

**Before the  
Department of Commerce  
National Telecommunications and Information Administration  
and  
Department of Agriculture  
Rural Utilities Service**

**The American Recovery and Reinvestment Act of 2009  
Broadband Initiatives  
Docket No. 090309298-9299-01**

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**Comments of  
The Wireless Internet Service Providers Association**

The Wireless Internet Service Providers Association (“WISPA”) hereby comments on the Joint Request of Information (“Joint Request”) of the Department of Commerce, National Telecommunications and Information Administration (“NTIA”) and the Department of Agriculture, Rural Utilities Service (“RUS”), published in the Federal Register on March 12, 2009 seeking public input on Section 6001 of the American Recovery and Reinvestment Act of 2009 (the “Act”).<sup>1</sup>

**Introduction**

Founded in 2004, WISPA is the trade association representing the interests of more than 350 Wireless Internet Service Providers (“WISPs”), vendors, system integrators and others interested in promoting the growth and delivery of wireless broadband service. WISPs provide fixed wireless Internet access services to more than 2,000,000 consumers and businesses. Many of these subscribers live in underserved areas of the nation, both rural and urban, where wired technologies, such as DSL and cable modem service, do not reach and are unlikely to extend because of the high infrastructure deployment costs. Created by the FCC’s allocation of unlicensed spectrum

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<sup>1</sup> See 74 Fed.Reg. 10716 (March 12, 2009).

in the early 1990s, many WISPs are eager to extend their networks to remote areas where demand for broadband is great but where broadband currently is not available. Many WISPs operate in license-exempt bands (e.g., 900 MHz, 2.4 GHz and 5.8 GHz), the 3650 MHz “licensed-lite” band and, in some cases, licensed bands. The vast majority of WISPs are “small businesses,” as defined in the Small Business Act.

Many WISPs have received federal and state grants and loans to assist successful construction and deployment in rural areas. In particular, WISPs have utilized the RUS grant, loan and loan guarantee programs to fund community centers, educational services and broadband access in small, rural communities where demand is shown and the WISP can meet that demand. WISPs have been very involved in these existing programs and proved to be responsible stewards of public funding.

WISPs also dedicated themselves to community service. As one example, in the aftermath of Hurricane Katrina, WISPs from around the country travelled to the Gulf Coast to establish wireless Internet service to areas ravaged by the hurricane. WISPs were instrumental in assisting public safety and first responders to aid the recovery effort and ensure that displaced consumers had a lifeline to the world. WISPs also provide service on a daily basis to schools, hospitals and public safety.

Having constructed and operated wireless networks in rural, underserved and unserved areas of the nation, WISPs are uniquely experienced in the trials and successes of providing service in areas where other ISPs have chosen not to offer service. WISPA strongly believes that, if implemented correctly, the grant programs authorized by the Act can help consumers in rural, underserved and unserved areas achieve affordable and

reliable access in an expeditious manner. In the pages that follow, WISPA is pleased to offer its responses to the Joint Request and urges adoption of its proposals.

Respectfully submitted,

**THE WIRELESS INTERNET SERVICE  
PROVIDERS ASSOCIATION**

April 10, 2009

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## Responses to the Joint Request

### NTIA:

***1. The Purposes of the Grant Program: Section 6001 of the Recovery Act establishes five purposes for the BTOP grant program.***

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

WISPA believes that NTIA should establish minimum percentages for the allocation of grant funds to consumers residing in “unserved” and “underserved” areas to ensure that adequate funds are directed to consumers residing where need and demand are greatest. Specifically, WISPA requests that at least **50 percent of the funds be distributed to “unserved” areas and 25 percent of the funds be distributed to “underserved” areas.**<sup>2</sup>

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

NTIA should not award preferences or priorities to applicants that propose to serve more than one of the stated purposes. WISPA is concerned that applicants may promise in their applications to accomplish more than they can deliver. For instance, applicants may state that they can both serve underserved areas and assist public safety, but public safety may not be willing to enter into an agreement with the provider. In addition, awarding additional credit to applicants claiming to be able to serve more than one purpose will disadvantage small businesses, such as WISPs, that use wireless technologies to serve areas that would otherwise not have access to broadband but that may not have sufficient resources to serve the other purposes of the Act.

Keeping in mind that grant applications will be competing for limited funding on a national or statewide basis, not merely locally, giving extra weight to applications that meet multiple needs may disadvantage many rural applications where multiple purposes might not exist or might not be available for inclusion – yet these areas are exactly where investment is often most needed.

***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?***

WISPA believes that other broadband-related programs should not be considered in the BTOP grant evaluation because it disadvantages newer and innovative players. The ability of NTIA to quickly distribute grant funds should not be complicated or compromised by inclusion of goals of other programs.

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<sup>2</sup> WISPA offers definitions for the terms “unserved” and “underserved” in its responses to Question 4b.

