

**Before the  
National Telecommunications and Information Administration, U.S. Department  
of Commerce, Rural Utilities Service, U.S. Department of Agriculture**

In the matter of	)	
American Recovery and Reinvestment Act of	)	
2009 Broadband Initiatives	)	Docket No. 090309298-9299-01
Joint Request for Information	)	
	)	
	)	

**Comments of Utopian Wireless Corporation**

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## Executive Summary

Utopian is a 4G service provider founded in 2006 on the premise of bringing 4G access to unserved and underserved areas throughout the nation. Utopian proffers the following recommendations regarding five of the questions asked in NTIA's Request for Information:

**Definitions.** NTIA should recognize and define two distinct types of broadband: portable/mobile nomadic broadband (e.g. WiMAX type services) and fixed broadband (e.g., wireline or point-to-point microwave type services). Portable/mobile nomadic broadband should have a minimum download speed of 3 Mbps. Fixed broadband should have a much higher minimum download speed of 20 Mbps. The term "unserved area" should be defined as any area defined by the applicant wherein the residents have no broadband access, as the term is defined above.

**Eligible Grant Recipients.** Commercial entities should be considered eligible grant recipients. A commercial broadband company is the entity most likely to put the funding to its highest and best use in the most immediate timeframe.

**Selection Criteria.** The primary criterion for determining a grant award should be whether the proposed project covers an unserved area. In the event multiple proposals identify the same unserved area, funding should be awarded to the applicant that demonstrates the following:

- (1) Applicant has committed to deliver free service to a health care, educational or public safety institution within the area covered by the plan;
- (2) Applicant is a small or start up business;
- (3) Applicant has the operational capability to quickly deploy services;
- (4) Applicant has secured a FCC wireless license or spectrum lease or sublease rights.

**Role of States.** States should have the role of identifying their own state needs and validating proposals that fulfill the same. If a state provides validation of any particular application, that factor should be given some weight in the application process, but should not be a determining factor. States should not play the role of gatekeeper. NTIA, as a single central administrator, should focus on administering the funding.

**Coordination with USDA.** NTIA should ensure that previous Rural Utility Service decisions do not in any manner preclude new market entrants from applying for Recovery Act loans within the same area, particularly where the new application has identified the areas as unserved.

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**Comments of Utopian Wireless Corporation**

Utopian Wireless Corporation (“Utopian”) submits these comments in response to the Request for Information<sup>1</sup> by the National Telecommunications and Information Administration (“NTIA”), U.S. Department of Commerce, seeking comments on how to implement Section 6001 of the American Recovery and Reinvestment Act of 2009 (“Recovery Act” or “ARRA”).<sup>2</sup> Utopian applauds NTIA for its initiative in holding public meetings regarding the broadband programs, together with the Rural Utilities Service (“RUS”), U.S. Department of Agriculture (“USDA”), and requesting public comment on the same in an efficient and expeditious manner.

NTIA is charged with a seminal task, the successful completion of which can help to stimulate the economy and change the broadband landscape of our country for generations to come. To successfully allocate the \$4.7 billion appropriated for the Broadband Technology Opportunity Program (“BTOP”), NTIA must embrace innovation, avoid bias toward incumbents, encourage new market entrants, and be bold in requiring next generation broadband services. To that end, Utopian offers NTIA the following recommendations, as expanded below, regarding

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<sup>1</sup> Joint Request for Information and Notice of Public Meetings, 74 Fed. Reg. 10,716-19 (Dep’t of Commerce Mar. 12, 2009) (“Request for Information”). Utopian limits its comments to the questions asked by NTIA.

<sup>2</sup> American Recovery and Reinvestment Act of 2009, § 6001, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“Recovery Act”).

five of the questions asked in NTIA's Request for Information: (1) define broadband and unserved areas broadly, (2) include private sector companies as eligible grant recipients, (3) create selection criteria encouraging fast implementation of stimulus grants and prioritize proposals covering unserved markets, (4) hearten states participation in this process but keep funding allocation simple and central, and (5) coordinate with USDA's broadband grant program but refrain from precluding the opportunity for market competition because of prior participation of another party in that program.

