

State of Washington  
Comments in Response to Federal Request for Information Regarding  
The American Recovery and Reinvestment Act of 2009 Broadband Initiatives  
Docket Number 090309298-9299-01

Executive Summary

The State of Washington's comments are focused on the following topic areas: The Purposes of the Grant Program; The Role of the States; Eligible Grant Recipients; Establishing Selection Criteria for Grant Awards; Broadband Mapping; Financial Contributions by Grant Applicants; Reporting and De-obligation; Coordination with USDA's Broadband Grant Program; and Definitions. Also included are responses to the Rural Utilities Service's (RUS) questions one through four.

Our goal in responding was to urge NTIA and RUS to preserve maximum flexibility in the manner that grants under the ARRA are considered and awarded. We also believe it is critical for states to have a meaningful and substantial advisory role in determining which projects meet the criteria set forth in the ARRA and any further federal requirements established by NTIA. The states can provide a comprehensive and localized understanding of their economic condition and broadband deployment challenges. Their views of where efforts to introduce or enhance broadband investment and encourage increased consumption are vital to ensuring that the greatest overall benefits are realized for those projects selected under the auspices of the BTOP program.

We urge the NTIA reviewers to consider Washington's detailed responses in the development of the program.

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NTIA

### The Purposes of the Grant Program

Washington State supports the development of NTIA guidelines for ensuring that broadband recovery funds are directed towards the purposes of the American Recovery and Reinvestment Act of 2009 (ARRA): reaching unserved and underserved populations; supporting broadband education, awareness, training, access, equipment, and support; improving access to broadband by public safety agencies; and stimulating the demand for broadband, economic growth, and job creation.

We do not support allocating a pre-set percentage of funds to each of the purposes enumerated under Section 6001(b) of the ARRA. Different areas of the United States have achieved different levels of progress in providing broadband infrastructure, access, education, training, equipment and support. Varying levels of progress make it problematic to assign a certain percentage of funds to each purpose set forth in the ARRA.

We support an approach that encourages fund applicants to address more than one legislative purpose in their requests, and, when possible, identifies opportunities to leverage other fund sources in support of their funding requests. We also believe that providing high-speed access to schools, universities, libraries, community centers job training centers, hospitals and public safety personnel is critical.

On balance, determining whether it is more important to invest in infrastructure than to invest in mapping or provide education and training will be a location-based issue. Please refer to “The Role of the States” below for additional comments relating to prioritization and meeting the goals of the ARRA.

### The Role of the States

The State of Washington supports a meaningful and substantial advisory role for the states in determining which projects meet the criteria set forth in the ARRA and any further federal requirements established by NTIA. The states can provide a comprehensive and localized understanding of their economic condition and broadband deployment challenges. Their views of where efforts to introduce or enhance broadband investment and encourage increased consumption are vital to ensuring that the greatest overall benefits are realized for those projects selected under the auspices of the BTOP program.

Like many states, Washington has its own initiative underway to assess and establish improved conditions for broadband deployment and adoption in the state. It is crucial that NTIA's BTOP rules tap into and complement such state efforts by establishing a consultative relationship with each state to evaluate, rank, and prioritize all public and private proposals submitted to the agency under the BTOP program. Serious consideration should be given to those projects specifically prioritized by a state's official designee that promote economic recovery in a manner most consistent with the statutory criteria of the BTOP program while fully considering local conditions.

The state consultative process should include at least four key components to maximize its effectiveness.

First, NTIA should request that each designated state official or agency adopt or have in place a defined and state-sanctioned process to engage all stakeholders in a broad outreach effort to ensure wide-ranging awareness of the resources available under the BTOP program for broadband infrastructure deployment and to promote broadband adoption by consumers.

Second, NTIA should require that each applicant for BTOP funding be required to file contemporaneously with the state its application and all supporting documentation.

Third, NTIA should set forth broad criteria for states to use in reviewing and ranking applications, while allowing states the flexibility to consider specific factors reflecting state and local conditions.

Finally, assuming that states have an ongoing role in monitoring and reporting on the effectiveness and compliance of accepted projects, each successful applicant for BTOP funding should be required to allow access to and share any relevant information, including books and supplementary records pertaining to their project(s), with appropriate state officials to assist the state and NTIA in evaluating each grantee's compliance with the terms and conditions of their BTOP award.

## Eligible Grant Recipients

With two exceptions, the eligible recipients identified in the ARRA are sufficient to ensure that the public's interest in expanding broadband development and deployment are met.

We encourage the NTIA to allow eligible entities to include new types of partnerships among public, nonprofit, and for-profit entities either to provide broadband infrastructure or to stimulate or aggregate demand for services. Such partnerships may be to create leverage and linkages between different infrastructure providers or demand-side entities to target certain unserved and underserved areas better, or offer higher speeds or more services or greater affordability in existing areas.

