

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

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

RESPONSE OF RURAL INDEPENDENT COMPETITIVE ALLIANCE

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Executive Summary Of the Response of the Rural Independent Competitive Alliance

The Rural Independent Competitive Alliance (“RICA”) is a national organization of facilities-based competitive local exchange carriers that have brought new and advanced services to underserved rural areas long neglected by the large incumbent carriers. In many rural areas RICA members are the only providers of wireline broadband services. RICA members are affiliated with nearby small rural independent telephone companies and bring with them the core value of dedication to providing the maximum possible service in rural areas.

RICA members’ affiliated rural telephone companies have long history of successful provision of modern communications to such areas. Some began service to areas unattractive to the Bell System as early as the late 19th century, most began following the 1949 entry of RUS’ predecessor into financing rural telephone companies, and began their competitive operations following the 1996 Telecommunications Act amendments.

Despite the success of RICA members in providing affordable broadband service to low density rural areas, the high cost of constructing and operating facilities in the most remote areas has so far precluded serving all rural areas. RICA members believe that funds to be made available by the agencies as authorized by the American Recovery and Reinvestment Act of 2009 can provide considerable assistance to further extend service to areas otherwise not financially feasible. At the same time, it is critical that the agencies recognize that such funding should not impair the continued viability of those entities that have demonstrated commitment and success to rural broadband services.

Congress has given the agencies the extraordinarily difficult task of reconciling partially conflicting objectives of rapid disbursement of substantial funds to stimulate the economy and foster job creation while expanding the availability of broadband Internet access to unserved and underserved areas in a sustainable fashion. This challenge is complicated by a timescale that calls for an FCC determined national broadband plan to be issued after most of the ARRA funds are committed.

In order to cover all questions of interest to the agencies, RICA’s response follows in Q & A format the NTIA/RUS Joint Request for Information; however, this summary will be limited to the core areas of concern as have been identified during the series of public meetings.

Administrative/Procedure: The high level of cooperation the agencies have shown in their initial efforts to implement the broadband provisions of the ARRA should continue through the grant/loan process to the maximum extent feasible. In particular, a common application form will provide efficiency for applicants that seek funding from either or both agencies, while recognizing the statutory differences in the programs.

Role of States: State agencies often have the capability to provide relevant information regarding unserved and underserved areas, demographics and topography. There is no legal authority to delegate selection of grantees or loan recipients to the states.

Eligibility of Recipients: NTIA should immediately begin the process leading to adoption of a rule permitting for-profit entities to be grant recipients. Specifically, for-profit entities that qualify as “small entities” under SBA criteria and/or are described in 47 U.S.C. 309(j)(3)(B) should be eligible, because they have a demonstrated ability to provide communications and information service in rural, high cost areas.

Selection Criteria/Priority: NTIA should generally follow RUS selection processes. Applications for loans or grants to serve areas where no broadband service is available should be given priority over those proposing to improve existing services. Within that group, applicants should be compared with respect to their proposed quality of service, including actual sustainable transmission rates and reliability. Competitive neutrality does not mean that differences in service quality or efficiency between differing technologies should be ignored. Each technology that can deliver broadband has its own advantages and disadvantages and these should be considered in evaluating any application. The number of potential new subscribers should also be compared with respect to the number of unserved homes and businesses to which the service will be made available as well as the potential take rate given the probable price of the service and the demographics of the area.

Sustainability: Applications superior in coverage and/or service quality must also be evaluated as to the soundness of the underlying business plan and the experience and capability of the applicant. Realistic proposals that show probable financial feasibility and good management should have priority over unrealistic promises not likely to be fulfilled. In this respect, a provider that is able to leverage its existing network may be the most efficient user of funds. Because RUS has a long history of evaluating financial feasibility of telecommunications projects in rural areas, its expertise should be shared with NTIA at a working level.

Definitions: “Unserved” should only mean areas where no broadband service is available. “Underserved” should mean either areas where service is available at speeds above dial-up, but less than those available in the nearest urban areas, or where broadband service is of poor quality and reliability, e.g., speed degrades substantially during busy hours. “Broadband” should mean Internet Access at a consistent speed no less than that available through DSL technology.

