Before the

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Washington, DC

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

COMMENTS OF STEPHOUSE NETWORKS

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Stephouse Networks offers these comments in response to the March 12, 2009, joint public notice inviting interested parties to submit comments on certain designated topics that will assist the (a) National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, in establishing and administering the Broadband Technology and Opportunities Program (BTOP), and (b) Rural Utilities Service (RUS), U.S. Department of Agriculture, in implementing its expanded authority to make grants and loans for the deployment and construction of broadband systems.[1]

In authorizing BTOP, Congress seeks to accelerate broadband deployment in unserved and underserved areas, and to ensure that the strategic institutions likely to create jobs or provide significant public benefits have broadband connections of a quality and speed that compares favorably to urban areas and other surrounding communities. In expanding RUS's broadband

[1] *See,* Section 6001 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Pub. L. 111-5, 123 Stat. 115 (February 17, 2009), which requires NTIA, in consultation with the Federal Communications Commission, to establish the Broadband Technology and Opportunities Program. The Recovery Act further establishes authority for RUS to make grants and loans for the deployment and construction of broadband systems.

authority, Congress seeks to improve access to broadband in areas without service or that lack sufficient access to high-speed broadband service to facilitate economic development.

I. INTRODUCTION

A broadband Internet service provider specializing in high-speed wireless and wired Internet solutions, including DSL, Metro Ethernet, Fiber, WiMAX, and Wi-Fi, Stephouse Networks serves the needs of residential, small business, and enterprise customers throughout the United States, providing rural residential customers with license-exempt wireless broadband service ranging in speeds from 1 Mbps download/256 Kbps upload, to 10 Mbps download/1 Mbps upload.[2]

Operating from its base in Portland, Oregon, since 2002, Stephouse Networks has made steady progress in delivering wireless broadband services to underserved communities in the Pacific Northwest, including, especially, the outlying rural areas north of the Portland metro area in and around Southwest Washington.[3] Moreover, even prior to the Recovery Act, Stephouse Networks developed a strategic plan that—subject to the availability of funding—would expand its wireless network in up to 26 additional outlying rural communities in Eastern Oregon and Southwest Washington.[4] Stephouse Networks believes that wireless broadband presents the most optimal, cost-effective solution for serving rural areas with difficult terrain and low population densities—as is the case in the rolling foothills and mountainous region of Southwest

[2] To be sure, Stephouse Networks typically provides its non-rural enterprise customers with 100Mbit service, up and down, through both fiber-based Ethernet and wireless microwave Ethernet facilities, as well as has the capability to provide such customers with multi-gigabit service.

[3] Apart from serving underserved neighborhoods in the North Portland metro areas of St. John, Linnton, North Marine Drive, and parts of Jantzen Beach, which, incredibly, still have no access to DSL, Stephouse Networks currently provides residential Internet services to the rural Southwest Washington communities of Woodland, Amboy, and Ariel.

[4] These underserved communities range in population from 24 to 2,000 inhabitants—with 13 them having populations of less than 500 inhabitants, and only one of them approaching a population near 5,000 inhabitants.

Washington and that portion of the Columbia River Gorge that traverses North Central and Eastern Oregon.

II. EXECUTIVE SUMMARY

NTIA Broadband Technology Opportunities Program

1. Grant funds should not be apportioned by category, nor should a rigid scorecard based on number of purposes served be employed to evaluate applications; rather, applications should be evaluated on their merit and in the totality.

2. The states' role should be consultative, not outcome determinative, and should focus on the mandatory one grant awarded to each state.

3. Awarding grants related to network deployment directly to broadband providers serves the public interest by ensuring that NTIA maintains the most direct oversight on how the funds are used.

4. Selection criteria should be transparent, merit-based, evaluated in its totality, and identify projects that are both operationally and environmentally sustainable.

5. Subject to maintaining commercially reasonable debt-equity ratios, applicants should be permitted to use loan proceeds to support the 20% contribution. Project costs incurred prior to grant award—particularly engineering fees—should also count toward the 20% contribution.

