

**Before the  
National Telecommunications and Information Administration  
and the  
Rural Utilities Service  
Washington, D.C. 20230**

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

**COMMENTS  
of the  
NATIONAL EXCHANGE CARRIER ASSOCIATION, Inc.**

The National Exchange Carrier Association, Inc. (NECA) hereby submits these comments in response to the Joint Request for Information (RFI) of the National Telecommunication and Information Administration (NTIA) and the Rural Utilities Service (RUS) in the above-captioned proceeding.<sup>1</sup>

NTIA and RUS seek comment on implementation issues surrounding the broadband programs authorized by the American Recovery and Reinvestment Act of 2009 (Recovery Act).

<sup>2</sup> NTIA and RUS have already received substantial input from interested parties, including many NECA member companies, in the context of various public meetings held in March of this year

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<sup>1</sup> *American Recovery and Reinvestment Act of 2009 Broadband Initiatives*, Joint Request for Information and Notice of Public Meetings, Docket No. 0903092989-9299-01, 74 Fed. Reg. 10716 (2009) (*RFI*).

<sup>2</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (*Recovery Act*). Questions are raised regarding how NTIA should apportion available funds among each of the various goals specified in Broadband Technologies Opportunity Program (BTOP) created under the Recovery Act, what role the States should play in administering BTOP funds, eligibility requirements and selection criteria for grants, and numerous other issues. Questions are also raised regarding provisions in the Recovery Act relating to RUS broadband grant and loan activities, including ways for RUS and NTIA to coordinate their activities to make the most efficient and effective use of Recovery Act broadband funds. *See RFI*.

and via written submissions. The agencies can also be expected to receive valuable assistance from the FCC as well, pursuant to its “consultative” role as described in the Recovery Act.<sup>3</sup>

NECA is also pleased to offer its assistance to NTIA and RUS as they undertake the challenges of implementing the Recovery Act’s broadband provisions. NECA is a not-for-profit association established in 1983 pursuant to rules promulgated by the Federal Communications Commission (FCC or Commission).<sup>4</sup> NECA acts primarily as the interstate access tariff filing agent for incumbent local exchange carriers (ILECs) and administrator of the interstate access charge revenue pools.<sup>5</sup> As such, it has extensive systems in place for collecting data and distributing funds to rural telephone companies.<sup>6</sup>

Currently, about 1,200 rate-of-return carriers choose to participate in one or more of NECA’s access charge tariffs and related revenue pools. For the most part, these companies

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<sup>3</sup> See *Comment Procedures Established Regarding the Commission’s Consultative Role in the Broadband Provisions of the Recovery Act*, GN Docket No. 09-40, Public Notice, DA 09-668 (rel. Mar. 24, 2009). Topics to be addressed by the Commission include definitions of the terms “unserved area”, “underserved area” and “broadband service”, as well as potential non-discrimination and network interconnection requirements to be included as contractual provisions in NTIA and RUS program grants and loans.

<sup>4</sup> See generally 47 C.F.R. §§ 69.600 *et seq.*; MTS and WATS Market Structure, CC Docket No. 78-72, Phase I, *Third Report and Order*, 93 FCC 2d 241 (1983).

<sup>5</sup> NECA files two access tariffs with the Commission. NECA Tariff No. 5 establishes rates, terms and conditions for interstate access services. The Commission’s rules permit ILECs to elect to participate in either or both the common line (CL) elements or traffic sensitive (TS) portions of NECA’s tariff. See 47 C.F.R. § 69.3. NECA’s FCC Tariff No. 4 describes the location and technical capabilities of wire centers for both ILECs and competitive local exchange carriers (CLECs) and includes extensive interconnection information necessary for ordering, billing, and provisioning of interstate access services.

<sup>6</sup> While NECA’s primary responsibilities involve preparation of interstate access tariffs and administration of related revenue pools, NECA is also responsible for collecting certain high-cost loop data from its member ILECs, and has served as administrator of the interstate Telecommunications Relay Services (TRS) fund since that fund’s inception in 1993. NECA also conducts extensive training for its member companies and other industry participants, publishes reports and studies relating to its member companies’ technical service capabilities and cost characteristics, and files at the Commission’s request quarterly reports of interstate access usage levels.

provide telecommunications services in rural and other high-cost areas of the country, and are often the sole providers of telecommunications services in their respective service areas. Consequently, they play a vital role in the provision of broadband services to rural America.

