

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

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

RESPONSES OF T-MOBILE USA, INC.

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EXECUTIVE SUMMARY

In awarding BTOP grants for mobile broadband services, NTIA should promote job creation, consumer choice, mobility, and long-term sustainability. The construction of new wireless broadband network facilities, including “middle mile” facilities, can create or preserve jobs because of the construction of cell sites and other network infrastructure. In underserved areas, the addition of competitors can expand consumer choice and put downward pressure on rates, thereby promoting broadband adoption. Wireless investments often are the most technologically cost effective means for bringing broadband to remote or sparsely populated areas. Rollout of mobile broadband to such areas will further the purposes of BTOP.

Defined terms should take into consideration the inherent differences between wireline and wireless broadband and should provide consumers with access to mobile broadband. With respect to wireless broadband, “*unserved area*” should be defined as any area in the United States where a consumer does not have access to a terrestrial mobile broadband provider, and “*underserved area*” should be defined as an area, defined by census tract, where there currently are fewer than three terrestrial mobile broadband providers. In underserved areas, a qualified wireless infrastructure project should be one that uses an air-interface technology that delivers theoretical maximum data transfer rates of at least 14.4 megabits per second downstream and 2 megabits per second upstream upon completion of the project. In awarding grants, NTIA should be neutral as among wireless technologies that can meet this standard. Conditioning the availability of funds on transmission speeds that are beyond the reach of mobile broadband providers in the near-term for areas that already are an economic challenge to serve would deprive the economy and consumers of the jobs and economic growth that wireless broadband makes possible and the value of mobile Internet access.

NTIA should give priority to projects that will create jobs within the short term. Consistent with the overall goals of the Recovery Act, BTOP funds should be used for broadband projects that will create jobs in the short term. Projects that can be implemented quickly, including the acceleration of longer term deployment plans, are particularly well-suited to the compressed timeframe of stimulus disbursements and therefore are best poised to have the greatest economic and job-stimulating impact.

Allowing States to control the disbursement of BTOP funds will add an additional layer of complexity into the process that could impede program goals. Allowing States to play the role of apportioning funds will by necessity delay the award of grant dollars, create further uncertainty, and delay near-term job creation that could potentially reduce the economic value of the program.

Qualified wireless infrastructure projects should be afforded an expedited zoning/permitting process. As a condition of state funding and consistent with NTIA’s statutory authority to adopt rules to carry out the purposes of BTOP, NTIA should establish a rule placing a reasonable time limit – no more than 75 days – on state and local zoning approval for the construction of cellular towers. Such a requirement will enable wireless broadband providers to begin job-creating construction projects as quickly as possible and substantially complete those projects within the Recovery Act’s two-year deadline.

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RESPONSES OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”) hereby submits its responses to the questions issued by the Department of Commerce’s National Telecommunications and Information Administration (“NTIA”) regarding implementation of the Broadband Technology Opportunities Program (“BTOP”).^{1/} T-Mobile is the fourth largest wireless carrier in the United States and serves approximately 33 million customers. We applaud the efforts of NTIA in implementing the American Recovery and Reinvestment Act of 2009 and believe that the program provides a critical “down payment” on our nation’s future broadband plan by extending broadband reach while also creating jobs.

T-Mobile recognizes that in formulating the implementing rules for BTOP, NTIA must balance a wide array of policy objectives and stakeholder interests. Likely applicants include public sector as well as private sector entities, seeking to further statutory goals ranging from infrastructure investments and sustainable adoption of broadband service to improved access to and use of broadband service by public safety agencies. In these comments, T-Mobile focuses on the areas in which it has a particular expertise and interest – the eligibility criteria, definitions,

^{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, 74 FED. REG. 10716-10721 (rel. March 9, 2009) (“Notice”).

and other elements of the program of greatest significance to a private sector provider of mobile wireless broadband service.

For NTIA's convenience, the questions that T-Mobile has answered are set out below along with T-Mobile's responses.^{2/}

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 and 1b: NTIA should encourage the funding of mobile broadband projects, which can achieve multiple BTOP grant program purposes.

