East-Central Vermont Community Fiber-Optic Network
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TO: ADMINISTRATOR OF THE RURAL UTILITY SERVICE (RUS)
FROM: EAST CENTRAL VERMONT COMMUNITY FIBER NETWORK

DATE: April 13, 2009

RE: Response to request for "Distance Learning, Telemedicine, and Broadband Program" ("the DLTB Program")

Background

East Central Vermont Community Fiber Network is a joint venture of 22 small towns and villages. We very much appreciate the opportunity to submit comments to RUS as to how best to interpret and implement the relevant sections of the American Recovery and Reinvestment Act of 2009 that has significantly expanded the scope and resources available for the above DLTB Program.

A. Facilitating Rural Development

The ARRA sets out numerous priorities for RUS to consider in making grant, loan or loan guarantee awards. In particular, the act requires RUS to establish priority for project that offer access to "sufficient high speed broadband service to facilitate rural economic development, as determined by the Secretary of Agriculture." We suggest that the Secretary consider that projects proposed under ARRA have the following characteristics in order to be deemed to be facilitating rural economic development:

1. **Universal Deployment** – No application should be considered that does not provide for universal availability within the proposed area to be served. Applicants cannot be permitted to "cherry pick" "pockets" within a community and leave the remainder in an even greater peril of ever being served. Universal coverage is one of the most important components of determining whether an area is currently "unserved/underserved." It must be mandatory obligation for any funded project.

2. **Affordability** – mere presence of broadband is meaningless if the local population cannot afford to purchase the connection. Grant applications should provide some forecast of pricing policy.

3. **Speed in BOTH directions**: Fast upload is also important--and rapidly becoming JUST as important as download;

4. **Latency:** Latency comes in two flavors: a) the average delay per packet; and, b) variability in the amount of delay (known as "jitter"). High latency (i.e. lengthy and/or irregular delay in delivering packets) is death on many applications (e.g. video---which includes such things as real time transmission of medical data like MRIs, XRays etc). Bad latency and jitter are very common in many wireless applications.

5. **Reliability**: Traditional telephone networks are engineered to the famous "5-nines" standard (i.e. each element is engineered to work 99.999% of the time). Applicant's networks should be engineered to the same standard. In systems where constrained bandwidth is shared between many customers, the reliability of advertised speed is very low. Almost every DSL, cable modem or wireless subscriber is familiar with the fact that their networks work pretty well at 3:00 AM--but slow to a crawl at 6:00 PM. Reliability--both of the connection itself and of its characteristics is, obviously, fundamental to a bedrock, foundation infrastructure.

6. **Upgradeability**: Demand for bandwidth (and low latency, reliability etc) is growing rapidly. Any technology which meets today's standard but is difficult/expensive to upgrade over time should not be eligible for funding or at least should be scored lower. The rationale for such demerits is clear. The taxpayer should be entitled to rely upon the network elements (s)he pays for with the stimulus money for as long as possible.

B. Maximizing the number of rural residents that can benefit from the program:

The ARRA provides for RUS to offer grants, loans or loan guarantees, and further establishes a priority for projects that "provide service to the highest proportion of rural residents that do not have access to broadband service." We suggest that there are several important ways in which RUS can efficiently and effectively leverage its grant funds, and thereby increase the population benefiting from this program:

1. **Use RUS funds as complements to non-federal sources of financing, including private sector debt in addition to RUS' normal requirement of an equity match.** For instance, if a project can demonstrate that, in addition to the equity match normally required, it can raise an additional percentage of private sector debt (that would rank pari passu with RUS loans) it should receive preference and accelerated processing since the private sector debt reduces the RUS' own risk, leverages its resources and brings private sector due-diligence to bear to supplement the RUS' own.

2. **The RUS should explicitly welcome and permit sufficiently subordinated private sector debt to be treated as equity for the purposes of the equity match.** Numerous kinds of entities such as many public or quasi-public entities that are prime candidates for the program cannot raise pure "equity" but can raise subordinated debt. Such debt, if properly structured, can stand in the same relationship to Federal creditors as a formal equity holder and hence there is no substantive reason why such instruments should be excluded. The only effect of such exclusion is to disadvantage such public and quasi-public entities from participating in the Program. Such an effect is clearly not what Congress intended in enacting the Program through the ARRA. The RUS should recognize that "equity" has two aspects: ownership and "first loss" position. Public and quasi-public entities cannot raise equity in the first sense, but they can raise funds on an equivalent "first loss" position, thereby providing RUS with the same protection as traditional equity.

3. **RUS should consider activating its currently authorized program for loan guarantees**. These would be especially effective in cases where a project would have been financeable in the private market but for the recent collapse. In such cases a partial guarantee (e.g. 40-60%) would enable the project to re-enter the private markets and obtain private financing. Such a mechanism would obviously double the leverage of RUS funds. It would also bring private sector due-diligence to bear since the private sector would be carrying a large portion of the risk. This should enable the RUS to accelerate its process for assessing projects, a

most desirable outcome. Further, such a mechanism would allow projects that, for various reasons (see above) may find it legally difficult to raise "equity" for the RUS' normal equity match requirement, but which can raise debt. One possible mechanism for such purpose would be to provide an RUS "loan" which is, in effect, a back-up Letter of Credit for a "debt service reserve fund replenishment". Such mechanisms are well known in the financial markets and can make project debt saleable even in the currently distressed markets, while using a relatively small amount of RUS resources and relatively little risk.

4. **RUS should consider capital leases as equivalent to its traditional loans.** In the State of Vermont, for example, municipalities are prohibited by statute from taking on "debt" for telecommunications development. They are explicitly permitted to use capital leases for this purpose, although private capital markets consider the two to be functionally equivalent. Vermont municipalities should be able to get equal consideration along with other potential borrowers, should they propose capital lease financing in an RUS loan application. They should not be excluded from what amounts to a technicality.

We would like to bring the RUS' attention to an amendment to the ARRA offered by Senator Patrick Leahy and co-sponsored by Senator Richard Shelby. This enjoyed wide support but was not voted on because (along with many other amendments, including relatively non-controversial ones like this) "the clock ran out" and the ARRA was voted on the floor. Among other things, that amendment provided for expedited procedures for approval, i.e., within 60 days of receiving such an application, since significant due diligence would have already been done by the parties providing the other 40-60% of project financing.

C. Eligible Grant Recipients:

The ARRA Act identifies "existing or prior RUS borrowers" as being one priority in allocating resources. However, it was one of many such priorities with no extra weight be given to it over other priorities. RUS must be careful not to add any weight to this priority but to treat it the way it was written: one item for consideration among many—with decisions to be made on the balance of all the statutory criteria. Local Governments and other entities not burdened by profit motive should not be disadvantaged in their reception by the RUS.

D. Timely Completion of Award Process

In order to realize the stimulus goal of ARRA, we suggest developing a more timely and streamlined process for making awards. One method for doing this was suggested in the above-mentioned "Leahy Amendment", of which the RUS was aware. There may be others, but we believe that this mechanism could be adopted directly as a policy as part of the NOFA.

E. Coordination with NTIA's Broadband Grant Program:

The statute provides that "no area of a project funded with amounts made available under this paragraph may receive funding to provide broadband service under the Broadband Technology Opportunity Program." However, we suggest that NTIA and RUS should accept proposals that segment part of a project for NTIA grants and part of a project for RUS loans, as these are specifically targeted at broadband development.