



**William P. Hunt, III**  
Vice President, Public Policy

TEL: (720) 888-2516  
FAX: (720) 888-5134  
Bill.Hunt@Level3.com

April 13, 2009

**VIA EMAIL**

Ms. Bernadette McGuire-Rivera  
Associate Administrator  
National Telecommunications  
and Information Administration  
Herbert C. Hoover Building  
U.S. Department of Commerce  
1401 Constitution Avenue, N.W.  
Washington, D.C. 20230

Re: Joint Request for Information  
American Recovery and Reinvestment  
Act of 2009 Broadband Initiatives  
*Docket No. 090309298-9299-01*

Dear Ms. McGuire-Rivera,

**EXECUTIVE SUMMARY**

The debate on extending the reach of broadband services into unserved and underserved markets tends to focus on the retail side of the equation. In these comments, Level 3 Communication LLC urges NTIA to give full weight to the development of “middle-mile transport” solutions. These links between the designated areas and an internet backbone provider are the “missing link” of the broadband debate.

Level 3 is told over and over again that the high costs of securing transport makes it difficult to justify the investment retail providers need to make to reach their customers.

These links provide another crucial benefit. As traffic aggregation points, these TAPs are agnostic as to the technology that brings traffic to the backbones. True wholesale middle-mile solutions will not enable just a specific technology but will expand the reach of many technology platforms. These concepts are more fully discussed in this letter.

NTIA faces an arduous task in meeting the deadlines established by Congress.

Level 3 looks forward to working with NTIA on this important project.

<b><u>TABLE OF CONTENTS</u></b>	<b><u>PAGE</u></b>
1. THE PURPOSE OF THE GRANT PROGRAM -	3
2. THE ROLE OF THE STATES -	4
3. ELIGIBLE GRANT RECIPIENTS –	6
4. ESTABLISHING SELECTION CRITERIA FOR GRANT AWARDS -	7
5. GRANT MECHANICS –	13
6. GRANTS FOR EXPANDING PUBLIC COMPUTER CENTER CAPACITY –	14
7. GRANTS FOR INNOVATIVE PROGRAMS TO ENCOURAGE SUSTAINABLE ADOPTION OF BROADBAND SERVICE -	14
8. BROADBAND MAPPING –	15
9. FINANCIAL CONTRIBUTIONS BY GRANT APPLICANTS -	19
10. TIMELY COMPLETION OF PROPOSALS -	21
11. REPORTING AND DE-OBLIGATION -	23
12. COORDINATION WITH USDA’S BROADBAND GRANT PROGRAM -	25

## 1. THE PURPOSES OF THE GRANT PROGRAM

Section 6001 of the Recovery Act establishes five purposes for the BTOP grant program.2 Sec. 6001(b) states that the purposes of the program are to—

- (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 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 USDA;
- (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.

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

No. Allocating set amounts in each category would undermine the goals of the Recovery Act by taking resources away from projects with higher merit to meet an arbitrary policy.

### ***b. Should applicants be encouraged to address more than one purpose?***

Applicants should not be encouraged to address more than one purpose since this might force them into areas outside their area of expertise. Also, such a requirement is not necessary for “middle-mile transport” solution since these connections between underserved and unserved areas and a backbone provider will open up that area for any combination of services.

### ***c. How should the BTOP leverage or respond to the other broadband-related portions of the Recovery Act, including the United States Department of Agriculture (USDA) grants and loans program as well as the portions of the Recovery Act that address smart grids, health information technology, education, and transportation infrastructure?***

Programs that establish middle-mile transport solutions leverage all of the broadband related objectives of the Recovery Act. By joining underserved and unserved areas to a backbone provider, a path will be established that can be used to provide health information technology, education and other bandwidth intensive services. As explained below, these connections become the anchor locations for traffic aggregation points (“TAPs”). Those TAPs become extensions of the Internet and can be used for any application needing access to bandwidth.

## **2. THE ROLE OF THE STATES**

The Recovery Act states that NTIA “may consult” with the States<sup>1</sup> with respect to 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?***

State priorities should be considered but should not be determinative in awarding grants. Some states have requested that all applications be routed through them for scoring. There is no precedent for this in the Act. Any such requirement would interfere with the ability of parties to seek grants.