While the funding available for BTOP is considerable, in the context of overall private sector investments in communications networks and services, it is a relatively limited amount. In 2008 alone, for instance, the wireless industry invested over \$20 billion to improve wireless services nationwide.^{3/} With limited BTOP dollars, NTIA should seek to advance projects that serve more than one of BTOP's five purposes and that maximize the value and reach of each federal dollar spent.^{4/} Wisely spent BTOP dollars can serve as a "down payment" on good ideas and projects that create needed jobs as well as help to incubate a marketplace that generates more jobs and broadband reach in the future.

^{2/} T-Mobile also endorses the responses of CTIA-The Wireless Association® to NTIA's questions.

^{3/} See CTIA Wireless Quick Facts, available at <http://www.ctia.org/advocacy/research/index.cfm/AID/10323>.

^{4/} 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 and the number of jobs created or saved in relation to the Federal dollars obligated").

Projects for the deployment of mobile broadband service have the potential to meet these objectives and should be among those receiving serious consideration for funding. The benefit of terrestrial mobile broadband as a service is that it can enable consumers to access the Internet at any time from any location, which wireline and fixed wireless broadband service simply by definition cannot do. Projects to deploy mobile broadband infrastructure can also be a more technologically cost effective means for bringing broadband to remote or sparsely populated areas. As such, mobile broadband providers can advance the program's twin purposes of bringing affordable, sustainable broadband to consumers in both unserved and underserved areas.^{5/}

Funding mobile broadband offerings is also consistent with the stated goals and purposes of the program because such projects can further an additional program purpose by “stimulat[ing] the demand for broadband, economic growth, and job creation.”^{6/} T-Mobile's own experience in rolling out its Advanced Wireless Services spectrum for broadband services underscores that the construction of new wireless broadband network facilities does create jobs in the construction of cell sites and other network infrastructure.^{7/} The construction of mobile broadband facilities also can create and preserve jobs by increasing the amount of equipment manufactured and the amount of technical support and customer service representatives needed to service new broadband offerings and operations. In addition, the availability of mobile

^{5/} American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (“Recovery Act”), § 6001(b)(1)-(b)(2) (setting forth that two of the BTOP program purposes are to “provide access to broadband service to consumers residing in unserved areas of the United States” and “provide improved access to broadband service to consumers residing in underserved areas of the United States”).

^{6/} Recovery Act § 6001(b)(3).

^{7/} A study commissioned by CTIA—The Wireless Association® (“CTIA”) found that to achieve ubiquitous 3G mobile broadband coverage, approximately 16,000 new towers would need to be constructed and approximately 55,000 existing towers would need to be modified. CostQuest Associates, *U.S. Ubiquitous Mobility Study: Identification of and Estimated Initial Investments to Deploy Third Generation Mobile Broadband Networks in Unserved and Underserved Areas*, at 4.

broadband service can contribute to demand for wireless services throughout the nation's workforce, boosting worker productivity and economic growth.

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?

Response to Question 2a and 2b: Allowing States to control the disbursement of BTOP funds would add an additional layer of complexity to the process and could impede program goals of rapid deployment and economic stimulus in the near-term.

While "States have resources and a familiarity with local economic, demographic, and market conditions that could contribute to the success of the broadband grant program,"^{8/} the States should not be in the role of distributing BTOP funds. The House-Senate conferees made clear that while NTIA, at its discretion, should seek advice and assistance from the States, "NTIA retains sole authority to approve the awards."^{9/} Given the serious time constraints imposed on NTIA for deploying funds, putting States in the role of middleman grantors will only increase uncertainty that could discourage participation and could also unfairly disadvantage consumers in States that do not have the resources to devote to filing applications or creating a comprehensive broadband strategy. Allowing the States to apportion funds or otherwise make the determination on which entities receive BTOP support inevitably would delay the deployment of funds. It could also introduce inconsistencies and uncertainty in the manner in which grants are awarded, thereby slowing job creation and potentially reducing the economic value of the stimulus program. Similarly, NTIA should reject suggestions of some commenters

^{8/} H.R. REP. NO. 111-16, at 775 (2009) ("Conference Report").

^{9/} Conference Report at 775.

at the BTOP roundtables that States be given the authority to conduct audits of BTOP grants. State oversight would add an additional and unnecessary layer of bureaucracy to the BTOP program. While post-award monitoring is an important component of the program, it is the responsibility of NTIA.

