
**Before the
DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration
and the
DEPARTMENT OF AGRICULTURE
Rural Utilities Service
WASHINGTON, DC**

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

To: The Assistant Secretary for Telecommunications and Information, Department of
Commerce, and the Administrator, Rural Utilities Service, Department of Agriculture

COMMENTS OF CTIA—THE WIRELESS ASSOCIATION®

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SUMMARY

The American Recovery and Reinvestment Act of 2009 (“Recovery Act”) presents a historic, one-time opportunity to create jobs and make a lasting impact by investing a limited amount of funding in a rapid and targeted way for the deployment of much-needed broadband facilities in unserved and underserved areas of the Nation. Congress recognized that broadband deployment provides a multiplier effect, and the Recovery Act directs NTIA to ensure that community anchor institutions such as schools, universities, libraries, community centers, job training centers, hospitals, and public safety personnel have high-speed access. For these goals to be achieved, however, NTIA must focus on the overarching goals of the Act – recovery, reinvestment, job growth and broadband deployment. NTIA should not engage in a debate about what is nondiscrimination, how to define interconnection, and what qualifies as broadband. The first two issues have been debated for years, and the third has already been answered by the expert agency, the FCC. The goal should be the use of the funds to fuel sustainable broadband and create jobs as quickly as possible.

As a first step toward sustainable projects, NTIA should examine whether grant applicants have the core competencies to deploy and operate broadband networks. NTIA, therefore, should embrace applications involving commercial broadband providers. In contrast, public sector-led, municipal Wi-Fi efforts have often resulted in business and operational challenges, failing to deliver a sustainable solution to community residents and businesses. Core competency in the buildout and operation of broadband networks must be an element in the grant review process.

In crafting the program, NTIA should also recognize the unique value of mobility. Consumers have shown their overwhelming desire for mobile broadband where it is available. NTIA should consider the availability of mobile broadband in deciding which areas are “unserved” and “underserved,” and should appropriately weigh the value of mobility in selecting among grant applicants.

With respect to the definition of broadband, CTIA urges NTIA to adopt the definition recently set by the FCC through its deliberative process. The FCC’s proceeding took the unique aspects of the many broadband delivery technologies into account in crafting a flexible definition. NTIA should rely on the Commission’s notice and comment process and participation by all interested stakeholders and adopt the FCC’s current definition of broadband. Nonetheless, in the event that NTIA chooses to adopt a new definition of broadband, it must consider the technological differences between fixed and mobile broadband technologies and adopt separate definitions.

Finally, in defining the network non-discrimination and interconnection obligations that will apply as a condition of broadband grants, NTIA should not make new law by extending the applicability of regulation to new entities. The FCC’s Broadband Policy Statement does not apply to many networks today, including wireless networks. Indeed, just last week the FCC acknowledged that the Broadband Policy Statement has not been extended to wireless networks. In light of the significant issues the FCC is grappling with as it considers the implications of the Broadband Policy Statement, NTIA should not use this proceeding as the vehicle to make new law or extend requirements that communications regulators have yet to impose.

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COMMENTS OF CTIA—THE WIRELESS ASSOCIATION®

CTIA—The Wireless Association® (“CTIA”)¹ submits the following comments in response to the Joint Request for Information² from the National Telecommunications and Information Administration (“NTIA”) and the Rural Utilities Service (“RUS”) regarding the broadband stimulus programs in the Recovery Act.³ The American Recovery and Reinvestment Act of 2009 (“Recovery Act”) presents a historic, one-time opportunity to create jobs and make a lasting impact by investing a limited amount of funding in a rapid and targeted way for the

¹ CTIA – The Wireless Association® is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the organization covers Commercial Mobile Radio Service (“CMRS”) providers and manufacturers, including cellular, Advanced Wireless Service, 700 MHz, broadband PCS, and ESMR, as well as providers and manufacturers of wireless data services and products.