## **I. Introduction**

Utopian is a fourth generation wireless broadband ("4G") service provider founded in 2006 on the premise of bringing 4G access to unserved and underserved areas throughout the nation. Utopian began with a belief that through ubiquitous connection to the Internet all communities can connect -- sharing ideas, expanding job opportunities, stimulating work relationships, spreading knowledge, and fostering friendships. Having observed that other service providers tend to focus on only densely populated areas, where the opportunity for big profits is greater; Utopian is dedicated to serving smaller communities where residents lack broadband options.

To this end, Utopian has acquired licensed and leased (pursuant to Federal Communications Commission ("FCC") 30 year long term de facto lease agreements) spectrum rights in the FCC licensed 2.5GHz spectrum covering hundreds of unserved and underserved markets throughout the United States.<sup>3</sup> As lessee, Utopian has partnered with local public and private K-12 schools, institutions of higher learning, and non-profit organizations in these markets, and has committed to providing these local educational and non-profit entities free

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<sup>3</sup> See Exhibit A, Map of Utopian's current 2.5GHz Geographic Service Area ("GSA") Coverage.

services on its network. Utopian is excited by the prospect of the federal government assisting its cause through the BTOP program, particularly given the current economic climate.

## **II. Discussion**

### **1. NTIA Should Define Broadband and Unserved Areas Broadly**

How NTIA defines broadband and unserved areas will play a critical role in how successful the BTOP program is administered. These definitions should be broad, allowing applicants the flexibility to propose unique and innovative solutions while also requiring applicants to be forward-looking.

The definition of broadband should not be based on antiquated notions of the same. NTIA should not accept current FCC definitions of broadband. Doing so would likely result in an inundation of proposals for projects that will quickly become out-of-date (a waste of taxpayers' money). NTIA should be especially wary of incumbent monopoly service providers lobbying for slower speeds or no minimum speeds at all. Such entities are not incentivized to update their current outdated systems and would prefer to keep broadband stimulus funding out of the hands of new market entrants and potential competitors willing to create competition.

Utopian proposes that NTIA instead recognize that two distinct types of broadband exist today: the emerging portable/mobile nomadic broadband (e.g., WiMAX type services) and fixed broadband (e.g., wireline or point-to-point microwave type services). Both types of broadband should not be considered duplicative and should be defined in terms of speed. Portable/mobile nomadic broadband should have a minimum download speed of 3 megabits per second (Mbps). Fixed broadband should have a much higher minimum download speed of 20 Mbps.

The definition of an unserved area should be flexible enough to ensure that residents lacking broadband access, as the term is defined above, really benefit from the Recovery Act's

stimulus grants. If NTIA is going to use its portion of the ARRA funds wisely, it needs to face head on the fact that past studies have been meaningless in depicting unserved areas. In the past, the FCC has defined ‘area’ as zip code areas for the purpose of determining broadband penetration.<sup>4</sup> If one house in an entire zip code had broadband access, the entire zip code was classified as served. The FCC’s studies have not taken into consideration large swaths of populations that are unserved.<sup>5</sup> The only way NTIA can efficiently and accurately identify the unserved areas is to allow the applicant to define ‘area’ itself.

Utopian therefore proposes that an “unserved area” be defined as any area defined by the applicant wherein the residents have no broadband access, as the term is defined above. Thus if an area has portable/mobile nomadic broadband services at download speeds under 3 Mbps, the area is unserved. Likewise, if an area has access to fixed broadband service at minimum download speeds of 20 Mbps, but no portable/mobile nomadic broadband at speeds of 3 Mbps or greater, the area is also unserved by portable/mobile broadband.