Although States should not control the disbursement of BTOP funds, NTIA should, as Congress contemplated, give the States the opportunity to voice their preferences for the use of BTOP funds so long as they abide by the time and process constraints set by the agency. Some States have already undertaken (or are currently undertaking) analysis of broadband facilities within the State, and such information could be very valuable to NTIA in its decisions regarding BTOP funding.

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: Eligibility should be broadly defined to include private entities and also allow for the construction of “middle mile” facilities by entities other than incumbent local exchange carriers.

The Recovery Act defines eligible entities 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.”^{10/} This provision creates a “broad definition of entities that are eligible to receive grants,” so that “as many entities as possible [will] be eligible to apply for a competitive grant, including wireless carriers . . .”^{11/}

^{10/} Recovery Act § 6001(e)(1)(C).

^{11/} Conference Report at 775.

Commercial wireless providers have extensive expertise in building, managing, and maintaining broadband networks and providing broadband services. For these reasons, any existing entity that holds an FCC license, state certificate of public convenience and necessity, cable franchise, or similar governmental authorization should be presumed eligible for the BTOP grant program. Defining eligibility to include such providers will encourage these qualified applicants to submit proposals, thus promoting the efficient expenditure of funds on high-quality broadband networks and services consistent with the requirements specified in the Recovery Act.

In addition to finding that providers of wireless broadband are eligible for BTOP grants, NTIA should accept applications for grants for high-speed “middle mile” facilities (such as Ethernet), as specifically contemplated by the House-Senate conferees,^{12/} to carry calls between cell sites in unserved or underserved areas and a carrier’s mobile switching office. As T-Mobile and other wireless carriers have noted, access to adequate middle mile facilities is important to enabling faster transmission speeds for advanced wireless broadband.^{13/} T-Mobile recommends that preference be given to new providers, *i.e.*, providers other than established incumbent local

^{12/} Conference Report at 775 (eligible entities include “backhaul providers”); *id.* at 774 (stating intent for “NTIA [to] select grant recipients that it judges will best meet the broadband access needs of the areas to be served,” including funding middle-mile facilities).

^{13/} *See, e.g.*, Comments of T-Mobile USA, Inc., FCC GN Docket No. 09-29, at 4 (filed March 25, 2009) (emphasizing dearth of available backhaul facilities, requesting urgent Commission action, and stating that “[a]s T-Mobile expands its network and deploys 3G services, its need for special access backhaul services continues to increase”); Comments of Sprint Nextel Corporation, FCC GN Docket No. 09-29, at 4 (filed March 25, 2009) (“The critical link between reasonable access to bottleneck [middle mile] facilities cannot be overstated. Sprint needs such facilities to connect its tens of thousands of cell sites to its backbone network to handle not only its voice but also its growing volume of broadband data traffic.”).

exchange carriers, in order to create more jobs, spur innovation, and offer a choice of providers that will help keep the costs of backhaul more reasonable.^{14/}

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?**
- e. **Should priority be given to proposals that address several purposes, serve several of the populations identified in the Recovery Act, or provide service to different types of areas?**
- f. **What factors should be given priority in determining whether proposals will encourage sustainable adoption of broadband service?**
- g. **Should the fact that different technologies can provide different service characteristics, such as speed and use of dedicated or shared links, be considered given the statute's direction that, to the extent practicable, the purposes of the statute should be promoted in a technologically neutral fashion?**

Response to Question 4a, 4e, 4f, and 4g: In awarding BTOP grants, NTIA should promote job creation, consumer choice, mobility, and long-term sustainability.

Job Creation. The ability of an applicant to create jobs must be a primary factor in the grant of any BTOP dollars. From T-Mobile's own experience, for example, the construction of new wireless broadband network facilities can create numerous jobs in the construction of cell sites and other network infrastructure. In reviewing BTOP applications, NTIA should focus on an applicant's track record and potential for creating jobs in order to fulfill the purposes of the Recovery Act. Ultimately, the success of this program will be measured by whether it was able to "seed" the economy with jobs as well as broadband opportunities. The construction and

^{14/} See, e.g., Letter from Sprint Nextel Corporation, to Obama Transition Team (Dec. 19, 2008) (stating that a reduction in backhaul costs "would spur \$14.5B of economic growth and create 132,000 new jobs").

maintenance of network facilities will create additional immediate employment opportunities for Americans, and help to promote further growth through the productivity gains that mobility services make possible.