Washington also supports making BTOP and RUS grants and loans available to private organizations or companies that have existing broadband capabilities or investments that seek to utilize funding to expand existing infrastructure into underserved or unserved service areas, regardless of technology.

Successful applicants should have a track record of providing quality telecommunications and information services to the public, and we fully expect that innovative grant proposals will come from the private, public, and non-profit sectors. The determination of whether an entity other than those described in Section 6001(e)(1)(A) and (B) is in the public interest depends on the particulars of the grant proposal. Assuming the applicant has demonstrated financial bona fides and technical competencies, and commits to comply with the terms of the

ARRA, the NTIA should find that it is in the public interest that the applicant be eligible to compete for grant awards.

The NTIA should also consider applications from non-profit and public regranting programs for the purposes of community technology literacy and broadband access programs reaching vulnerable populations.

Finally, Washington believes the NTIA should reserve the power to make exceptions to the grant eligibility criteria in cases where no eligible entity comes forward for a specific location, and an entity or group of entities can show that they share the characteristics and overall goals of otherwise eligible, similarly situated, recipients.

## Establishing Selection Criteria for Grant Awards

Although it may be desirable to rank or prioritize factors and criteria for awarding grants, Washington believes that NTIA should retain sufficient flexibility amongst the statutory criteria such that any mix of supply and demand side projects may be funded under the BTOP program.

Simply stated, not all states are the same. Each state has its own social demographics, geography, and economic conditions, among other factors. More specifically, from a broadband perspective, each state has different broadband deployment levels, competitive alternatives, and consumer adoption practices and levels. While some geographically large states may have broad swaths of un-served or partially-served areas, other smaller, more densely populated states, may have more urbanized requirements pertaining to broadband adoption. Similarly, opportunities for computer training may be different in different communities. BTOP criteria need to be sufficiently flexible to anticipate and address the requirements of both situations.

Accordingly, Washington strongly believes that NTIA should resist efforts adopt rigid or inflexible selection criteria in an effort to apply a “national” solution or approach to determining grant awards where different approaches for different states would address better local conditions.

Washington would support a rebuttable presumption for “sustainable adoption of broadband services” which assigns a heavier weight to grant proposals that come from existing broadband infrastructure providers, public or private, and demand-side programs that have a proven track record.

We disagree with the suggestion that a statewide map or mapping initiative should be a prerequisite to receiving BTOP funding for infrastructure. While it may be true that a broadband map can be a useful tool to identify un-served areas of a state, other resources or avenues also exist to facilitate identification of unmet broadband requirements. State economic development agencies, state commissions, and state or local government task forces or committees may well have meaningful insight and opinions on undeveloped areas ripe for broadband investment. Indeed, an ad hoc group established by the Washington Legislature recently completed a comprehensive study of factors influencing broadband investment and adoption throughout the state and made recommendations regarding a potential mapping endeavor. While that process may someday lead to a statewide broadband map, there is simply no need to wait for the outcome of the state mapping exercise to begin tapping BTOP funding when suitable information from alternative sources already exists.

We also urge that each grant applicant be required to certify in some form that it is not seeking similar or identical support from the RUS broadband program as a means to “double dip” federal funding for their particular project(s). While Washington understands that NTIA and RUS may plan to coordinate in some fashion to prevent

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double dipping, a self-certification process for project proponents provides an added layer of awareness and prevention of such an outcome. We support the recommendation from NASUCA asking that federal agencies establish an interagency task force to address this matter and other important matters of coordination.

Finally, regarding the potential displacement of private investment by BTOP funds, the NTIA should not give weight to an applicant that proposes an infrastructure project in an area where a broadband infrastructure provider is already offering affordable and reliable high-speed internet services.

## Broadband Mapping

On December 1, 2008, Washington published a legislatively commissioned report on High-Speed Internet Deployment and Adoption Strategy Recommendations for the State of Washington. The Report addresses topics covered in the ARRA and the Broadband Data Improvement Act (P.L. 110-385) in substantial depth, including Geographic Information System (GIS) based mapping. The link to the Report and related materials is <http://dis.wa.gov/hiswg/default.htm>.

In addition to addressing a variety of topics related to high-speed access, deployment, adoption, and listing specific GIS mapping criteria, the Report recommends several additional features that should be included in GIS maps.

Of particular note is the recommendation that the map include an application layer to illustrate what level of various applications could be facilitated in different geographic areas. Application attributes can be appended to the GIS mapping database to create color-coded maps displaying the uppermost high-speed application available in each area and other information. As an example, mapped areas could display various levels of application classes ranging from basic email and You Tube video, to telecommuting, telemedicine, and smart/intelligent building monitoring. These types of application classes can be fundamental to determining whether an area is underserved and whether the service provided can facilitate economic development.

