

**Before the
National Telecommunications and Information Administration,
U.S. Department of Commerce**

and the

**Rural Utilities Service,
U.S. Department of Agriculture**

Washington, D.C. 20554

In the Matter of)
)
Joint Request for Information on)
Implementation of the American Recovery) Docket No. 090309298-9299-1
and Reinvestment Act of 2009)
)

**COMMENTS OF
THE AMERICAN PUBLIC POWER ASSOCIATION**

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The American Public Power Association (“APPA”) appreciates this opportunity to respond to NTIA’s and RUS’s joint request for comments on implementation of the American Recovery and Reinvestment Act of 2009 (“the Recovery Act”).

I. INTEREST OF APPA AND ITS MEMBERS

APPA is a national service organization that represents the interests of more than 2,000 publicly-owned, not-for-profit electric utilities located in all states except Hawaii. Many of these utilities developed in communities that were literally left in the dark as private-sector electric companies pursued more lucrative opportunities in larger population centers. Residents of these unserved or underserved communities banded together to create their own power systems, in recognition that electrification was critical to their economic development, educational opportunity, and quality of life. Public power systems also emerged in several large cities – including Austin, Cleveland, Jacksonville, Los Angeles, Memphis, Nashville, San Antonio,

Seattle and Tacoma – where residents believed that competition was necessary to obtain lower prices, higher quality of service, or both. Currently, over 70 percent of APPA’s members serve communities with less than 10,000 residents, and approximately 45 million Americans receive their electricity from public power systems operated by municipalities, counties, authorities, states, or public utility districts.

The patterns that marked the evolution of the electric power industry are now repeating themselves in the communications industry. As incumbent private communications providers focus on large population centers, many smaller communities are at risk of falling behind in obtaining the full benefits of the Information Age. These benefits include vigorous economic development, global competitiveness, rich educational and occupational opportunity, affordable access to modern health care, public safety and homeland security, energy security, environmental sustainability, efficient government service, digital equity, and the many other the factors that contribute to a high quality of life. At the same time, America’s larger cities are also falling rapidly behind their counterparts in Asia and Europe, many of which are currently developing next-generation high-capacity communications networks.

As was the case when America was electrifying a century ago, many unserved or underserved communities are ready, willing, and able to take matters into their own hands, if necessary, to deploy the sophisticated broadband communications networks that will enable their communities and America to continue to be a leader in the global economy. Many have already done so. According to the most recent survey of APPA members, 141 have identified that they provide broadband transport to customers, 79 have wireless networks and as many as 186 lease fiber in some fashion. As the attached reports by the Fiber to the Home Council indicate, there were 44 publicly-owned and operated fiber-to-the-home (FTTH) systems operating as of April

2008. Systems that had been providing service for one to four years had average take rates of 54% percent nationwide, which was much higher than the 35% average take rates of major private-sector fiber systems.¹

Bristol, Virginia, furnishes a good example of the contributions that municipal fiber systems can make. It is a particularly good example, because Bristol and the Southwest Region of Virginia encountered conditions a decade ago that were very similar to the conditions that many areas of the United States are experiencing today, and the many positive results that Bristol has achieved would benefit the whole nation.

As the 21st Century began, Bristol, a town of 18,000 on the border of Virginia and Tennessee, was facing severe economic recession in all of its bedrock industries at the same time – tobacco, textiles, coal mining, and agriculture. Many of its stores and businesses were boarded up, and the future looked grim, not only for Bristol, but also for the entire Southwest Virginia region. Bristol’s municipal government and utility board, with the encouragement and assistance of U.S. Rep. Rick Boucher, decided to take matters into their own hands and rebuild the local economy on the platform of advanced telecommunications infrastructure and high technology services. In 2001, Bristol won a crucial challenge to Virginia’s then-existing barrier to public entry, and it began to build a state-of-the-art FTTH system. Three years of industry-backed legislative challenges and litigation disrupted Bristol’s progress and substantially added to its burdens and costs, but Bristol stayed the course.

