

CoverageCo

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**DEPARTMENT OF COMMERCE
National Telecommunications and Information
Administration**

and the

**DEPARTMENT OF AGRICULTURE
Rural Utilities Service**

Comments Regarding
**Docket No. 090309298-9299-01
American Recovery and Reinvestment
Act of 2009
Broadband Initiatives
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Executive Summary

CoverageCo is a new venture led by Chairman and CEO Tom Kelly, a wireless industry leader and former executive at Nextel, AT&T and McCaw Cellular. CoverageCo provides wholesale roaming coverage to retail wireless operators. CoverageCo is leveraging innovative technologies to improve the traditional wireless coverage model. This is being accomplished by providing opportunities for new wireless coverage for rural areas of the country and offering mobile broadband data to rural areas that have limited data alternatives today. CoverageCo intends to launch its wholesale roaming service in multiple “unserved” and “underserved” areas of the U.S.

Maximizing the values of the American Recovery and Reinvestment Act of 2009 (ARRA) requires the following considerations:

- **Definitions** – In defining “unserved” markets, the agencies should include separate definitions for mobile and fixed broadband services. These are inherently different services and should also be considered distinct – not duplicative – for the purpose of establishing whether an area is “unserved” or “underserved.” We believe the National Telecommunications and Information Administration (NTIA) and Rural Utility Service (RUS) also should evaluate applications based on whether the service proposed would represent a material improvement over existing services, rather than setting a static minimum data rate.

By doing so, the NTIA and RUS will better be able to assess the current level of service, determine the increment of improvement, the covered population and likely penetration of the service to judge whether the proposal provides “the greatest broadband...to the greatest population.”

- **Simplicity and Efficiency** – Since application processing time has long been an issue for other loan and grant programs, we believe the application process should be highly focused and streamlined, with projects for “unserved” areas, where the need is greatest, being addressed in the first round and those in “underserved” areas being addressed in subsequent rounds.
- **Eligibility** – The ARRA requires the NTIA and RUS to structure its programs so that a wide variety of entities are eligible for funds. The private sector is the engine of economic growth, and therefore funds should be available to these entities to achieve the goals of the ARRA, which includes the retention and creation of jobs. Thus, no limitations on eligibility should be imposed.

I. Grant Program Purpose

NTIA should allocate funds in a manner most likely to achieve the objective of the ARRA to create jobs. We believe this translates into stimulating investment into new infrastructure and new networks in the broadband sector.

Applicants should be encouraged to address the broadest possible set of criteria specified in the statute. This can be achieved by establishing objective scoring criteria for each of the subsection criteria, which differentiate among competing applications.

Attempting to require or encourage Broadband Technologies Opportunity Program (BTOP) applicants to coordinate their applications with other programs could lead to confusion for the applicant, and creates a very cumbersome review process for the agency. We believe that the agency should focus on creating a streamlined application process and fast, efficient review criteria so that the agency can issue grant awards in the fastest possible manner. NTIA cannot control the grant or loan processing of other agencies and we fear that any attempt to do so will seriously impair the agency with unnecessary delays.

The agency should encourage leveraging non-federal sources, and not attempt to distract the BTOP program to coordinate grant or loan awards with other agencies. The agency's coordination activity with other agencies should be restricted to preventing "double dipping." Prevention of double dipping should occur after prospective awards have been identified in order to minimize time and effort.

II. The Role of the States

The agency should foster coordination with State priorities by giving considerable weight to applications filed either in conjunction with States, endorsed by States, or if the applicant can demonstrate that its proposed service addresses previously identified priorities of a State.

States should validate the priority of projects within their jurisdiction. For example, NTIA should take into account what a State designates as its unmet needs, provided, those needs are consistent with the statutory criteria. Thus, NTIA's definition of "unserved" should provide enough flexibility for a State to identify a unique circumstance for what it considers "unserved" and thus favorably consider applications that meet such a need identified by a State. A State's determination that an area is "unserved" should give rise to a rebuttable presumption that such an area is, in fact, "unserved."

NTIA should not seek to resolve differences between competing interests. Rather, the agency should focus on creating objective scoring criteria that will differentiate applications to the degree that they can successfully serve the highest possible number of the criteria specified in the statute. All other things being equal, applications that are submitted either jointly with a State or with the State's endorsement should score higher than applications without such coordination.

The agency should ensure that post-award follow up includes manageable reporting on progress towards the goals pledged in a particular application. Post-award reporting requirements need to be manageable for both the applicant and the agency. In evaluating a State proposal, the NTIA needs to give special attention to the ability to not just obligate funds, but to complete projects promptly.

