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April 24, 2009

Broadband Technology Opportunities Program
U.S. Department of Commerce
Room 4812
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

RE: Errata to the Comments of the National Rural Electric Cooperative Association filed in the NTIA/RUS proceeding, *American Recover and Reinvestment Act of 2009 Broadband Initiatives*, Docket No. 090309298-9299-01

Dear Madam or Sir:

Attached is a corrected version of the comments filed by the National Rural Electric Cooperative Association on April 13, 2009, in the above-caption proceeding. The only change is to the last sentence on page 2.

Respectfully submitted,

Gloria Tristani (GLL)

Gloria Tristani

Attachment

BEFORE THE
DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
AND
DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE

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

Comments of the National Rural Electric Cooperative Association

[ERRATA]

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April 13, 2009

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EXECUTIVE SUMMARY

NRECA is the not-for-profit, national service organization representing nearly 930 not-for-profit, member-owned rural electric cooperative systems, which serve 42 million customers in 47 states. NRECA estimates that Cooperatives own and maintain 2.5 million miles of the electric power lines, or 42% of the nation's electric distribution lines covering three quarters of the nation's landmass. However, Cooperatives still average fewer than seven customers per mile of electric distribution line, and this low population density creates a significant obstacle to rapid deployment of broadband service to rural communities. Low population densities, together with the issues of a traversing vast expanses of remote and often rugged topography, present unique economic and technological hurdles to the deployment of broadband to rural America.

A number of Cooperatives already provide telecommunications, dial-up Internet access and broadband services to rural consumers over a variety of platforms, including satellite, WiFi or WiMAX, Fiber and Broadband over Power Line. Cooperatives also provide high-speed and robust connections to anchor institutions such as schools, libraries and hospitals, as well as to business customers.

NTIA BTOP Initiative.

NRECA urges NTIA to adopt BTOP eligibility and grant application evaluation criteria that (1) permit discretion and flexibility to apportion the grant money amongst the most worthy grant applications and not arbitrarily apportion the funding by purpose category; (2) give meaning to the statutory "public interest" requirement and not provide automatic eligibility for private entities that hold government licenses or blanket eligibility for any private entity; (3) take into account the particular way that Cooperatives are organized and operate, and of the nature of "capital credits"; and (4) define "broadband service" in a flexible way so as to ensure that difficult- to-serve areas are not precluded from service by the adoption of "one size fits all" threshold speeds.

NRECA urges NTIA to reject criteria or priorities that have no basis in the statute and that may narrow the NTIA's flexibility in awarding grants, such as the recommendation that was made at a March 16, 2009, roundtable that priority in funding should be given to states that have mapping, infrastructure and technology plans in place.

NRECA also urges the NTIA and RUS to develop a single, uniform grant application form that can be used to apply for both agencies' broadband grant programs.

RUS Broadband Program.

NRECA advocates that RUS implement its broadband program in a way that (1) devotes the majority, if not all, of its funding authority to broadband grants; (2) defines broadband in a way that includes "sustainable" development because there may be more than one broadband speed that will facilitate rural economic development; and (3) assigns the highest value of

priorities to projects providing service to the highest proportion of rural residents, which is the priority that is most critical to the broadband needs of rural America.

BEFORE THE
DEPARTMENT OF COMMERCE
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

AND

DEPARTMENT OF AGRICULTURE
RURAL UTILITIES SERVICE

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

COMMENTS OF THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

[ERRATA]

The National Rural Electric Cooperative Association ("NRECA") submits its comments to the Department of Commerce National Telecommunications and Information Administration ("NTIA") and to the Department of Agriculture's Rural Utilities Service ("RUS") in response to the Joint Request for Information and Notice of Public Meeting ("Joint Request for Information") regarding the broadband initiatives of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 11-5, 123 Stat. 115 (2009) ("ARRA").[1]

I. INTRODUCTION

NRECA is the not-for-profit, national service organization representing nearly 930 not-for-profit, member-owned rural electric cooperatives systems, which serve 42 million customers in 47 states. Rural electric cooperatives ("Cooperatives" or "Co-ops") employ approximately

[1] *American Recovery and Reinvestment Act of 2009 Broadband Initiatives*, Joint Request for Information and Notice of Public Meetings, 14 Fed. Reg. 10716 (Mar. 12, 2009).

70,000 people in the United States, serving 18 million businesses, homes, schools, churches, farms and other establishments in 2,500 of the 3,141 counties in the U.S.