NECA data shows that the rural incumbent local exchange carriers (ILECs) participating in its Traffic Sensitive (TS) pool have made substantial progress deploying broadband to previously unserved areas in recent years.<sup>7</sup> *Trends 2008*, NECA's most recent public report on member company technology deployment, shows overall broadband availability in NECA TS pool members' service areas reached 92 percent in 2008, a large increase from the 2005 average broadband availability of 79 percent.<sup>8</sup> However, a number of factors can affect the type and quality of service in areas where broadband service is available, resulting in substantial variance in deliverable bandwidths.<sup>9</sup>

Concurrently with this filing, NECA is providing comments to the FCC encouraging the Commission to take an active role assisting NTIA and RUS with administration of the BTOP and other broadband deployment programs initiated by the Recovery Act. NECA's FCC comments provide suggestions regarding definition of terms and issues surrounding non-discrimination and network interconnection obligations. NECA offers the following comments and observations as well to NTIA and RUS on relevant topics raised in the agencies' Public Notice:

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<sup>7</sup> See NECA Comments, *Report on Rural Broadband Strategy*, GN Docket No. 09-29 (Mar. 25, 2009), at 2-4 (*NECA Comments on Rural Broadband Strategy*).

<sup>8</sup> *Trends 2008*, National Exchange Carrier Association, Inc. (2008), at 3,7, [https://www.neca.org/portal/server.pt/gateway/PTARGS\\_0\\_0\\_308\\_205\\_0\\_43/https%3B/prodnet.www.neca.org/media/Trends2008\\_web.pdf](https://www.neca.org/portal/server.pt/gateway/PTARGS_0_0_308_205_0_43/https%3B/prodnet.www.neca.org/media/Trends2008_web.pdf) (*NECA 2008 Trends Report*).

<sup>9</sup> See *The Packet Train Needs to Stop at Every Door*, NECA (June 2006) (*Packet Train Study*); NECA's *Middle Mile Broadband Cost Study* (Nov. 2001) (*NECA Middle Mile Study*); and NECA *Rural Broadband Cost Study* (June 2001) (*NECA Last Mile Study*).

### **Qualification for Grant Eligibility**

As USTelecom has noted,<sup>10</sup> it is critical for NTIA to decide as quickly as possible what type of entities will be allowed to qualify for grants. While the Recovery Act currently specifies that States, local governments, Indian tribes and non-profit agencies are eligible, NTIA is permitted to specify by rule whether it is in the public interest to permit other entities to qualify.

Many NECA members operate as non-profit cooperatives and thus presumably are explicitly qualified under the Recovery Act's terms. But approximately *one thousand* of these companies operate on a commercial basis, and thus may not fall within the Recovery Act's established definitions. Regardless of whether they are organized on a cooperative or commercial basis, NECA members are likely to be in the best position to put grant money to immediate and sustainable use expanding deployment to additional unserved or underserved areas. These carriers are financially stable and have substantial experience providing telecommunications services in high-cost and difficult-to-serve locations. Rural ILECs also provide the wireline infrastructure upon which other types of service providers depend.<sup>11</sup> All should be declared eligible for funding under BTOP and other broadband deployment programs. Prompt action confirming eligibility will assure these providers can develop and submit proposals in a timely manner.

### **Defining "Unserved" and "Underserved" Areas**

NECA member companies typically serve areas that are sparsely populated, with long distances between customers, population centers, and highways. Expanding broadband to remaining "unserved" areas represents a considerable economic challenge for any provider,

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<sup>10</sup> See Letter from Walter B. McCormick, USTelecom, to Bernadette McGuire-Rivera, NTIA and David P. Grahn, RUS, (Mar. 16, 2009) at 2.

<sup>11</sup> It is doubtful, for example, whether terrestrial wireless broadband networks would even be feasible in rural areas without access to rural ILEC backhaul facilities.

regardless of primary technology employed. For these reasons, NECA pool members are using a diverse set of technologies to meet the demand for advanced services, including DSL, Ethernet, and various forms of wireless.<sup>12</sup> In developing grant and loan-based programs designed to extend broadband service to remaining “last mile” locations, NTIA and RUS should seek to provide funding not on the basis of whether a particular technology is employed, but rather according to whether a particular proposal best meets consumer needs for speed and reliability of service as the broadband marketplace evolves.

It is also likely that a one-size-fits-all definition of “underserved” areas, applicable to all areas across the country, may lack sufficient flexibility. Some areas currently limited to “Tier 1” access levels, as that term is defined by the FCC, may realize substantial economic benefits simply by upgrading service from 756 kbps to 1.5 Mbps. Other areas might be considered “underserved” even though higher speeds are currently available.<sup>13</sup>

In considering potential definitions for “underserved” areas, NTIA and RUS should be aware that limitations on Internet access speed are often the result of restrictions in affordable “middle mile” connections (*i.e.*, data transport facilities between rural areas and the Internet backbone). Current federal universal service programs enable rural telephone companies to invest significant resources in “last mile” high-speed multi-use networks that support broadband.

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<sup>12</sup> *NECA 2008 Trends Report* at 7-11.

