

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

**DEPARTMENT OF AGRICULTURE
Rural Utilities Service**

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

COMMENTS OF ATSI COMMUNICATIONS, INC.

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EXECUTIVE SUMMARY

ATSI Communications, Inc., a global provider of Voice over Internet Protocol (“VOIP”) communication services and an operator of cable television networks in underserved rural communities in South Texas, submits these comments on several questions posed by the NTIA and the RUS in its joint Request for Information. It is the intent of ATSI to apply for and utilize BTOP and/or RUS grants in order to bring broadband applications to unserved and underserved rural markets of Texas, with which ATSI has direct experience. ATSI will do this by expanding existing systems as well as implementing new facilities and services. Among other things, ATSI urges NTIA and RUS to adhere faithfully to the Recovery Act’s statutory command to provide BTOP grant funding first and foremost to projects to extend and improve broadband service to unserved and underserved areas of the nation, and to give priority weighting to project applications submitted by entities that can leverage existing infrastructure and experience to bring optimal speed to market in the geographic areas to be served.

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ATSI Communications, Inc. ("ATSI"), by its counsel, hereby submits its written comments in response to the Joint Request for Information ("RFI") of the National Telecommunications and Information Administration ("NTIA") and the Rural Utilities Service ("RUS") issued on March 10, 2009.¹

I. INTRODUCTION

ATSI Communications, Inc. is a global provider of Voice over Internet protocol ("VOIP") communication services. The Company, through its wholly-owned subsidiary, Digerati Networks, Inc. owns and operates its own VoIP network in San Antonio, Texas for processing voice communication traffic between the United States and rapidly expanding markets in Asia, Europe, the Middle East, and Latin America. The Company also operates a cable television network in underserved rural communities in South Texas through a subsidiary, Fiesta Communications, Inc. Fiesta Communications was established to deliver cable television, broadband Internet, and VoIP services to underserved communities throughout Texas.

¹ 74 Fed. Reg. 10716, released March 12, 2009.

It is the intent of ATSI to apply for and utilize BTOP and/or RUS grants in order to bring broadband applications, especially Internet, to the unserved and underserved rural markets of Texas, with which ATSI has direct experience. ATSI will do this by expanding existing systems as well as implementing new facilities and services.

II. COMMENTS

Reproduced below are the questions of the NTIA and the RUS in the RFI in response to which ATSI is offering comments. ATSI will respond to the agencies' questions and requests for information in the order in which they appear in the RFI.

A. NTIA Questions

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?

Yes. To the extent necessary to ensure that a significant percentage of the grant funds should be applied to fulfill the first-listed and principal objectives of the BTOP as provided in the Recovery Act-- namely, to provide and/or improve broadband access to unserved and underserved areas of the United States— a commensurate significant percentage of the grant funds should be apportioned to projects that will serve these overriding policy goals. Moreover, the NTIA should weight the competitive applications received on the basis of how many of these objectives are likely to be achieved by the proposed project.

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

Yes. Applicants should be encouraged to address more than one purpose, but a significant emphasis should be placed on meeting the stated purpose of providing and/or improving broadband access to unserved or underserved areas in the United States.

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?

The BTOP should leverage other broadband-related portions of the Recovery Act to further the purposes of the Act. All broadband programs should ultimately meet the stated purpose of providing and/or improving broadband access to unserved or underserved areas in the United States. Applicants should have the opportunity to utilize their broadband infrastructure for specialized applications that encompasses other portions of the Recovery 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. What standard should NTIA apply to determine whether it is in the public interest that entities other than those described in Section 6001(e)(1)(A) and (B) should be eligible for grant awards?

The NTIA's public interest determination should be based on the capabilities and experience of the applicant in the targeted geographic area, and its ability to meet the purposes set forth in the BTOP. Entities that are not a State or political subdivision, a territory or possession of the United States, an Indian tribe, native Hawaiian organization, nonprofit foundation, non-profit corporation, or non-profit institution should be eligible, provided that they satisfy the purposes set forth in the BTOP and possess the required experience and capabilities.

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 establish selection criteria for awarding grants based on the needs of the targeted geographic area that will be served, the speed to market for providing services, the technology that will be deployed, and the number of jobs to be created. Additionally, in order for the NTIA to determine if the need for Federal funding exists, it should implement a review process wherein existing and new providers would be required to demonstrate their capability, or lack thereof, to finance through private investment. As part of this review, applicants should present their respective business cases for Federal funding. The long term feasibility of the investment should be evaluated based on market penetration, subscriber growth, revenue growth, profitability, and basic financial metrics for determining the return on invested capital. The NTIA should require periodic financial reporting that includes a status report on the use of funds. Additional reporting should include a description of the benefits derived from the use of the technology deployed in the targeted geographic area.

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

Significant weighting should be applied to the ability to serve the targeted geographic area and speed to market. Special consideration should be given to those applicants with existing infrastructure that can be leveraged to optimize speed to market.

- 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?*

As discussed above, the BTOP should consider USDA broadband grant awards and loans in establishing these priorities.

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

BTOP proposals should be considered on a stand-alone basis. However, an applicant's future infrastructure should be considered for meeting the needs established in other Recovery Act projects.

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

The services or products provided by a grantee will obviously be a key factor in encouraging sustainable adoption of broadband services. Accordingly, priority should be given to those applicants that bring other services, such as digital phone service and/or video content, to communities utilizing the same broadband infrastructure proposed to be utilized in their BTOP project proposals.