Consumer Choice. NTIA also should carefully evaluate how an applicant's proposal will facilitate competition and expand consumer choice. In some underserved areas, NTIA has an opportunity to creatively utilize BTOP dollars to support opportunities that could fuel new competition and expand consumer choice. In underserved areas, more competition can put downward pressure on rates, making broadband service more affordable.^{15/} T-Mobile notes that wireless investments may be the most technologically cost effective means for bringing broadband to many remote or sparsely populated areas, enabling wireless providers to "increase the affordability of, and subscribership to, service to the greatest population of users in [a particular geographic] area."^{16/}

Mobility. Mobility should be a key factor in NTIA's consideration of grant applications. Mobile broadband services have the potential to bring the Internet to consumers wherever they are. While current mobile broadband speeds may not equal those provided over wireline connections, mobility is a countervailing benefit that deserves consideration. And, mobile speeds have great potential to rapidly increase in the not too distant future – so NTIA should not short-change mobile uses solely on the basis of speeds available today.

^{15/} See, e.g., *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Thirteenth Report, WT Docket No. 08-27, DA 09-54, ¶ 1 (rel. Jan. 16, 2009) ("13th Annual CMRS Competition Report") (finding that competition in the wireless marketplace creates significant benefits, "including low prices, new technologies, improved service quality, and choice among providers").

^{16/} Recovery Act § 6001(h)(2)(A).

Long-Term Sustainability. The long-term sustainability of projects funded by BTOP may require ongoing private sector investment after the “down payment” of a BTOP grant has been spent.^{17/} In considering applications for funds, NTIA should look for opportunities that have the potential to obtain financing in the longer term or that might fit into the goals of the National Broadband Plan under development by the FCC.

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.

- a. What factors should an applicant show to establish the “financial need” necessary to receive more than 80 percent of a project’s cost in grant funds?
- b. 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 Question 9a, 9b, and 9c: The acceleration of existing broadband deployment plans that would not otherwise have been implemented during the next two years should qualify for BTOP funding. In addition, applicants with the ability to fund the full 20 percent of broadband projects are better positioned to roll out sustainable, competitive services to consumers.

The Recovery Act limits the use of BTOP funds to projects that “would not have been implemented during the grant period without Federal grant assistance.”^{18/} This provision should be interpreted to encourage rather than discourage funding of “shovel-ready” projects. In particular, the acceleration of plans under consideration but which would not have been implemented during the funding period in the absence of stimulus funds should qualify for

^{17/} See Recovery Act, Div. A., Title II, Dept. of Commerce, Nat’l Telecommunications and Information Admin. – Broadband Technology Opportunities Program.

^{18/} Recovery Act § 6001(e)(3).

BTOP funding. The legislative history of the Recovery Act contemplates funding for such acceleration, stating that NTIA should ensure that grant funds are used to assist infrastructure investments that might not otherwise be made or “might not be made as quickly.”^{19/}

Accelerating the execution of projects that have been contemplated but where no concrete plans have been put into place or where implementation was planned to occur outside the grant period strikes an appropriate balance between the goal of directing funds to “shovel ready” projects and the statutory ban on grants for projects that would otherwise have been undertaken.

While projects that are planned but not yet executed have the greatest job-stimulating potential, such projects must be backed by stable entities with an eye toward long-term, sustainable growth of broadband access and services. NTIA should require each applicant to provide sufficient financial information to satisfy the agency that the applicant has the resources and track record to complete the project on time and actually provide service. While it may seem appealing to fund start-ups and other entities without prior experience, NTIA should not squander valuable stimulus dollars on companies that lack sufficient capital or expertise to successfully complete and operate their proposed projects within the short timeframes contemplated by the Recovery Act. Requiring entities to fund 20 percent of each broadband project receiving BTOP funds is the minimum necessary to ensure that those entities are completely vested in the project and have an incentive to provide competitive, quality service to consumers. To ensure the widest possible availability of BTOP funds, NTIA may wish to consider giving a preference to projects in which the applicant is willing to bear more than a 20 percent share of the costs.

^{19/} Conference Report at 774.

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?

Response to Question 10a: NTIA should prioritize projects that rapidly create jobs and that utilize expedited zoning and permitting processes for qualified wireless infrastructure projects.