6. Unserved should be identified as any community, or portion thereof, with access to dial up services only.

7. Underserved communities should be identified as those whose available broadband speeds are substantially less than the speeds available to other communities within the surrounding area.

8. The NTIA should adopt a flexible definition of minimum broadband speeds based on the prevailing speeds available in urban areas.

Rural Utilities Service

9. The Recovery Act's mandate to target "rural areas without sufficient access needed for economic development" allows for a more qualitative analysis than the NTIA's directive to identify unserved and underserved communities. In terms of economic development, communities compete with each other for potential businesses; thus, "access needed for economic development" should involve a comparative analysis of broadband availability across regional communities.

10. RUS should support solutions targeting improved access to "middle mile" network facilities.

III. DISCUSSION

NTIA Broadband Technology Opportunity Program

Item 1. The Purposes of the Grant Program

a. Should a certain percentage of grant funds be apportioned to each category?

Grant funds should not be apportioned by category, nor should a rigid scorecard based on number of purposes served be employed to evaluate applications; rather, applications should be evaluated on their merit and in the totality. The NTIA should avoid creating incentives for applicants to propose contrived projects narrowly tailored to suit a particular purpose without regard to the fundamentals and sustainability of the project.

Item 2. The Role of the States

a. How should the grant program consider State priorities in awarding grants?

State priorities—as articulated by each state—should be given particular emphasis with respect to the Recovery Act's mandate that the NTIA award at least one grant per state. States should share their respective priorities with NTIA, but the evaluative function of matching applications with those priorities should remain with the NTIA. And, beyond the one grant awarded per state, additional awards per state should be evaluated based on national broadband priorities and the merits of the individual projects and their related applications—and not state ranking.

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

The states' role should be consultative, not outcome determinative. NTIA should be cautious of any extensive "pre-screening" conducted by the states, where such screening has the effect of removing applications from NTIA's review and selection process. Simply put, such an

outcome-determinative role for the states lies outside the ambit of the Recovery Act. Put another way, a state's recommendation should not prejudice another entity with a compelling grant application in its own right. States, to be sure, are uniquely positioned to provide an intermediary role by identifying and assembling the needs and priorities of their county and municipal governments and non-profit institutions, giving a louder voice, in effect, to smaller constituents within the state. NTIA should encourage states to perform this intermediary role for the purpose of identifying priorities and assisting applicants to make the most effective proposals—not for the purpose of excluding potential applicants.

Surely, if Congress wanted to give states a more substantive role in the process of awarding funds, the Recovery Act simply would have lumped broadband in with other direct appropriations to the states. Significantly, the Recovery Act—by designating NTIA and RUS as "gatekeepers' of the broadband stimulus funds—reflects prevailing law with respect to broadband. That is, the Federal Communications Commission (FCC) has retained regulatory authority with respect to information services, which generally refers to broadband-based Internet access, and has preempted states from exercising their telecommunications regulatory authority over such services.

Too, states will inevitably have varying levels of experience in broadband matters, which raises the potential for disparate treatment among states. Significantly, some projects may cross state lines, further complicating the proper role for the states. Stephouse Networks, for example, operating in both northwest Oregon and southwest Washington, may rely on the same backhaul, or "middle mile," network for communities in both states. Operational economy and efficiency may dictate categorizing a single project that involves communities close in

proximity, but across state lines. An applicant should not be forced to divide a single project into two applications to satisfy a state review process.

Moreover, good stewardship of government funds demands avoidance of duplicative efforts—especially where additional staffing will be required at the state level. Finally, NTIA should ensure that the states' role does not result in a *de facto* dual application process that only adds to the applicants' costs and administrative burdens.

Item 3. Eligible Grant Recipients

Many, if not most, applications to initiate or improve broadband access under BTOP will involve the construction or installation of network facilities. By designating broadband providers eligible for BTOP funds, the NTIA will have direct oversight over the entity entrusted with engineering, constructing and operating the broadband network. Moreover, if BTOP funds are limited to certain end users of broadband services, the funds may ultimately benefit laggard incumbent local exchange carriers (ILECs) that have failed to make necessary investments to keep their facilities up to date. For example, where a school district relies on aged network facilities owned by an ILEC, BTOP funds awarded to the school district may ultimately be spent to upgrade the ILECs facilities – to the partial benefit of the school district, but to the greater benefit of the ILEC who failed to maintain adequate facilities in the first place.