² *American Recovery and Reinvestment Act of 2009 Broadband Initiatives*, Joint Request for Information and Notice of Public Meetings, Docket No. 090309298-9299-01, 74 F.R. 10716 (March 12, 2009) (“*Request for Information*”).

³ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009 (“Recovery Act”).

deployment of much-needed broadband facilities in unserved and underserved areas of the Nation. Congress recognized that broadband deployment provides a multiplier effect, and the Recovery Act directs NTIA to ensure that community anchor institutions such as schools, universities, libraries, community centers, job training centers, hospitals, and public safety personnel have high-speed access. For these goals to be achieved, however, NTIA must focus on the overarching goals of the Act – recovery, reinvestment, job growth and broadband deployment. NTIA should not engage in a debate about what is nondiscrimination, how to define interconnection, and what qualifies as broadband. The first two issues have been debated for years, and the third has already been answered by the expert agency, the Federal Communications Commission (“FCC” or “Commission”). The goal should be the use of the funds to fuel sustainable broadband and create jobs as quickly as possible.

I. NTIA MUST ENSURE ITS GRANTS MAXIMIZE ECONOMIC OPPORTUNITY AND JOB CREATION.

As President Obama stated when he signed the Recovery Act into law, “what makes this recovery plan so important is not just that it will create or save 3.5 million jobs over the next two years.... It's that we're putting Americans to work doing the work that America needs done.... Because of this investment ... men and women will go to work ... bringing critical broadband connections to businesses and homes in nearly every community in America....”⁴

NTIA’s Broadband Telecommunications Opportunities Program (“BTOP”) grants will create jobs in the near term as workers deploy new network infrastructure, but it is critical that

⁴ Remarks by the President and the Vice President at the Signing of the American Recovery and Reinvestment Act, February 17, 2009 (available at http://www.whitehouse.gov/the_press_office/Remarks-by-the-President-and-Vice-President-at-Signing-of-the-American-Recovery-and-Reinvestment-Act/).

this broadband investment have a long-lasting effect on job creation and broadband access and use in unserved and underserved areas around the country. Indeed, as NTIA Senior Advisor Mark Siefert recently observed in Congressional testimony, “[a]t its core, the broadband initiatives in the Recovery Act offer a tremendous opportunity to stimulate job creation and economic growth in both the near term and for the future.”⁵ Congress recognized that broadband deployment provides a multiplier effect, and the Recovery Act directs NTIA to ensure that community anchor institutions such as schools, universities, libraries, community centers, job training centers, hospitals, and public safety personnel have high-speed access. It is up to NTIA, however, to award its limited funding to sustainable broadband projects that will advance long-term economic growth and opportunity.

One important element in ensuring that broadband projects are sustainable is to entrust the stimulus funding to the types of entities capable of successfully building and operating broadband networks. Commercial broadband service providers “have extensive technical, financial, and managerial experience and expertise in building broadband networks and providing broadband service. They clearly have the capability of carrying out the projects that they propose in a competent manner in compliance with all applicable federal, state, and local laws, and in an efficient and expeditious manner as envisioned by [the Recovery Act].”⁶

In contrast, there are numerous examples of non-commercial efforts to deploy broadband – particularly wireless broadband – that have been striking failures. Many large cities have seen

⁵ Testimony of Mark G. Seifert, Senior Advisor to the Assistant Secretary, NTIA, before the House Energy and Commerce Subcommittee on Communications, Technology, and the Internet Committee on Energy and Commerce, Hearing on “Oversight of the American Recovery and Reinvestment Act of 2009: Broadband,” at 1 (Apr. 2, 2009).