RUS Specific Issues: RUS and NTIA should coordinate in areas where a portion of an integrated proposal would comply with NTIA requirements and a portion with RUS requirements, but ensure there is no duplicate support. In evaluating whether a proposal will encourage “Rural Economic Development,” RUS should consider both the potential for attracting or retaining businesses that utilize broadband, but also an educated workforce. Like NTIA, RUS should order its priorities so that areas with no broadband service receive funding first.

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RESPONSE OF RURAL INDEPENDENT COMPETITIVE ALLIANCE

I INTEREST OF RICA

The Rural Independent Competitive Alliance (“RICA”) is a national organization representing the interests of facilities based competitive local exchange carriers providing service in rural, high cost areas of the country long neglected by the large incumbent telephone companies. RICA members have a proven and quantifiable record that demonstrates how the commitment of local rural carriers to their rural service areas in combination with sound and rational federal telecommunications policies can produce meaningful advances in services provided to formerly under-served rural areas of the nation.

RICA members have brought new and advanced services to thousands of rural consumers formerly under-served by large incumbent carriers that have demonstrated little interest in providing upgraded and advanced services to rural communities and consumers. Each RICA member is affiliated with a rural telephone company; and each RICA member has pursued an “edge out” strategy to provide superior service and advanced telecommunications capabilities that the incumbents have failed to provide in order to bring broadband and other advanced services to otherwise underserved rural areas of the nation.

II NTIA TOPICS

A. Purposes of the Grant Program

1. *Should the funds be allocated among the five stated purposes?*

No, a single grant proposal may well be targeted to achieve several or all of the stated purposes. The purposes should be used to evaluate grant requests,

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

Yes, see above

3. *How should BTOP grants relate to other Broadband-related portions of the ARRA, including RUS, smart grids, health information technology, education and transportation infrastructure?*

As discussed below NTIA should coordinate grants with RUS where a particular applicant might apply for both for separate portions of a unified project. Further, to the extent permitted by its separate requirements, NTIA grant administration should adopt RUS's existing grant procedures in order to minimize the time before applicants can finalize and file their applications. With respect to other Broadband-related portions of the ARRA, grant evaluations should recognize where the other objectives will be promoted.

B. Role of the States

1. *How should State priorities be considered in awarding grants?*

State priorities are relevant to the allocation of grants within a state and should be considered, although not controlling. For example, applicants that provide credible proposals for sustainable provision of service to unserved areas should have priority over a state preference for upgrading existing broadband service. Where states are able to articulate their priorities prior to the filing of grant applications, applicants will be able to best address how their application is either consistent with the priorities, or why the priority should not govern. If the priorities are not stated until after applications are filed, they should be given substantially less weight in the application process.

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

The statute is clear that the state role is consultation at the discretion of the Assistant Secretary. The Assistant Secretary is not given authority to delegate the power to award grants, and such authority cannot be implied. The most important consultative function of the state is to provide information regarding unserved and underserved served areas. Secondly, States should be free to express their priorities, subject to the considerations stated in the response to question B. 1., above.

3. *How should NTIA resolve differences among parties as to priorities within a state?*

NTIA should independently evaluate competing and conflicting proposals, including the position of the responsible state agencies, to ascertain which best furthers the purposes of the ARRA.

4. *How should NTIA ensure that State proposed projects are well executed and produce worthwhile and measurable results?*

States and their political subdivisions (as well as DC, territories and possessions and Indian Tribes and Native Hawaiian organizations) are eligible to be applicants. Their applications should

be given the same evaluation as that given all other eligible applicants, including likelihood that their proposal will be well executed and produce worthwhile and measurable results. Similarly, post construction evaluations should be conducted on the same basis, regardless of the identity of the applicant.

C. Eligible Grant Recipients

What standard should NTIA apply to determine whether it is in the public interest that entities other than government and non-profit should be eligible for grants.

