BTOP grants in rural areas – especially those offering service to a large number of unserved communities – since those are chronically the most unserved and underserved parts of the country, particularly from a broadband perspective. In Section 254 of the 1996 Telecommunications Act, Congress determined that it is in the public interest that rural areas of the country have access to “advanced telecommunications and information services” that are “reasonably comparable” to the services available in urban areas, and at “reasonably comparable” rates. In Section 706 of the 1996 Telecommunications Act, “advanced telecommunications and information services” was defined to mean “broadband” services. The 1996 Congressional statement of policy continues in effect today and, unfortunately, the need to achieve “reasonably comparable” access for rural consumers remains as pressing today as it was

13 years ago. As a result, pursuant to the Recovery Act, the NTIA and RUS share a common goal of increasing access to broadband facilities and services in the rural parts of this country.

Because RUS is able to leverage its loan and loan guaranty appropriations by making loans in multiples of the appropriation limit, the NTIA should be encouraged to cooperate with RUS to deliver support to qualified applicants in the form of a combination of loans and/or loan guaranties and outright broadband grants. The limitations against double funding of particular project elements or unjust enrichment of applicants previously addressed (see response to Question 1c) must be closely adhered to by both funding agencies in the course of this collaboration. In order to expedite this collaborative effort for the benefit of potential Recovery Act Broadband Program funding recipients, NTIA and RUS should coordinate their application processes, adopting a uniform application form which will minimize the risks of the two agencies receiving differing or conflicting information from the same applicant.¹⁸ The agencies should also coordinate their implementation and oversight activities of the performance by fund recipients in order to ensure that waste and abuse of their collective appropriations does not go unchecked.

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?”

¹⁸ KKCC supports and encourages the efforts already started by the agencies to create a common application form. See supra fn 10, prefiled testimony of Mark G. Seifert, at p. 5.

“Unserved” should be defined as having no access to broadband service at all, or having access to the Internet only through dial-up or satellite connectivity, as NARUC has proposed in the NTIA/RUS jointly sponsored public meetings on the terms for implementing the Recovery Act Broadband Program.¹⁹ In Alaska, the inadequacy of satellite delivery as a means of providing access to broadband services is now a matter of public consensus, with the state’s public utility commission, the Regulatory Commission of Alaska, having publicly testified to that effect before the FCC.²⁰ In addition, General Communication, Inc., the largest integrated provider of telecommunications services in Alaska and itself a purveyor of satellite backbone transmission capacity, concurs in this assessment of the role for satellites for the delivery of current- and next-generation broadband services.²¹

KKCC proposes that NTIA and RUS should, once again, look to Congress’ policy declarations in the 1996 Telecommunications Act for guidance in helping define “underserved” areas. An “underserved” area should be defined as a rural area which lacks access to broadband facilities and services, however that term is defined in this proceeding, “reasonably comparable” to the access to such facilities and services in the urban areas of the same state and at “reasonably comparable” rates.²²

¹⁹ See Betty Ann Kane, NARUC Chairman, Testimony to the NTIA and RUS on the Recovery Act, page 10, available at http://www.ntia.doc.gov/broadbandgrants/090316/NTIA_031609_1000-1130session.pdf.

²⁰ See Regulatory Commission of Alaska, Comments, *Report on Rural Broadband Strategy*, GN Docket No. 09-29 (March 25, 2009).

²¹ See General Communication, Inc., Ex-Parte Notice, *Broadband Industry Practices*, WC Docket No. 07-52 (Feb. 23, 2008); General Communication, Inc., Comments, *Report on Rural Broadband Strategy*, GN Docket No. 09-29 (March 25, 2009).

²² See 47 U.S.C. § 254(b)(3).

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

The Recovery Act provides an opportunity for agencies coordinating the Recovery Act Broadband Program to define broadband meaningfully by considering what applications are driving the burgeoning use of the Internet today and are likely to continue to do so for the foreseeable future. KKCC advocates the adoption of a functional definition, rather than one that is delimited in terms of capacity and data speed, which can become antiquated almost as soon as it is agreed upon. Therefore, KKCC proposes that “broadband” be defined as enabling, at a minimum, the delivery of interactive, real-time and full-motion, high definition video content, both in a downstream and upstream mode to and from the end user. A transmission pipe that is incapable of delivering video content fulfilling this range of qualities and characteristics will be unable to provide adequate levels of support for such critical applications in the unserved areas of Alaska that KKCC seeks to support as interactive distance learning and effective telehealth/telemedicine functionalities. KKCC believes the definition of “broadband” needs to be sufficiently robust to accommodate and support the rapid migration to social networking and mobile video applications on the Internet which in particular are being embraced by younger consumers. In short, NTIA should take care to avoid approving projects that are or will soon be providing obsolescent levels of support.

(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?