III. Eligible Grant Recipients

In its legislative language and history, Congress clearly stated that a large number of entities should be eligible for BTOP funding. The private sector is the engine of economic growth and job creation, therefore making BTOP funds available to private sector entities will facilitate the primary goal of the ARRA, which is to retain and create jobs.

The statute does not suggest that the agency prioritize among applications from the eligible entities specified in Section 6001(e). Therefore, NTIA should not discriminate among eligible entities. Applications from any eligible entity should be considered on its merits, how it achieves the goals established in the statute and adheres to the criteria in the statute. Eligibility should not be based on the nature of the applicant, provided the applicant is eligible under the terms specified in the statute.

IV. Establishing Selection Criteria

NTIA should limit its scoring criteria to the criteria established in the statute. The agency should consider the criteria specified in Section 6001(b) and Section 6001(h)(2) as criteria that can distinguish between competing applications. Projects proposed that will serve these criteria best should receive the most favorable assessment.

In assessing fulfillment of the purpose set forth in Section 6001(h)(2)(B), favorable consideration should be given to the ability of a solution to provide service to those who are temporarily located in, but are not permanent residents of, the area in which service is proposed to be offered.

In many cases, it will be difficult for the NTIA to determine where need exists and is not replacing private investment. No real objective information exists for the agency to judge against applications. However, the fact that the area is “unserved” is *prima facie* evidence that it will not attract private investment.

Applications for “underserved” areas are required under the statute to be considered and, in these cases the burden should be on the applicant to make a showing that private investment could not ensure affordable service with respect to the new service that is being proposed in the application.

With regard to ensuring long-term feasibility, the agency should require applicants to demonstrate how the proposed project, if awarded, is part of a sustainable business plan. The business plan must use realistic assumptions with respect to take rates, revenue and churn appropriate for the given market.

Factors such as determining a “need for federal funding” and “replacement of private investment” should be given a “yes” or “no” test. It will become too burdensome on the agency to establish reasonable criteria to make judgments that one applicant meets these criteria better or worse than another applicant.

Applications proposing service to “unserved” areas should be considered by the agency first and applications for “underserved” areas should be considered in a later grant round. A grant round or grant rounds focused on “unserved” populations need not wait for a final resolution of what is determined to be “underserved.”

Previous USDA grant and loan awards should not be permitted to prevent NTIA from awarding a BTOP grant in the same area or an area that may have some overlap with the previous USDA grant or loan. That is, provided that the BTOP application is for new broadband service that is not being provided or planned to be provided under a previous USDA grant or loan. However, with respect to grants and loans awarded by the USDA under the ARRA, an RUS grant or loan should not block a worthy BTOP grant award (or vice versa). For example, it may be logical and desirable to provide a BTOP grant to a mobile wireless provider and an RUS grant to fund a wireline broadband provider.

If both projects create jobs and create needed infrastructure, the rules or implementation of the statute should not prevent both technologies from qualifying for funding. If an entity seeks a USDA ARRA broadband loan, a BTOP or USDA grant should not be a barrier to loan eligibility. The USDA, of course, would still need to consider the ability of the borrower to repay the loan.

Given the level of interest in the ARRA broadband grant and loan programs – and the urgent need to create jobs – the NTIA and the RUS should consider every opportunity to simplify the application and evaluation process. In addition,

according more favorable treatment to proposals that leverage other ARRA projects is not supported by Section 6001 and therefore contrary to its intent.

In circumstances when the agency is considering competing applications – and only in such circumstances – the agency should provide greater weight to applications that address several purposes specified in the statute.

Technological neutrality requires that the agency avoid establishing definitions for eligibility, minimum broadband speeds, unserved and underserved that would favor a particular technology (among technologies that meet the same basic performance established by the agency for the BTOP program). It also requires that the agency remain mindful that different technologies may provide very distinct broadband service and therefore should not be considered duplicative.

For example, the presence of a mobile broadband service meeting the minimum broadband performance required under the BTOP program should not preclude consideration of a BTOP grant application for fixed broadband service in a particular area and vice versa. Mobile broadband and fixed broadband services are very distinct services and will address different needs in a given community. Technological neutrality requires NTIA and the RUS to consider these different technologies as not duplicative when considering applications.

All applications for grants should propose affordable service. The agency should not impose a hard and fast rule, but take into consideration various factors affecting the market for which the project is proposed. No one factor should establish the agency's definition of affordability. The agency should take into consideration the full complement of factors – including, but not limited to – the price of services in areas where there is a vibrant competitive market.