NTIA should immediately announce the institution of a proceeding leading to the adoption of a rule stating that for-profit entities are eligible to apply for, and be awarded grants. RICA specifically proposes that, at a minimum, for profit entities that qualify as “small entities” under criteria established by the Small Business Administration and/or are described in 47 U.S.C. 309(j)(3)(B) [small businesses and rural telephone companies] be eligible. For-profit business entities have a demonstrated ability to provide communications and information services, while governmental entities have very little such experience. Nor, with the exception of cooperative telephone and electric companies and some Indian tribes, is there much experience in the non-profit sector in successfully constructing and operating a capital intensive, regulated business employing a rapidly evolving technology in rapidly changing markets. NTIA is assigned the bulk of the ARRA broadband funds, but it without applications from for profit entities that have extensive real world experience in providing broadband service, pool of knowledgeable applicants will be substantially reduced and the Agency’s ability to compare which applications are most likely to be worthwhile will be severely impaired.

D. Selection Criteria for Grant Awards

1. *What factors should NTIA consider in establishing selection criteria? How can NTIA determine the need for federal funding and that private investment is not displaced? How should the long term feasibility of the investment be judged?*

In general, NTIA should follow the selection process used by RUS in order that the process can be initiated and completed within the statutory time schedule. In that framework, the burden should be on each applicant to demonstrate quantitatively that its specific proposal is likely to promote the specific goals of the ARRA. The application should include verifiable evidence that broadband service is either non-existent or inadequate in the area to be served, and a sound business plan demonstrating a realistic probability that the applicant will be able to construct and operate the facilities necessary to provide broadband service.

The applicant should be required to provide evidence that federal funding is needed and that grant of the application will not displace private investment. In addition to NTIA’s own expert evaluation of the claims, all applications should be immediately made public and interested parties in the area be given a brief opportunity to contest the applicants factual statements.

2. *What should be the weighting of these criteria?*

NTIA should follow the historical practice of RUS in its loan applications and make probable financial feasibility a requirement for all grants. Despite the stimulus benefits of rapid

infusions of cash, if funds are spent, but no actual service is provided, or it quickly deteriorates, the long term damage to the public will exceed any stimulus benefit. Closely tied to a sound business plan demonstrating financial feasibility is a showing of need. Again, provision of grant funds where they are not needed ultimately will do more harm than good by displacing the private investment that will function over the long term.

3. *How should the BTOP prioritize proposals that serve underserved or unserved areas? Should USDA broadband grants and loans be considered.*

Priority should go to unserved areas. The absence of any existing provider is an indication not only that under existing circumstances, no entity has been able to establish a financially feasible means of providing the service. Areas with no service are necessarily those with the most pressing social and economic needs for broadband service and should receive assistance before areas with less than optimal broadband.

After all proposals to serve unserved customers have been funded, the second priority should be given to proposals to serve mixed areas of unserved and underserved areas. Third priority should be for areas with only underserved areas. In those areas, more consideration must be given to whether existing providers should be helped to upgrade their facilities, or a new provider should start from scratch in an area that may well not support two providers. Given the strict time limits for deployment of funding and completion of the projects, the focus should be on unserved areas.

Additional limitations are needed to ensure that funding is not counterproductive by impeding financial viability in rural markets through funding to multiple providers where the market does not support multiple providers. When funding is requested to serve an area contained within a rural area, there should be a rebuttable presumption that the proposed project is not financially viable if a provider already serves the entire area (or makes broadband available to 95% of those residing or working in the area). This proposal does not impede market competition, but would require a more rigorous look at the financial viability and the potential provider applying for the funding would carry the burden of demonstrating the viability.

This proposal would essentially focus the funding agencies on making a decision regarding the best use of the funding. An existing provider in such a rural area will be able in all likelihood to provide more by using the funding because they will be able to leverage the use of the funds with their existing network. The funding agency will be able to focus directly on whether the public interest is better served by directing the funding in this way (i.e. to an existing provider in a rural area that can use their existing network to provide more to the public by using the funding) or by directing the funding to a potential competitor in the rural area.

4. *Should priority be given to proposals that leverage other ARRA projects?*

Leveraging other ARRA projects should be a positive criterion in evaluating competing grant proposals, but should not be priority. Despite the use of the term priority in the act, in establishing its application and evaluation process it is not useful to have multiple priorities where there is no obvious way to order them. Thus while NTIA may specify that it will consider such showings, such leveraging should not move an application with an inferior broadband proposal ahead of one with a superior broadband proposal.

