

Via Electronic E-mail to BTOP@ntia.doc.gov

NTIA and RUS
Broadband Technology Opportunities Program
U.S. Department of Commerce
Room 4812
1401 Constitution Avenue, NW
Washington, DC 20230

***Re: Comments on Section 6001 of the American Recovery and Reinvestment Act of 2009:
Docket No. 090309298-9299-01 – NTIA and RUS Joint Request for Information - Dated March
12, 2009***

Dear NTIA and RUS:

Lehigh Valley Cop Telephone Association hereby submits its comments on Section 6001 of the American Recovery and Reinvestment Act of 2009 (ARRA) regarding several of the specific agency questions for both NTIA and RUS. We thank both the NTIA and RUS for providing the opportunity to submit these comments in an effort to assist in the preparation of the guidelines and rules.

We are a rural telephone LEC in Iowa. Our company has been in business since 1949. We have demonstrated a commitment to improving access to broadband services in the rural communities within our service area.

Both, the NTIA and RUS have been given a great honor by being designated as the authorities to oversee the distribution of \$7.2 Billion in Stimulus Funds under the ARRA. This authority brings the difficult role of determining the most effective and efficient way of awarding and distributing the funds allocated by them. In the process of establishing the rules and guidelines to be used in the application process, both are seeking public comments on several aspects of the bill. As a rural carrier, we are among the entities that could effectively utilize funds from the stimulus bill to improve the broadband service in our rural communities. We appreciate the time constraints and daunting process that NTIA and RUS will be undertaking when reviewing all the public comments and then determining funding eligibility.

On behalf of the rural communities we serve, we respectfully submit these comments, as a separate attachment, in which we address the items NTIA and RUS outlined in its Joint Request for Information published in the Federal Register, Docket No. 090309298-9299-01, on March 12, 2009.

Respectfully submitted,

James E Suchan

General Manager

Via Electronic E-mail to BTOP@ntia.doc.gov

Lehigh Valley Coop Telephone Association Comments on Section 6001 of the American Recovery and Reinvestment Act of 2009: Docket No. 090309298-9299-01 – NTIA and RUS Joint Request for Information - Dated March 12, 2009

NTIA Program Comments

1. Purposes of the Grant Program

In response to whether a certain percentage of grant funds should be allocated to each category proportionately, we strongly believe that the funds should be allocated to those categories that have the greatest need. The ARRA was enacted to create jobs, close the broadband gap, stimulate the economy, improve current and future broadband services and encourage the demand for broadband. Projects that will be able to meet those requirements and provide broadband access to those areas that meet the definitions for both unserved and underserved should be allocated the greatest share of the funds. The most important need is for these areas to get infrastructure in place that will allow service providers to offer broadband to the greatest population over the greatest serving area. Educating users on broadband services and adoption will be a part of the marketing effort of individual service providers. Community focused providers will ensure that their customers are educated on the uses and benefits of broadband access. Using the funds to construct broadband infrastructure should be the highest priority. Once the infrastructure is built, broadband access will be extended to all of the institutions listed in the bill, (schools, libraries, medical and healthcare providers, community colleges, etc.) in each community.

2. Role of the States

It will be important for the NTIA to coordinate its work with the States with respect to the BTOP. However, the level of involvement by the States will need to remain strictly advisory. The ARRA states that the Secretary may consult a State with respect to: identification of areas described in sub-section (b)(1) or (2); and, the allocation of grant funds within the State for projects. There have been several comments, both during and after the Open Forum meetings, regarding what level of involvement that the States should possess. Unfortunately, there are many differences in opinion. Coordination between NTIA and the States will be important in determining areas where there is a need for broadband service. However, NTIA will need to maintain final control and independent decision making on awarding funding throughout the grant award process. If States were given the authority to determine which projects would qualify by means of “screening” the applications before NTIA’s review, there could be a potential conflict of interest, primarily due to the fact that some States will be submitting projects of their own. This conflict may prejudice projects submitted by private entities like us. States should be able to provide insight on projects that will provide broadband service to the greatest population. However, as a means of maintaining consistency in how grants are awarded in all 50 states, NTIA should be the final decision maker in determining funding for all applications. The State’s role should remain merely advisory in nature by

coordinating and gathering projects as established in the ARRA.