## **2. Commercial Entities Should be Considered Eligible Grant Recipients.**

Section 6001(e)(1) of the Recovery Act requires that applicants be a State or political subdivision, a nonprofit, or “any other entity, including a broadband service or infrastructure provider, that the Assistant Secretary finds by rule to be in the public interest.” In its Request for

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<sup>4</sup> *See In re* 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, *Report and Order and Further Notice of Proposed Rulemaking*, WC Docket No. 07-38, ¶ 6 (Rel. June 12, 2008).

<sup>5</sup> *See, e.g.*, Cnet News: News Blog, *FCC Approves New Method for Tracking Broadband's Reach*, March 19, 2008, accessible at [http://news.cnet.com/8301-10784\\_3-9898118-7.html](http://news.cnet.com/8301-10784_3-9898118-7.html) (last visited Apr. 13, 2009) (discussing the inaccuracy of zip code areas and low broadband speed definitions, the article notes "Critics, both inside and outside the agency, have charged that the inadequacy of data that the FCC collects semiannually from Internet service providers hinders both the government's ability to set smart pro-broadband policies and could slow investment on the technology side.").

Information, NTIA asks what standard it should apply “to determine whether it is in the public interest that entities other than those described in Section 6001(e)(1)(A) [State or political subdivision] and (B) [nonprofits] should be eligible for grant awards?”<sup>6</sup>

Congress specifically contemplated the inclusion of a “broadband service or infrastructure provider.”<sup>7</sup> A commercial broadband company is the entity most likely to put the funding to its highest and best use in the most immediate timeframe. The commercial company has the technological expertise and business acumen to build and run a broadband network efficiently. It is also the entity most likely to consider the longevity of the investment.

### **3. NTIA Should Select Proposals That Cover Unserved Areas and Are Likely to Hit the Ground Running.**

As noted by the Mark G. Seifert, Senior Advisor to the Assistant Secretary, the ARRA gives NTIA some guidance in determining which applications to fund:

For example, in the case of infrastructure grants, the Act specifies that we consider: whether an application will increase the affordability of, and subscribership to, service to the greatest population of users in an area; whether the application will enhance service for health care delivery, education, or children to the greatest population of users in an area; and whether it will not result in unjust enrichment as a result of support from another Federal program in the area. The Act also directs us to consider other important factors, such as whether the applicant is a socially and economically disadvantaged small business concern and whether the application will provide the greatest broadband speed possible to the greatest population of users in an area.<sup>8</sup>

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<sup>6</sup> Question 3, Request for Information at 10717-18.

<sup>7</sup> Recovery Act at § 6001(e)(1)(C).

<sup>8</sup> Testimony of Mark G. Seifert, Senior Advisor to the Assistant Secretary, Before the Subcommittee on Communications, Technology, and the Internet Committee on Energy and Commerce U.S. House of Representatives, Hearing on “Oversight of the American Recovery and Reinvestment Act of 2009: Broadband” (Apr. 2, 2009), accessible at [http://www.ntia.doc.gov/congress/2009/NTIA\\_Seifert\\_Testimony\\_20090402.html](http://www.ntia.doc.gov/congress/2009/NTIA_Seifert_Testimony_20090402.html); *see also* Section 6001(h)(2) of the Recovery Act.

NTIA seeks comment on additional criteria and priorities it should consider in selecting competitive grants.<sup>9</sup> Utopian provides recommendations to each question as follows:

- 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?<sup>10</sup>**

In addition to the factors outlined in the Recovery Act and referenced above, NTIA should consider and prioritize start-up and small business applicants, local public-private partnership, applicants that have demonstrated strong interest in local communities through agreements with local educational institutions, hospitals, public safety agencies or governments, and applicants that have secured wireless spectrum rights in the areas most in need of broadband access. These additional criteria will ensure that, consistent with the purpose of the Recovery Act, broadband grants are creating local jobs, being used efficiently and effectively.