5. *Should priority be given to proposals that address several purposes, serve several of the populations identified in the Recovery Act, or provide services to different types of areas?*

Not necessarily. While achieving multiple purposes of the Act might, in theory, serve the public interest where all else was equal, equality is rarely found, and a proposal that lacks focus may end up serving none of the purposes well and not being financially feasible.

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

Sustainability has two essential aspects that must be considered, supply and demand, which necessarily have a certain amount of a chicken and egg relationship. On the supply side, the broadband service must be properly constructed, operated by an experienced entity and governed by a business plan based upon realistic expectations of long term revenues sufficient to cover all the long term costs of operation, including the inevitable physical and technological depreciation of the facilities. The revenue estimate must in turn be based upon realistic estimates of subscriber take rates. Rural telephone companies have found that in areas with low income and education levels, the availability of broadband service at a reasonable rate does not automatically result in high penetration rates. Demand for broadband is highest among populations that own and can operate computers. Proposals to serve areas of low income and/or education levels must be evaluated for realistic expectations of take rate in the short term, and in the longer term for their plans to improve penetration.

7. *Should the different performance characteristics of different technologies be considered in view of the statute's direction that its purposes should be promoted in a technologically neutral fashion?*

Absolutely. While Congress did not define or explain what it meant by technological neutrality, that term cannot be interpreted in a way that impairs accomplishing the purpose of the Act. Each broadband technology has its own strengths and weaknesses and these essential characteristics cannot rationally be ignored in making determination as to which proposal receives funding. For example, two alternative technologies may advertise delivery of the same bit rate, but if the bit rate is measured at a "busy hour" one technology may demonstrate a significantly degraded rate. It would not serve the public interest or the purposes of the Act to award competing proposals using the two technologies equal points for speed of service. With respect to the Universal Service Fund, the FCC has recognized that technological neutrality means that there is no "unfair" advantage given to one technology over another. It is not unfair to recognize, for example, that one technology provides consistent speed to all users, while another provides mobility.

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

Retail price of a proposed service will directly affect the penetration rate of broadband service, particularly in low income areas. Penetration rate in turn will affect the gross revenues of the service and thus its long run financial feasibility. A rate that is either too high or too low will result in insufficient revenue. Applications must therefore be evaluated on both the affordability of the proposed service, but the realistic expectation that the revenues will be sufficient to cover the operating expenses.

E. Efficient funding of projects that would not otherwise receive investment.

1. *What methods should be used for distributing funds in addition to traditional grant and loan programs?*

The alternative forms of capital infusion to an entity or project are essentially: (1) donations of capital in the form of gifts; (2) loans of capital, with or without an interest obligation, or interest below cost of money to the government; and purchase of equity interest in the enterprise. Hybrids of these forms, such as preferred stock, or conversion rights may also be used.

Alternatively, the government could own the facilities and lease access, at preferential rates where necessary or appropriate. Where government funds are provided, it must be assumed there will be conditions imposed to ensure that the governmental purpose is achieved. Unlike some other current areas of the economy, there does not appear to be any need for the federal government to acquire ownership interests in broadband service providers or facilities.

2. *How would these mechanisms address shortcomings, if any, in traditional grant and loan programs?*

The use of alternative forms of federal government ownership of facilities or service providers is the least desirable method of deploying ubiquitous broadband service, and should be used only when no other adequate service provider is willing to undertake the obligations.

F. Grants for Public Computer Center Capacity

[No comment]

G. Grants to Encourage Sustainable Adoption of Broadband Services

[see D. 6, above]

H. Broadband Mapping

[No comment]

1. *What uses should the map be capable of serving?*
2. *What information should the map contain, should the information be different for different users (e.g. consumers v. government)?*
3. *What other factors should be considered to meet the requirements of the Broadband Data Improvement Act?*
4. *Are the state models of maps?*
5. *What information should states collect as a condition of receiving statewide inventory grants?*
6. *What are the technical specifications to ensure that state maps can be combined into a national database?*
7. *Other conditions for statewide inventory grants?*
8. *What information in addition to statewide inventory information should be in the comprehensive nationwide map?*

9. *How should NTIA and FCC work together to implement duties imposed by BDIA and ARRA?*

I Financial Contributions by Grant Applicants

1. *What factors should an applicant show to establish financial need for a more than 80% federal share of the total funding?*

Applications should show the capital costs of the proposed facilities and describe the applicant's financial resources or what efforts have been made to raise the additional 20%. Because of the short time frames required by the stimulus purpose, applicants will not be able to make extensive efforts to raise funds they don't have. Nevertheless, a compelling showing should be required because the risk of overleveraged ventures is so great. Procedures should permit applicants financial showings to be treated confidentially at the application stage.