NRECA estimates that Cooperatives own and maintain 2.5 million miles of the electric power lines, or 42% of the nation's electric distribution lines covering three quarters of the nation's landmass. However, Cooperatives still average fewer than seven customers per mile of electric distribution line and this low population density continues to preclude rapid deployment of broadband service to rural communities. Low population densities together with the issues of traversing vast expanses of remote and often rugged topography present unique economic and technological barriers to the deployment of broadband to rural America.

Indeed, access to broadband in rural America still lags behind access in other areas of the country. According to a Pew 2008 report, 38% of people living in rural America have broadband at home as compared to 57% of urban residents and 60% of suburban residents.[2] Rural Americans are being denied the benefits of broadband — such benefits enable better health care, education and business opportunities. Meanwhile, according to the USDA, unemployment and poverty rates have been rising significantly in rural areas.[3] NRECA's members understand well the importance of improving economic opportunities for rural Americans. The median per capita income of electric Co-op consumers is $21,435 – 21% lower than the national average. As the attached map shows, the average per capita income of consumers in the service areas of 93% of the nation's electric Co-ops (790 Co-ops) is below the U.S. national average per capita income average of $27,260.[4]

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[2] John B. Horrigan, Pew Internet & American Life Project, Home Broadband Adoption 2008, at 3, *available at* http://www.pewinternet.org/Reports/2008/Home-Broadband-2008.aspx.

[3] USDA Economic Research Service, Rural America at a Glance: 2008 Edition, Econ. Info. Bulletin No. 40, (Oct. 2008), *available at* http://www.ers.usda.gov/Publications/EIB40/.

[4] Co-op Consumer Per Capita Income, attached as Exhibit 1.

A number of Cooperatives already provide telecommunications, dial-up Internet access and broadband services to rural consumers over a variety of platforms, including satellite, WiFi or WiMAX, Fiber and Broadband over Power Line. Co-ops also provide high-speed and robust connections to institutions such as schools, libraries and hospitals, as well as to business customers. The Southeast Colorado Power Association ("SECPA"), which has a rural service territory of nearly 12,000 square miles, partnered with the State of Colorado in 1998 to install 600 miles of fiber optic cable to provide broadband connectivity to 22 rural schools, rural libraries, hospitals and 2 junior colleges. In addition, SECPA, through its subsidiary SECOM, provides both residential and commercial broadband, as well as wholesale Internet bandwidth, Ethernet circuits, and other services.[5]

Many more Co-ops stand poised and ready to deploy or enhance their broadband networks and services. In Missouri, many Co-ops, in coordination with the state, are planning to band together to build out a very high-speed open access fiber network. Once constructed, a tower at each electrical substation with a connection to the fiber optic network could mean statewide Wi-Fi coverage. One of those Missouri Co-ops, Intercounty Electric Cooperative, is currently installing fiber to serve a very rural community of only 214 homes. In other states, at least sixteen Co-ops are working to deploy broadband over power lines solutions throughout their entire networks.[6] In Oregon, LS Networks, a state-wide inter-exchange company owned by five Oregon electric cooperatives and one Indian Tribe, operates and maintains a carrier optical

[5] *See* product descriptions at http://www.secom.net/Sites/Products.html (viewed on 4/1/2009).

[6] See Response of Request for Information by International Broadband Electric Communications, Inc., available at http://www/ntia.doc.gov/broadbandgrants/comments/727F.pdf

network over 2,250 miles across Oregon rural cities. LS Networks is looking to expand its services and provide broadband in unserved and underserved areas of the state.[7]

NRECA welcomes the opportunity to comment on the implementation of the ARRA's broadband initiatives. It commends the NTIA and RUS for hosting the many public meetings where divergent views on how to implement the broadband initiatives were vigorously discussed. NRECA also commends the agencies for their demonstrated interagency cooperation and given the agencies scarce resources, encourages this continued interagency cooperation.

While the ARRA provides significant funding for broadband deployment through the NTIA's Broadband Technology Opportunities Program "("BTOP") grants and through the RUS grants and loans program, the funding allocated is not sufficient to meet the nation's broadband needs. Thus, both NTIA and RUS have an enormous responsibility in administering their respective programs to ensure that the programs not only comply with the statutory requirements and purposes, but that they maximize broadband deployment, access and connectivity, including high speed broadband deployment. Maximizing broadband will also necessarily spur the job creation and economic recovery intended by the ARRA. And maximizing broadband to rural America will afford Americans living in rural areas much needed economic opportunity.