Small businesses, especially start-up businesses, find it extremely challenging to secure private investment, particularly in today's economic climate. Such businesses, however, are the ones most likely to stimulate the job market. These businesses are looking to hire immediately and are also more likely to hire locally. By prioritizing these companies, NTIA will ensure the funding is being used to fulfill one of the primary purposes of the Recovery Act – to create jobs.<sup>11</sup> Advancing BTOP funds to established companies without a demonstrated need to expand already established workforces may not help fulfill the goals of the Recovery Act.

Local public-private partnerships may also ensure the broadband grants are used most effectively and serve the public interest. The public partner's input will be essential to assessing

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<sup>9</sup>Question 4, Request for Information at 10718.

<sup>10</sup> *Id.*

<sup>11</sup> Recovery Act at § 3(a)(1) (“The purposes of this Act include the following: (1) To preserve and create jobs and promote economic recovery.”).

the local community's needs, whether it be advancing emergency telecommunications systems, enhancing broadband access to students, or developing more advanced health care delivery options. The private partner's experience and capability in building and running telecommunications systems that can meet those needs will be vital to ensuring the funding is used efficiently and most beneficially. The private partner will also understand better the long-term feasibility of a proposed project and be wary of throwing the funds into a project unlikely to yield future returns on investment.

**b. What should the weighting of these criteria be in determining consideration for grant and loan awards?<sup>12</sup>**

The primary criterion for determining a grant award should be whether the proposed project covers an unserved area. In the event multiple proposals identify the same unserved area, funding should be awarded to the applicant that demonstrates the following:

- (1) Applicant has committed to deliver free service to a health care, educational or public safety institution within the area covered by the plan;
- (2) Applicant is a small or start up business;
- (3) Applicant has the operational capability to quickly deploy services;
- (4) Applicant has secured a FCC wireless license or spectrum lease or sublease rights.

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<sup>12</sup> Question 4, Request for Information at 10718.

**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?<sup>13</sup>**

NTIA should give highest priority to applicants that can demonstrate their services will benefit communities most in need of broadband access. Most unserved and underserved areas are in rural and/or low income neighborhoods and communities. Because of the geography and demographics of these areas, commercial service providers have a very difficult time securing private financing to deploy them. Therefore, federal funding will be essential for building infrastructure in and providing service to these areas – first and foremost.

An applicant that has already received USDA funding or has a pending application for the same, however, should not be given priority. If anything, such applicants should be precluded from applying for grants under NTIA’s program. Section 6001(e)(3) of the Recovery Act requires an applicant to include a “showing that the project would not have been implemented during the grant period without Federal grant assistance.” An applicant that has already been rewarded USDA funding has already committed to implementing its project through the use of other federal funding. In addition, NTIA must consider Section 6001(h)(2)(D) of the Recovery Act directing the Administration to consider whether an application “will, if approved, not result in unjust enrichment as a result of support for non-recurring costs through another Federal program for service in the area.” Unless the applicant is applying for a broadband grant to fund a project entirely unrelated to its project funded by the USDA, the applicant should be

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<sup>13</sup> *Id.*

considered ineligible for funding, pursuant to Sections 6001(e)(3) and (h)(2)(D).

Throwing more federal dollars into the same project would be wasteful.

Finally, a prior USDA grant or loan decision should not trump the eligibility of a BTOP application and NTIA should not be excluded from awarding a grant to an area in which a previous USDA grant or loan application has been awarded.

**d. Should priority be given to proposals that leverage other Recovery Act projects?<sup>14</sup>**

NTIA should be cautious of awarding priority status to an applicant solely because its proposed project leverages other aspects of the Recovery Act. In fact, ARRA funded programs should not be conditioned on the decisions of other agencies. An applicant proposing to provide a multitude of services may lack the expertise to implement any individual service effectively. NTIA should instead concentrate on awarding funding to the applicant that proposes the best possible broadband initiative for unserved and underserved Americans.