2. *What factors should lead to a less than 80% share?*

Applicants should be free to apply for less than 80% of the capital cost of a project.

3. *What showing should be required to demonstrate that a particular proposal would not have been implemented without federal assistance?*

Essentially, the applicant should show that without a grant for 80% of the capital cost of the facilities to be used to provide the ongoing cost of capital (return on invested capital plus cost of debt) would, when combined with the operating expenses result in total ongoing costs in excess of the revenue that provision of the service could reasonably be expected to produce. Alternatively, or in addition, an applicant should be able to show that, despite its reasonable efforts in the time available, it has been unable to obtain equity or debt capital regardless of the pro-forma feasibility of the project. Where an applicant has shown that capital is unavailable, or if available at a cost that renders the project unfeasible, it should be deemed to have met its burden under this section of the ARRA.

J. Timely Completion of Proposals

10. *What is the most efficient and fair way to establish the program and make all awards by the end of FY2010?*
11. *What elements should be included in the application to ensure that projects can be completed in two years?*

Although the combined broadband fund represents a minority of projected capital expenditures for facilities to provide broadband services over the relevant time period, because of its unexpected nature it may still be large enough to raise questions as to whether vendors and contractors have sufficient materials, equipment and personnel to deploy the additional capacity. Grant applications should include evidence that the applicant has the commitments from vendors necessary to construct their proposed facilities. NTIA should evaluate its authority to prioritize projects in the event shortages in material or construction capability develop.

K. Reporting and Deobligation

1. *How should NTIA define wasteful or fraudulent spending?*

The essential characteristic of fraud is dishonesty, e.g., false representation of a matter of fact and should be defined and dealt with in the same manner as any other government grant. Waste also has a traditional legal meaning of abuse or destruction of property. In the context of the use of grant funds to construct infrastructure that will be used to provide a vital service to the public, however, waste has a more, common and subjective element meaning that the funds were not used in a reasonably efficient manner. Reasonable people can disagree however about what is the most efficient way to construct infrastructure. For example in the early days of the REA (now RUS) program, REA determined that in many cases loan funds should be allocated to bury outside plant rather than stringing it on poles. Some state commissions' objected that burial was wasteful because it increased the cost per subscriber unnecessarily, but REA had careful studies that demonstrated that buried plant required substantially less maintenance over its useful life so that the total cost to subscribers was less. The point is that constructing facilities at the lowest first cost may, in the long run, be wasteful. The traditional regulatory concept of prudent investment should be applied both in evaluating applications and monitoring results.

2. *How should NTIA determine that performance is at an insufficient level?*

Applicants should include performance measurements in their proposals.

3. *If wasteful or fraudulent spending is detected, what actions should NTIA take?*

As explained in 1, above, fraud should be dealt with in the same manner as any other grant program, which could include termination and recoupment in appropriate cases. In cases of alleged waste, however, it is important that grantees have a fair opportunity to explain the rationale for their expenditures.

L. Coordination with RUS

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

The most critical step is to ensure that the proposal in the application is sound from both engineering and economic perspectives, and that the grantee is contractually committed to employ the funds in the manner proposed. There must be, of course, a procedure for amendment in the event of unforeseen and unforeseeable circumstances. Grant funds can be distributed in phases as agreed upon benchmarks are reached. RUS has personnel and procedures that have been used for many years for this purpose. The complication here is that there is a substantial tension between assuring that grant funds are used in the most efficient and effective manner and meeting the stimulus objectives of the ARRA to get money into the economy and create jobs. Both objectives cannot be maximized, and grantees should not be penalized for decisions that result in less than optimum efficiency or effectiveness in order to meet the overriding goal of Congress to address the current severe economic crises.