NRECA and the National Rural Utilities Cooperative Finance Corporation founded the National Rural Telecommunications Cooperative ("NRTC") in 1986 to find, commercialize and deliver advanced telecommunications and technological innovations to the family of rural cooperatives. NRTC is a non-profit cooperative[8] that has helped its rural telephone and electric cooperative members provide advanced telecommunications services to rural America since its inception. Due to a shared desire to improve the economic and educational opportunities

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[7] See http://www.lsnetworks.net for more information on LS Networks.

[8] www.nrtc.coop

currently eluding rural Americans due to the lack of advanced broadband services, NRECA is supportive of the NRTC comments filed in this proceeding.

II. NTIA IMPLEMENTATION

The NTIA asks for information regarding BTOP grant purposes, eligibility, criteria and other areas related to the processes it will follow and implement in awarding grants. It also asks for information on post-award grant monitoring and on how to measure the BTOP's success. NRECA will focus its comments on the questions revolving around the application and awarding of grants processes.

A. BTOP Purposes

While the RUS broadband program is tailored to serve rural communities, the BTOP's reach is broader but is also intended to benefit rural areas. The Conference Report accompanying the ARRA states that "(t)he Conferees intend that the NTIA award grants serving all parts of the country, including rural, suburban, and urban areas."[9] The BTOP enumerates five specific purposes:

> (1) provide access to broadband service to consumers residing in unserved areas of the United States;
>
> (2) provide improved access to broadband service to consumers residing in underserved areas of the United States;
>
> (3) provide broadband education, awareness, training, access, equipment, and support to—
>
> (A) schools, libraries, medical and healthcare providers, community colleges, and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband service by or through these organizations;
>
> (B) organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of

[9] H.R. Rep. No. 111-16, at 774 (2009) ("Conf. Rep.").

broadband service by low income, unemployed, aged, and otherwise vulnerable populations; and

(C) job-creating strategic facilities located within a State-designated economic zone, Economic Development District designated by the Department of Commerce, Renewal Community or Empowerment Zone designated by the Department of Housing and Urban Development, or Enterprise Community designated by the Department of Agriculture;

(4) improve access to, and use, of broadband service by public safety agencies; and

(5) stimulate the demand for broadband, economic growth, and job creation.[10]

While all the enumerated purposes are important, for NRECA and for the rural areas its members serve, providing "*access to broadband service to consumers living in unserved areas*" is key.

The NTIA asks several questions regarding the BTOP purposes including whether there should be percentages of funds apportioned for each of the five purpose categories. NRECA does not believe that there should be specific percentages allotted as all of the categories are important and in many instances the purpose categories overlap. For instance, providing access to consumers residing in unserved areas (Purpose 1) would overlap with stimulating the demand for broadband, economic growth, and job creation (Purpose 5). Similarly, providing access to consumers residing in underserved areas (Purpose 2) and providing "broadband education, awareness, training, access, equipment, and support..." (Purpose 3) would also overlap with Purpose 5.

NTIA should have the discretion and flexibility to apportion the grant money amongst the most worthy grant applications and not arbitrarily apportion the funding by purpose category. Had Congress intended these categories to be funded by percentages or a set formula, it could

[10] ARRA, Sec. 2, Div. B, Title VI, § 6001(b), 123 Stat. at 512-513.

have said so. In that regard, Congress specified that certain minimal funding be awarded to two types of BTOP program grants: the competitive grants for expanding public computer center capacity and the competitive grants for innovative programs to encourage sustainable adoption of broadband service.[11] NRECA agrees that applicants should be encouraged to address more than one purpose category (and, as noted most applications will encompass at least two purposes) but only to the extent it fits with the particular applicant's community broadband needs.

B. The NTIA Should Consult The States

The ARRA states that the NTIA may consult with the States with respect to identifying unserved and underserved areas in the particular State, and as to the allocation of grand funds in the State.[12] The NTIA asks, among other questions, how the grant program should consider State priorities in awarding grants; and, what is the appropriate role for States in selecting projects for funding. The NTIA received extensive feedback on this question at the NTIA/RUS public meetings, including at the ones held on March 17 and on March 23, 2009.

The NTIA should consult with States to the extent practicable as States may be best positioned to understand their particular communities' broadband needs. Many States have completed broadband plans, have broadband planning organizations in place, or otherwise have a wealth of data and information to share with the NTIA regarding broadband deployment in their particular jurisdictions. The NTIA should give weight to a State's endorsement of a particular project or to projects in which States are applicants or co-applicants for funding. States, however, should not be given the authority to rank or prescreen all applications within their

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[11] ARRA, Sec. 2, Div. A, Title II, 123 Stat. at 128.