Any solution that has the effect of making services available in unserved or underserved areas at prices that are the same as those offered by a nationwide service provider should be deemed affordable within the meaning of Section 6001(h)(2)(A).

V. Grant Mechanics

Both agencies should use a competitive grant process for distribution. All eligible entities should be allowed to compete for the grants and loans from both agencies.

Both agencies should adopt a streamlined application process using objective criteria that permit quick review by the agencies and allows for early decision making on the application.

The application process should be highly focused and streamlined, requiring a description of the project, the business plan, sustainability and the territory of the project. The application should be scored only against the criteria outlined in the ARRA and scoring should be done on a national basis. High scoring applications should not be mutually exclusive. It should be possible, for example for a mobile wireless and a fixed wireline provider to both win grant awards in the same area.

Processing time has been the most significant shortcoming of traditional grant and loan application processes. For example, since the RUS broadband loan process was established, the process has been riddled with delays and inconsistencies. Addressing these problems and establishing a streamlined application process and shorter decision making period for the RUS should be one the USDA's top priorities for distributing ARRA funds.

A streamlined application process would allow both agencies to make fast determinations of the most feasible applications, while still allowing the agencies to obtain the full complement of information necessary to make a final determination on the application.

VI. Broadband Mapping

The broadband map should make distinctions between the availability of fixed and mobile services. The map should show tiers of broadband service as reported pursuant to the FCC Development of Broadband Nationwide Data Order (WC Docket no. 07-38). NTIA should establish the criteria for assessing broadband availability and use based on the policy goals of the Administration and leverage the data collected by the FCC.

NTIA also should consider the positive impact of mobile wireless networks that provide service to a broader number of people (not just residents in the area) over a broader area (not just at home or at work). There should be an assessment of mobile and fixed broadband service in licensed spectrum bands and unlicensed providers.

The availability and adoption of broadband services for public safety, educational, and health care entities in each State should also be part of the inventory.

The broadband map should provide an assessment of the affordability of services. Services that are not affordable should not be included or should be distinguished from affordable services.

In addition, substantial deference should be given to the determination of a state as to whether an area is "unserved" or "underserved."

VII. Financial Contributions by Grant Applicants

Where financial need is greatest, projects are least likely to be sustainable. As a result, projects seeking increased percentages of financial support should be required to provide expanded business plan and other sustainability disclosures, since the project is higher risk and less non-federal capital is at stake.

Determination that an area is “unserved” should be *prima facie* evidence that a project would not be implemented without Federal assistance.

VIII. Timely Completion of Proposals

To achieve timely completion of proposals, six key steps are needed:

First, each agency should establish a streamlined application process that permits the minimal information necessary for the agencies to make quick decisions, and then later require the applicant to provide more comprehensive information.

Second, NTIA and RUS scoring criteria should be limited to what is specified in the statute and the agencies should not seek to impose additional criteria.

Third, the RUS should immediately reform the rules and criteria in the broadband loan program to ensure faster review of application and lessen the burden on applicants.

Fourth, both agencies should consider applications covering more than one community. One serious limitation of the RUS Community Connect program, for example, is that the agency only considers separate applications for each community. This should be changed and both agencies should accept applications that cover multiple communities.

Fifth, previous RUS loan and grant awards should not preempt loans and grants awarded under the ARRA to the extent the loan or grant proposed under the ARRA is not duplicative of the prior RUS loan or grant.

Sixth, fixed broadband services and mobile broadband services should not be considered duplicative. The presence of one should not exclude consideration of applications for the other type of service.

Applications should be presented to the agencies in the context of an overall business plan for the applicant that shows build out within the required time frames. The agencies should establish manageable post-award reporting requirements that demonstrate that applicant is deploying the service as

promised. In addition, any partnerships claimed in the application should be supported with necessary documentation and made available to the agencies upon request.

IX. Reporting and De-Obligation

In issuing a BTOP grant, NTIA should specify what purchases are allowed with the grant funds. Applicants should be required to maintain records to demonstrate, upon demand from NTIA, that funds have been used appropriately. Grant recipients should be required to certify that they have used grant funds only for eligible purposes and be able to provide documentation should the agency desire to see such documentation. Funds should be released as the project proceeds.

The standard for insufficient level of performance should simply be that the grant recipient has not substantially fulfilled build out as promised in the application. The agency should consider all situations on a case-by-case basis and take into consideration factors that would be out of the control of the grant recipient – such as weather, vendor delays, local or State tower siting requirements or rights of way restrictions that could not reasonably have been anticipated in the grant application.