**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?<sup>15</sup>**

Priority should be given to proposals that address unserved areas and underserved areas. These proposals should be given additional weight if they also serve health care institutions, educational entities, children, or public safety agencies.

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

**f. What factors should be given priority in determining whether proposals will encourage sustainable adoption of broadband service?<sup>16</sup>**

NTIA should consider the broadband service and infrastructure experience of each applicant. This experience should be weighted in accordance with the above point system outlined in Section II.3.b above. An applicant that has the operational capability to deploy next generation broadband systems quickly and holds the unique certifications or spectrum rights necessary to provide services to unserved or underserved markets should receive top priority in the evaluation process.

**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?<sup>17</sup>**

Pursuant to the Recovery Act's directive, NTIA should, *to the extent practicable*, award grants in a technologically neutral fashion. Where it would be impracticable to not favor one technology over another, for instance in a geographic area where the costs of laying wire would be exorbitantly more expensive than the costs of deploying a wireless system, NTIA should prioritize the technology that is more economical. NTIA should also be mindful of the dichotomy of the broadband definition, considering portable/mobile nomadic broadband as distinct from fixed broadband. Mobile/nomadic broadband service should not be considered duplicative of fixed broadband service and consumers in unserved and underserved markets should be afforded access to both services.

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<sup>16</sup>*Id.*

<sup>17</sup> Question 4, Request for Information at 10718.

**h. What role, if any, should retail price play in the grant program?<sup>18</sup>**

None; market forces should dictate retail price for maximum stimulation of the economy by this program. NTIA should not impose retail rate regulation on successful applicants as such could result in a lack of innovation and improvement to the system in the future.

**4. NTIA Should Hearten State Participation in This Process But Ensure That Funding Allocation is Simple and Central.**

In its Request for Information, NTIA asks what the appropriate role for states is with regards to the BTOP.<sup>19</sup> The states should be granted deference in the validation phase of the Recovery Act's broadband grants. States should identify their own state needs and may validate proposals that fulfill the same. States should also coordinate with NTIA in developing broadband availability maps; but the publication of these maps should in no way delay funding decisions. If a state provides validation of any particular application, that factor should be given some weight in the application process, but should not be a determining factor if there is a competing proposal that would better serve the public interest and the goals of the BTOP.

While states should certainly have a role in this project, they should not play the role of gatekeeper. Applicants should be able to apply for projects within a state independent of that state's jurisdiction over any aspect of the process not already codified in state law. NTIA, as a single central administrator, should focus on administering the funding. Allowing each individual state to administer funds will result in a multitude of rules and application forms, all varying from one state to the next and ultimately confusing the applicant and slowing down the process

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<sup>18</sup> *Id.*

<sup>19</sup> Question 2, Request for Information at 10717.

of getting stimulus funding into our economy as quickly as possible. The urgency of our current economic requires one simple and efficient allocation process. That process must be administered by one central agency.

### **5. Coordination with USDA's Broadband Grant Program**

NTIA seeks comment on how to coordinate its BTOP with RUS's broadband grant program.<sup>20</sup> NTIA should ensure that previous Rural Utility Service decisions do not in any manner preclude new market entrants from applying for Recovery Act loans within the same area, particularly where the new application has identified the areas as unserved. An unserved area, as defined in Section II.1 above, is an unserved area and it should not be taken off the table simply because a previous RUS decision covers the same.

### **III. Conclusion**

For the foregoing reasons, Utopian urges NTIA to adopt the following measures in implementing the BTOP: define broadband and unserved areas broadly, include private sector companies as eligible grant recipients, create selection criteria encouraging fast implementation of stimulus grants and prioritize proposals covering unserved markets, keep funding allocation simple and central, and not allow a USDA grant or loan decision to trump the eligibility of a BTOP application.

Respectfully submitted,



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<sup>20</sup> Question 12, Request for Information at 10719.