[12] ARRA, Sec. 2, Div. B, Title VI, § 6001(c), 123 Stat. at 513.

jurisdictions as the National Governors Association and NARUC have urged.[13] The ARRA specifically provides for the States to have a consultative role, but not more.

In addition, having States review all BTOP applications would make the application process cumbersome and delay the timely awarding of grants. NRECA also notes that at the NTIA/RUS March 23 roundtable some participants and commenters cautioned against giving the states the authority to rank the applications.[14] NRECA urges the NTIA to rely on the States and their expertise and knowledge, but that it not forgo its statutory responsibility in awarding the grants.

C. Private Entity Eligibility Should Not Be Automatic – the NTIA Needs to Give the "Public Interest" Standard Meaning

The ARRA provides that for private broadband service or infrastructure providers to be eligible for BTOP grants, the NTIA find by rule that it is in the public interest.[15] The NTIA asks what standard it should use in doing so.

Although NRECA does not endorse a particular standard, it urges the NTIA to give meaning to the statutory "public interest" requirement. At the NTIA public roundtable devoted to private entity eligibility, Curt Stamp, the representative of the Independent Telephone and Telecommunications Alliance, proposed that any entity with an existing FCC license, state certificate of convenience and public necessity, franchise or other government license be

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[13] NTIA/RUS public meeting transcript, Roundtable on the Role of States, Session 2 (Mar. 23, 2009), *available at* http://www.ntia.doc.gov/broadbandgrants/meetings.html. *See also* NARUC letter to the Department of Commerce, the Department of Agriculture and to NTIA (dated Apr. 2, 2009), *available at* http://www.naruc.org/policy.cfm?c=advocacy.

[14] *Id.*, where the Appalachian Regional Commission representative stated in part: "The comment I would make with regards to the state, they are a great convener, they are a great facilitator. And they have specific plans in mind based upon projects and activities that they have completed. However, I would say that what you do want from them, from the NTIA and the utilities service would be endorsement of project activity, that it is a consistent project activity consistent with their priorities of the state, but I would not ask that they rank the projects."

[15] ARRA, Sec. 2, Div. B, Title VI, § 6001(e)(1)(c), 123 Stat. At 513.

automatically eligible to apply.[16] Debbie Goldman, representing the Communications Workers of America ("CWA") agreed.[17] Grant Seiffert, representing the manufacturing sector, went further, and urged that *all* private entities be eligible to apply for BTOP grants.[18]

NRECA does not agree with those three roundtable participants and urges that there not be automatic eligibility for private entities that hold government licenses or blanket eligibility for any private entity. Allowing eligibility for private entities would increase the applicant pool exponentially – and reviewing the increased number of applicants would be a logistical nightmare. As one public commenter stated at the March 16 roundtable, if Congress had intended for government licensees to be eligible it could have said so.[19] NTIA must require that to be eligible, private entities make a specific public interest showing.

At the eligibility roundtable, DC Public Service Chairwoman Betty Ann Kane endorsed the idea that a private entity could meet the public interest standard if it was partnering with a State in applying for funding.[20] Sasha Meinrath, a panelist representing The New America Foundation, cautioned that if "partnerships" are to be a public interest factor, it should only be so for "true" partnerships with full shared ownership, accountability and control for initiatives.[21] NTIA should consider the partnership concept as well as other specific and measurable options in crafting a public interest rule.

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[16] NTIA/RUS public meeting transcript, Roundtable on Private Sector Eligibility, Session 1, Comments of Curt Stamp at 5 (Mar. 16, 2009), *available at* http://www.ntia.doc.gov/broadbandgrants/meetings.hmtl.

[17] *Id.* at 6-7 (Comments of Debbie Goldman).

[18] *Id.* at 11-13 (Comments of Grant Seiffert).

[19] *Id. See* public comments section.

[20] *Id.* at 9-11 (Comments of Betty Ann Kane).

[21] *Id.* at 8-9 (Comments of Sasha Meinrath).