**2. *The Role of the States: The Recovery Act states that NTIA may consult the States (including the District of Columbia, territories, and possessions) with respect to various aspects of the BTOP. The Recovery Act also requires that, to the extent practical, the BTOP award at least one grant to every State.***

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

The Act is designed to stimulate the economy through job creation, and WISPA strongly believes that the **private sector** can help accomplish this goal more expeditiously and efficiently. While private industry should not be precluded from partnering with state and local governments, WISPA believes that distributing grant funds directly to state and local governments would countermand the purposes of the Act. In general, state and local governments are inexperienced in constructing and operating broadband networks. Further, granting funds directly to state and local governments will require them to solicit private contracts for equipment, construction and management via a subsequent fund distribution process during which additional objectives and obligations could be attached, a process that will delay the provision of service to consumers.

States should be permitted to highlight areas of need and should be able to consult with the private sector in so doing.

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

For several reasons, **WISPA does not believe that states should be permitted to support or rank specific projects** as part of the grant approval process. First, states themselves may be applicants for grant funds, and it would not be appropriate for them to be in the position to make recommendations. Second, states may be influenced by political factors that disadvantage smaller companies that do not have political clout to curry favor with state governments. Third, the NTIA process should be transparent and limited to consideration of the criteria specified in the Act. If states had the right to recommend or rank specific projects, NTIA's processes could be viewed as less than transparent. Fourth, the states are not as well-equipped as NTIA and RUS to apply the grant criteria in a way that would create certainty in the selection process. NTIA and RUS have more expertise than the states do, and permitting states to screen and rank applications would thus be inadvisable.

WISPA understands that many states have broadband commissions designed to promote the growth of broadband, collect data for the governor or state legislature and suggest policy. WISPA notes that in some states, large incumbent wired carriers have positions on the commissions and that smaller wireless companies are not as well represented. Further, the inclusion of Section 6001 of the Act can be construed as an acknowledgment that state broadband commissions have not succeeded in ensuring that broadband access is extended to "unserved," "underserved" and "rural" areas. In light of these apparent shortcomings, WISPA asks that NTIA limit the role of the states – and their broadband commissions – to avoid the negative perceptions and problems inherent in extensive statewide participation beyond the consultative role specifically stated in the Act.

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.*

a. *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?*

WISPA requests that NTIA adopt a rule stating that **it is in the public interest for entities already providing broadband service to be eligible for NTIA grants**, without additional review. In addition, if an applicant is owned by principals having demonstrable experience in providing broadband service, such entity also should be eligible. WISPA strongly believes that experience in providing broadband service to consumers will help ensure that grant funds are distributed to entities that have a track record of deployment, managerial experience and an understanding of broadband technology, and thus will be reliable stewards for taxpayers' dollars.

For purposes of determining **eligibility**, "fixed broadband" means average speeds of at least 768 kbps in one direction, which is consistent with the FCC's definition (adopted in 2008) of "Basic Broadband Tier 1" service. *See also* Response to Question 4b.

The private sector serves a vital role under the Act. Among other things, business is a vehicle for investment that can help make a project more sustainable. Congress apparently acknowledged this role when it deleted from the final version of the Act an earlier provision that would have required private enterprises to participate only through partnerships with governmental units.

WISPA urges NTIA to adopt its private sector eligibility criteria before it makes grant funds available in the first funding round. This will ensure that funds are not first distributed solely to state and local governments while NTIA considers and finalizes its rules.

4. *Establishing Selection Criteria for Grant Awards: The Recovery Act establishes several considerations for awarding grants under the BTOP. In addition to these considerations, NTIA may consider other priorities in selecting competitive grants.*

a. *What factors should NTIA consider in establishing selection criteria for grant awards? How can NTIA determine that a Federal funding need exists and that private investment is not displaced? How should the long-term feasibility of the investment be judged?*

NTIA should use a **three-step process** in reviewing applications. **First**, NTIA should ensure that the application meets the eligibility requirements of Section 6001(e)(1)

of the Act. **Second**, NTIA should determine whether the application demonstrates compliance with the statutory requirements of Section 6001(e)(2)-(7) of the Act. If the applicant meets these requirements and no other application is proposing to serve the same communities, NTIA should proceed quickly to award the grant. If the applicant does not meet all of the requirements and no other application is proposing to serve the same communities, the applicant should be given a short period of time to address the deficiencies in the application. If the applicant meets the eligibility requirements and at least one other application proposes to serve the same communities, then NTIA should evaluate the applications based on the selection criteria described below.

As the **third** step of its analysis, and in compliance with its statutory obligations under Section 6001(h) of the Act, NTIA should employ an objective scoring system to select grant recipients from among eligible applicants. This is discussed in WISPA's Response to Question 4.b.

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

**Above all, selection criteria should favor applicants proposing to provide “broadband” service to “unserved” and “underserved” areas of the country**, as further discussed below. A Brookings Institution study showed that with “every one percentage point increase in penetration in a state, employment is expected to increase by 0.2 to 0.3 percent per year,” which translates into the creation of 300,000 jobs nationally.<sup>3</sup> WISPA believes that service to “unserved” and “underserved” areas are the most important purposes of the Act – they are the first two purposes listed in the Act – and the selection criteria should reflect this to ensure that funds are distributed to communities where broadband availability is lacking.

