

**Before the
DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
Washington, DC**

In the Matter of)

American Recovery and Reinvestment Act)
of 2009 Broadband Initiatives)

) Docket No. 090309298-9299-01
)
)

COMMENTS OF DISCOVERY COMMUNICATIONS, INC.

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EXECUTIVE SUMMARY

Projects that spur demand for broadband and bring it meaningfully within the reach of all Americans are a key component of the overall national broadband strategy. While increasing broadband deployment to all areas is important, the availability of a broadband network is meaningless if no one subscribes to the service. Americans -- particularly those vulnerable populations like children in rural and low-income areas -- cannot fully realize and enjoy the benefits of broadband until there are compelling broadband content and applications available that spur demand for broadband service *and* they receive the knowledge and training on how to make the best and most productive use of that service.

While Congress has set aside certain monies for demand-side programs, NTIA should view that amount as a minimum floor only, and should seek to devote BTOP funding to as many broadband adoption programs as possible. The criteria for judging the merits of such proposals should differ from those used for evaluating infrastructure grant proposals, and should focus on an applicant's experience and proven ability to deliver results, a proposed project's ability to have a striking impact on a large population in a short timeframe, and the extent to which a proposal can meet multiple purposes of the Recovery Act, including furthering broadband education and awareness. Those projects seeking to serve public buildings, such as schools and libraries, should receive special consideration. Broad eligibility criteria, limited state involvement with respect to program approvals and disbursements, and encouragement of "shovel-ready" projects backed by financially stable applicants will ensure that funds are expeditiously distributed to a wide range of valuable programs poised to have a lasting impact on the adoption of broadband services by previously underserved populations.

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Discovery Communications, Inc. (“Discovery”) hereby submits its comments regarding the Notice (“Notice”)^{1/} issued by the Department of Commerce’s National Telecommunications and Information Administration (“NTIA”) regarding implementation of the Broadband Technology Opportunities Program (“BTOP”).

INTRODUCTION

Discovery is the world’s number one nonfiction media company reaching more than 1.5 billion cumulative subscribers in over 170 countries. Discovery empowers people to explore their world and satisfy their curiosity through 100-plus worldwide networks, led by Discovery Channel, TLC, Animal Planet, Science Channel, Planet Green, Investigation Discovery and HD Theater, as well as leading consumer and educational products and services, and a diversified portfolio of digital media services.

Discovery Education, a division of Discovery, provides high-quality digital resources to schools and homes with the goal of making educators more effective, increasing student achievement, and connecting classrooms and families to myriad avenues of learning. It does so

^{1/} Notice, *American Recovery and Reinvestment Act of 2009 Broadband Initiatives Joint Request for Information and Notice of Public Meetings*, Docket No. 090309298-9299-01 (rel. March 9, 2009).

by streaming thousands of easy-to-use, full-length educational videos and tens of thousands of content-specific clips tied directly to state and national standards into schools via the Internet. More than half of the public and private K-12 schools in the U.S. utilize Discovery Education solutions. These products help over one million educators and 35 million students harness the power of broadband and media to connect to the universe around them. Discovery Education also supports the Discovery Educator Network, a global community of individuals passionate about sharing resources, teaching with digital media, collaborating, and networking with more than 88,000 active educators worldwide.

As the nation's premier provider of educational services over broadband, Discovery is pleased to provide its responses regarding implementation of the broadband initiatives specified in the Recovery Act.^{2/}

RESPONSES TO SPECIFIC QUESTIONS REGARDING NTIA PROGRAMS

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

Response to Question 1a: NTIA should establish a percentage of funds for different categories of grant programs. However, it should view this percentage as flexible, depending on the demand for funding and the number and nature of worthwhile projects proposed for each category. Funding for projects that encourage broadband adoption should not be limited to the minimum amount set forth in the Recovery Act.