D. Selection Criteria for Grant Awards Should Remain Flexible and Inclusive

How the NTIA structures and weighs the BTOP grant awards criteria is critical. At the outset, NRECA notes that the BTOP statutory criteria are broad and include:

> (2) consider whether an application to deploy infrastructure in an area -
>
> a. will, if approved, increase the affordability of, and subscribership to, service to the greatest population of users in the area;
>
> b. will, if approved, provide the greatest broadband speed possible to the greatest population of users in the area;
>
> c. will, if approved, enhance service for health care delivery, education, or children to the greatest population of users in the area; and
>
> d. will, if approved not result in unjust enrichment as a result of support for non-recurring costs through another Federal program for service in the area;[22]

NRECA believes that these criteria should be applied flexibly and as befits the applicant's particular territory and circumstances. In areas with no broadband service, projects that improve affordability and subscribership to the greatest population of users may be more important than projects that provide the greatest possible speed to the greatest population of users. Yet in areas that have some broadband availability but in which businesses and other institutions are in need of higher speeds, projects that provide the greatest speed may be more vital.

NTIA asks numerous questions regarding grant criteria including whether priority should be given to proposals that leverage other ARRA projects. While NRECA agrees that leveraging should be encouraged to the extent it fits a particular applicant's needs, the fact that an applicant can leverage other ARRA project funding should not move that particular applicant ahead of others in the funding line. As many have estimated, the potential pool of applicants for BTOP and RUS program grants is in the thousands. The applicant pool will also be diverse given the

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[22] ARRA, Sec. 2, Div. B, Title VI, § 6001(h), 123 Stat. at 514-515.

nation's geographic, demographic and socio-economic mix. A particular applicant should not be sent to the back of the funding line because it does not have particular needs or resources that enable ARRA project leveraging. Similarly, priority should not be given to proposals that address several of the BTOP purposes or serve several of the populations identified in the ARRA. As discussed above at pages 6-7, all of the BTOP purposes are important and, given the ARRA's broad purposes, every application should be evaluated based on its particular circumstances and merits.

NRECA also urges NTIA to reject criteria or priorities that have no basis in the statute and that may narrow the NTIA's flexibility in awarding grants. As one example, the CWA has urged that priority in funding should be given to states that have mapping, infrastructure and technology plans in place.[23] NRECA commends those states that have completed broadband mapping. However, states that do not have such plans in place or that are in the process of inventorying broadband deployment in their state should not be penalized. Such a scheme might reward states with more as opposed to states with fewer resources. The BTOP statutory provisions nowhere mention such a priority. Moreover, the fact that a state has not completed broadband mapping does not translate into a conclusion that there is no information available in the particular state as to broadband availability. In many instances, local governments and local entities, including Co-ops, have the necessary information in hand. An application's worthiness should not be diminished because there isn't a state or national broadband map in place, as long as there is data or information that supports the particular project.

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[23] NTIA/RUS public meeting transcript, Roundtable on Private Sector Eligibility, Session 1, Comments of Debbie Goldman at 7 (Mar. 16, 2009), *available at* http://www.ntia.doc.gov/broadbandgrants/meetings.hmtl.

E. In Evaluating Co-op Applicants NTIA Must Take Note of "Capital Credits"

While the ARRA requires that the Federal share of funding for any proposal may not exceed 80 percent of the total grant, it allows for an increase in the Federal share beyond 80 percent if the applicant petitions NTIA and demonstrates financial need. The NTIA asks among other questions 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.

NRECA urges that when the NTIA evaluates the financial capacity of rural electric cooperatives, it first take note of the particular way that Co-ops are organized and operate; and of the nature of "capital credits."

Rural electric cooperatives operate on a not-for-profit, at cost, basis. In order to ensure financial health and stability, Cooperatives generally retain margins in excess of cost from the sale of electricity and other services ("Capital Credits") for a period of time. To achieve operation at cost, these margins are allocated on the books to members or other customers (collectively Patrons) of the cooperative based on the amount of power purchased or other services utilized by the Patron. Federal and state law, as well as the rural electric cooperative's organizational documents and board policies, govern these allocations.

Until Capital Credits are returned to the Patron, rural electric cooperatives use Capital Credits to invest in infrastructure and meet other capital needs. Thus, Capital Credits do not represent "cash" which is otherwise available for other purposes since amounts received by the rural electric Cooperative in excess of cost have already been invested in infrastructure and other cooperative assets.

F. BTOP Coordination with the RUS Broadband Program

The RUS broadband grant program's focus is on economic development in rural areas while the NTIA has broad authority to award grants throughout the country – including in rural

areas. NTIA asks what programmatic elements both agencies can adopt to ensure that grant funds are utilized in the most effective and efficient manner.