⁶ Statement of Curt Stamp, ITTA (on behalf of the multi-association group including CTIA, USTelecom, NCTA, WCAI, and SIA), NTIA/RUS/FCC Roundtable, March 16, 2009, session 1 (available at http://www.ntia.doc.gov/broadbandgrants/090316/NTIA_031609_1000-1130%20session.txt).

their plans for municipal Wi-Fi cancelled due to business or operational issues, including Chicago, IL, Springfield, IL, San Francisco, CA, Houston, TX, St. Louis, MO, Sacramento, CA, New Orleans, LA, and Portland OR. A host of smaller cities like Concord, CA, Cupertino, CA, Foster City, CA, Riverside, CA, San Jose, CA, Santa Clara, CA, and Sunnyvale, CA, and others also face uncertain – or no – municipal Wi-Fi futures.⁷ As a first step toward sustainable projects, NTIA should examine whether grant applicants have the core competencies to deploy and operate broadband networks.

The amount of broadband stimulus funding is limited and the time is short. The only way NTIA can be assured that its grants will create and retain jobs today *and* into the future is to entrust those grants to entities that have the core competencies to deploy and operate broadband networks.

II. NTIA SHOULD RECOGNIZE THE VALUE OF MOBILITY AS IT CONSIDERS THE NATURE OF UNSERVED AND UNDERSERVED AREAS AND IDENTIFIES SELECTION CRITERIA FOR GRANT AWARDS.

U.S. consumers have shown they value mobility and, increasingly, mobile broadband. So too should the BTOP grant program. As NTIA considers the definition of unserved and underserved areas and the selection criteria for grant awards, it must recognize the pervasive role of mobile communications in how Americans live, work, and play. Specifically, in defining unserved and underserved areas NTIA should regard the markets for fixed and mobile broadband

⁷ See “Cities Unwired”, RCR Wireless News, Nov. 17, 2007 *available at* <http://www.rcrnews.com/apps/pbcs.dll/article?AID=/20071117/SUB/71117010/0/cla> (last accessed June 5, 2008); *see also* Tim Wu, “Where’s My Free Wi-Fi?”, Slate.com, Sept. 27, 2007 *available at* <http://www.slate.com/id/2174858/> (last accessed June 5, 2008); W. David Gardner, “Nine More Municipal Wi-Fi Networks Slated for Closing”, InformationWeek, May 19, 2008 *available at* <http://www.informationweek.com/news/mobility/muni/showArticle.jhtml?articleID=207801062> (last accessed June 5, 2008).

separately. In addition, mobility should be one of the criteria NTIA considers in selecting among competing grant applicants.

A. In Defining “Unserved” and “Underserved” Areas, NTIA Should Consider Whether Mobile Broadband Service Exists

In Question 13(a), NTIA asks for comment on the appropriate definitions of “unserved area” and “underserved area.”⁸ CTIA urges NTIA to consider separately the markets for fixed and mobile broadband services in formulating these definitions. To the extent that a consumer does not have access to mobile broadband in the 21st century, they are not being served. If the United States is to lead the world in broadband it must recognize that third- and fourth-generation wireless networks will drive broadband innovation, and therefore use.⁹ If, as Congress has recognized, part of the goal is to increase demand for broadband, not just increase supply, NTIA must support the service that consumers are choosing – mobility. Accordingly, in determining whether an application with mobility seeks to serve an area that qualifies as “unserved” or “underserved,” NTIA should consider whether consumers in the area have access to mobile broadband services.

B. A Key Consideration in the Grant Selection Process Should Be Whether the Applicant is Proposing to Provide Mobile Broadband Service

Wireless is not a third pipe into the *home*, but rather a third pipe to the *person*, wherever they are, whenever they want access to information. In a National Consumer Study conducted last year, MyWireless.Org® found that, if forced to choose, a majority of consumers would keep

⁸ *Request for Information* at Question 13(a).