To be sure, eligibility of broadband providers should be conditioned on their compliance with all federal and state regulations applicable to their services, including, without limitation, registration and reporting requirements administered by the FCC. Thus, subject to regulatory compliance, NTIA should deem broadband providers eligible for BTOP funds.

Item 4. Establishing Selection Criteria for Grant Awards

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?

Selection criteria should be transparent and merit-based, with each application being evaluated in its totality. The NTIA should consider a project's sustainability, meaning both its likelihood for long-term success on an operational basis, and its impact on the environment. Consistent with the multiple aims of the Recovery Act, projects and applicants that demonstrate efforts to minimize environmental impacts should be favored. The NTIA's assessment of long-term feasibility should also take environmental sustainability into account.

Item 9. Financial Contributions by Grant Applicants

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?

Rather than creating express conditions justifying waiver of the 20% contribution requirement, NTIA should clarify how the 20% contribution will be calculated and minimize potential situations where a waiver might be requested.

Specifically, subject to maintaining commercially reasonable debt-equity ratios, applicants should be permitted to use loan proceeds to support the 20% contribution. For example, an applicant may seek an RUS loan for a portion of the project costs, and a BTOP grant for the remaining portion. The application process should elicit adequate financial information from the applicant to ensure that the applicant is not so highly leveraged that its potential inability to service its debt requirements jeopardizes the completion or sustainability of the project.

In addition, project costs incurred prior to a grant award—particularly engineering fees—should also count toward the 20% contribution. Indeed, the NTIA should encourage applicants

to conduct detailed engineering surveys and beginning planning before submitting applications. While this pre-grant activity imposes costs on the applicant, it also makes for a more informed application review and improves timeliness of performance post-award. Significantly, pre-grant costs incurred by the applicant decrease the amount of post-grant funding required to complete the project. As such, unless the pre-grant costs will be reimbursed by the funding, such costs should count toward the applicant's satisfaction of its 20% contribution.

Finally, some projects may rely on backhaul services or other "contributions" from the applicant's existing network. The cost-based value of these network contributions should also count toward the applicant's satisfaction of its 20% contribution.

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

Stephouse Networks supports the proposal advocated by Wireless Internet Service Provider Association that calls for NTIA to cap project funding at the 50% level for applicants with average annual revenues of $50 million over the previous three years. Such a measure would have the effect of maximizing dollars available to smaller companies—who may likely propose smaller, focused projects in keeping with their operational strengths.

Item 12. Coordination with USDA's Broadband Grant Program

In its network deployment throughout Oregon and Washington, Stephouse Networks consistently encounters "pockets" of communities that have no access to broadband services, or, alternatively, broadband services capable of only minimal threshold speeds. It is often the case that these "pockets" of communities do not fit neatly into the "rural area" definition – whether before or after the revisions mandated by the 2008 Farm Bill – because the discrete area of need may be just a small part of a larger community that is already adequately served (as in the case of

Jantzen Beach, an underserved community in Portland), or the unserved community may be too close in proximity to a population center.

The Recovery Act exempted RUS from the traditional "rural area" definition with respect to the $2.5 billion authorized by the Act, and imposed an alternative standard that 75% of the area to be served must be in a rural area without sufficient access to high-speed broadband service. The NTIA, on the other hand, has no apparent "rural" constraints on disbursing its $4.7 billion allocated by the Recovery Act, and is charged with identifying unserved and underserved areas where broadband deployments would not be economically feasible absent federal assistance.