NTIA should distinguish between mistakes and deliberate attempts to defy the rules of the program. When unauthorized or ineligible spending is determined by NTIA, the agency should evaluate the seriousness of the violation. In cases where the errors were not serious, grant recipients should be permitted to rectify the problem and demonstrate compliance within a reasonable period of time. In the case of serious errors or unjust enrichment, the agency should de-obligate any remaining funds under the grant and immediately consider new applications for grants to serve the area that was covered by the violating grant recipient.

X. Coordination ~ USDA's Broadband Grant Program

Both agencies should coordinate grant or loan activities after an assessment of eligibility in order to minimize administrative burden and maximize prospects for funding of worthy projects.

XI. Definitions

The definition of “unserved” should include separate definitions for mobile and fixed broadband as these are inherently different services and thus the presence of one should not necessarily prevent funding of a proposal to deploy the other

under the broadband stimulus programs. Additionally, the NTIA and RUS should consider mobile and fixed broadband services as distinct – and not duplicative of each other – for the purposes of establishing whether an area is “unserved” or “underserved.”

The NTIA and RUS should accord substantial deference to State determinations of what constitutes an “unserved” territory such that a determination by a State that an area is “unserved” should give rise to a rebuttable presumption as to its “unserved” status.

The NTIA and RUS should evaluate applications based on whether the service proposed to be deployed would represent a material improvement over existing services rather than creating a static, minimum data rate. The “material improvement” approach will permit the NTIA and RUS to assess the current level of service, determine the increment of improvement, the covered population and the likely penetration of service. This will allow for a determination of whether the proposal provides “the greatest broadband ... to the greatest population”.

Additionally, a static minimum definition of broadband would result in worthy proposals being rejected in some of the “unserved” areas most in need of service today (due to the cost of providing higher data rates in the least populated areas). It would result in an unworthy proposal being funded (where a high data rate proposal for an area already served by broadband would exceed the threshold data rate but represent a *de minimis* improvement over existing service).

For the definition of broadband, the FCC’s recognition of several different tiers of service in the Development of Broadband Nationwide Data Order (WC Docket no. 07-38) (the “Order”) provides a useful tool for NTIA and RUS to employ, recognizing that the best solutions available in different regions are not “one size fits all.” The different tiers of data rates recognized in the Order provide a recognized framework for assessing what level of service (if any) is available in a given region and what degree of improvement over that level of service is proposed by an applicant.

NTIA and RUS should maintain some flexibility. The definitions in the Order would allow them to better take into consideration conditions in the area in which service is being proposed.

The speed of the service should be measured as the speed to the end user that the relevant communication standard is capable of delivering, after taking into account pertinent effects of applicant’s proposed network architecture, such as “middle mile” bandwidth.

Shared facilities should be encouraged because such facilities present the opportunity to lower costs and increase consumer choice.

Grantees should be required to fulfill those non-discrimination and interconnection requirements within their direct control, but should not be forced into policing customer or supplier behaviors to cause adherence to such obligations through contractual means. Any non-discrimination or interconnection requirements should be enforced by the FCC under its existing rules. NTIA should be permitted to take notice of failure of a grantee or loan recipient to abide by such obligations with respect to future applications by such grantee or recipient.

Obligations should extend beyond the life of the grant and attach for the usable life of the infrastructure for any infrastructure paid for in whole or part by grant funds.

NTIA should take into consideration retail pricing in establishing the definitions of “unserved” and “underserved.” For instance when customers can access broadband service, but only at extraordinary prices, those customers should be considered “unserved” or “underserved.” Relevant pricing benchmarks include those available on a nationwide basis or in competitive metropolitan areas.

XII. Measuring the Success of BTOP

NTIA should measure success of a BTOP applicant via tangible measures of progress, such as infrastructure deployments as set forth in the applicant’s project plan or subscriptions for service.

Network usage metrics should be used to assess the extent of usage relative to the cost of deployment for purposes of measuring efficacy of the project.

XIII. Other Issues

NTIA should establish the rules of the program in a manner that encourages, to the greatest extent possible, new infrastructure deployment and promotes innovative new technologies. In the early grant funding rounds, NTIA should limit grants to only those projects that will deploy new infrastructure.

XIV. RUS Program

The RUS has broad statutory authority to streamline the existing criteria for broadband loans and grants through ARRA funds. In particular, the ARRA provides RUS with sufficient authority to create separate ARRA broadband loan and grant programs, which are highly streamlined and focus on the prime objective of quickly creating jobs and creating deploying infrastructure. RUS is

not bound to the current rules governing existing programs for ARRA funding. Congress was clear that ARRA criteria were notwithstanding Title VI of the Rural Electrification Act. Therefore, the RUS can and should revise its existing rules to allow for more flexibility and a streamlined application process.