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

Retail price clearly will play an important role in encouraging sustainable adoption. Accordingly, retail price should be considered as a factor in qualifying an applicant.

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?*

The selection criteria applied to ensure the success of this program should include screening of applicants to determine how efficiently they have implemented previous programs to provide public access to computers, The Internet, and other relevant technologies.

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

Additional institutions to be considered as eligible recipients under this program should include (1) senior citizen centers, (2) charity hospitals, (3) immigration offices, (4) job centers and unemployment offices, and (5) other charitable organizations that demonstrate a need.

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?*

The innovative products and services provided over a broadband network will encourage sustainable adoption of broadband service. Priority in selection should be given to those applicants that demonstrate innovative products and services or innovative “bundling” of services that increase the value proposition for the consumer. The selection criteria should also include evaluation of the applicant’s marketing plans, sales plans, and dissemination of information related to the services to be provided.

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

The measures to be used to determine whether such innovative programs have succeeded should include subscriber count (adoption rates), revenue per subscriber, attrition rates, and a comparison of actual results versus the proposals presented by applicants. Periodic measurement should include comparing adoption rates experienced by a given grantee to those experienced by other grantees.

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?*

A broadband map must enable agencies and prospective providers to efficiently determine and prioritize the need for broadband solutions in a particular geographic area. The nationwide broadband map should determine current availability of broadband from current providers, including those employing cable, copper, fiber, satellite and other wireless technologies.

- 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)?*

In addition to availability of broadband, broadband mapping should include penetration and adoption rate statistics within each footprint and for each provider in the respective geographic areas

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

In addition to the foregoing, broadband mapping should also provide information on available potential users to determine market potential and the estimated growth of the market to determine near term and long term needs.

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

ATSI is aware that California, Vermont, and Iowa have established differing but apparently successful mapping programs to date.

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

States should collect specific information on broadband coverage, demographics, income per capita, and other economic data required to make a business case for broadband deployment in a specified area.

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 NTLA 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?*

If verifiable demographic and economic data supplied by an applicant and/or a state or local government indicate that the target population is below a certain average income, in comparison to a national average for unserved or underserved markets, consideration should be

given for more than an 80% subsidy. The rationale for this is that initial operating losses to the provider will undoubtedly be higher in such areas.

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?**

The BTOP provision mandates that NTIA and RUS set timelines for each step in the grant process, and to oversee grant application processing and approval. States should provide assistance and suggest criteria with respect to their particular areas, and should have an important role, but not sole authority, in the selection and award process.

- 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)?**

Applications should include a budget, timeline, and specific deployment milestones for the broadband network. The applications should include engineering diagrams and letters of agreement with technology partners required to deploy the network. Priority should be given to those applicants with existing infrastructure and the ability to provide the proposed broadband services in the shortest time frame.

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.

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

A finding of insufficient level of performance should be based on a comparison to the budgets, timelines, and milestones presented by the applicant. As an example, an applicant operating at 50% of its budget, or significantly behind the timeline it had presented, should be considered as performing at an "insufficient level" unless it provides an adequate explanation. A comparison should also be made relative to peers or other applicants with regard to deployment, adoption rates, and subscriber growth.

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

NTIA should allow for a cure period allowing a grantee to achieve satisfactory performance. If unsatisfactory performance continues, a peer grantee operating in the same state or region should be allowed to take over the project, provided that it submits a fully adequate project proposal.

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[sic], 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?"*

The NTIA should consider using the following definitions of "unserved area" and "underserved area":

Unserved area should be any area where no provider furnishes duplex broadband at transmission rates greater than 256 kbps in either direction.

Underserved area should be one in which all providers in the area have an aggregate penetration rate of 10% or less.

- 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?

The BTOP should consider using 256 kbps as a reasonable threshold to establish transmission speed.

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

Yes. The BTOP should establish different threshold speeds for different technologies, particularly for wireless versus cable or DSL.

(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)?

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

Certain technologies (wireless, satellite hybrid) have limited bandwidth in the return direction, yet they might be the only ones feasible in sparsely populated rural areas. Therefore, BTOP standard thresholds for asymmetrical transmission need to be developed. A minimum threshold of 256 kbps up/ 512 kbps down would be a reasonable minimum threshold.

B. RUS Questions

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 way 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 such areas, a portion of grant monies could be allocated to subsidize monthly subscription costs or allocated to providers to subsidize operating costs in order to offer affordable rates.

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

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

The RUS should establish a ranking system early in the process to give preference to the most deserving areas.

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? 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?"

"Unserved" should be considered synonymous with "75% rural" in most cases, since most other areas are either fully served or underserved.

3. How should RUS evaluate whether a particular level of broadband access and service is needed to facilitate economic development?

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

(b) What speeds are needed to facilitate "economic development?" What does "high speed broadband service" mean?

Download speed is always going to be more critical than upload speed. 256 kbps up/ 512 kbps down would seem reasonable and achievable as minimum threshold values.

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.

These priorities should be ranked as follows:

1. Serve the highest proportion of rural residents that lack access. This is a primary statutory purpose of the BTOP.
2. Provide end users a choice of providers wherever possible.

3. Projects of current and former RUS borrowers: this should not be a criterion if a new applicant has a superior application and plan.
4. Fully funded (“shovel-ready”) when funding received.

Respectfully submitted,

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