For purposes of evaluating grant proposals (as opposed to determining eligibility), **“fixed broadband” should be defined to give applicants priority for proposing speeds up to 3 Mbps to the customer and at least 2 Mbps from the customer**. No additional preference would be awarded for speeds above these in order to preserve the “technology neutral” requirements of the Act. NTIA could approve grants for fixed speeds of less than 3 Mbps to the customer and 2 Mbps from the customer (but at least 768 kbps in at least one direction).<sup>4</sup> Thus, where two applicants apply for funding for the same community and one is proposing 3 Mbps to the customer and at least 2 Mbps from the customer and the other is proposing 1.5 Mbps to the customer and 768 kbps from the customer, the applicant proposing the faster speed would receive priority. However, where two applicants apply for funding for the same community and one is proposing 3 Mbps to the customer and at least 2 Mbps from the customer and the other is

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<sup>3</sup> Crandall, Robert, *et al.*, “The Effects of Broadband Deployment on Output and Deployment: A Cross-Sectional Analysis of U.S. Data,” Brookings Institution (2007), at 2.

<sup>4</sup> WISPA observes that use of the term “average” speed for fixed wireless broadband requires consideration of a number of variable elements that are difficult to factor in to a meaningful definition, including: (1) the number of sectors, (2) contention ratios (i.e., number of users per sector), (3) bandwidth, (4) number of applications that the user has on its system, (5) Deep Packet Inspection and other network management techniques, and (6) backhaul parameters.

proposing 100 Mbps to the customer and 20 Mbps from the customer, neither applicant would receive priority.<sup>5</sup>

WISPA supports use of U.S. Government defined geographic boundaries such as census tracts, census block groups, census block, or zip codes, in defining “unserved” and “underserved” areas, but supports the use of census blocks as the baseline area because they encompass smaller areas. However, because existing geographic designations measure availability in a given area even if only one resident in the area has access, applicants should be permitted to provide additional information identifying smaller communities that are “unserved” or “underserved.” **No “unserved” or “underserved” community should be disqualified because it is too small.** NTIA should not favor the perception of administrative convenience in determining the areas that grant applicants designate over the needs of smaller communities that could be mis-categorized because they lie within a larger area that, taken as a whole, may not be deemed “unserved” or “underserved.”

In defining the terms “unserved” and “underserved,” WISPA generally concurs with the Free Press’ three-tiered approach to defining “**unserved**” area:

- **“Completely Unserved”** – applicant-defined areas where low-latency (capable of less than 100 milliseconds) non-dial-up Internet access service is only available to less than 10% of occupied residential or commercial properties.
- **“Severely Unserved”** – applicant-defined areas where low-latency non-dial-up Internet access service is only available to more than 10% and less than 50% of occupied residential or commercial properties.
- **“Moderately Unserved”** – applicant-define areas where low-latency non-dial-up Internet access service is only available to more than 50% and less than 90% of occupied residential or commercial properties

An “**underserved**” area exists where service may be widely available, but no “fixed broadband” provider offers service capable of delivering downstream data at average transmission speeds exceeding 2 Mbps.<sup>6</sup> Again, no area or community should be deemed too small to qualify for funding.

The scoring criteria for this **first criterion** should give the greatest weight to the number of persons in “Completely Unserved” Areas, followed by the number of persons

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<sup>5</sup> WISPA takes no position on how “broadband” should be defined for mobile services, but observes that fixed and mobile technologies serve different markets.

<sup>6</sup> These definitions are grounded in availability of broadband and not the rate of subscription to broadband. While perhaps imperfect, broadband mapping is not complete and the FCC Form 477 process does not request information at a granular level. Consequently, the best way to measure the extent of service at this time is to consider its availability.

in “Severely Unserved” Areas, followed by the number of persons in “Moderately Unserved” Areas, and then finally, the number of persons in “Underserved Areas.”<sup>7</sup>

As the **second-most important criterion**, WISPA believes that **experienced small business broadband providers**, defined as those earning less than \$10 million a year in average gross revenues for the previous three years, should be ranked with the highest priority, receiving points at a number equal in weight to that of a completely “unserved” area. The merit behind this concept is that it will indirectly guarantee the widest distribution of funds to dispersed areas and to the greatest number of diverse leaders skilled in broadband deployment. This will surely expedite expansion of broadband, multiply the chances for successes, and create and save jobs.

WISPA believes that socially disadvantaged “small business” 8(a) firms, should not be prioritized with a high weight or number of points, nor higher than a non-8 (a) experienced small business broadband provider, unless the 8(a) applicant also meets the requirements of an experienced small business broadband provider. This is because an applicant’s racial or ethnic background is not a relevant factor that can enhance one’s ability to better meet the Act’s core objective to expand and build out sustainable broadband networks to consumers.