13. *Where there are rural and non-rural areas to a proposal to be funded by one or both agencies, how should projects be funded in the most cost effective manner without unjustly enriching the applicants?*

Applications for projects funded by both agencies must have clearly delineated divisions that allow each agency to evaluate and review its portion on a stand alone basis. All such applications should be clearly labeled as such so that the agencies can determine that there is no overlap resulting in double recovery. The applications must also specify how they will allocate common costs and overheads between the portions.

M. Definitions

14. *How should unserved and underserved areas be defined?*

“Unserved” should be restricted to areas where no broadband service (as defined below) is available. Underserved should mean an area where either internet connection is available at speeds faster than dial-up (56kbs) but less than the speeds comparable to the services available in the urban areas nearest to the rural consumers; underserved should also include those consumers with access to broadband service that is of such poor quality as to be unreliable, e.g., it is unavailable for unreasonable periods of time, or the speed degrades substantially during busy hours.

Note, for a multiplicity of reasons, applicants can be expected to propose service for an area that they determine they can most effectively serve. This area need not conform to any existing political or regulatory boundaries, and can be expected to include portions that are “Unserved” and portions that are “Underserved.” It does not appear possible to establish arbitrary areas for measurement of unserved or underserved that do not discriminate against one type or size of provider, or artificially limit the populations that could benefit from the grants.

15. *How should “broadband” be defined?*

“Broadband” should be defined as Internet access at a consistent speed no less than the lowest speed available through the provision of DSL.

a. *Should there be threshold speeds for determining if an area is unserved or underserved and for prioritizing grant awards? Should the thresholds be rigid or flexible?*

Whether an area has “Broadband” service should depend upon whether service is available throughout the area at or above the speed defining Broadband. The threshold speeds for determining if a rural area is underserved should be based on consideration of whether the rural area has available speeds comparable to those available in the nearest urban areas..

b. *Should there be different threshold speeds for different technologies?*

No, see discussion of technology neutral above.

c. *What should the threshold speeds be and how should they be measured?*

See definition, above. Speed should be measured as that consistently provided to all subscribers without reduction for “busy hour.”

d. *Should threshold speeds be symmetrical or asymmetrical?*

While symmetrical should be the ultimate goal, given current technology, economics and the time constraints in the program, a reduced upload speed could be accepted.

e. *How should the use of shared facilities by service providers and network congestion be considered?*

Service providers should not be penalized for conditions beyond their control to the extent such conditions are only occasional and not reasonably foreseeable.

3. *How should the nondiscrimination and network interconnection obligations conditions to grants be defined?*

Due to the extremely tight time constraints, no additional requirements should be imposed beyond compliance with the FCC Policy Statement.

a. *Should network management techniques, if any, be described as conditions to a grant.*

The FCC Policy Statement permits reasonable network management practices. The failure of a provider to manage its network may result in unreasonable discrimination between users. It is not possible to describe the universe of reasonable practices as a grant condition at this time.

b. *What should interconnection obligations be?*

No additional interconnection obligations should be established.

c. *Should nondiscrimination and network interconnection obligations be different for different technologies?*

Only to the extent there is a technological basis for the difference.

d. *Should failure to abide by whatever obligations are established result in de-obligation of funds?*

While “de-obligation” is necessary to retain as a tool to ensure that grantees meet their obligations, it should be the sanction of last resort, especially in cases where no fraud is involved. Commitments may be entirely reasonable when made, but external circumstances can change in ways that could not reasonably have been predicted. Similarly, minor, unintentional

departures should not be a death sentence to a project, because the subscribers will suffer if sanctions force a project to shut down.

e. *Should grant obligations extend beyond the term of the grant to the useable life of the infrastructure?*

No. Grant obligations such as offering service to all subscribers in the area should obviously continue beyond the completion date, but the useable life of the infrastructure, at least technically, could be 20 years or more. A more reasonable period could be the time over which, if the facilities had been paid for by the grantees' funds, they would be depreciated.

f. *Should retail price play a role in these definitions?*

No - except that prices might be relevant in determinations of reasonableness of network management practices.