<sup>13</sup> Some commenters suggest that areas be considered “unserved” or “underserved” based on the number of competitive providers offering service. This approach fails to recognize the practical difficulties associated with providing service to rural markets, which often do not have the ability to support even one provider let alone multiple networks. In this regard, some parties have pointed out the advantage of requiring providers receiving funds from support mechanisms to make their networks available to other carriers on a common carrier basis, thereby assuring competing service providers can reach customers located in sparsely-populated areas. *See, e.g.*, “The Role of Competition in a National broadband Policy”, Robert D. Atkinson, Information Technology and Innovation Foundation, <http://www.itif.org/files/JTHTL.pdf>; Letter from Kenneth C. Johnson, Counsel for Panhandle Telecommunications Systems, Inc., to Marlene H. Dortch, FCC, CC Docket No. 96-45, (Jan. 11, 2008).

But these programs provide little or no up-front or continuing support for access to Internet backbone facilities. NTIA and RUS may therefore wish to place substantial emphasis on proposals to reduce transport costs to the Internet backbone, as this approach may be a significant factor hindering the provision of improved broadband service to “underserved” populations.

### **Non-discrimination and Interconnection Obligations**

Any non-discrimination conditions imposed on a contractual basis by NTIA or RUS should be consistent with those set forth in the FCC’s 2005 *Broadband Policy Statement*.<sup>14</sup> Questions relating to “open access” requirements for Internet services can be complex and contentious. The Commission’s 2005 *Statement* seems to have achieved a reasonable balance between the interest of consumers in an open Internet and the need for broadband providers to manage their networks. Thus, attempts by NTIA and RUS to modify the Commission’s 2005 principles are likely to result in unnecessary controversy and possibly litigation, with the result that stimulus programs will be delayed.

It bears noting in this regard that NECA member companies are treated as “dominant” carriers regulated under Title II of the Telecommunications Act, and as such are already prohibited from engaging in unjust or unreasonable discrimination in the provision of their common carrier services. These companies are also subject to extensive interconnection obligations pursuant to sections 201(a) and 251(c) of the Act. These provisions may serve as a

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<sup>14</sup> See *Access to the Internet over Wireline Facilities*, CC Docket No. 02-33, *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, *Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review –Review of Computer III and ONA Safeguards and Requirements*, CC Docket Nos. 95-20, 98-10, *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, GN Docket No. 00-185, *Internet Over Cable Declaratory Ruling, Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, CS Docket No. 02-52, Policy Statement, 20 FCC Rcd 14986 (2005).

model for assuring non-carrier compliance with the nondiscrimination and network interconnection requirements of the Recovery Act.

### **Data Reporting and Fund Distribution**

In considering procedures for administering broadband grants and loans under the Recovery Act, NTIA and RUS should consider ways to avoid, to the extent possible, imposition of unreasonable administrative burdens on fund recipients. NECA pool members may be in the best position to contribute to the success of rural broadband deployment efforts, but due to small staffing sizes, they may be dissuaded from seeking broadband grants or loans if over-extensive recordkeeping, reporting, and auditing requirements are imposed.

In this regard, NTIA and RUS may wish to consider ways in which administrative burdens can be reduced for fund recipients. Utilizing existing data resources (such as the FCC's existing broadband data base) as opposed to instituting new federal reporting requirements is one way to avoid imposing undue administrative costs on service providers. Similarly, audit and review plans should recognize the extent to which companies are already reviewed by independent auditors, other agencies, and NECA, and should be designed to avoid burdening program participants to the extent possible.

Finally, NTIA and RUS may wish to incorporate procedures that allow grant and loan recipients to designate agents for submission of program-related data and disbursement of funds. Such "Remittance Company" arrangements are commonly used in administration of the FCC's high-cost universal service program,<sup>15</sup> and provide substantial administrative benefits and efficiencies in fund administration.

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<sup>15</sup> See, e.g., Universal Service Administrative Company, Instructions for Completing the Service Provider Identification Number and Contact Information Form, [http://www.universalservice.org/\\_res/documents/fund-administration/pdf/form-498-fy2006-instructions.pdf](http://www.universalservice.org/_res/documents/fund-administration/pdf/form-498-fy2006-instructions.pdf).

## **Conclusion**

NECA urges NTIA and RUS to recognize the critical role played by rural ILECs in providing broadband service in rural areas. Many of these high-cost areas would be completely unserved but for the efforts of rural ILECs in deploying broadband-capable facilities. Proposals that would permit these companies to deploy additional facilities throughout their serving territories should be given careful consideration by NTIA and RUS. In addition, the agencies should take into account the extent to which rural customers are “underserved” as a result of difficulties obtaining “middle mile” connections to the Internet backbone.

Finally, as discussed above, NECA has extensive facilities and procedures in place for collecting, reviewing, and validating data submitted by ILECs, and also has the ability to handle and disburse funds among these carriers rapidly and securely. To the extent these systems and procedures would be of use, NECA is pleased to offer its assistance to NTIA and RUS in meeting the administrative challenges of implementing Recovery Act’s broadband programs.

Respectfully submitted,

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By:



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April 13, 2009