For the reasons stated above, KKCC does not advocate the adoption of specific capacity requirements or transmission speeds. It does believe that priority for grants awards should be accorded to unserved over underserved areas, and that priority in awarding grants should also be given to projects that are capable of delivering the highest broadband speeds.

(2) Should the BTOP establish different threshold speeds for different technology platforms?

The threshold speeds, at a minimum, should support today's commercially available interactive, real-time, full-motion, high definition video applications. To be effective and to meet the statutory concept of technologically neutral, this standard should be applied regardless of the technology used.

(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)?

Again, in order to be meaningful, any threshold speed agreed upon must be measured on the basis of what can actually be delivered to and received from the end user, not what the provider might choose to advertise.

(4) Should the threshold speeds be symmetrical or asymmetrical?

In order for broadband capabilities to be used in an interactive mode, any agreed threshold standards must be symmetrical.

(5) How should the BTOP consider the impacts of the use of shared facilities by service providers and of network congestion?

One of Congress' goals in the Recovery Act was to fund projects that provide the highest possible, next-generation speeds to consumers. For this reason, the BTOP should prioritize the deployment of backbone networks that will deliver to unserved areas large capacities of broadband. These broadband "highways" will, in turn, become the platform for competition among last-mile Internet service providers. In this manner, the shared facilities that typically characterize the delivery of broadband access to the end user will increasingly be fed by robust pipelines that will avoid and mitigate congestion in last-mile networks.

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

Section 6001(j) of the Recovery Act requires that NTIA shall, at a minimum, require grant recipients to adhere to the principles contained in the FCC's broadband policy statement adopted August 5, 2005.²³ KKCC submits that the themes of that policy statement – the consumer's right to access content and applications of his choice on the Internet provided by competitive service providers of his choosing – should be applied by NTIA to funded telecoms projects, as well. Specifically, backbone networks provided on a carrier's carrier basis should be favored for the receipt of Recovery Act funding, as such networks make possible the provision of competitive broadband services in the last mile.

As regards network interconnection obligations, it is important that broadband facilities that are deployed with the support of Recovery Act funding have the right to interconnect with other carriers, so that no carrier can become a bottleneck for self-serving, competitive reasons in permitting access by end users to robust, broadband capacity. A model for this requirement is found in Section 251 of the 1996 Telecommunications Act, which establishes basic interconnection requirements to enable competition in the local exchange sector. Subsection (a) of this provision states simply that “[e]ach telecommunications carrier has the duty...to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.” For backbone networks developed with the use of Recovery Act funding that provide long haul and middle-mile access to unserved and underserved areas, the inability to interconnect with last-mile carriers would thwart the very purpose which the public funding was intended to accomplish.

²³ FCC 05-151, released Sept. 23, 2005.

KKCC submits, therefore, that backbone, wholesale carriers should have both the right and responsibility to interconnect with any other carrier of their choosing. Toward this end, the principles of Section 251(a) of the 1996 Telecommunications Act should be made a condition to the operation of systems funded by BTOP grants. It is further noted that the requirements found in Section 251(b) of the Act would have an equally salutary effect when applied to grant recipients. In accordance with that provision, grant recipients should also be required not to install network features, functions or capabilities that will violate the standards found in Section 255 of the Act ensuring access to the network by persons with disabilities, and Section 256 of the Act which seeks to promote “nondiscriminatory accessibility by the broadest number of users and vendors of communications products and services to public telecommunications networks....”

(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?

Grantees that provide backbone transport services funded by BTOP grants should be required to make their capacity available on a non-discriminatory, carrier-neutral basis.

(2) Should the network interconnection obligation be based on existing statutory schemes? If not, what should the interconnection obligation be?

In addition to complying with the requirements of Section 251 of the 1996 Telecommunications Act, grantees that offer backbone transport should do so on a carrier-neutral and nondiscriminatory basis, so that no interconnecting telecommunications provider is either favored or disfavored, and so that retail prices to the end user may be as low as possible.

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

For backbone transport facilities funded by BTOP grants, access should be provided on a non-discriminatory and carrier-neutral basis.

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

Yes. Failure to comply with nondiscrimination and network interconnection obligations should be regarded as a breach of the conditions under which grants are awarded. It is likely that breach will in most cases be discovered only after committed funds have been expended, thereby rendering de-obligation of funds an ineffective mechanism. KKCC suggests that construction loan programs be used as a model for remedies to be pursued by the funding agency in the event of a breach of contract terms. However, if a backbone provider breaches nondiscrimination and network interconnection obligations after a project is completed, the backbone provider should be subject to civil penalties and fines.

(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?

The obligation should extend over the life of the funded infrastructure. Otherwise, the commitment to non-discrimination and network interconnection will be a short-lived sham, and a disservice to the public interest.

d. Are there other terms in this section of the Recovery Act, such as “community anchor institutions,” that NTIA should define to ensure the success of the grant program? If so, what are those terms and how should those terms be defined, given the stated purposes of the Recovery Act?

e. What role, if any, should retail price play in these definitions?