The Report also notes that the GIS maps could be combined with “Wiki”-type inputs from consumers to both add to, and verify information from, other sources. A Wiki enabled map could also help identify variations in offered versus realized services, including determination of an average service level in any given area (this would further help determine the viability of applications that are dependent upon certain guaranteed service levels within any given area). The map could also provide links to high-speed internet information from available websites of providers, including service type and pricing.

NTIA and RUS should work together to specify the geographic level required for mapping data, and should consider recently adopted FCC reporting requirements that specify census tract level reporting and yet to be determined service availability reporting requirements. NTIA and RUS should also define the data requirements necessary to ensure that statewide inventory maps can be rolled up into a searchable national broadband database so that states can build their data sets accordingly.

## Financial Contributions by Grant Applicants

The assessment of the “financial needs” of an applicant, and whether or not the NTIA should provide greater than 80 percent of a project/activity’s cost should be assessed on a case-by-case basis, taking into account the totality of economic and financial circumstances. Should NTIA determine that for-profit infrastructure providers are “eligible entities” in the public interest, then such providers should provide the full 20 percent matching requirement. However, if a for-profit entity enters into a partnership with a governmental entity, or non-profit organization it may assert a “financial needs” waiver based on a combination of economic circumstances. NTIA and RUS should be generally aware of economic and financial distress in state and local governments and other public entities throughout the country, and specifically in Washington State today. The agencies should use publicly available data on the economic and budget circumstances, which are widely available from a number of sources, regarding the specific circumstances of the applicant. The NTIA and RUS should consider various forms of in-kind contributions that a state, local government, or political subdivision may be able to contribute toward the 20 percent match requirement, such as assigned personnel, and office and administrative overhead. The NTIA should consider some of the following specific factors in reviewing a waiver for “financial need”:

- Reaching the largest number of households/customers at the highest possible speed for a particular project (referenced in Sec. 6001(h)(2)(B));
- How much previous work the applicant has done, either alone or with a state agency or task force, in getting the proposal or project to the status of “shovel-ready”;
- How quickly the particular projects or activity can be started and completed;
- The number of jobs created by the applicant and/or projects, what impact that may have on the unemployment rate.
- The economic condition of the community where services would be provided.

## Reporting and De-obligation

NTIA and RUS should require grantees to use independent third party quality assurance practitioners to ensure compliance with the commitments identified in the grant application, and the requirements of the ARRA and related acts.

Quarterly reporting by an independent third party quality assurance practitioner, together with the grantee’s quarterly reports on progress toward achieving the objectives of the grant proposal, provides a means for regular monitoring of grant activities, and early warning if the objectives of the grant are not being met.

Third party quality assurance services are widely available and routinely used to provide oversight and reporting for all manner of projects. The purpose of quality assurance is to increase the probability of a project’s success. Projects are more likely to be successful when the project managers and sponsors are provided with insightful, competent, timely, independent and objective assessments of how well the project team is executing its objectives. Quality assurance provides its greatest value when engaged in the early initiation phases of a project, and continued throughout the project lifecycle. Quality assurance services are considered to be a part of total project cost and should be budgeted accordingly.

Washington State prefers quality assurance practitioners with professional credentials appropriately related to oversight activities, and recent experience managing and assessing projects of similar size, risk and complexity. Practitioners should also be aware of the political and legal environment in which the projects operate.

NTIA and RUS could use quality assurance reporting to assess whether projects are progressing appropriately in light of the projects' milestones and deliverables, and could receive early warning of risks that could prompt additional corrective action and reporting in cases where risks are deemed unacceptably high. The threshold at which funds are deobligated should be determined by NTIA and RUS after a thorough review of all relevant circumstances.

### Coordination with USDA's Broadband Grant Program

NTIA and RUS should issue a unique identifier to all eligible entities who desire to make application for ARRA funding. That identifier should be linked to the applicant's eligibility status and geographic location. Applicants applying for funding under the ARRA should be required to use their unique identifier when applying to NTIA and RUS, and to state whether they have applied to NTIA, or RUS, or both, at the time of their application. In this way, NTIA and RUS can track the activity of all eligible entities and ensure that grant funds are utilized in the most efficient and effective manner possible, without unjustly enriching any particular applicant. In addition, we urge RUS and NTIA not to limit the possibility of any "unserved area" from maximizing potential benefits under both programs through some arbitrary constraint. We believe that both statutes (Division A, Title I for RUS and Division B, Title VI for NTIA) allow an applicant to develop innovative ways to serve such "unserved areas" by combining various elements of each into a comprehensive proposal, and the implementing rules should allow this.