An alternative to the above would be to acknowledge that in a broadband industry dominated by large duopolies, there is in fact a real competitive and economic disadvantage for small broadband operators. NTIA could extend the Act’s 8(a) mandate to broadband companies that are “competitively disadvantaged” and thereby place them on an equal footing as disadvantaged small businesses without regard to social characteristics of race and ethnic origin.

For the **third criterion**, NTIA should evaluate the sustainability of the proposed project. NTIA should also consider the applicant’s **track record** of providing service in the community or nearby areas. This could be evidenced by submitting a history or timeline of the applicant’s deployment, the expediency of market expansion and other facts demonstrating the applicant’s experience and success. If there is more than one application for “fixed broadband” in an area, NTIA should determine which proposal would be make **more efficient use** of grant funds to deploy service. The **scalability** of the project and the applicant’s **financial projections** also should be considered as part of the sustainability criterion.

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<sup>7</sup> In cases where the area to be served is a combination of two or more categories of “unserved” and/or “underserved” areas, NTIA should reach a final point total with reference to the population in each category. For example, if 50 percent of the population is in a “Completely Unserved” area and 50 percent of the population is in an “Underserved” area, the applicant would receive a blended number of points representing the percentage of the population in each category.

- 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?*

WISPA's Response is included in its Responses to Questions 1.a, 4.a and 4b.

- 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?*

WISPA's Response is included in its Responses to Questions 1.b and 4b.

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

WISPA's Response is included in its Response to Question 4b.

- 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?*

WISPA's proposed definition of "fixed broadband" in its Response to Question 4b. is intended to be "technology neutral." Thus, any consideration of speed above what can reasonably be defined as "fixed broadband" should not be given priority.

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

WISPA believes that applications should be reviewed to ensure that retail pricing will be reasonable, but pricing should not be included in the scoring system. WISPA suggests that the problem of affordability of broadband service in some areas of the country can be addressed through other means, such as the program providing \$250,000,000 for innovative programs to encourage sustainable adoption of broadband service. Further information on WISPA's position is contained in its Response to Question 7.

**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?*

WISPA believes that the grant program will be the most effective and efficient means to promote the purposes of the Act and will encourage private investment to a greater degree than other mechanisms.

There may be cases where a loan guarantee program may be warranted. For instance, if the applicant cannot adequately demonstrate how the unfunded 20 percent of the project will be funded and no other successful applicant receives funding for the community after the final round of grants have been awarded, NTIA could offer to guarantee a traditional bank loan if the applicant can obtain one on reasonable terms. Such a program should not be implemented until after all communities have been designated for funding so that the loan guarantee does not preclude grant funds from being awarded.

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

The loan guarantee program would offer another means to fund broadband deployment without imposing any monetary cost to the government, and would facilitate private financing in areas that do not otherwise qualify for funding.

***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?***

WISPA believes that this program can help improve access to broadband services, especially in low-income urban areas and rural areas where broadband is not affordable. WISPA believes that these funds should be distributed only if a grant recipient is not selected for the community and serving community colleges, libraries and other public sites are not included in the grant application. WISPA does not propose selection criteria at this time. In other words, funds should be distributed under this program only if the site is not included in a BTOP grant.

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

WISPA questions whether NTIA has the statutory authority to permit other educational institutions from being eligible for funds under this provision of the Act.

***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?*

WISPA believes that **an important element of sustainable adoption is ensuring that service remains affordable**. Accordingly, NTIA should consider using these funds to pay for rebates or vouchers that subscribers seek based on a demonstration of financial need. The funds could be used to help cover the costs of consumer premise equipment (“CPE”) and monthly service. In addition, funds from this program could be used to pay a grant recipient for its cost in deploying and providing service to areas where consumers may not be able to afford service. For instance, if a grant applicant shows that 20 percent of the population cannot afford broadband service and requests support, NTIA should cover the costs of free service by paying the grant recipient.

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

NTIA should have ongoing auditing and data collection responsibilities to determine the success of any rebate, voucher or re-payment program.

**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?*

The map should identify the locations where unused broadband capacity exists so that providers can access the existing spectrum or infrastructure. The map should state the type of capacity that is available (e.g., fixed spectrum, mobile spectrum, backhaul, etc.), the amount available and the entity that controls the resource. The map should be updated on a frequent basis and use uniform formatting and database information to promote expediency in finishing the map and uniformity of information. Creating the base line mapping tools should be the first order of business, before states begin to access funds.

*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 map should be available to operators, government and consumers that may want to contact a provider for service. A consumer should be able to provide on-line its address and determine immediately whether broadband service is available and who can provide the service. There should be no need to differentiate the information on the map for different classes of users.

If no provider is listed for a given area, or listed providers are not able to provision service as listed, the consumer should have the right to add its location to a list as a site in need of broadband. As well, the online mapping system should provide a mechanism for the consumer to report when such requested service has been successfully provided.