As an important first step, NRECA recommends that the agencies adopt a standardized application form that can be used by applicants to apply for either or for both programs if appropriate. NRECA recognizes that because the BTOP and the RUS program have related but different purposes, and related but different eligibility and criteria, a standardized application form would necessarily include subsections that would apply only to one of the programs. However, much of the application information that will have to be supplied including accompanying documentation will be the same – *i.e.,* broadband availability data, other demographic and geographic information, applicant organizational information, financial statements, etc. Allowing applicants to use a standardized application would streamline the process and avoid duplicating resources for those applicants that will be applying for both the BTOP and the RUS grants.

A standardized application form would also allow NTIA and RUS to easily cross-reference applicants applying for both programs and to better coordinate and maximize awarding their respective grants efficiently and effectively. NRECA further notes that at the NTIA/RUS public roundtable addressing NTIA/RUS coordination most panelists endorsed a standardized application form.[24]

G. Definitions

NTIA asks a series of questions regarding definitions including how to, in consultation with the FCC, define "unserved" and "underserved" areas. NRECA continues to believe that strictly applied, "bright line" definitions run the risk of excluding worthwhile projects.

[24] Mar. 16, 2009 Public Meeting, Session 2, "Roundtable on Coordination with NTIA and RUS on Broadband Industries," Comments of Brad Ramsay representing NARUC (at 3-4), Comments of Jeff Arnold, representing NACo (at 5), and Comments of Derrick Owens representing the Western Telecommunications Alliance (at 6, 14).

However, we also realize the necessity of quantitative, objective measures. Therefore, NRECA recommends that "unserved areas" be defined as areas without any broadband access, e.g., areas without Internet access service at transmission speeds of at least 768 kbps in either direction; and that "underserved areas" be defined as areas with some level of access, but which level of access is inadequate, e.g., where residential dwellings are without access to at least one Internet Service Provider offering transmission speeds of at least 3 Mbps downstream and 768 kbps upstream. NRECA further poses that pursuant to these definitions there should a presumption that all counties designated as "rural", as defined by the RUS,[25] are "unserved" or "underserved."

NTIA also asks how the BTOP should define "broadband service" including whether BTOP should establish threshold transmission speeds for analyzing whether an area is unserved or underserved and for prioritizing grant awards. As an initial matter, the FCC definition of "broadband" should be maintained: "advanced communications systems capable of providing high-speed transmission of services such as data, voice and video over the Internet and other networks. Transmission is provided by a wide range of technologies, including digital subscriber line and fiber optic cable, coaxial cable, wireless technology, and satellite."[26] While NRECA understands that faster broadband data speeds are obviously better (and indeed some of its members are providing optimal speeds) it does not believe that there should be threshold or hard-line data speed standards. Broadband speed is relative to the area of service. Definitions should remain sufficiently flexible to ensure difficult to serve areas are not precluded from service by

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[25] The RUS regulations define a rural area as "any area, as verified by the latest decennial census of the Bureau of the Census or the latest edition of the Rand McNally Atlas, which is not located within the boundaries The Consolidated Farm and Rural Development Act defines a rural area as which is not located within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 20,000 inhabitants." 7 C.F.R. § 1739.3. *See also* the Food, Conservation, and Energy Act of 2008, Pub. L. No. 110-246, §6110, 122 Stat. 1651 (2008).

[26] *Id.* Roundtable on NTIA and RUS Coordination on Broadband Industries, Series 2, Comments of Brad Ramsey representing NARUC, Comments of Jeff Arnold, representing NACo, and Comments of Derrick Owens representing the Western Telecommunications Alliance.

the adoption of "one size fits all" threshold speeds. There are too many rural areas where terrestrial service is not an option and where satellite service may be the only feasible choice for service. And in many areas satellite broadband may be the only affordable broadband alternative to sluggish dial-up service. If the NTIA feels compelled to establish threshold speeds it should establish separate thresholds for different technology platforms.

As to other definitions, NRECA believes that the BTOP should establish reasonable nondiscrimination and interconnection obligations as long as potential grantees are able to implement reasonable network management practices.