### Definitions

Broadband: Washington recommends that broadband or high-speed internet service be defined similar to the FCC broadband tiers with the exception of the lowest tier, so the first tier would be  $\geq 768$  kilobits per second (kbps) download and  $> 200$  kbps upload. For the purposes of the ARRA grants, we believe that there should be flexibility in the definition so that the minimum level of service is based on the community, geography and need. We recognize that some communities may require a higher minimum level of service to meet their needs. Top tier research-intensive universities and government laboratories, for example, will require much higher speeds than ordinary consumers.

We believe that Washington's definition balances the data gathering needed to provide a realistic assessment of high-speed internet service within the state, coupled with the requirements already placed on providers by the FCC. The definition does not place an additional requirement on service providers because the data that would be categorized as broadband under the FCC's definition is information that would be characterized as high-speed internet under the state's definition.

Underserved: Besides defining high-speed internet service in terms of speed tiers (upload and download speed pairings), Washington feels that various levels of high-speed internet should be defined by the applications that can be enabled by different speed tiers, especially for purposes of determining whether an area is underserved, or where the service provided can facilitate economic development.

When settling on definitions, NTIA should consider not only whether a given set of speed tiers is equivalent to “broadband” or high-speed” service, but also whether an area is “underserved” if the speeds available are not sufficient to support users’ needs.

Rural: Washington’s statutory definition of rural is limited to “rural county” and means a county with a population density of fewer than one hundred persons per square mile or a county smaller than two hundred twenty-five square miles. We recommend that NTIA and RUS select a definition of “rural” appropriate for the greatest number of states based on existing legal definitions, and currently implemented eligibility standards.

## RUS

**What are the most effective ways RUS could offer broadband funds to ensure that rural residents that lack access to broadband will receive it?**

Washington supports a mix of grants and loans that is heaviest on the loan side. It is our understanding that the loan program allows RUS to leverage the funds available to it. This, in turn, increases the availability of funding for broadband projects. Existing loan programs administered by the RUS have proved effective in deploying telecommunications infrastructure in rural America. Although the loan program is an effective tool, there may be instances in which a direct grant is preferable given local circumstances. For example, there may be very low density pockets of unserved areas in rural America where the economics of even a low-interest loan do not make sense. Thus, deploying a mixture of loans and grants under the administration of the RUS, with the assistance of the states in a consultative role, will assure the greatest availability of broadband infrastructure throughout the nation.

We also urge that each grant applicant be required to certify in some form that it is not seeking similar or identical support for the same project from the RUS broadband program as a means to “double dip” federal funding for their particular project(s).

**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?**

NTIA and RUS should issue a unique identifier to each eligible entity that applies for ARRA funding. That identifier should be linked to the applicant’s eligibility status and geographic location. Applicants applying for funding under the ARRA should be required to use their unique identifier when applying to NTIA and RUS and to state whether they have applied to NTIA or RUS or both at the time of their application. In this way, NTIA and RUS can track the activity of all eligible entities and ensure that grant funds are utilized in the most efficient and effective manner possible, without unjustly enriching any particular applicant. In addition, we urge RUS and NTIA not to limit the ability of an applicant to apply for support under both programs if a combination of support is not duplicative and furthers the deployment of broadband service into unserved areas. We believe that the both

statutes (Division A, Title I for RUS and Division B, Title VI for NTIA) allow an applicant to develop innovative ways to serve such unserved areas by combining various elements of each into a comprehensive proposal, and the implementing rules should allow this.

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

Broadband access and service has become the price of entry for economic areas. Need should be evaluated on a case-by-case basis taking into account the broadband needs of the businesses currently located in an area as well as the industries that area hopes to recruit in the future.

Also, see Washington's comments in response to NTIA's questions above concerning the definition of "underserved," and the relationship between economic development and different levels of high-speed internet service.

### **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?**

In evaluating proposals, RUS must examine whether the proposed project (1) gives end-users a choice of internet service providers, (2) serves the highest proportion of rural residents who lack access to broadband service, (3) is submitted by a current or former RUS borrower, and (4) is fully funded and ready to start once it receives funding, and (5) addresses barriers to adoption. Of these five specific factors, we believe that items 2 and 4 should be assigned the highest priority given that they best meet the overriding goals of the ARRA and promotion of broadband deployment. The first factor, "giving end-users a choice of internet service providers," should be assigned the lowest priority; in our view, focusing on choice of service may well be a wasteful exercise that diverts necessary funding to those rural areas lacking even a single broadband provider. The fourth priority listed should be assigned a higher value because it best meets the overriding goals of the ARRA in terms of economic development and creating jobs.

We urge the RUS to coordinate closely with the NTIA in identifying additional priorities.