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

The information on the map should be collected at the smallest level of granularity possible, certainly no larger than the Census Block level. WISPA appreciates that it may take a long time to collect data at this granular level and that the map will be an evolving document that will become more accurate and complete over time.

***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)?***

WISPA believes that a public agency should be responsible for creating the broadband map. Private entities may be populated by staff or board members that represent private interests that could affect the quality, authenticity and credibility of the mapping process.

In addition, NTIA should take into account that many broadband providers will want to ensure that information about the location of their services remains confidential.

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

WISPA is aware that many states are part of the ConnectedNation mapping project. Other states have adopted their own mapping programs. NTIA should ensure that the mapping process uses consistent, granular information, is without bias and is transparent.

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

States should collect data on backhaul capacity, POP site details and fiber deployment maps (including dark fiber).

***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?***

All maps should use the same standards (e.g., same speed tiers) and have a standard database. Users should be able to overlay various data points depending on the

information they seek – for instance, availability of backhaul plant and wireless spectrum sorted by bands.

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

In order to expedite production of the map, alternative sources of information should be accepted as long as it is in the proper format and from a reputable source. If a state fails to provide timely and accurate information for the national map, the federal government should be permitted to complete the job and further state funding would be subject to a higher standard.

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

WISPA's Response is included in its Responses to Question 8b.

***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?***

The FCC should share its FCC Form 477 data collection as a cross-check against the data that will populate the map.

***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?***

NTIA should use a “public interest” standard to determine whether an applicant should be entitled to funding above the 80 percent level if it so requests. Examples would include: (1) the vast majority of the area to be served qualifies as “Completely Unserved,” (2) a large part of the area to be served includes Tribal Lands, (3) a pattern of consistent investment in the applicant’s existing broadband operations, and (4) other reasons that NTIA finds to be in the public interest.

In determining the non-Federal portion of the funding, NTIA should include the following:

- Cash and other liquid assets on hand as of the most recent month for which financial statements are available at the time of filing the application;<sup>8</sup>
- Value of existing infrastructure, if it will be used as part of the project to be funded (e.g., connecting to existing backhaul to extend service);
- Like-kind services such as staff time and consulting fees, based on reasonable prevailing rates;
- Firm financial commitment letters from banks and other financial institutions or vendors that will be providing equipment for the funded project; and
- State and local grant funds to be made available to the grant recipient.

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

NTIA should establish a rule that applicants with average revenues of \$50 million over the previous three years should only be eligible to receive 50 percent of project funding from BTOP. This will ensure that more money is available to smaller companies, such as WISPs that have already demonstrated a desire to serve rural, unserved and underserved area.

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

Applicants should be required to demonstrate that either the project would not pay for itself in five (5) years or that funds (debt or equity) would not otherwise be available to the applicant on reasonable commercial terms.

***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?***

NTIA should make funds available on an annual basis in an amount to cover the recipient's expected expenses for the upcoming year. On one hand, simply depositing all

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<sup>8</sup> Financial information should remain confidential so that an applicant's competitors (and the general public) do not have access to this information.

of the funds into the recipient's bank account at the time the award is made could lead to abuse. On the other hand, approving each expense and reimbursing the recipient thereafter would require significant administrative overhead, both at NTIA and at the company level, and would require providers to issue purchase orders for funds that are not readily available. Annual draw-downs would be an appropriate way to balance the need for fiscal responsibility with the need for administrative efficiency.

If NTIA is unwilling to permit funds to be drawn down annually in advance, it should make funds available to grant recipients on a quarterly basis. The request for funds could be combined into the quarterly reports on the use of grant proceeds that recipients are required to submit, thereby further decreasing overhead. WISPA suggests that a funding request be reviewed during the immediately following quarter for expenses in the quarter following that (e.g., a funding request made in the first quarter should request funds for the third quarter and be reviewed and approved in the second quarter).

***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)?***

A build-out plan with phases and timelines should be required. NTIA should be vigilant in ensuring compliance, but should acknowledge that circumstances beyond the recipient's control may result in delays.

***11. Reporting and Deobligation: 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?***

Examples of wasteful or fraudulent activity would include (1) use of money for purposes other than stated in the application, (2) failure to deliver on services promised, and (3) failure to deliver on the applicant's financial share.

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

In reviewing the reports and by exercising its audit authority, NTIA can determine whether performance is sufficient. If material performance is lacking, NTIA should provide the recipient with written notice and an opportunity to cure, much as a lender would expect if it were in breach of loan covenants. Examples of alleged insufficient performance would include substantial delay in ordering equipment, deploying service or marketing broadband availability.

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

NTIA should publish a supplemental Notice of Availability of Funds and allow applicants to apply for the unspent funds. Applicants should be required to submit a streamlined application demonstrating how the plan will be improved and completed. Recipients should be permitted additional time to complete the project.

**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?*

WISPA believes that the emphasis should be on funding deployment projects in small communities that are "unserved" or "underserved," and should provide the opportunity for grant recipients to subsidize areas that do not meet the definitions. Both NTIA and RUS should rely on the broadband map when it is available.