In rules proposed by XO Communications and Nextlink, the evaluation criteria awards five points to a proposal endorsed by the governor of a state or the governor’s designee. It would be inappropriate for a proposal to be awarded additional points based solely on governmental support.<sup>2</sup> Those points could be determinative in the scoring

---

<sup>1</sup> For purposes of these Comments, “States” includes the District of Columbia, territories and other possessions of the United States of America.

<sup>2</sup> Proposed Rules for Implementation of NTIA’s Broadband Technology Opportunities Program, letter from Heather Burnett Gold, XO Communications to Dr. Bernadette McGuire-Rivera, NTIA, dated March 9, 2009. See Proposed Rule 1008(a)(3)(A).

process. If the only difference between two proposals by separate entities is one was endorsed by the governor and the other was not or did not seek gubernatorial support, the award process takes on political overtones. The most likely result is that governor might file a blanket endorsement of all projects in order to secure the five points. Level 3 believes that is does not make good policy or scoring to grant or deny a request if it is not scored or part or submitted as a broader state application.

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

The appropriate role for States in the BTOP program is to provide guidance to NTIA and RUS. The States should not have a final say in the selection of projects for funding. This includes awarding a single grant to specific states to award for projects within its boundaries. The States role is advisory and they are best situated to coordinate efforts within their states but the final decision rests with NTIA and RUS.

***c. How should NTIA resolve differences among groups or constituencies within a State in establishing priorities for funding?***

It is unclear whether this question focuses on equally qualified grant requests for identical projects, or with slight variations or on broader policy disputes by diverse groups who want funds targeted in specific ways. For purposes of this response, Level 3 will focus on the former hypothesis. In those cases, NTIA should notify groups to allow them to either submit a new joint proposal or NTIA can combine the proposals into a single award. Following this path will provide services to the greatest group of people and should free up additional funds to be deployed elsewhere.

***d. How should NTIA ensure that projects proposed by States are well-executed and produce worthwhile and measurable results?***

---

NTIA should require each project to develop a step-by-step work plan that includes dates from initial receipt of the funds through completion of the project. The metrics should include the contracting process, permitting, equipment acquisition and delivery, construction stages, disbursements of funds, and final acceptance of any work. These records could be provided to NTIA twice-a-month on a public basis. NTIA can monitor progress and fund disbursement and seek additional information if necessary.

### **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?

The Internet and ensuing broadband applications have fundamentally changed the communications marketplace. In today's world, a sole provider of services has been replaced by any number of parties who are now involved in providing service to an end user. A network backbone provider sells services to an ISP who develops products or services using applications hosted on servers from vendors around the world. The balkanization of services is complex and exceeds anything available through the old copper based public switched telephone network. With that in mind, NTIA should consider non-traditional carriers and providers in addition to the incumbent providers provided they are have the technical, managerial and financial expertise to deliver on its proposal.

#### **4. ESTABLISHING SELECTION CRITERIA FOR GRANT AWARDS**

The Recovery Act establishes several considerations for awarding grants under the BTOP. It also allows NTIA to 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?*

When considering projects involving “middle-mile transport” or ensuing capital expenditures to allow for interconnection in rural areas, NTIA should consider the managerial, financial and technical expertise of the operators of the backbone. The second criteria should cover the ability of the backbone operator to manage capacity on its network and its ability to meet commitments to deliver capacity. Third, NTIA should give preference to those backbone networks that are not “conduit constrained” and where additional construction is not required along the backbone to add capacity. And finally, NTIA should consider the scalability of the backbone to provide additional capacity as bandwidth demand increases.

The scalability of a project and its ability to introduce competitive pressures on pricing for bandwidth and backbone access are major considerations in the long term feasibility of a project. NTIA, however, should not narrow its consideration of the long term economic feasibility of a project by considering only the demographics of a project when it’s built. From a backbone perspective, each extension of broadband into an unserved or underserved area creates a new traffic aggregation point (TAP). From the

perspective of a network operator, TAPs become new entry points for the Internet for any number of platforms or applications. Mobile switching centers, cell tower sites, cable headends, large enterprise buildings or campuses and data centers are examples of the types of users that can access a network through a TAP. As networks grow and by consequence the reach of TAPs, the cost of reaching these unserved and underserved areas is reduced thus driving down the cost of bandwidth and the services that use bandwidth. This drives a constant cycle of increased demand leading to lower network costs.

Establishing TAPs on high-speed broadband networks is crucial to the future of the United States and its economy. While the preference of the government and the industry is to allow markets to dictate how capital is deployed, there are instances where federal funding is needed because private investment has not materialized. That is the exact situation faced in the market for “middle-mile” transport and capital expenditures to allow interconnection at remote sites along the backbone.