Consistent with the overall goals of the Recovery Act, BTOP funds should be used for broadband projects that will create jobs in the short term, or more specifically within three to 18 months of the grant. Projects that can be implemented quickly are particularly well-suited to the compressed timeframe of stimulus disbursements and therefore are poised to have the greatest economic and job-stimulating impact.

To ensure that mobile infrastructure projects can commence expeditiously, NTIA should require State and local zoning and permitting authorities to act on applications for BTOP projects in no more than 75 days. States and localities that apply for BTOP funds for their own use should be required, as a condition of funding, to adhere to this 75-day "shot clock" requirement with respect to any other recipient of BTOP funds. With respect to other government entities, NTIA should exercise its authority under section 6001(m) of the Recovery Act to require compliance with the shot clock. Section 6001(m) empowers NTIA to adopt rules "necessary to

carry out the purposes” of the Recovery Act.^{20/} A 75-day shot clock is necessary to ensure the speedy deployment of wireless broadband infrastructure contemplated by Congress.^{21/} Ensuring prompt approval for BTOP projects is also necessary to enable grant recipients to substantially complete projects within the two-year deadline specified by the Recovery Act.

Obtaining zoning and other authorizations from local authorities has become increasingly cumbersome for wireless carriers. In June 2008, nearly one-third of T-Mobile’s approximately 706 pending collocation requests had been pending for more than one year. Out of those requests, approximately 114 had been pending for more than three years. The same trend applies for requests for new towers with over 30 percent of such requests pending for more than one year and over 25 pending for more than three years over the same time period.

A shot clock does not require that local governments act favorably on any particular application, just that they make some decision in a timely fashion. Even a negative decision can advance the ball by allowing a service provider to decide whether to revise its application, appeal the adverse decision, or pursue a different site. It is T-Mobile’s experience that in some cases local authorities sit on clearly meritorious applications because they do not want to approve them, but realize they have no lawful grounds for rejection. Although most localities exercise their zoning authority responsibly, a shot clock would prevent those that do not from improperly slowing down deployment of mobile broadband services.

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

^{20/} Recovery Act § 6001(m).

^{21/} Recovery Act § 6001(e)(3) (requiring program applicants to “provide a detailed explanation of how any amount received under the program will be used to carry out the purposes of this section in an efficient and expeditious manner”).

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?”**
- b. How should the BTOP define “broadband service?”**
 - (1) Should the BTOP establish threshold transmission speeds for purposes of analyzing whether an area is “unserved” or “underserved” and prioritizing grant awards? Should thresholds be rigid or flexible?**
 - (2) Should the BTOP establish different threshold speeds for different technology platforms?**
 - (3) What should any such threshold speed(s) be, and how should they be measured and evaluated (e.g., advertised speed, average speed, typical speed, maximum speed)?**
 - (4) Should the threshold speeds be symmetrical or asymmetrical?**
 - (5) How should the BTOP consider the impacts of the use of shared facilities by service providers and of network congestion?**

Response to Question 13a and 13b: Definitions of “unserved area,” “underserved area,” and “broadband service” should be technologically neutral other than taking into consideration the inherent differences between wireline and wireless broadband service and should promote consumer choice in mobile broadband service.

Definition of “unserved area.” Wireline and wireless broadband services differ in important respects and such differences must be taken into consideration in defining key program terms. The House-Senate conferees noted such distinctions, stating their intention that “NTIA take into consideration the technical differences between wireless and wireline networks, and consider the actual speeds that broadband networks are able to deliver to consumers under a variety of circumstances.”^{22/} Accordingly, with respect to wireless broadband, “unserved area”

^{22/} Conference Report at 776; *see also* Letter from The Honorable Michael J. Copps, Acting Chairman, Federal Communications Commission, to The Honorable Joe Barton, Ranking Member, Committee on Energy and Commerce and The Honorable Cliff Stearns, Ranking Member, Subcommittee on Communications, Technology, and the Internet, Committee on Energy and Commerce (March 31, 2009) (“Thus, while technological and competitive neutrality is important, I also recognize that different technology platforms can bring different features and benefits, and that a national plan for broadband deployment should not limit the full potential of a particular platform.”).

should be defined as any area in the United States where a consumer does not have access to a terrestrial mobile broadband provider.