⁹ Wireless carriers recently announced the expansion of their marketing and provision of “netbooks” to wireless users. See Olga Kharif, *Wireless Carriers: Your New PC Retailer?*, BusinessWeek, Apr. 13, 2009, available at http://www.businessweek.com/technology/content/apr2009/tc20090410_637212.htm.

their wireless phone service instead of their landline phone service.¹⁰ Mobile broadband additions are driving the growth of high-speed lines overall, and mobile broadband utilization rates are accelerating at breakneck speed. According to the FCC's most recent High-Speed Internet Access Services Report, the number of Americans with access to high-speed mobile broadband more than doubled from December 2006 to December 2007, and the number of mobile broadband users with "advanced services lines" more than tripled in that same time period.¹¹ The report further demonstrates that wireless broadband additions from December 2006 to December 2007 outpaced, by nearly three to one, the additions for cable companies and wireline telephone companies combined.¹²

Moreover, mobile broadband usage is skyrocketing. As Nielsen Mobile recently reported, "In the US, Mobile Internet has become a mass medium."¹³ One study recently estimated that data traffic will grow at a rate about one hundred times greater than voice traffic over the next ten years.¹⁴ In light of this significant and pervasive evidence of the value that consumers place on mobile broadband where it is available, *all* Americans should enjoy access to the benefits of mobile broadband communications.

Accordingly, as NTIA identifies the selection criteria and evaluation factors it will use in selecting individual applications,¹⁵ it should account for the extent to which U.S. consumers

¹⁰ MyWireless.org® National Consumer Survey (conducted March 17-19, 2008).

¹¹ Industry Analysis and Technology Division, Federal Communications Commission, *High-Speed Services for Internet Access: Status as of December 31, 2007* tbls. 1 & 2 (January 2009), available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-287962A1.pdf.

¹² *Id.*

¹³ Nielsen Mobile, "Critical Mass: The Worldwide State of the Mobile Web," at 3 (July 2008).

¹⁴ Peter Rysavy, "Mobile Broadband Spectrum Demand," at 11 (Dec. 2008).

¹⁵ Request for Information at Question 4.a.

have shown they value mobility. To that end, NTIA should consider whether an applicant seeks to provide mobility in selecting among competing grant proposals.

III. NTIA AND RUS SHOULD NOT UNDERTAKE TO REDEFINE “BROADBAND.”

In the Request for Information, NTIA asks a number of questions relating to the definition of broadband, speed thresholds for broadband services and technologies for providing broadband service. CTIA urges NTIA to adopt the Commission’s current – and recently updated – definition of broadband. Through FCC Form 477, the Commission collects data on the speeds of broadband connections across all technologies. As recently as last year, the Commission undertook to redefine the data collected from broadband providers to reflect the current broadband marketplace.¹⁶ The Commission’s definitions come as a result of a deliberative notice and comment process that took into account the wide-ranging interests of the myriad technologies and markets that comprise America’s broadband market. In the short time permitted by the Recovery Act, NTIA should not undertake to replicate FCC policy adopted less than one year ago.

Nonetheless, in the event that NTIA chooses to adopt a new definition of broadband, it must consider the technological differences between fixed and mobile broadband technologies and adopt separate definitions. In Question 13(b), NTIA asks whether the BTOP should establish “different threshold speeds for different technology platforms” and how “shared facilities” might impact the definition of broadband service.¹⁷ The Joint Explanatory Statement

¹⁶ See generally Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscriberhip Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscriberhip, Report and Order, 23 FCC Rcd 9691 (2008).

¹⁷ *Id.* Question 13(b)(2) & (5).

accompanying the Recovery Act makes the intent of Congress clear: “In defining ‘broadband service,’ the Conferees intend that the NTIA take into consideration the technical differences between wireless and wireline networks....”¹⁸ The amount of spectrum available for a wireless broadband network and the extent that spectrum must be shared among users dictate that network speeds are a product of relevant propagation characteristics, the number of simultaneous users, the nature of such use, and network management techniques. Wireless providers cannot simply “build their way out” of network congestion because of the limited amount of spectrum available. Despite the challenge presented by spectrum limitations, the wireless industry has invested billions in the deployment of 3G, and is in the process of planning and deploying 4G networks, that offer robust broadband service.¹⁹

Moreover, all of the 3G and 4G technologies that U.S. wireless carriers are in the process of deploying meet or exceed the Commission’s current definition of broadband. As NTIA considers the definition of broadband for use as a gating criterion for BTOP grants, adoption of the current definition – or a new definition specific to mobile wireless – should cast as wide a net of potential mobile broadband providers as possible and therefore should not exclude the third generation mobile wireless services that are available today.