When considering all of the available broadband funding sources, it seems reasonable to draw the high-level conclusion that there are (i) funds allocated to existing programs with relatively narrow definitions of "rural;" and (ii) funds allocated under the Recovery Act with less constrictive definitions of "rural" and a greater emphasis on unserved and underserved communities. Assuming that the timing of available funds under all programs is not exceptionally disparate, Stephouse Networks encourages the responsible agencies to coordinate efforts on the front end to steer applications clearly satisfying the traditional "rural" definitions to the existing programs, and direct applications that might not otherwise fit in the traditional "rural" categories to the Recovery Act programs.

Item 13. Definitions

a. For purposes of the BTOP, how should NTIA, in consultation with the FCC, define the terms "unserved area" and "underserved area?"

The definitions of unserved and underserved communities should allow for a flexible, comparative analysis suited to the community need and location. Clearly, a community with access to dial-up services only would be unserved. Even within a service area where most users

are able to access broadband service, there may be neighborhoods where only dial-up is available. The definition of unserved should be open enough to include these neighborhoods, or "pockets" of unserved communities. Put another way, no "unserved" or "underserved" community should be disqualified because it is too small.

Underserved communities should be identified as those communities whose available broadband speeds are substantially less than the speeds available to other communities within the surrounding area. The purpose should be to identify areas where the ILEC has failed to make the necessary investments in maintenance and upgrades to support a reasonable level of broadband access consistent with the surrounding communities. This approach matches availability with customer demand more effectively than a standard tied strictly to a certain number of providers.

Finally, the consideration of whether a community is unserved or underserved should take into account the target market of the provider's services. For example, if the only broadband provider is a cable company that targets only residential customers, the business market in the community is arguably unserved.

b. How should the BTOP define ``broadband service?"

The NTIA should adopt a flexible definition of minimum broadband speeds based on the prevailing speeds available in urban areas. A flexible definition of broadband should serve to encourage sustainable and adaptable technology.

Rural Utilities Service

Item 2. In what ways can RUS and NTIA best align their Recovery Act broadband activities to make the most efficient and effective use of the Recovery Act broadband funds?

RUS and NTIA should establish a joint application form, with unique appendices or schedules as need to reflect the program priorities. Application review status and estimated dates

for awards should be available to applicants via a web interface as a means of assisting applicants with their own internal planning and funding requirements.

Item 3. How should RUS evaluate whether a particular level of broadband access and service is needed to facilitate economic development?

The Recovery Act's mandate to target "rural areas without sufficient access needed for economic development" potentially allows for a more qualitative analysis than the NTIA's directive to identify unserved and underserved communities. In terms of economic development, communities compete with each other to recruit potential businesses. A community with more than one provider and various technology options will undoubtedly be more attractive to many businesses than a community with only one provider, offering service at 768 Kbps. Thus, in considering which applications best deliver "access needed for economic development," RUS's evaluation should involve a comparative analysis of broadband availability across regional communities.

When considering the quality of broadband service needed for economic development, minimum bandwidth requirements should support video conferencing, with symmetrical upload/download speeds. Additional factors weighing on the quality of broadband service should be driven by the requirements of business located in the relevant area. An agriculture-based community may have very different requirements from a mining community, which may be differ still from a manufacturing community. Applicants should be encouraged to perform enough market research to present a compelling case that—for a particular community—the proposed project will significantly improve the quality of broadband available to an extent commensurate with the character of the business needs of the community, so that the community can effectively compete with other communities to recruit and support business growth.

Item 4. In further evaluating projects, RUS must consider the priorities listed below. What value should be assigned to those factors in selecting applications? What additional priorities should be considered by RUS?

RUS should consider targeting financial assistance, whether loans, grants or some combination thereof, specifically toward the "middle mile" network facilities linking rural communities to the long-haul networks providing connectivity to the Internet. Moreover, RUS should deem operational expenses related solely to the purchase of middle-mile capacity as eligible for funding under the Recovery Act programs. Finally, as with BTOP, RUS should carefully consider the operational and environmental sustainability of the project.

IV. CONCLUSION

Stephouse Networks appreciates the opportunity to provide comment on these crucial matters impacting the implementation of the broadband portions of the Recovery Act, and looks forward to the programs' successful launch in the near term.

Respectfully submitted,

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