3. Eligible Grant Recipients

Eligible grant recipients should be those listed under Section 6001(e)(1)(A) and (B) of the ARRA. Further, under (C) other entities should include rural LECs and CMRS, like Lehigh Valley Coop Telephone Association . Grants need to be awarded to those entities that are community focused and have a history of ensuring that quality service is provided. By eliminating the large RBOCs, CMRS, start up entrepreneurs, investment firms, speculators and others who either lack a rural focus or have no service history, you will be ensuring that those who will be benefitting from the broadband stimulus funds will have a commitment to the rural communities, that they will get the job done timely and efficiently and that quality broadband services will be provided long term. Community focused rural providers prove daily their commitment to the communities they serve by reinvesting back in the communities.

A key element of every eligible grant recipient will be that the project they are submitting will increase both the affordability and overall take rate of broadband access to the greatest population of users in the area. In addition, the project will need to enhance the current broadband access service to the following institutions: health care, educational facilities, public safety, libraries and community centers.

4. Establishing Selection Criteria

There should be established selection criteria to award any funds and that criteria must be made public before any deadlines are set for submitting applications. We would suggest NTIA look back to the original TOPS program and how applications for that program were reviewed with modifications required by the priorities now stated in the ARRA at Sec 6001. In the TOP program, the following criteria were analyzed and weighted in determining award recipients:

- *Project Purpose (20%)*
- *Innovation (30%)*
- *Community Involvement (10%)*
- *Evaluation (10%)*
- *Project Feasibility (20%)*
- *Project Budget (10%)*

For the new BTOPs program, a similar process could be used with several criteria from the ARRA that could be rated and assigned a relative weight as follows:

- Project to provide infrastructure capable of providing broadband service to the greatest number of population in unserved and underserved areas (30%)
- Provide service to Community Anchor Institutions (20%)
- Applicant's level of experience and commitment to the community (20%)
- Project's economic feasibility (10%)
- Long Term Sustainability of Broadband Access (10%)
- Ability to timely start and complete the project (10%)

In weighting the criteria for the BTOP Grant selection process, NTIA should review the area of the proposed project by looking at the level of broadband service currently being offered and the economic need of the communities for broadband. The past history of the applicant should also be reviewed including the following: level of experience, service reliability, customer service and financial stability. Long term feasibility of the project will need to be judged. All applicants should provide a financial forecast showing at least a 10 year projection. The forecast will need to demonstrate that the project is sustainable long term. The net income and cash flow in the forecast need to prove this. NTIA should establish consistent minimum financial benchmarks to show such long term sustainability.

NTIA will need to coordinate with RUS in establishing priorities in granting funds. Due to the fact applicants may be applying to both authorities, coordination will need to be maintained to avoid any prohibited double dipping in the awards process. Priority should not be given to proposals that leverage other ARRA funding or that do not provide at least a minimum of 20% equity. Applicants need some level of company or local financial commitment to ensure that they are invested in making the project a success long term. Any waivers of the 20% equity requirement, as allowed in the ARRA, should be rare.

Also, NTIA should deny applications proposing a project that would overbuild the service area of any existing RUS borrower, unless the applicant is a current or existing RUS borrower serving that area. Funding should not be granted to create new competition in areas that already have adequate broadband. Funding should only be provided to build out broadband infrastructure in areas that fit NTIA's definition of unserved or underserved.

Priority should be given to applications that demonstrate the applicant has a history of commitment to serving rural populations and has done so successfully for some time. The application should require a detailed narrative on those who will be served, including public anchor institutions, if funds are awarded, how the project will be implemented and over what time frame the project should be implemented. Due to the number of applications that are expected to be submitted, priority should be given to applications that will be serving the greatest need by offering broadband access to the greatest number of customers over a project area and at the highest speeds possible. Also, the project should score higher if it provides key services to core community anchor institutions, such as, the public safety network, Tribal lands, educational facilities, libraries, and medical and healthcare facilities.