Since the government is funding these projects, the goal should be to keep the cost of broadband services to the end user as low as possible, in order to encourage accessibility. KKCC submits that one model for achieving this end is the encouragement of and support for backbone

networks delivering large broadband capacity first to previously unserved, then underserved areas, thereby encouraging the development of a competitive last-mile broadband market.

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?

To begin with, compliance with an agreed performance or construction schedule would measure whether a funded proposal has met the project timeline. Quarterly reports from the grantee during the construction or deployment phase would also serve as tools to monitor whether and to what extent the grantee is deviating from agreed cost and performance parameters. Following completion of the funded project, recipients should be expected to submit annual reports certifying whether the grant's conditions continue to be fulfilled, how the funded infrastructure is being utilized and by how many users, whether the project continues to sustain itself, the number and kind of jobs that have been created or preserved upon and following completion of the deployment effort, and the terms on which the recipient continues to provide broadband capacity to Statutory Interest Groups. In order to encourage full and timely reporting, the funding agencies should consider designing the reporting forms in a short and concise format.

- 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?

Because the range of funded projects are likely to differ significantly, it may be that a common set of data elements will not be the best or even an effective measure of success for all projects, and will not succeed in capturing data that will be of use to NTIA. Again, consideration should be given to making forms on which data are reported short, concise and uniform, both to

encourage maximum reporting compliance and to increase the ease of public review. In the published outputs from such reports, emphasis should be given by the funding agencies to reporting percentages of end users assisted by the broadband projects, rather than actual numbers, since many unserved areas have small and widely scattered populations.

15. Please provide comment on any other issues that NTIA should consider in creating BTOP within the confines of the statutory structure established by the Recovery Act.

As discussed above in these Comments, NTIA should adopt a requirement that grant recipients provide service to Statutory Interest Groups on some established basis of affordability. This requirement need not extend to cover the cost of operation and maintenance of the capacity made available in this manner, but only the capital cost of acquiring the capacity.

In addition, since one of the overarching goals of the Recovery Act is to spur economic development and job creation in the short term, as well as in the longer term, NTIA should be required to consider the number of states in which a project proposed for funding is expected to generate jobs. Preferential consideration should be accorded to those projects that are likely to benefit in this regard the largest number of states.

B. RUS Questions and Requests for Information

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 is looking for suggestions as to the best way 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;

KKCC encourages RUS' collaboration with NTIA in combining its funding authority with that of NTIA, in particular to enable the deployment of broadband capacity to areas that, due to their great expanse, sparse populations and challenging terrain and climate, cannot attract commercial investors on traditional terms. As KKCC has already noted above, RUS is likely to

have, as a result of its new Recovery Act Broadband Program loan and loan guaranty appropriation combined with its preexisting broadband loan authority, a lending capacity far in excess of the grant-making authority delegated to NTIA. RUS should encourage qualifying rural broadband applicants to pursue both loan and loan guaranty funding from it and grant funding from NTIA. By working together, the two agencies can leverage their combined funding authority for the benefit of larger group of beneficiaries than can be supported by NTIA grants alone. It is understood, as has been repeatedly clarified, that the combined loan and grant funding would be provided under terms that avoid duplicate funding of the same area or component of a project and unjust enrichment of the applicant.

- b. Promote leveraging of Recovery Act funding with private investment that ensures project viability and future sustainability; and

The RUS should be prepared to credit broadband grant applicants against their private investment requirement for the value of capacity they will make available to Statutory Interest Groups on an affordable basis. Similarly, the RUS should be prepared to accept in appropriate cases tribal bonds issued pursuant to the Recovery Act as a substitute for the requisite private investment component of broadband loan and loan guaranty applicants.

- c. Ensure that Recovery Funding is targeted to unserved areas that stand to benefit the most from this funding opportunity.

RUS should interpret the legislative restriction on combining RUS loans and NTIA grants liberally to favor projects in unserved areas. The restriction should not apply at all to broadband loans under RUS appropriations preexisting the Recovery Act. It should not apply to loans under the Recovery Act Broadband Program except to the extent there is double-funding of a project component or area or otherwise unjust enrichment of the applicant. In unserved areas, combined loan and grant funding should be allowed to exceed the NTIA 80 percent federal share under the

Recovery Act, and in tribal areas or for projects sponsored by tribes consideration should be given to permitting the federal share to go as high as 100 percent of project value.

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? 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?”