Said simply, any project in an underserved or unserved areas should carry a presumption that the service would not be provided without Federal assistance and that private investment is not being displaced. It has been 13 years since the Telecommunications Act of 1996 was passed and since then, the nation has made strides in deploying broadband services in urban areas. During that time, funding decisions have been based on market considerations and what companies viewed as the most efficient use of their capital and not to meet any national policy objectives. It is because of market dynamics such as the high cost of construction and backhaul, limited subscriber base and uncertain returns on capital that the capital markets have ignored these areas. The decade-

long turmoil in the capital markets for telecommunications investments has not helped. NTIA does not need to develop a new test to show that the projects would not be implemented without Federal assistance. The market has already decided that Federal assistance is necessary.

In areas where existing broadband solutions exist, NTIA should examine whether there is a competitive environment for the inputs needed to provide service. In rural and remote locations, middle-mile solutions may only be available from a single interexchange carrier or the dominant telephone company. These excessive backhaul costs impede the deployment of broadband by keeping the price that retail providers and their end users pay unnecessarily high. Yet for the same reasons discussed earlier, the capital markets have largely ignored these areas finding other projects or areas where capital can be more successfully allocated. In addition, predatory pricing behavior makes it difficult to build in these areas since once construction starts, an incumbent provider may suddenly reduce its rates to make it uneconomical for a party to build that backhaul. Just as NTIA should consider underserved and unserved areas as the result of a market failure, it should apply the same designation to those markets where only a single provider exists for backhaul or middle mile solutions. By allowing funding for competitive middle mile projects, NTIA will be establishing a competitive environment for the inputs required to provide broadband. This will establish a pricing environment that will allow broadband projects to thrive after federal stimulus money is no longer available.

***b. What should the weighting of these criteria be in determining consideration for grant and loan awards?***

When considering proposals for middle-mile transport or capital expenditures to upgrade network access points, the criteria established in Section 1 should receive almost all of the weight for grants and loans. These middle mile projects are similar to construction highways in that none of the anticipated benefits will happen until the road is built. Establishing TAPs in underserved and unserved areas should be the first priority of NTIA. From a networking perspective, TAPs are agnostic to the technology used by the traffic brought to them. It does not matter whether it is WiMAX, LTE, unregulated spectrum, cable or cellular. TAPs can accept all traffic and connect the end users with the rest of the world.

***c. How should the BTOP prioritize proposals that serve underserved or unserved areas? Should the BTOP consider USDA broadband grant awards and loans in establishing these priorities?***

While NTIA may consider USDA broadband grant awards and loans in establishing priorities for BTOP funds, Level 3 believes those metrics would be misleading when considering “middle-mile projects”. Most grants and loans for broadband deployment have focused on the retail side of the equation and the expansion of the last mile to reach end users. Few if any of the grants have gone toward establishing competitive middle mile solutions. Reliance on those metrics will skew the analysis away from the crucial need for middle-mile development.

***d. Should priority be given to proposals that leverage other Recovery Act projects?***

Level 3 believes that proposals to provide competitive middle-mile transport and funds to cover capital expenditures for network upgrades in unserved and underserved markets provide leverage for all other Recovery Act projects by building a platform for

those projects to reach their targeted areas.

***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?***

Proposals that provide competitive middle-mile transport and funds to cover capital expenditures for network upgrades to allow for backbone access in unserved and underserved areas should be given priority. These projects will result in the creation of TAPs which will allow for the expansion of services beyond a single community. For example, a wireless ISP or some other provider may collocate its equipment at the TAP and use that location to anchor its wireless network throughout a county or several communities. By creating access to the Internet, middle-mile projects become the platform upon which any number of policy goals, populations or areas can be served more economically than through existing infrastructure.

***f. What factors should be given priority in determining whether proposals will encourage sustainable adoption of broadband service?***

One factor that should be a priority is whether the project will introduce competition into the wholesale market for the inputs required to offer retail broadband service. In the case of “middle-mile” transport, projects that will create an alternative backhaul route may have greater impact on the sustainable adoption of broadband service by introducing competitive pricing to the most crucial ingredient in any broadband service, access to the Internet. Studies have shown that where broadband is introduced, the demand for bandwidth increases as more and more applications are introduced. Focusing too heavily on the retail side of expanding local networks will create an

increase in demand that will require additional backhaul. With no competitive alternative, retail providers will be forced to pay the non-competitive price for backhaul which will force them to keep their prices higher. If prices do not come down or if the service begins to suffer because demand exceeds the capacity of the backbone connection, end users will become frustrated with the service and may not perceive any value in paying for it. By ensuring that a competitive backhaul solution is available, there will be additional capacity in the network that can handle demand and will lead to competitive pricing for the inputs.