- 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)?*

See Response to Question 12a.

**13. Definitions: The Conference Report on the Recovery Act states that NTIA should consult with the FCC on defining the terms "unserved area," "underserved area," and "broadband." The Recovery Act also requires that NTIA shall, in coordination with the FCC, publish nondiscrimination and network interconnection obligations that shall be contractual conditions of grant awards, including, at a minimum, adherence to the principles contained in the FCC's broadband policy statement (FCC 05-15, adopted August 5, 2005).**

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

See Response to Question 4b.

- b. How should the BTOP define "broadband service?"*

***(1) Should the BTOP establish threshold transmission speeds for purposes of analyzing whether an area is “unserved” or “underserved” and prioritizing grant awards? Should thresholds be rigid or flexible?***

See Response to Question 4b.

***(2) Should the BTOP establish different threshold speeds for different technology platforms?***

WISPA believes that there should be separate definitions for “fixed broadband” and “mobile broadband” in recognition of the different applications and markets that can be served. However, there should be a single speed threshold for “fixed broadband” so that all fixed applications can be evaluated in a “technology neutral” way, as required by the Act. See also Response to Question 4b.

***(3) What should any such threshold speed(s) be, and how should they be measured and evaluated (e.g., advertised speed, average speed, typical speed, maximum speed)?***

Speeds should be measured and evaluated based on average speed. See also Response to Question 4b.

***(4) Should the threshold speeds be symmetrical or asymmetrical?***

See Response to Question 4b.

***(5) How should the BTOP consider the impacts of the use of shared facilities by service providers and of network congestion?***

Grant applications should require applicants to address these issues in describing the technology plan, network design and forecast. In evaluating grant applications, NTIA should ensure that the applicant has adequately addressed these issues, but shared use and network congestion should not be specific criteria for selecting grant recipients.

***c. How should the BTOP define the nondiscrimination and network interconnection obligations that will be contractual conditions of grants awarded under Section 6001?***

WISPA believes that the “nondiscrimination” obligation should prevent grant recipients from prioritizing, discriminating or impairing the content that it provides to a user, subject to reasonable network management techniques and practices (described in WISPA’s Response to Question 13.c(1)), with respect to grants provided for “unserved” and “underserved” areas. Users should have the right to engage in such activities at the end-user site.

WISPA believes that the **“interconnection” obligation should require facilities-based retail broadband providers to have access to intermediate transport networks (the “middle mile”) and to the Internet backbone.** Broadband providers proposing to serve “unserved,” “underserved” or “rural” areas should have equitable, non-discriminatory access to the rates, terms and conditions that the transport and backbone providers offer their own affiliates and largest customers. Absent these requirements, grant recipients will be forced to pass on higher transport and backbone access costs that could result in higher prices and lower adoption rates.

From the experience of WISPS, interconnection and non-discriminatory access obligations on their own do not adequately address all of the core problems inherent in the monopoly ownership of broadband transport or backbone network pipe, nor does it replace the need for diverse ownership of the physical (Layer 1) broadband pipe or create true competition. There would always be a strategic advantage to control the pipe – and with it, the ability to determine wholesale price levels – enabling uninhibited self-support of infrastructure, standard-setting for management methods and first priority on availability and capacity. The largest factor that leads to big boom growth of the wireless industry was not just the unique characteristics of wireless being un-wired, but more so that the business model of wireless empowered and afforded many service providers and entrepreneurs to be able to be in control of their own destiny. By enabling self-ownership and control of one’s own network, it brought back the confidence and certainty necessary to encourage re-investment and engagement in the broadband business.

WISPA suggests that, if NTIA awards BTOP grants to states, local governments or other public bodies for the purpose of funding fiber optic backhaul and connectivity to the Internet backbone, such grants should require the recipient to make available a certain number of fiber strands to WISPs and other Internet service providers. This would help solve non-discriminatory access concerns, and enable more broadband providers to be in control of their own destiny, without the security and management complications inherent in having only one shared managed wholesale network available.

***(1) In defining nondiscrimination obligations, what elements of network management techniques to be used by grantees, if any, should be described and permitted as a condition of any grant?***

WISPA believes that there should be no discrimination based on classes of traffic. The following **network management techniques** should be permitted:

- Prioritization for all 911 services;
- Deep Packet Inspection and other anti-virus techniques for limiting malware and other intrusions that can harm the network; and
- Quality Of Service for protocols such as Voice over Internet Protocol services.

NTIA also should allow providers to take into consideration capacity constraints on networks that require broadband providers to use good engineering practices when managing their networks.

***(2) Should the network interconnection obligation be based on existing statutory schemes? If not, what should the interconnection obligation be?***

WISPA believes that NTIA should not attempt, as part of its obligations under the Act, to modify existing network interconnection obligations. Doing so could inject contentiousness, uncertainty and delay and, perhaps most importantly, discourage investment in broadband that would threaten the sustainability of certain broadband projects. To the extent that the existing statutory requirements are deemed to be insufficient, Congress or the FCC (as the expert agency on interconnection) should take action to ensure that consumers are not being denied broadband service because of a failure of the provider to interconnect to the Internet backbone.