¹⁸ H.R. Conf. Rep. No. 111–16, at 776 (2009).

¹⁹ As CTIA noted previously, “the wireless industry continues to commit substantial resources to meet evolving consumer demands.... For the first half of 2007, the wireless industry’s six-month incremental capital expenditures in operational systems were \$9.71 billion, resulting in a total cumulative capital expenditure in operational systems of more than \$233 billion (not including billions paid to the federal treasury for spectrum).” Comments of CTIA—The Wireless Association, WT Docket No. 08-27, at 10 (March 26, 2008).

IV. NTIA SHOULD NOT EXPAND NON-DISCRIMINATION AND INTERCONNECTION OBLIGATIONS BEYOND THOSE THAT EXIST TODAY.

In defining the network non-discrimination and interconnection obligations that will be contractual conditions of broadband stimulus grants,²⁰ NTIA should not make new law or expand the communications regulation beyond existing obligations and applicability. Broadband network providers operate today under a regulatory structure that has been developed in a series of proceedings at the FCC that have engaged in fact-finding and relied on policy expertise over several decades. By contrast, the instant proceeding is of necessity breathtakingly short – the Recovery Act was signed on February 17, 2009, and NTIA intends to issue a notice of funding availability within the April-June 2009 timeframe. This proceeding simply does not afford the luxury of time that would be necessary to go beyond the regulatory structure that has been (and continues to be) carefully considered by the FCC.

When creating the obligations for grant recipients, and when reviewing individual applications, NTIA and RUS must interpret the language of the Act based on the type of service that is being offered. For example, if a state health department were to construct a broadband network to interconnect rural health care facilities and teaching hospitals, it would not today be subject to the Broadband Policy Statement (even if it received funding from the FCC’s universal service Rural Health Care Pilot Program to do so), and such a network should not be subject to the Policy Statement if it receives a BTOP grant either. Similarly, a broadband network built and operated by public safety agencies for first responders would not be subject to the Policy Statement and should not be subject to it under BTOP. The same is true for a wireless network.

²⁰ Request for Information at Question 13.c. (citing Recovery Act § 6001(j)).

The Commission acknowledged as recently as last week that the Broadband Policy Statement has not yet been applied to wireless providers, and NTIA should not make new law here.²¹ The Broadband Policy Statement should be applied to broadband stimulus grantees within the context of its existing parameters, and not more broadly. Wireless networks are inherently different than the networks for which the Policy Statement was developed. The underlying network infrastructure, including spectrum, as well as the integration of the customer equipment make wireless significantly different than other broadband networks. The Policy Statement clearly was not designed to be applied to any of the networks / services discussed above, and should not be extended to these broadband offerings in the context of the stimulus effort.

CONCLUSION

NTIA and RUS face a daunting challenge in administering the BTOP program grants in a cost-effective manner and in a very short period of time. Because of these time constraints NTIA and RUS should not undertake to redefine policy that the FCC has crafted over the last 15 years through a deliberative process. Rather, in focusing on the goals of the Recovery Act, NTIA has the opportunity to bring the mobile wireless broadband services that Americans desire to unserved and underserved areas. America's mobile wireless carriers are well-suited to use BTOP funding to stimulate the economy and quickly create jobs while investing BTOP funds in projects that will provide long-term, sustained broadband infrastructure and benefit in unserved

²¹ *A National Broadband Plan for Our Future*, GN Docket No. 09-51, Notice of Inquiry, FCC 09-31 (rel. April 8, 2009) at n.28 & n.71 (“The extent to which the principles in the Internet Policy Statement apply to wireless service providers is currently before the Commission in the Skype proceeding.”).

areas. CTIA urges NTIA and RUS to adopt rules for the broadband stimulus funding programs that recognize the unique benefits of mobility for *all* American broadband consumers.

Respectfully submitted,

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