Definition of “underserved area.” “Underserved area” should be defined as an area, defined by census tract, where there currently are fewer than three terrestrial mobile broadband providers. According to the FCC’s *13th Annual CMRS Competition Report*, approximately 272 million people, or 95.5 percent of the total U.S. population, have three or more different operators offering mobile telephony or mobile broadband service in the census blocks in which they live.^{23/} An examination of geographic coverage, however, shows that only 41 percent of the total U.S. land area is covered by three or more providers.^{24/} While these statistics combine traditional mobile telephony and mobile broadband into one market, the FCC has determined that these two services are not interchangeable: mobile broadband provides far superior speeds and service quality than traditional mobile telephony to consumers.^{25/} As legacy systems increasingly are being replaced with high-speed mobile broadband networks, NTIA should work to ensure that as many U.S. consumers as possible have access to at least three mobile broadband providers.

Qualified Projects. In unserved areas, applicants should be eligible for grants to construct facilities to provide mobile broadband service, as currently defined by the FCC. In underserved areas, a qualified wireless infrastructure project should be one that uses an air-interface technology that delivers theoretical maximum data transfer rates of at least 14.4 megabits per second downstream and 2 megabits per second upstream upon completion of the project.

^{23/} *13th Annual CMRS Competition Report* ¶ 41.

^{24/} *Id.* ¶ 43.

^{25/} *Id.* ¶ 32.

Broadband. While the Recovery Act does not specify minimum broadband speeds, the House-Senate conferees were “mindful that a specific speed threshold could have the unintended result of thwarting broadband deployment in certain areas.”^{26/} Even with respect to projects for the deployment of next generation broadband facilities, the conferees instructed NTIA “to seek to fund, *to the extent practicable*, projects that provide the highest possible next-generation broadband speeds to consumers.”^{27/} Conditioning the availability of economic stimulus support on transmission speeds that are beyond the reach of mobile wireless providers for areas that already are an economic challenge to serve could deprive the economy and consumers of the jobs and economic growth that wireless broadband makes possible.

Several commenters in the BTOP roundtables have suggested threshold speeds that disregard the inherent differences between wireline and wireless broadband technologies. For instance, the National Association of Telecommunications Officers and Advisors (“NATOA”) has stated that speed thresholds should be set at 100 megabits symmetrical. Such proposals would substantially restrict the entities and types of projects that may qualify for funding, in contravention of the purposes of the Recovery Act to create jobs as quickly as possible. Adoption of these types of exclusionary definitions would frustrate, rather than facilitate, the deployment of broadband to unserved and underserved areas.

Congress directed NTIA to consult with the FCC in defining “broadband” for purposes of BTOP. In this regard, it is instructive that the Commission recently noted the difficulty in choosing a single metric to define broadband. For instance, the Commission has explained that basing broadband speed requirements on actual speeds is problematic, in part, because “factors

^{26/} Conference Report at 775.

^{27/} *Id.* (emphasis added).

beyond the control of service providers may compromise . . . the actual speeds experienced by consumers.”^{28/} Given this difficulty, the FCC relies on categories of maximum speeds that the technology or service configuration is capable of delivering for FCC broadband reporting purposes.^{29/} NTIA should adopt a similar approach in establishing speed metrics for BTOP.

QUESTION 15

Other Issues: Please provide comment on any other issues that NTIA should consider in creating BTOP within the confines of the statutory structure established by the Recovery Act.

Response to Question 15: Adherence to principles that will encourage mobile broadband providers to apply for BTOP funding will spur innovation and act as a “seed” for further broadband and economic stimulus growth.

The BTOP program represents an opportunity for the federal government to make a “down payment” on the country’s future national broadband plan. As noted above, just last year, the wireless industry alone invested more than five times the amount of funds available under BTOP. BTOP funds will not be sufficient to address all of the nation’s broadband needs, but they do provide NTIA with the opportunity to expand the reach of broadband, spur innovation in new technologies, and promote competitive choice – to make a “down payment” on the national broadband plan recently undertaken by the FCC. While a broad range of entities are competing for BTOP dollars, commercial entities have the capability and expertise to further multiple purposes of the program and put funding to some of the best and most efficient uses.

^{28/} *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, et al.*, Report and Order and Further Notice of Proposed Rulemaking, 23 FCC Rcd 9691, ¶ 36 (2008).

^{29/} *Id.* ¶¶ 19-20.

Respectfully submitted,

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