***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?***

NTIA should not consider the differences in technologies and their characteristics when reviewing grant proposals. Organizations submitting grant proposals will do so after determining what type of technological solution makes the best economic and engineering sense for the markets and the terrain. In some instances, it will be cheaper to deploy wireless backhaul and in others, it will be cheaper to bury fiber. Yet in others, it may be a combination of the two. NTIA should not try to reengineer the proposals due to technological issues. NTIA can avoid the need to distinguish between technologies by ensuring that a competitive market exists for TAPs.

***h. What role, if any, should retail price play in the grant program?***

The consideration of retail pricing should not play any role in the grant program. The requirements of the Recovery Act focus the awards on projects for capital spending. Instead, NTIA should focus on projects that will develop competitive markets for the building blocks used in the provision of broadband.

Level 3 hears from rural providers that there is a serious lack of competition for the “middle mile” or the connection from their network point of presence to an Internet backbone. In many instances, there is only one alternative provider and the cost of the connections make it difficult to justify providing broadband services to end users. As part of the grant process, NTIA should consider those projects that will inject competition in the backhaul market. If NTIA can develop this competitive marketplace, then broadband operators will see the prices for one of their major inputs decline which improves the economics of their retail services.

Also, NTIA should consider projects that will help inject competition on the retail side of the broadband equation. Competition and not regulation is the best way to check excessive prices on the retail side.

## **5. GRANT MECHANICS**

The Recovery Act requires all agencies to distribute funds efficiently and fund projects that would not receive investment otherwise.

### ***a. What mechanisms for distributing stimulus funds should be used by NTIA and USDA in addition to traditional grant and loan programs?***

Level 3 will not offer comments on what alternative mechanism should be used by NTIA and USDA for distributing stimulus funds other than traditional grant and loan programs.

### ***b. How would these mechanisms address shortcomings, if any, in traditional grant or loan mechanisms in the context of the Recovery Act?***

See response to subpart a.

## **6. GRANTS FOR EXPANDING PUBLIC COMPUTER CENTER CAPACITY**

The Recovery Act directs that not less than \$200,000,000 of the BTOP shall be awarded for grants that expand public computer center capacity, including at community colleges and public libraries.

### ***a. What selection criteria should be applied to ensure the success of this aspect of the program?***

When considering grants to expand public computer center capacity at community colleges and libraries, NTIA should consider the impact those centers will have on broadband demand and the need for access competitive middle mile transport. In addition, NTIA should consider how those locations can become TAPs and how those locations can become anchors for other uses and other technologies. NTIA should provide greater weight to those requests that can serve as TAPs when they have improved access to broadband facilities.

### ***b. What additional institutions other than community colleges and public libraries should be considered as eligible recipients under this program?***

Level 3 will not offer any comments on the type of additional institutions that should be considered as eligible recipients under this program. However, in the evaluation process, NTIA should consider the feasibility of those locations to act as TAPs and serve as springboards for expanding the reach of bandwidth and other applications in an area.

## **7. GRANTS FOR INNOVATIVE PROGRAMS TO ENCOURAGE SUSTAINABLE ADOPTION OF BROADBAND SERVICE**

The Recovery Act directs that not less than \$250,000,000 of the BTOP shall be awarded for grants for innovative programs to encourage sustainable adoption of broadband services.

***a. What selection criteria should be applied to ensure the success of this program?***

Level 3 will not be submitting comments on the criteria that should be applied to ensure success of programs to encourage sustainable adoption of broadband service.

***b. What measures should be used to determine whether such innovative programs have succeeded in creating sustainable adoption of broadband services?***

**8. BROADBAND MAPPING**

The Recovery Act directs NTIA to establish a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State.

***a. What uses should such a map be capable of serving?***

There are numerous uses for a national map detailing broadband deployment. They range from providing basic information on the availability of retail services to identifying where additional network diversity should be considered.