III. RUS IMPLEMENTATION

The RUS broadband program purposes are narrower than the BTOP purposes and are specifically targeted to areas where "at least 75 percent of the area to be served by a project receiving funds...shall be in a rural area without sufficient access to high speed broadband service to facilitate rural economic development.[27] The RUS broadband program is also different from the BTOP in that the RUS is authorized to provide grants, loans and loan guarantees.[28]

A. The RUS Broadband Funding should be allocated to Grants

NRECA urges that the RUS devote the majority, if not all, of its funding authority to broadband grants. As RUS itself acknowledges in the Request for Information for a number of years "it has struggled to find an effective way to use the Agency's current broadband loan program to provide broadband access to rural residents who lack such access." Applicants too have struggled with a difficult, cumbersome and lengthy loan application process, difficult

[27] ARRA, Sec. 2, Div. A, Title I, 123 Stat. at 118.

[28] *Id.*.

collateral requirements, and other application barriers.[29] Providing funding for grants only and implementing a streamlined application process will help ensure that the many rural Americans that lack access to broadband begin to receive it.

B. Aligning RUS and NTIA Broadband Activities

The RUS asks how it and NTIA can align their broadband activities. It first asks how to reconcile the RUS statutory language of "at least 75 percent of the area is rural and without sufficient access needed for rural economic development"[30] with the NTIA "unserved" and "underserved" definitions. NRECA reiterates that there should be a presumption that all counties that are designated "rural" are unserved or underserved. And if such rural areas are unserved or underserved – without any access or with only limited access to broadband – it should follow that such areas are "without sufficient access needed for rural economic development."

The RUS also asks how both agencies could structure their eligibility requirements and other programmatic elements. As NRECA recommended *supra* at pages 13-14, both agencies should adopt a standardized application, so that applicants targeting both programs do not duplicate resources and efforts. NRECA commends NTIA and RUS for their efforts to create a streamlined, common application form to make it easier to file applications with both agencies.[31] A standardized application would also make it easier for RUS and NTIA to conserve their limited resources. It would enable the agencies to easily cross-reference applications and more efficiently and effectively administer their respective programs. While it might be practical to

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[29] NRECA notes the RUS testimony before the House of Representatives Committee on Energy and Commerce on April 2, 2009 where David Villano, RUS Assistant Administrator, also acknowledged past problems with the broadband loan program but stated RUS was aggressively working on regulations to ameliorate the process. *Available at* http://www.energycommerce.house.gov/Press_111/20090402/testimony_villano.pdf

[30] *Supra*, note 24

[31] NRECA notes the NTIA testimony before the Congress on April 2, 2009 where Mark Seifert, Senior Advisor to the Assistant Secretary, acknowledged current work with RUS on developing a common grant application form. Testimony available at http://www.ntia.doc.gov/congress/2009/NTIA_Seifert_Testimony_20090402.pdf.

also standardize the eligibility and other criteria, the programs are different and cannot be completely reconciled. Any standardized application will necessarily have to include subsections that apply only to the BTOP or the RUS program.

C. Defining Sufficient Access Needed for Economic Rural Economic Development

The RUS also asks questions revolving around what particular level of broadband is needed to facilitate economic development including how to define "rural economic development," and what speeds are needed to facilitate economic development. NRECA will not proffer a precise definition for rural economic development since what constitutes rural economic development may vary by region, but any development must be sustainable. However, any definition must include "sustainable" development. Likewise, there may be more than one given broadband speed that will facilitate rural economic development. In unserved areas that lack *any* access to broadband, minimal broadband speeds may enable economic development; while in underserved areas where there is some broadband access but the broadband speeds may be limited, higher speed broadband may be the spur for that particular area's economic development.

D. RUS Priorities – Providing Service to the Highest Proportion of Rural Residents is Key

The ARRA provides that priorities are to be given to projects that: 1) provide broadband systems that deliver end users a choice of more than one provider; 2) provide service to the highest proportion of rural residents that do not have access to internet service; 3) are projects of current and former RUS borrowers, and 4) are fully funded and ready to start once they receive funding. The RUS asks what value should be assigned to the different priorities. While all the priorities are important, NRECA believes that the priority of *providing service to the highest*

proportion of rural residents is the most critical to the broadband needs of rural America and should be assigned the highest value vis-à-vis the other priorities.

IV. CONCLUSION

In structuring their respective programs both agencies should keep in mind the dismal state of broadband deployment and adoption in rural America. Rural America is, by any definition and measurement, unserved and too many rural areas throughout the country lack *any* broadband service. There should be a presumption that counties designated as "rural" are "unserved" or "undeserved."

Both agencies must stay focused on their respective statutory obligations. Given the BTOP purposes and criteria, the NTIA must be flexible in awarding grants; should give meaning to the public interest requirement for private provider eligibility; and, should consult with States but retain ultimate authority.