***(3) Should there be different nondiscrimination and network interconnection standards for different technology platforms?***

See WISPA's Response to Question 13.c.

***(4) Should failure to abide by whatever obligations are established result in deobligation of fund awards?***

NTIA should have the authority to deobligate fund awards for non-compliance with the nondiscrimination and network interconnection standards, after the recipient has received written notice and has had a reasonable period of time to cure the alleged violation.

***(5) In the case of infrastructure paid for in whole or part by grant funds, should the obligations extend beyond the life of the grant and attach for the useable life of the infrastructure?***

WISPA believes that the nondiscrimination and network interconnection obligations should extend beyond the life of the grant, and anticipates that there may be changes over time if Congress or the FCC determines that existing obligations should be modified.

***d. Are there other terms in this section of the Recovery Act, such as "community anchor institutions," that NTIA should define to ensure the success of the grant program? If so, what are those terms and how should those terms be defined, given the stated purposes of the Recovery Act?***

WISPA believes that "community anchor institutions" could include schools, libraries, colleges and community centers where consumers typically visit to learn and obtain information. However, applicants should not be disadvantaged in the selection process if there are no "community anchor institutions" in the area or if the "community anchor institutions" already receive broadband service.

*e. What role, if any, should retail price play in these definitions?*

WISPA does not believe that retail price should be part of the definitions of nondiscrimination and network interconnection.

***14. Measuring the Success of the BTOP: The Recovery Act permits NTIA to establish additional reporting and information requirements for any recipient of grant program funds.***

*a. What measurements can be used to determine whether an individual proposal has successfully complied with the statutory obligations and project timelines?*

Grant recipients that demonstrate in their reports that they are in material compliance with timelines, obligations and contractual provisions should be deemed to have successfully complied with the statutory obligations under the Act. NTIA should allow flexibility in how plans are rolled out as long as the recipient can document and explain significant deviations in the timeline and they are not highly likely to prevent project completion consistent with the overall terms of the grant.

*b. Should applicants be required to report on a set of common data elements so that the relative success of individual proposals may be measured? If so, what should those elements be?*

NTIA should develop a form for the quarterly reports, but allow grant recipients to attach relevant materials in the form in which they were produced. In designing any audit or compliance obligations, NTIA should be mindful of the burdens that extensive reporting obligations will place on small businesses. WISPA believes that a web-based reporting process that is simple yet thorough will strike the appropriate balance.

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

WISPA emphasizes that the Act is intended to promote job creation to stimulate the economy. WISPA believes that **small businesses, particularly those that are providing broadband services, are the engines that will help make the American economy strong again**, and that wireless broadband is the most cost-efficient means to extend broadband service to “unserved,” “underserved” and “rural” areas of the country.

WISPA has the following suggestions:

- **Expedited Governmental Approvals** – To the extent permissible, NTIA and RUS should ensure that governmental approvals from the Federal Aviation Administration, the Bureau of Land Management and other agencies can be expedited to facilitate rapid construction of towers, especially in rural areas and federal lands.

- **National Focus** – NTIA and RUS must ensure that the grant programs promote economic stimulus on a national basis, and should not permit the states and other local governments to influence the process such that a “patchwork quilt” of priorities is created.

**RUS:**

- 1. What are the most effective ways RUS could offer broadband funds to ensure that rural residents that lack access to broadband will receive it? For a number of years, RUS has struggled to find an effective way to use the Agency’s current broadband loan program to provide broadband access to rural residents that lack such access. RUS believes that the authority to provide grants as well as loans will give it the tools necessary to achieve that goal. RUS is looking for suggestions as to the best ways to:*
  - a. bundle loan and grant funding options to ensure such access is provided in the projects funded under the Recovery Act to areas that could not traditionally afford the investment;*

In a recent article, the shortcomings in the existing RUS loan programs were explained as follows:

Experts have criticized the RUS’s exclusive reliance on loans – with no agency funds devoted to grants – as counterproductive and woefully inadequate for accelerating broadband deployment in areas neglected by commercial carriers. Testifying before Congress in October 2007, Curtis Anderson, the USDA’s deputy administrator for the RUS, conceded that because companies find it very difficult to craft business models that would ensure repayment of loans used to build out broadband infrastructure in unserved areas, few companies seek the loans, and the RUS often does not exhaust its annual funding.<sup>9</sup>

For these reasons, WISPA strongly believes that **grants are the most effective means to promote broadband deployment** in areas that would not otherwise receive investment. WISPA members are recipients of grants and loans under the existing RUS programs, and this experience demonstrates that grants are a better vehicle for rural investment and thus would stimulate the economy in a more meaningful way.