While the Recovery Act sets aside \$250,000,000 for innovative programs to encourage sustainable adoption of broadband service, NTIA should not limit funding for broadband adoption programs to this amount. Projects that spur demand for broadband offer significant

^{2/} American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) ("Recovery Act"). Discovery only reproduces and responds herein to questions for which it has particular expertise or for which it has great interest. All other questions have been omitted from this document.

public benefits and are a critical component of the BTOP grant program and the overall national broadband strategy.^{3/} Investment in broadband infrastructure is important, but such infrastructure will be left idle if members of the public do not have the knowledge, skills, or desire to make use of it. As the House-Senate conferees noted, programs encouraging the sustainable adoption of broadband service by vulnerable populations will have the important effects of “aggregating demand, ensuring community involvement, and fostering useful technology applications, thereby stimulating economic growth and job creation.”^{4/} As such, NTIA should consider funding projects that encourage demand for broadband from all available sources of funds.

Response to Question 1b: Proposals that serve more than one purpose of the Recovery Act may achieve the greatest impact for the stimulus funds spent, but NTIA’s primary focus should be on ensuring that grants directly promote at least one of the purposes of the Recovery Act in a timely and efficient manner.

Projects that further multiple purposes of the Recovery Act’s BTOP grant program -- for example, both stimulating the demand for broadband and providing broadband education, awareness and training -- may achieve the greatest impact for the amount of stimulus funds spent, and may merit a higher priority than those projects that serve only one such purpose. However, NTIA’s primary focus should be on ensuring that grants directly promote one of the

^{3/} See, e.g., Letter from The Honorable Joe Barton and Cliff Stearns, Ranking Members, Subcommittee on Communications, Technology, and the Internet, House of Representatives, to Bernadette McGuire-Rivera, Associate Administrator, NTIA, James R. Newby, Acting Administrator, Rural Development, U.S. Department of Agriculture, and The Honorable Michael J. Copps, Acting Chairman, FCC, at 2 (March 25, 2009) (suggesting that funds in underserved areas should be directed to stimulating demand rather than supply); Letter from The Honorable Michael J. Copps, Acting Chairman, FCC, to The Honorable Joe Barton and Cliff Stearns, Ranking Members, Subcommittee on Communications, Technology, and the Internet, House of Representatives, at 3 (March 31, 2009) (“I agree that stimulating demand for broadband is an important component of promoting the deployment and utilization of broadband, including programs that involve computer training or improving digital and media literacy. That is why I expect that programs that stimulate demand will receive significant attention as we develop the national broadband strategy.”).

^{4/} H.R. REP. NO. 111-16, at 774 (2009) (“Conference Report”).

purposes of the Act in a timely and efficient manner, and that grantees have the expertise and experience to carry out and sustain the project as proposed.

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

Response to Questions 2a, 2b, and 2c: While the states have an important advisory role to play in the BTOP grant program, state approval or control over the disbursement of funds should be avoided to ensure timely completion of program goals. Rather, all proposed projects should be scored according to objective pre-established criteria, and meeting a State priority should be one such factor. In considering whether a proposal satisfies a State priority, the input of any State agency or constituency should be treated equally, provided that the project on which that agency or constituency is opining falls within its area of expertise.

As Congress has noted, “States have resources and a familiarity with local economic, demographic, and market conditions that could contribute to the success of the broadband grant program.”^{5/} As a result, States play an instrumental role in ascertaining unserved and underserved areas and assessing the needs of their particular geographic areas, and should be encouraged to play that role in the NTIA process. On the other hand, states should not be directly responsible for allocating or distributing program funds, because such involvement would add an additional layer of approval and complexity to the program, delaying the distribution of funds and impeding program goals. Rather, all proposed projects should be scored according to objective pre-established criteria, and meeting a State priority should be one factor that NTIA considers when scoring a project. This approach strikes the appropriate balance

^{5/} Conference Report at 775.

for program administration by soliciting input from the States while allowing “NTIA [to] retain[] sole authority to approve the awards.”^{6/}

In considering whether a proposal satisfies a State priority, the input of any State agency or constituency should be treated equally, provided that the project on which that agency or constituency is opining falls within its area of expertise.

QUESTION 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?

Response to Question 3: Broad eligibility criteria will encourage efficient expenditure of funds on a wide range of projects.