The evaluation of sustainable adoption of broadband service need not be subjective. Sustainability can be demonstrated by an applicant's past track record in delivering solid broadband penetrations in other areas it serves. Further, NTIA can review past marketing and pricing of services to ensure that a reasonable and affordable price can be maintained for any NTIA project. The rules should not require a mandatory marketing study, but if an applicant voluntarily provides one as a part of its application (a market survey which includes market penetrations that support long term sustainability) then these applications should score higher in the NTIA selection process.

A detailed quality project would likely do a scientific marketing survey to best determine pricing, service goals, penetration and long term sustainability.

In response to the question on whether the fact that different technologies provide different service characteristics should be considered given the “technologically neutral fashion” direction of the ARRA, we agree that the selection criteria needs to be technology neutral. Different broadband technologies will differ based on the needs of a community, the terrain of a service area, the availability of spectrum, ROW, poles, etc. Therefore, NTIA should allow applicant’s to decide what technology to utilize, wireline or wireless, to provide broadband access dependent on the terrain of the area and other service area characteristics. Applicants will want to use technology that will be able to offer the greatest speed to the greatest population in the area(s) they desire to serve, also considering the long term economics of their choice.

5. Grant Mechanics

In discussing the mechanisms that should be used in distributing funds, we suggest that the NTIA and RUS use a simplified and coordinated application and review process, similar to what NTIA has used in the past like TOPs. In reviewing applications, there should be a proper review process which focuses on the quality of the application and the project being proposed. The funding and selection of quality projects that fit the final criteria is more important than taking an “out the door quickly” approach. Please see our comments in #4 above regarding selection criteria and review processes. It will be critical that both NTIA and RUS establish similar standards in how applications will be reviewed. A similar application and process would be best having differences only where the text of the ARRA require differences. It will also be critical that both are well staffed in order to meet the demands of the application process.

6. Public Computer Center Capacity

As a part of the ARRA, not less than \$200 million is to be awarded to expand public computer center capacity. In awarding the Public Computer Center Capacity funds, a request for funds with a detailed plan on how the funds will be used should be included in the application. Often this request should be in connection with a request for funds to build the broadband infrastructure in the same community also. Public Computer Centers can be very valuable for rural communities. For example, job training, education, research, marketing, economic development, keeping in touch with friends and family or in touch with world events are just a few potential uses of a Public Computer Center. A Public Computer Center can be set up as a separate location, within a public library, community hall, school, senior center, nursing home or assisted living center, within a Community College, tribal facility, and local medical or healthcare facilities. The key in establishing or enhancing a Public Computer Center is to provide access to computers and broadband, while educating and training residential users and community organizations on the uses and benefits of broadband access. Such centers prime the pump for further adoption in the community.

7. Innovative Programs to Encourage Sustainable Adoption of Broadband Services

As a part of the ARRA, not less than \$250 million is to be allocated to “Encourage Sustainable Adoption of Broadband Service”. Service providers will be promoting and advertising the benefits of their services which history shows leads to reasonable levels of broadband adoption over time where good service is being provided. It will be important to have the Public Computer Center in place to ensure, access, education and training is occurring in the communities that receive stimulus funds. Without, access, education and training, consumers may not utilize broadband services to their full potential simply because they do not have the access or knowledge.

8. Broadband Mapping

NTIA will need to coordinate with each State during the process of establishing a nationwide inventory map of existing broadband service capacity in each state in the United States. The FCC recently updated the rules on filing the FCC Form 477, which contains much of the key data that can be utilized in developing a comprehensive nationwide broadband map. We encourage NTIA to work with the FCC, RUS and state agencies to share this data as permitted by law. The FCC Form 477 does include significant proprietary data, which will need to be protected while being utilized in the mapping process. With the recent revisions to the FCC Form 477 filing rules, the FCC is requiring the Form 477 be completed by Census Tract, to list providers, technologies utilized, subscriber counts and established speeds. If NTIA uses the information provided on the Form 477, a clear view of served, unserved and underserved areas will be shown on the state and nationwide broadband maps. NTIA has the duty to establish the nationwide inventory map, but will need to work with each state to coordinate that all mapping is combined into one nationwide map as required by the Broadband Data Improvement Act.