# **EXHIBIT**

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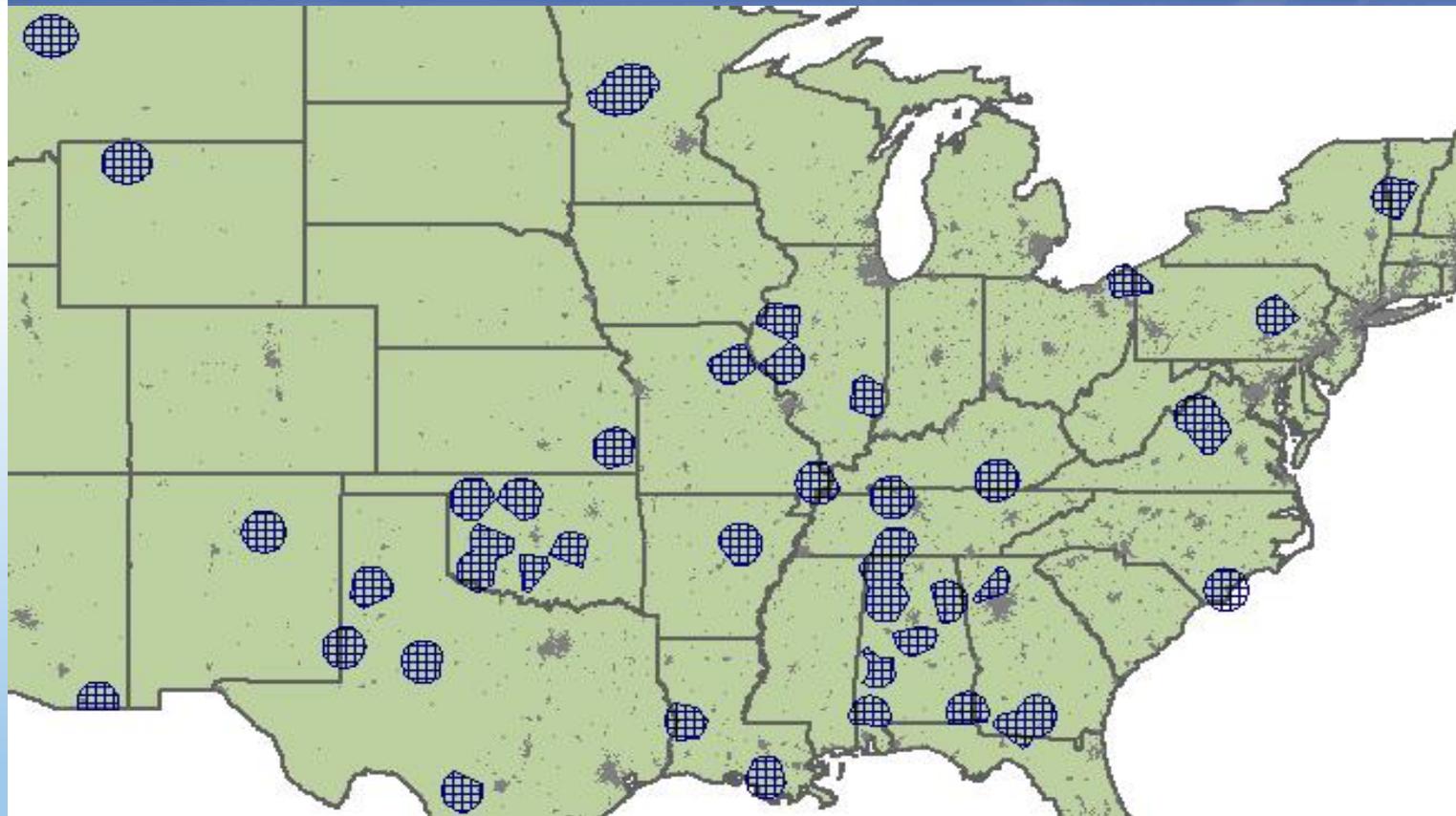


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