Eligible entities are defined broadly in the Recovery Act to include not only states and non-profit organizations but also “any other entity, including a broadband service or infrastructure provider, that the Assistant Secretary finds by rule to be in the public interest.”^{7/} This “broad definition of entities that are eligible to receive grants” was designed to ensure that “as many entities as possible [will] be eligible to apply for a competitive grant.”^{8/} Consequently, public entities, private entities, and quasi-governmental entities all should be eligible to receive funding. This will encourage a wide range of applicants, enabling NTIA to choose from the best possible proposals and channel funds to the most worthy and experienced applicants.

^{6/} Conference Report at 775.

^{7/} Recovery Act § 6001(e)(1)(C).

^{8/} Conference Report at 775.

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

Response to Questions 4a and 4b: NTIA should adopt an objective scoring system that rates proposals according to established evaluation criteria. In setting these criteria, NTIA should establish different criteria to evaluate projects that spur demand for broadband, to reflect the different qualities that will enable such projects to succeed in meeting the goals of the Recovery Act. Such criteria should include applicant experience, project impact, time to market, and service to public buildings.

Given the inherent differences between projects to deploy additional broadband infrastructure (“supply-side”) and those that encourage greater demand for broadband (“demand--side”), different proposal evaluation criteria must be adopted for each type of proposal. Criteria for projects designed to stimulate the widespread adoption of broadband services should include the following:

- ***Applicant Experience.*** NTIA should place a high priority on applications from applicants that have specific experience carrying out the proposed project. Applicants with proven experience and success in designing, rolling out and providing broadband infrastructure, broadband content and broadband products and services are more likely to create high-quality broadband content that better spurs demand and so represents the most efficient use of valuable stimulus funds. There is less risk that such applicants will run into problems implementing proposals, particularly under BTOP’s compressed timeframe and potentially stringent metrics.

- **Financial Stability.** Financially stable applicants are more apt to be able to achieve sustainable success in spurring public demand for broadband and should receive priority for funding. While the Recovery Act requires applicants to fund specific portions of their proposed projects, it is equally important to the nation’s long-term broadband plan that fund recipients be able to continue to fund and grow their projects once the grant money has been used, such that the grant money is a “down payment” for future broadband growth rather than representing the entire funding for a short-term project with little long-lasting impact.
- **Project Impact.** NTIA should give a higher score to projects that will affect a large number of people per tax dollar spent.^{9/} Projects with a “multiplier effect” are a better use of federal funds than projects that only affect a finite group of people in a limited geographic area or areas.
- **Time to Market.** NTIA should take into consideration the time it will take an applicant to implement its proposal, giving priority to projects that can have an effect in the market as soon as possible after the money is received. The sooner a project can achieve results, the higher the score it should receive.

^{9/} See, e.g., OFFICE OF THE PRESS SECRETARY, EXEC. OFFICE OF THE PRESIDENT, Memorandum for the Heads of Executive Departments and Agencies: Ensuring Responsible Spending of Recovery Act Funds (March 20, 2009) (reiterating to agency heads that Recovery Act funding should be directed to “achieve economic stimulus by optimizing economic activity . . . in relation to the Federal dollars obligated”); Letter from The Honorable Joe Barton and Cliff Stearns, Ranking Members, Subcommittee on Communications, Technology, and the Internet, House of Representatives, to Bernadette McGuire-Rivera, Associate Administrator, NTIA, James R. Newby, Acting Administrator, Rural Development, U.S. Department of Agriculture, and The Honorable Michael J. Copps, Acting Chairman, FCC, at 2 (March 25, 2009) (suggesting that allocation of Recovery Act “funds be based on competitive criteria, so that projects that have the most impact for the least amount of taxpayer dollars are funded before less efficient projects”); Letter from The Honorable Michael J. Copps, Acting Chairman, FCC, to The Honorable Joe Barton and Cliff Stearns, Ranking Members, Subcommittee on Communications, Technology, and the Internet, House of Representatives, at 3 (March 31, 2009) (“I agree that the grant programs under the Recovery Act should be implemented in the most effective manner possible to achieve the goals set forth by Congress.”).

- *Service to Public Interest Buildings.* NTIA should place a high priority on applications that would extend the benefits of broadband to public interest buildings such as schools and libraries.
- *Synergies with Other Stimulus Programs.* NTIA should favor funding programs that create synergies with other stimulus programs of the Recovery Act, and those that serve multiple purposes of the BTOP grant program.