N. Measuring Success

16. *What measurements determine whether a proposal has successfully complied with the statutory obligations and project timelines?*

Grantees will be required to report and certify that they are in compliance with the terms of their grants.

17. *Should there be a set of common data elements by which individual proposal's compliance could be compared.*

The basic criteria should be completion of the project and full operation at the stated level within the time allowed.

III RUS TOPICS

A. *What is the most effective ways RUS could offer broadband funds to ensure that rural residents that lack access to broadband will receive it? What are the best ways to:*

1. *Bundle loan and grant funding options to ensure funding to areas that could not traditionally afford the investment?*

Combining grants and loans in a bundle is useful because it provides capital that might otherwise not be available, while ensuring that the bundled awards go to projects that can reasonably be expected to be able to pay the remaining principal, plus interest. This means that the applicant must be able to demonstrate sufficient demand for the service at a price that will cover the operating and capital expenses of the entity. Grant funds should be available for both capital costs and for demand stimulation through education programs and perhaps user equipment subsidies.

2. *Promote leveraging of funding with private investment that ensures viability and sustainability?*

Applicants should also contribute enough of their own capital to ensure their commitment to the success of the project. Rather than a rigid formula however, applicants should have the opportunity to demonstrate that their capital contributions are sufficient.

3. *Ensure funding is targeted to unserved areas that will benefit the most?*

Among truly unserved areas, i.e., areas without broadband access, preference should be given to areas that are the most isolated and have the least alternatives. Among equally isolated areas, those with the most realistic and viable proposals should be funded first.

B. *How to align RUS and NTIA efforts*

1. *How should ARRA requirement that RUS fund areas that are 75% rural and without sufficient access for economic development be reconciled with NTIA definitions of “unserved” and “underserved”?*

The requirements are not necessarily mutually exclusive, particularly for unserved areas. It will often be the case that an unserved area for NTIA purposes is also 75% rural and without sufficient access for RUS purposes. RUS must obviously comply with the RUS requirement for grants or loans that are partially or wholly funded by RUS. This should not preclude an application to both agencies for coordinated approval where RUS funds are used to fund service in an area meeting the RUS requirements, and NTIA funds the area that meets the ARRA requirements applicable to NTIA.

2. *How can eligibility requirements and other elements be structured so that applicants can readily seek funding from both agencies but not receive duplicate support?*

All applications seeking funds from both agencies, either shared or on an alternative basis, should be required to conspicuously note that fact on the application, in order that the respective staffs can ensure their awards do not overlap (or leave gaps). Applications requesting funds from both agencies for a single project will also need to show how projected costs and revenues are allocated. In the absence of a more obvious division for a particular project, the agencies should agree that the costs common to both areas of such projects be allocated in proportion to the relative investment.

C. *How to evaluate whether a particular level of broadband access is needed to facilitate economic development?*

Where an applicant shows that the area meets the “unserved” test adopted by NTIA, there should be a conclusive presumption that making broadband access available will facilitate economic development. An application for funding to serve an area meeting the definition of “underserved” should be required to provide further evidence that there is sufficient demand to upgrade the existing broadband access to justify the additional investment. If the area meets neither

of these tests, even though it is 75% rural, applications for funding should generally be held pending determination that sufficient funds are available to fund all otherwise acceptable applications for unserved or underserved areas.

1. *How to define “rural economic development” What factors should be considered in terms of job growth, sustainability and other socio-economic benefits?*

RUS should define “rural economic development” and evaluate the potential for applicant’s proposals consistently with the multitude of other rural development programs it administers with a focus on the sustainability of the benefits in job creation, educational benefits and public services. At the same time it must be recognized that the particular jobs involved in infrastructure construction will not be maintained, but that the economic capabilities of the area will ultimately attract employment that would not otherwise exist, and, in some cases, maintain employment that may otherwise be lost.

2. *What speeds are needed to facilitate “economic development”? What does “high speed broadband” mean?*

To establish consistency between the RUS and NTIA programs to the extent permitted by the statute, RUS should consider only applications that will provide service at speeds above the level that would make the area “underserved” under the NTIA definition. NTIA, in turn, should establish that speed at a level that will meet the business needs of enterprises locating in rural areas in order to foster economic development through the deployment of broadband service levels and quality comparable to urban areas.