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<sup>9</sup> Varona, Anthony E., “Toward a Broadband Public Interest Standard,” 61 Admin. Law Rev. 1 (Winter 2009), at 88-89 (footnotes omitted).

- b. promote leveraging of Recovery Act funding with private investment that ensures project viability and future sustainability; and*

WISPA believes that providing grant funds should be used to construct or expand the broadband network will encourage private investment for long-term sustainability of the network for upgrade, further expansion and new services.

- c. ensure that Recovery Funding is targeted to unserved areas that stand to benefit the most from this funding opportunity.*

See Responses provided above.

- 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? In the Recovery Act, Congress provided funding and authorities to both RUS and the NTIA to expand the development of broadband throughout the country. Taking into account the authorities and limitations provided in the Recovery Act, RUS is looking for suggestions as to how both agencies can conduct their Recovery Act broadband activities so as to foster effective broadband development. For instance:*

- a. RUS is charged with ensuring that 75 percent of the area is rural and without sufficient access needed for economic development. How should this definition be reconciled with the NTIA definitions of “unserved” and “underserved?”*

WISPA believes that RUS should adopt the **definition of “rural” that the Census Bureau uses: “Territory, population and housing units not classified as urban. Rural classification can be in metropolitan or non-metropolitan areas.”**<sup>10</sup>

Many areas of the country will be either “unserved” or “underserved” as well as “rural.” WISPA submits that this is intentional and will help identify areas that are most in need – “rural” areas that are either “unserved” or “underserved” – consistent with the purposes of Act.

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<sup>10</sup> By contrast, the Census Bureau defines Urban Areas as “all territory, population and housing units in urban areas, which include urbanized areas (UAs) and urban clusters (UCs).” An urban area generally consists of a large central place and adjacent densely settled census blocks that together have a total population of at least 2,500 for UCs, or at least 50,000 for UAs. Urban classification can be in metropolitan or non-metropolitan areas.

- b. How should the agencies structure their eligibility requirements and other programmatic elements to ensure that applicants that desire to seek funding from both agencies (i) do not receive duplicate resources and (ii) are not hampered in their ability to apply for funds from both agencies?***

Applicants should be required to disclose in their applications whether they are also applying for funds for the same areas through the other agency's program. In order to prevent abuse, all owners of the applicant should be required to be disclosed so that the agencies can determine whether there is any prohibited cross-ownership.

- 3. How should RUS evaluate whether a particular level of broadband access and service is needed to facilitate economic development? Seventy-five percent of an area to be funded under the Recovery Act must be in an area that USDA determines lacks sufficient "high speed broadband service to facilitate rural economic development." RUS is seeking suggestions as to the factors it should use to make such determinations.***

- a. How should RUS define "rural economic development?" What factors should be considered, in terms of job growth, sustainability, and other economic and socioeconomic benefits?***

WISPA has no specific set of guidelines to recommend.

- b. What speeds are needed to facilitate "economic development?" What does "high speed broadband service" mean?***

WISPA believes that its definition of "fixed broadband" provided in response to Question 4b. should be sufficient to promote economic development.

- c. What factors should be considered, when creating economic development incentives, in constructing facilities in areas outside the seventy-five percent area that is rural (i.e., within an area that is less than 25 percent rural)?***

Applicants that propose programs that will subsidize provision of service to a meaningful percentage of low income consumers within the area for which they are seeking grant funds should be prioritized. Proposals for non-rural areas also should be prioritized if they can show that such infrastructure build-outs will compliment expansion to remote and rural markets.

- 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? Priorities have been assigned to projects that will: 1) give end-users a choice of internet service providers, 2) serve the highest proportion of rural residents that lack access to broadband service, 3) be projects of current and former RUS borrowers, and 4) be fully funded and ready to start once they receive funding under the Recovery Act.***

*a. What additional priorities should be considered by RUS?*

WISPA believes that existing **small broadband businesses with average gross revenues for the previous three years of less than \$10 million should be afforded a priority** if their grant application proposes to serve “rural” areas near their existing operations. This will afford a priority to broadband providers seeking to “edge out” their networks into “rural” areas.

*5. What benchmarks should RUS use to determine the success of its Recovery Act broadband activities? The Recovery Act gives RUS new tools to expand the availability of broadband in rural America. RUS is seeking suggestions regarding how it can measure the effectiveness of its funding programs under the Recovery Act. Factors to consider include, but are not limited to:*

- a. Businesses and residences with “first-time” access*
- b. Critical facilities provided new and/or improved service:
  - i. Educational institutions*
  - ii. Healthcare Providers*
  - iii. Public service/safety**
- c. Businesses created or saved*
- d. Job retention and/or creation*
- e. Decline in unemployment rates*
- f. State, local, community support*

Determining benchmarks for success at this point would be difficult if not impossible. WISPA expects that future policy decisions of Congress, the FCC, NTIA and RUS; the development of the national broadband strategy; the ultimate definitions of terms such as “broadband,” “unserved,” “underserved” and “rural;” and the projects for which funding is provided will all have an impact on how “success” is defined.