Simultaneously with the efforts to implement the stimulus package, RUS should immediately adjust existing rules and criteria to implement the changes of the 2008 Farm Bill in a manner that encourages investment and adjusts weaknesses in the Community Connect program to ensure that broadband grant funds in the supplemental appropriations bill can be more quickly and rationally disbursed.

RUS must quickly and consciously break from its past and expedite loan and grant processing. While the duties of the ARRA are substantial, they also should not delay the prompt implementation of the 2008 Farm Bill and should not create a credit crunch at the agency. The economic crisis should prompt the agency to focus all resources on creating jobs and facilitating investment through ARRA and other programs.

RUS applicants should be allowed to bundle service territories in loan and grant applications. Applicants should distinguish which areas are subject to the loan request and which are subject to a grant request. In bundling applications, RUS should not exclude an entire application because a discrete number of communities do not qualify for an award.

The RUS should retain the flexibility to award loans and grants independently if the agency determines this is necessary. The agency should place a premium on making timely decisions to issue awards.

The ARRA does not require matching funds for broadband loans or grants. Leveraging non-federal sources should be favorably considered by the RUS, but there should not be any firm requirements or preferences provided based on the amount being leveraged.

Although it should be a criterion, the agency should not establish a "population covered" test as the sole criteria for prioritizing applications. In the case of competitive applications covering the same area, the agency should remain free to award both applications if they would create jobs, increase investment and be a rational use of resources. The first round of grant funding should be focused on "unserved" areas and need not wait for a full resolution of what is an "underserved" area.

The terms "rural and without sufficient access needed for economic development" need not be reconciled with the NTIA definitions of "unserved" and "underserved." The ARRA gives the Secretary of Agriculture complete discretion to determine what is rural. The RUS should establish a higher population limit for what it considers "rural" for the purposes of ARRA funding for both loans and

grants. Additionally, the RUS and NTIA should use the same standards for what constitutes “unserved” and “underserved.”

Also, at a minimum, the RUS should not consider mobile broadband service and fixed landline broadband service duplicative for the purpose of ARRA funding. Previous RUS loans and grants should not block eligibility for an ARRA applicant.

There should be no restriction on applications seeking funding from both agencies. The first agency to award funding, should notify the other agency so as to prevent a double award to the same applicant. It may be desirable and reasonable for the same area to receive one award for wireline service and one award for mobile wireless service. Each is – and should be considered – a separate service. Both can create jobs and infrastructure needed for economic development.

Rural economic development should be defined broadly and include factors such as job growth, benefits provided by the deployment of new broadband services to end users and the ability to provide seamless service throughout the region to subscribers and transient populations (such as those who may be visiting an area on business or for recreation) alike. Modern business requires constant connection. Without it, economic development on a pace equal with that of “connected” areas will be impossible.

It is undeniable that a meaningful terrestrial broadband option is essential to rural development.

For the definition of high speed broadband service, the FCC’s recognition of several different tiers of service in the Development of Broadband Nationwide Data Order (WC Docket no. 07-38) (the “Order”) provides a useful tool for RUS to employ, recognizing that the best solutions available in different regions are not “one size fits all.” The different tiers of data rates recognized in the Order provide a recognized framework for assessing what level of service (if any) is available in a given region and what degree of improvement over that level of service is proposed by an applicant.

The RUS should favorably consider applications proposing innovative, new services that would provide broadband connectivity to:

- Unserved and underserved residential consumers;
- Unserved and underserved businesses; and
- New services for government entities such as public safety, educational, and health care entities.

Applications proposing service to “unserved” areas should be the first applications considered. Applicants should be encouraged to aggregate several “unserved” areas into a single application. Additionally, applications proposing

service on either a wholesale basis or whose business plan allows for customer choice for Internet service should be given favorable consideration as they foster choice.

The RUS should minimize consideration that applicants be current or former RUS borrowers because it could seriously impair the agency's ability to successfully distribute ARRA funds. The ARRA provides the RUS with complete authority to break away from its non-duplication rules. The RUS needs to use this opportunity to begin taking into consideration technological advances and not deny innovative technologies access to government funding because of legacy RUS loans or grants. RUS should fund the best business plans since they offer the strongest potential for replicable and sustainable proliferation of service.

If RUS seeks assurance applicants are fully funded and ready to start, RUS should be prepared to commit conditionally to provide funding to avoid a chicken-and-egg scenario in which an applicant cannot obtain funds because each source of funding is waiting for the other to commit.