***b. What specific information should the broadband map contain, and should the map provide different types of information to different users (e.g., consumers versus governmental entities)?***

The Broadband map should contain population information, economic information for that area, retail information, locations of Community Anchor Institutions including recipients of Telemedicine support, and wholesale inputs. In addition, the map should also detail any providers or routes built with funds allocated by the RUS prior to the Recovery Act and those projects funded through the Act.

In addition to mapping retail pricing, retail consumer providers should report on a per subscriber basis the average bandwidth utilization for each service they offer. This

includes distinctions between residential and business subscribers and variations in the broadband speeds offered at different pricing levels. These measurements should be captured for upstream and downstream transmissions for the average hour each month and the average peak busy hour for each day of the month. By recording these metrics, NTIA and industry will be able to compare areas where advertised retail bandwidth matches major metropolitan areas. It will also identify where retail bandwidth speeds are being pinched because of inadequate or congested backhaul links.

***c. At what level of geographic or other granularity should the broadband map provide information on broadband service?***

As a threshold matter, NTIA will need to reconsider the traditional notions of service areas when it develops its reporting requirements. There will be a great temptation to default to historic telecommunications notions of local calling areas, exchange boundaries, LATA boundaries and even state boundaries. For purposes of detailing broadband penetration, those traditional metrics are irrelevant. Broadband services and how they are delivered defy the traditional telecommunications classification since any designated area may be served by a network gateway across the country. Instead of relying on those outdated classifications, NTIA should define a service area as one where subscribers are served by a router or set of routers that share a common backhaul route to the Internet backbone.

***d. What other factors should NTIA take into consideration in fulfilling the requirements of the Broadband Data Improvement Act, Pub. L. No. 110-385 (2008)?***

Level 3 has no comments on this section.

***e. Are there State or other mapping programs that provide models for the statewide inventory grants?***

While Level 3 believes that the states are the in best position to develop the most accurate picture of what is available in a particular state, Level 3 has no position on any state or other mapping programs that provide models for statewide inventory grants. The differences between various state programs may reflect differing policy goals, funding or legislative mandates.

***f. Specifically what information should states collect as conditions of receiving statewide inventory grants?***

See response to subsection e.

***g. What technical specifications should be required of state grantees to ensure that statewide inventory maps can be efficiently rolled up into a searchable national broadband database to be made available on NTIA's website no later than February 2011?***

In order to eliminate confusion and avoid unnecessary IT and other development costs, NTIA should determine the system it will use for its national broadband database and provide the requirements for populating that database to the states as quickly as possible. NTIA should use existing, off-the-shelf software and systems that are widely accessible. In addition, NTIA should avoid creating its own software or programs.

***h. Should other conditions attach to statewide inventory grants?***

Level 3 does not believe any other conditions should attach to a statewide inventory grant.

***i. What information, other than statewide inventory information, that should populate the comprehensive nationwide map?***

In addition to the statewide inventory information, the comprehensive nationwide map should include the following:

- a. Non-classified Federal Anchor Institutions such as military bases, administrative agencies, laboratories and other locations
- b. An overlay of nationwide backbones such as those operated by AT&T, Sprint, Verizon, Level 3 and others;
- c. An overlay of nationwide education networks such as Internet 2, Lambda Rail and other educational consortiums;
- d. Those areas where grants were awarded for broadband education, awareness, training, access, equipment and support applications; and
- e. Projects to provide service to public safety agencies.

The map should allow a user to click on a highlighted area for any project and learn who received the award, contact information for the award winner, the purpose of the grant, the amount of the award and status of that project.

***j. The Recovery Act and the Broadband Data Improvement Act (BDIA) imposes duties on both NTIA and FCC concerning the collection of broadband data. Given the statutory requirements of the Recovery Act and the BDIA, how should NTIA and FCC best work together to meet these requirements?***

In order to eliminate the need for multiple reports, NTIA and the FCC should develop a single form that captures the information required for each agency. Those reports should be submitted once to a consolidated location. However, before NTIA and the FCC start requiring reports, they should work with the industry to develop appropriate metrics and classification for information. The reportable information should be generated in the normal course of business and should not require additional resources to be spent on new systems or software.

## 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?*

The factors that NTIA uses to establish whether a project receives more than 80 percent of its costs in grant funds will vary based on the proposal. In these comments, Level 3 will focus on the need for middle mile transport or the costs of upgrading remote network facilities to receive high speed IP traffic.