We disagree with the prepared Testimony of Connected Nation Chairman and CEO Brian Mefford regarding broadband mapping being prepared at a household level. The concept of working with state agencies to develop a map at the household level, especially in rural areas would be a daunting task to undertake and is not necessary with the data providers already prepare for the FCC 477 form. We should use that data and not require any new or additional inconsistent efforts in each of the 50 states. The percentage of error between using Census Tract and Household level does not appear to be as significant as thought by Connected Nation and does not warrant using a process other than the reporting required by the 477 forms.

9. Financial Contributions by Grant Applicants

The limit set on funding requests should normally not exceed 80% of the total grant. Applicants that are able to contribute at least 20% of their own funds, whether in cash or other in kind equity (hard assets, spectrum, etc), will be more committed to the long term viability of their projects. On the reverse side, if an applicant is dependent on more than 80% in grant funds, their commitment to the, project, area and the people will be less since they will have little investment into the area and the project. Applicants who are willing and financially able to commit a greater percentage of their own funds in to a project should score higher in the review process when awarding funds. NTIA should waive the 20% equity requirement only in very rare cases of

extreme need. Frequent waivers would reduce the dollars available for other well deserving projects also.

In determining whether or not a project would have been implemented without Federal assistance, the history and demographics of the proposed coverage area for the project will need to be reviewed. In addition, projects that are being submitted should be analyzed for financial need. Project selection should be based in part on the need for grant funds to complete the project. Without grant funds, the cost justification would not have otherwise been financially feasible.

10. Timely Completion of Proposals

We propose that NTIA and RUS establish a realistic timeline in which applications will be reviewed and funds awarded. Awards should be made to projects where the application documents that they are high quality and prove that they are sustainable, which should be more important than a quick turn-around in awarding funds. NTIA will need sufficient time to review the applications and projects. In addition, if an application template is developed, time consideration may be needed for OMB review and approval.

We encourage NTIA and RUS to look at historical application practices in both the original TOPs program and Broadband Loan programs. If there were mistakes made or the processes were to slow when awarding funds those issues need to be rectified and the process simplified. However, many rural LECs are familiar with those application processes and could quickly adapt to any minor ARRA changes needed to make them work. We applaud both NTIA and RUS for working together and continuing to improve and enhance their processes so that sound decisions will be made in the Stimulus funding process.

In response to ensuring that projects can be completed within two years, we recommend that applications include a detailed timetable for the project in which requests for funds are being made. Once funds are awarded, as a part of the quarterly reporting requirements, award recipients should include an updated timetable marking the progress that has been achieved in addition to steps still needing to be met. NTIA and RUS should allow some flexibility in the timeline, depending on the type of technology being proposed in the project and product availability. For example, a wireless project that is proposing a LTE deployment will be dependent on when product development is completed, which is estimated towards the tail end of the two year time frame.

11. Reporting and Deobligation

The quarterly reports (which should include updated timetables showing what has been completed and what is still needed) will be the main source for NTIA and RUS review to determine whether funds are properly being spent. NTIA and RUS staff members that will be responsible for overseeing the projects that are awarded funds will need to compare the progress of projects to the commitments made in the applications. In the event it is determined that funds have not been used in accordance with the ARRA,

rules, or an application, any remaining funds should be frozen until a review can be completed to determine the impact the deobligation of the funds would have on the part of the project that may have already been completed. All funding should be deposited in a separate funding account until the funds have been spent and the project is completed for better review.

12. Coordination with USDA's Broadband Grant Application

To efficiently and effectively review the volume of applications that will be submitted to both NTIA and RUS, it will be important that each authority have application formats that are similar. Applicants will have the opportunity to submit applications for both programs. As such, they will need to maintain an open forum for communication and coordination in the review process with each other. Both programs should adopt similar definitions, especially of rural, unserved and underserved. Joint funding by both NTIA and RUS may be appropriate in a larger mixed project where NTIA is lead on community services, including public anchor institutions, while RUS would focus on rural infrastructure funding.

13. Definitions

There are several terms in the ARRA that require NTIA to define them. It is important that these terms be clearly defined to allow applicants to identify whether their proposed projects will meet the requirements. Terms requiring definitions are as follows and we provide our suggestions herein:

- a) **Unserved:** To be classified as an "unserved area", applicants need to show that the area they are proposing to serve is currently only able to receive broadband service at a speed of less than 768Kbps, bi-directional, during peak – hour load.
- b) **Underserved:** To be classified as an "underserved area", applicants need to show that the area they are proposing to serve is currently only able to receive broadband service at a speed of 768Kbps to less than 12Mbps, bi-directional, during peak – hour load.