The RUS should dedicate its funding to grants only; should streamline and ameliorate its application processes; and, should recognize that rural economic development must be sustainable but that different broadband speeds may be required to spur economic development for different rural areas. Both agencies should adopt a standardized application.

Ultimately, the NTIA and the RUS must recognize that "providing access to consumers living in unserved areas" and "providing service to the highest proportion of rural residents" are the keys to economic health, development and sustainability of rural America. Applications that address these goals and maximize broadband to rural America should be highly valued.

Respectfully submitted,

/s/

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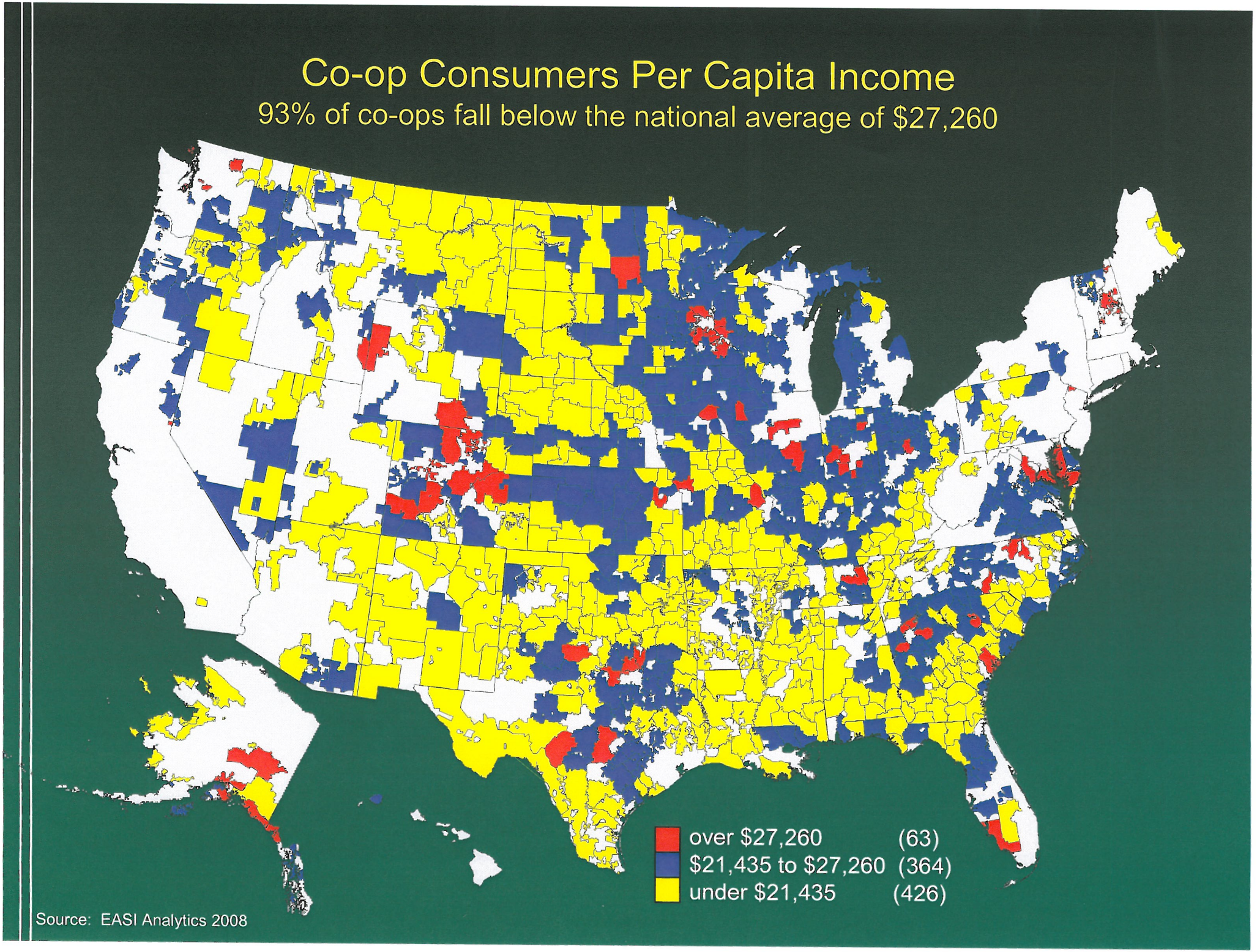
EXHIBIT 1

Co-op Consumers Per Capita Income

93% of co-ops fall below the national average of $27,260



Source: EASI Analytics 2008