The first factor involves the cost of reaching the internet backbone. Proposals in areas with difficult terrain, sparse population or environmental sensitive areas could exponentially increase the costs of a project. The goal of the Recovery Act is to connect those remote areas with a reliable broadband supply. The parties seeking funds should not be penalized just because their construction costs may be higher due to the topography. Establishing either the first or a competitive connection to the unserved or underserved area should be the first priority of award grants.

NTIA should also consider a company’s internal rate of return on a specific project when decided whether to fund more than 80 percent. Within any profit making organization, the money for broadband deployment will have to compete with other projects for funding. Decisions are usually made based on factors such as the internal rate of return the company can expect on that capital. That analysis will create friction

between the commercial interests of an organization and the policy goals set out by Congress. The grant program can help alleviate that tension by making the capital available for projects that would not normally meet a company's allocation methodology. By doing that, NTIA will ensure that funds for broadband projects are not diverted from other projects which could mean a loss of jobs in other areas.

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

Level 3 has not comments on this section.

***c. What showing should be necessary to demonstrate that the proposal would not have been implemented without Federal assistance?***

Any project in an underserved or unserved areas should carry a presumption that service would not be provided without Federal assistance. It has been 13 years since the Telecommunications Act of 1996 was passed and since then, the nation has made strides in deploying broadband services in urban areas. During that time, funding decisions have been based on market considerations and what companies viewed as the most efficient use of their capital and not to meet any national policy objectives. It is because of the market dynamics such as the high cost of construction and backhaul, limited subscriber base and uncertain returns on capital that the capital markets have ignored these areas. NTIA does not need to develop a new test to show that the projects would not be implemented without Federal assistance. The market has already decided that Federal assistance is necessary.

In areas where existing broadband solutions exist, NTIA should examine whether there is a competitive environment for the inputs needed to provide service. In rural and remote location, middle-mile solutions may only be available from a single interexchange

carrier or the dominant telephone company. These excessive backhaul costs impede the deployment of broadband by keeping the price end users pay unnecessarily high. Yet for the same reasons discussed earlier, the capital markets have largely ignored these areas finding other projects or areas where capital can be more successfully allocated. In addition, predatory pricing behavior makes it difficult to build in these areas since once construction starts, an incumbent provider may suddenly reduce its rates to make it uneconomical for another party to build that backhaul. Just as NTIA should consider underserved and unserved areas as the result of a market failure, it should apply the same designation to those markets where only a single provider exists for backhaul or middle mile solutions. By allowing funding for competitive middle mile projects, NTIA will be establishing a competitive environment for the inputs required to provide broadband. This will establish a pricing environment that will allow broadband projects to thrive after federal stimulus money is no longer available.

#### **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?***

A simple, defined process for awarding the grants and transparency in the award process will provide for the most efficient, effective and fair way to carry out the requirements of the BTOP. As the party disbursing the funds, NTIA must first establish a process that it can meet for each funding round. If parties are going to have their grant requests in by a specific date, then NTIA must meet its commitment to decide on those grants by a specified date. In order to ensure fairness in the system and that all applications are considered, NTIA should release the grant awarded in each phase at the same time. NTIA should make available the rationale for why it picked a specific project so that parties who did not receive funding in the first round, can adjust their grant proposals in the second round. The greater clarity and transparency that NTIA can provide will prevent the award system from resembling a black box which spits out random results.

***b. What elements should be included in the application to ensure the projects can be completed within two (2) years (e.g., timelines, milestones, letters of agreement with partners)?***

Each application for a project should include a detailed project plan detailing each step in the process from award to completion. The project plans should also include metrics against which NTIA and the public can evaluate progress. These work plans, while subject to change due to issues that arise in construction, should be updated weekly by the award winners and made publicly available through a NTIA website.<sup>3</sup> In addition, the work plan should include a detailed account of when money is spent, the purpose of

---

<sup>3</sup> Like all construction projects, broadband stimulus work will be subject to delays caused by government permitting, shortages of equipment, issues with suppliers, weather and any number of other reasons. It is important that NTIA realize that flexibility will be required in the work project plan.

the money and the recipient. This transparency will allow NTIA, interested stakeholders, media and the public to monitor progress and raise flags when issues develop.

While documents such as letters of understanding with potential partners may be helpful, they should be given little weight. It is unlikely that most parties will sign detailed pricing lists or contracts until after they understand if an award has been made. Also, once a primary party has been awarded a bid, they could receive offers from vendors seeking to improve the pricing on services.