The speeds as defined above in a) and b) are consistent with the FCC's new broadband speed reporting requirements for FCC Form 477. In addition these speeds are also supported by OPASTCO and other national organizations.

- c) **Broadband Service:** Broadband service should be defined consistent with the speed tier system as currently established by the FCC. Following this system, the minimum bandwidth for basic broadband should be 768Kbps downstream.
- d) **Nondiscrimination and Network Interconnection obligations:** In proposing suggested definitions regarding nondiscrimination and network interconnection obligations, we recommend that NTIA and RUS adopt the FCC's Policy Statement adopted August 5, 2005. Applicant's must also comply with, Section

230 (b) of the Communications Act of 1934, Congress states that the United States policy should be to “preserve the vibrant and competitive free market that presently exists for the Internet”¹

- e) **Community Anchor Institutions:** NTIA should define what will be classified as a Community Anchor Institutions in order to be consistent and provide guidance for applicants as they prepare their applications for funds. We interpret Community Anchor Institutions to be those institutions that are vital to the ongoing functioning and longevity of a community. For example: public safety institutions like police, fire, emergency response; city hall; schools; hospitals or medical clinics; Chamber of Commerce; library, etc.

RUS Program Comments

1. Most Effective ways RUS could offer Broadband funds

To be effective, RUS will need to take an approach similar to NTIA in the application review process. The application process will need to be streamlined significantly compared to the current RUS loan programs in order to meet the timeframes established in the bill and desires of the President and Congress. We would recommend that the funds that are allocated to RUS be divided between grant and loan funds with a higher percentage going to grants Such as, 60% grant and 40% loan funds. Projects seeking funds from NTIA are going to be those projects that may not be financially feasible with the traditional RUS loan program or the existing RUS Broadband loan program.

2. How can RUS and NTIA best align their activities to make the most efficient and effective use of the funds

RUS and NTIA will need to have similar processes for application submission, review, scoring and awarding of funds. The definitions as proposed for unserved and underserved under NTIA should be considered in determining if an area can be classified as a “rural area without sufficient access to high speed broadband service” under the RUS program. NTIA and RUS will need to maintain an open forum for communication and coordination in the review process with each other. NTIA should deny applications proposing a project that will overbuild the area of an existing RUS borrower, unless the applicant is a current or existing RUS borrower serving the area.

3. Definitions

RUS is seeking comments on how to determine if an area lacks “sufficient high speed broadband service to facilitate rural economic development”. In order to determine this, a few terms require definitions.

- a) **Rural Economic Development:** The ARRA was passed to create new jobs and stimulate the economy. A proposed project should be able to show how many

¹ 47 U.S.C. § 230(b)(2)

new jobs will be created as a result, how it will stimulate the economy of the area that will benefit from the project and that the project benefits will be able to be sustained over several years.

- b) **High Speed Broadband Service:** Speed limits should be the same as those defined under the NTIA proposed definitions for unserved and underserved.
- c) **Rural:** The definition per the Farm Bill Sec. 601 identifies rural as any area, which is not located within: a city, town, or incorporated area that has a population of greater than 20,000 inhabitants; and an urbanized area contiguous to a city or town that has a population of greater than 50,000 inhabitants.

4. Priority criteria

There should be established selection criteria in awarding funds and the criteria must be made public before any deadlines are set for submitting applications. There are several criteria that could be used. However, we believe that current and former RUS borrowers should be one of the top priorities in the selection criteria for entity eligibility consistent with the language of the ARRA. In addition, RUS should also take into consideration similar criteria and priorities as outlined in the NTIA comments on Selection Criteria. Due to the fact RUS and NTIA should have similarities in the application process; the selection criteria should also be similar. However, there are a few unique RUS criteria, which are listed in the ARRA that also must be considered. They are:

- Providing service to the highest proportion of rural residents that do not have access to broadband
- Provide evidence that all elements will be fully funded
- Provide evidence that the project will be completed if funds are provided
- Provide evidence that the project will commence promptly following approval
- Providing a choice of more than one service provider