There is nothing inconsistent between RUS’ mandate to provide funding support for rural areas and NTIA’s mandate to provide funding support for unserved and underserved areas. An area can easily qualify as both rural for purposes of RUS’ definition and as “unserved” for purposes of NTIA’s definition. A rural area that meets NTIA’s definition of “unserved” should be provided priority by RUS for funding purposes over an area that qualifies as “underserved,” as unserved areas face the greatest challenge for making a viable business case for commercial investment in the absence of federal support.

(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?

For the award of Recovery Act Broadband Program dollars, either by means of grant or loan, NTIA and RUS should adopt identical application forms, so that the same information is provided to both agencies in the same format by joint applicants. As has been discussed in response to NTIA Question 10(b) above, the intended use of funds needs to be explained by the applicant in detail, so that the funding agencies can discern whether there will be any double-funding of the same component or area of a project. Applicants should be encouraged to apply to both programs, and the award of loans, loan guaranties and grants should be coordinated by the two agencies.

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

(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?

Based on the experience of unserved communities in the western regions of Alaska, KKCC submits that RUS should focus first on rural stabilization, and secondly on rural “economic development.” Both of these objectives can be advanced through broadband deployment to rural communities that will be defined, for NTIA’s purposes, as unserved.

“Rural economic development” presumes that there are sustainable rural communities. In order to have sustainable rural communities, there must be real opportunities for education, both at the primary/secondary school level and the college level. Similarly, sustainable rural communities must have real health care delivery systems that promote both physical and mental health. Therefore, the existence of broadband services that enable the delivery of interactive, real-time, high-definition, full motion video services for education and for health care services, are a prerequisite to rural economic development.

The first objective is to staunch the outflow of residents, particularly younger ones, from their home communities. In Alaska, lack of access to educational facilities and to meaningful employment opportunities has resulted in a migration away from isolated, particularly native, communities, as well as an unusually high alcoholism and drug dependency rate and youth suicide rate. By introducing in these communities distance learning capabilities at the primary/secondary school, as well as community college, levels, and access to the Internet, younger residents are provided critical tools for development and social interaction without the need for relocation. Similarly, the provision of state-of-the-art telehealth/telemedicine applications in these communities provides a vital form of quality of life sustainability, whether

services are primary care or mental health. For example, veterans returning from Iraq and Afghanistan to their western Alaska homes and families do not have any real access to mental health services and they cannot afford the cost of air transport to urban communities in order to obtain vital services. In order to receive these services, a veteran may well have to leave their rural community and move to an urban area. If broadband existed today, such mental health services would be available in rural communities.

The second benefit that effective broadband access can make possible is job creation at the local level. Dependable Internet access in their homes and villages open up the possibility for both employment training and actual employment in on-line and information-based services that heretofore have been outsourced to other countries.

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

RUS and NTIA should adopt the same definition of “broadband” for their respective programs. The definition must be forward-looking and be as robust as possible in order to facilitate next-generation applications. For that reason, “high speed broadband service” should be functionally defined, in light of interactive video applications being the driving force of the Internet. Effective broadband must, at a minimum, enable the delivery of interactive, real-time, full-motion, high definition video content both downstream to and upstream from the end user.

(c) What factors should be considered, when creating economic development incentives, in constructing facilities in areas outside the seventy-five percent area that is rural (i.e., within an area that is less than 25 percent rural)?

The RUS’ appropriated funds should be used as little as possible outside of areas that qualify as rural. The only exception should be where construction of facilities is required to interconnect broadband facilities in unserved areas to broadband facilities in underserved or served areas.

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?²⁴

1. RUS should support backbone networks capable of delivering large quantities of broadband capacity on a carrier-neutral basis, thereby facilitating multiple last-mile broadband providers to the largest number of unserved communities possible.

2. RUS should prefer providing support to benefit unserved over underserved areas.

3. RUS should not limit its broadband loan, loan guaranty or grant programs to former or current borrowers, if the project is meritorious. RUS should use the Recovery Act to expand its current broadband program and make it more encompassing, including by matching its lending capability with the grant authority of NTIA under the Recovery Act.

4. RUS should show preference to those applications that demonstrate they will serve the highest number of the Statutory Public Interest Groups.

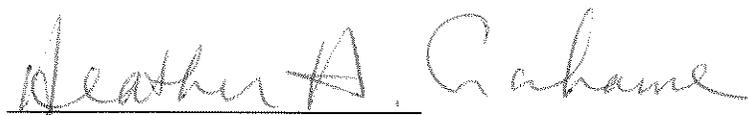
²⁴ Priorities have been assigned to projects that will: (1) Give end-users a choice of Internet service providers, (2) serve the highest proportion of rural residents that lack access to broadband service, (3) be projects of current and former RUS borrowers, and (4) be fully funded and ready to start once they receive funding under the Recovery Act.

III. CONCLUSION

KKCC encourages the NTIA and the RUS to adopt the comments submitted herein for making grants and loans for the deployment and construction of broadband systems under the Recovery Act.

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