## **11. REPORTING AND DE-OBLIGATION**

The Recovery Act also requires that grant recipients report quarterly on the recipient's use of grant funds and progress in fulfilling the objectives of the grant proposal. The Recovery Act permits NTIA to de-obligate funds for grant awards 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. How should NTIA define wasteful or fraudulent spending for purposes of the grant program?***

In this question, NTIA seeks definitions for wasteful spending and fraudulent spending. Those terms involve separate concepts and will require NTIA to establish careful definitions.

Wasteful spending should be defined as expenditures that are extravagant or exceed the necessary requirements for the project. One example might include "gold plating" a network by purchasing capacity or equipment that is far in excess of the best case scenarios for broadband deployment. It would make little sense for a rural area with about 5,000 broadband users to deploy an OC-192 worth of Internet capacity unless that area was expecting significant economic development. (An OC-192 is the equivalent of

about 750,000 simultaneous telephone calls). Nor would it make sense to purchase 50 routers initially if one or two will work. Another example might include travel to Barbados to tour a rural broadband installation there.

Fraudulent spending is often harder to detect because it is done in a deceitful manner. NTIA should adopt a “less than zero” approach to fraudulent spending and should move aggressively to protect the integrity of the BTOP funds and any impact programs. Level 3 offers some suggestions on how to deal with suspected fraudulent spending in subsection c.

***b. How should NTIA determine that performance is at an “insufficient level?”***

NTIA should establish simple metrics to measure performance. An “insufficient level of performance” should be triggered by any project that has fallen more than 30 days behind its performance plan. At that point in time, the project owners should be required to meet with NTIA and file a plan to rectify any deficiencies. In the event a project falls 60 days behind schedule or reaches an insufficient level of performance for a second time, NTIA should suspend the project including barring any additional spending until the project owners rectify the deficiencies through a transparent administrative process to be developed by NTIA.

***c. If such spending is detected, what actions should NTIA take to ensure effective use of investments made and remaining funding?***

NTIA should be prepared to take extraordinary actions and to do so swiftly to protect the funds invested by the American taxpayer in the BTOP program. If NTIA identifies any extravagant spending, it should order the parties involved to replace any extravagant equipment with more appropriate equipment and require refunds for the

difference in pricing. In the event a party is recalcitrant and does not want to make the adjustments, NTIA should immediately suspend that party from participating in any future BTOP programs and should halt consideration of any additional bids involving that party.

In the case where NTIA has identified fraudulent spending or arrangements, NTIA should immediately suspend the project and identify new program managers to step in and assume the program. At the same time, NTIA should aggressively pursue all legal recourse to recover the money including withholding or clawing back monies awarded to the parties for this project or any other project involving BTOP funds.

## **12. COORDINATION WITH USDA'S BROADBAND GRANT PROGRAM**

The Recovery Act directs USDA's Rural Development Office to distribute \$2.5 billion dollars in loans, loan guarantees, and grants for broadband deployment. The stated focus of the USDA's program is economic development in rural areas. NTIA has broad authority in its grant program to award grants throughout the United States. Although the two programs have different statutory structures, the programs have many similar purposes, namely the promotion of economic development based on deployment of broadband service and technologies.

***a. What specific programmatic elements should both agencies adopt to ensure that grant funds are utilized in the most effective and efficient manner?***

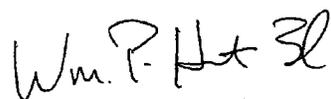
Level 3 does not have any comments on this section.

***b. In cases where proposals encompass both rural and non-rural areas, what programmatic elements should the agencies establish to ensure that worthy projects are funded by one or both programs in the most cost effective manner without unjustly enriching the applicant(s)?***

Level 3 does not have any comments on this section.

The Recovery Act presents an opportunity to transform the Nation's communications infrastructure and to break down the barriers of time and distance that divide American into two markets, one urban and the other rural. By shattering these barriers and their underlying bloated cost structure, the Nation will develop a stronger and vibrant economy that spreads its benefits throughout all 50 states. Level 3 looks forward to working with NTIA on this important project.

Respectfully submitted,

A handwritten signature in black ink that reads "Wm. P. Hunt III". The signature is written in a cursive style with a large, stylized "H" and "I".

William P. Hunt III  
VP, Public Policy  
LEVEL 3 COMMUNICATIONS LLC  
1025 Eldorado Boulevard  
Broomfield, CO 80021