QUESTION 7

Grants for Innovative Programs to Encourage Sustainable Adoption of Broadband Service: The Recovery Act directs that not less than \$250,000,000 of the BTOP shall be awarded for grants for innovative programs to encourage sustainable adoption of broadband services.

- What selection criteria should be applied to ensure the success of this program?
- What measures should be used to determine whether such innovative programs have succeeded in creating sustainable adoption of broadband services?

Response to Questions 7a and 7b: See Response to Question 4.

The selection criteria and performance metrics should mirror the criteria stated above for demand-side broadband initiatives as described in Discovery's response to Question 4. Success in furthering adoption of broadband service can be measured by data demonstrating increased adoption and usage of broadband service in the supported area or population following a grant.

QUESTION 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. The Recovery Act also requires that applicants demonstrate that their proposals would not have been implemented during the grant period without Federal assistance. The Recovery Act allows for an increase in the Federal share beyond 80 percent if the applicant petitions NTIA and demonstrates financial need.

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

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

Response to Questions 9b and 9c: Financially stable applicants with a proven track record of success in implementing broadband adoption programs are best positioned to meet BTOP’s compressed timeframe and important goals.

Financially stable applicants with expertise in providing broadband services will be able to provide sustainable services to the public most quickly and effectively, ensuring that federal dollars are not wasted on shaky projects with only fleeting impact. In addition, the Recovery Act requires funded projects to be those that “would not have been implemented during the grant period without Federal grant assistance.”^{10/} “Shovel-ready” projects – those projects that have been contemplated but for which an officer of the grant recipient certifies that no plans for execution during the grant period exist – strike the appropriate balance between Recovery Act eligibility and implementation requirements, and should be funded to the full 80 percent contemplated by the Recovery Act.

QUESTION 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. The Recovery Act also requires that grant recipients report quarterly on the recipient’s use of grant funds and the grant recipient’s progress in fulfilling the objectives of the grant proposal. The Recovery Act permits NTIA to de-obligate awards to grant recipients 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. **What is the most efficient, effective, and fair way to carry out the requirement that the BTOP be established expeditiously and that awards be made before the end of fiscal year 2010?**

^{10/} Recovery Act § 6001(e)(3).

Response to Question 10a: Projects with near-immediate impact should receive priority to maximize the value of stimulus funds.

In order to maximize the benefits of the BTOP grant program, NTIA should ensure that the rules for BTOP prioritize funding for projects that will begin achieving results as near to the time of funding as possible. Projects with short implementation timeframes often provide greater value per federal dollar and will deliver the economic boost for which they are designed.

QUESTION 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?”**

Response to Question 13a: Definitions must reflect the differences between demand- and supply-side projects.

Key definitions should reflect the inherent differences between infrastructure and adoption projects. For projects designed to spur greater broadband adoption, the definition of “underserved area” should be based upon a comparison of broadband availability versus broadband adoption in a particular geographic area. For example, the Commission’s latest broadband report released in June 2008 found that 90.5 percent of the lowest density zip codes (defined as those with fewer than six persons per square mile) had access to broadband services.^{11/} However, home broadband adoption in rural areas was estimated at only 31 percent,

^{11/} *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Fifth Report, 23 FCC Rcd 9615, ¶ 36 (2008).

with broadband adoption for U.S. adults nationwide far surpassing that statistic at 72 percent.^{12/}

As a result, Discovery proposes that NTIA define “underserved area” to mean an area where broadband adoption is less than 72 percent. Such a definition will facilitate the adoption of broadband in the areas that need it most.

CONCLUSION

Without adequate funding for adoption programs, end users will have neither the knowledge nor the desire to make good use of broadband infrastructure investments. It is imperative that NTIA ensure adequate funding for projects that lead to greater understanding of and demand for broadband access. Promulgating rules that encourage proposals from financially viable entities with a proven track record of success in the provision of broadband services will ensure that broadband stimulus funds are put to their best and most efficient use.

Respectfully submitted,

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^{12/} *Id.* ¶ 60.