3. *What factors should be considered in constructing facilities in the portion of an area outside the 75% that is rural?*

Applicants will no doubt be filed in which the feasibility of service to the 75% rural portion of an area is only economically feasible when served by a facility that also serves a non-rural area. This is the familiar “hole and donut” situation. Where there is an existing service provider in the hole that has no interest in serving the donut that provider will nevertheless be expected to object that grant of a combined application should not be made because there is insufficient demand to support two providers in the hole. These cases will have to be examined on their individual merits, and the capabilities of the applicant carefully considered. RUS should not fall into the trap the FCC did during the 1970s and 80s when it refused to allow telephone companies to build cable TV facilities in rural areas in order to protect cable companies operating only in municipalities. The result was that rural residents often received no video service at all.

D. *What values should be assigned to the priorities RUS is required to consider?*

1. *End user choice of service providers?*

Because areas without service should have absolute first priority, the issue of multiple facilities based providers should not arise. If there is no broadband service in the area, that is strong evidence that the area would not support multiple providers. While some applicants may

offer alternatives to end users over their facilities, RUS should not attempt to impose any kind of “unbundled network element” or resale obligation on broadband internet access service.

2. *Serve highest proportion of rural residents that lack access to broadband service?*

As mentioned in 1, above, and elsewhere, the first priority for this program should be to bring broadband access to those that do not have it today. Thus a proposal that will serve more unserved rural residents should be funded before an otherwise comparable proposal that expanded less into unserved areas, but provided more upgrading to existing broadband. Further, more broadband meeting the minimum definition should take priority over proposals to provide higher speed to fewer unserved customers.

3. *Projects of current and former RUS borrowers?*

Current and former borrowers are demonstrably more likely to be able to accomplish the purposes of ARRA funding in the most rapid and sustainable manner due to their extensive experience in meeting the RUS “area coverage” requirements, in constructing and operating capital intensive, high technology infrastructure, and their proven abilities in customer support and financial management. In most cases these entities are already providing broadband service in areas of much lower density than the large, non-RUS borrowers or cable service providers. As discussed above, financial feasibility and sustainability should be critical considerations in evaluating proposals. This is not to say that demonstrate competence and experience are the only relevant criteria, but it must be a significant factor.

4. *Fully funded and ready to start?*

Among the multiple purposes of the ARRA is immediate stimulus to the national economy. Thus a project for which funds can be committed quickly should be funded before an equally meritorious application that can’t begin for an extended period of time. RUS should evaluate such assertions carefully however, because a possible result of simultaneous funding of multiple large projects not anticipated by vendors within their normal estimation cycles may mean that materials or construction crews simply aren’t available. RUS should immediately begin discussions with its contacts in the manufacturing and construction trades to evaluate whether there will be shortages.

E. *What benchmarks should RUS use to measure success?*

1. *Business and Residences with “first time” access*

The take rate for service should first be measured against the applicant’s demand projections, and secondly against that in areas with comparable demographics that have had broadband availability for some time. No single measurement is valid for all areas.

2. *Critical facilities provided new and/or improved services to education institutions, healthcare providers, public service and safety agencies?*

It must be assumed that all applications that receive funding for an area will ensure that service is provided to all educational, health and public safety agencies, absent some satisfactory explanation in application. Success should be measured by whether the applicant actually serves all of the users.

3. *Businesses created or saved*

Business creation, or even retention, will not necessarily be immediately apparent upon completion of a project. The fact that the applicant has built the facilities and begun successful operation of the service proposed, the creation or retention of business should be assumed to have been more likely, but the lack of new business in an area, or the failure of an existing business could be due to circumstances far beyond the control of the broadband service provider.

4. *Job retention and/or creation*

Job retention and or creation is closely tied to business creation or retention, so the analysis described under 3 above applies as well.

5. *Decline in unemployment rates*

Same answer as 3 and 4, above.

6. *State, local, community support*

Percent take rate will be one measure of community support, but there can be several others. Participation in demand stimulation activities such as computer training, etc., will also demonstrate community involvement.

Respectfully submitted

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