¹ Fiber to the Home Council, “Municipal Fiber to the Home Deployments: Next Generation Broadband as a Municipal Utility” (April 2008), <http://tinyurl.com/cnt7no>; Michael Render, RVA, Fiber to the Home Council, “North American FTTH/FTTP Deployment Status (December 2008), <http://tinyurl.com/corsut>.

Now, Bristol's FTTH system serves more than 65 percent of the area's residents and businesses, and it has attracted hundreds of new high-paying jobs. For example, a recent article notes that two new employers alone will bring up to 1500 high-paying jobs into Bristol.² These jobs are creating new revenues that circulate around and around the local economy, generating new wealth, increasing property values, enhancing local tax revenues, and enriching the community's quality of life. Bristol also has a future-proof asset that can serve the community well for decades to come. As a result, Bristol has won numerous awards for its vision and creativity, and it is currently the only American city among the seven international finalists for recognition as the Intelligent Community of the Year for 2009.

II. RESPONSES TO NTIA'S QUESTIONS

In this section, APPA responds to NTIA's questions. Recognizing that NTIA and RUS are likely to receive hundreds, if not thousands, of comments, we will be as brief as possible and focus on the questions that are of most relevance to communities served by public power utilities. In some instances, to avoid repetition, we will address several NTIA questions together.

² Paul Miller, "Bristol's Broadband Push," *Virginia Business* (November 2006), <http://tinyurl.com/y6bjjc>.

Q1. The Purposes of the Grant Program: Section 6001 of the Recovery Act establishes five purposes for the BTOP grant program.³

a. Should a certain percentage of grant funds be apportioned to each category?

Under the Recovery Act, NTIA must establish a grant program that supports all five of the major stated goals of the Act. Each of these goals is critically important, and Congress did not establish priorities among them. Furthermore, communities have different needs and priorities. Some will want to focus on increasing broadband availability and adoption at the household level. Some will prefer to support broadband programs at schools and libraries. Some will want to target public safety, job creation, economic development, or narrowing the digital divide. As a result, one could plausibly argue that setting aside a percentage of the grant funds for each statutory goal would ensure that each goal received a fair share of the

³ “(1) Provide access to broadband service to consumers residing in unserved areas of the United States;
(2) provide improved access to broadband service to consumers residing in underserved areas of the United States;
(3) provide broadband education, awareness, training, access, equipment, and support to --
(A) Schools, libraries, medical and healthcare providers, community colleges, and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband service by or through these organizations;
(B) organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by low-income, unemployed, aged, and otherwise vulnerable populations; and
(C) job-creating strategic facilities located within a State-designated economic zone, Economic Development District designated by the Department of Commerce, Renewal Community or Empowerment Zone designated by the Department of Housing and Urban Development, or Enterprise Community designated by the Department of Agriculture;
(4) improve access to, and use, of broadband service by public safety agencies; and
(5) stimulate the demand for broadband, economic growth, and job creation.”

funding and that communities would be able to concentrate on specific goals without having to compete with other communities that wanted to emphasize different goals.

At the same time, however, allocating the available funds among the Act's goals could create significant theoretical and practical difficulties. First, in fashioning the Recovery Act, Congress recognized that America faces a wide range of daunting challenges at the same time and must act quickly, boldly, and wisely to address them. As NTIA's officials have observed, the Act encourages applicants to think holistically, to design projects that would serve multiple purposes simultaneously, and to establish creative partnerships to aggregate demand, leverage funding opportunities, and enhance long-term sustainability.⁴ Treating the Act's goals as separate silos for funding purposes could undermine the fulfillment of these overarching goals.

Second, from a practical standpoint, NTIA would undoubtedly find it very difficult to establish meaningful percentage allocations among the Act's goals, particularly because the goals overlap and reinforce one another in a variety of ways. For example, providing broadband access in unserved areas (Goal 1), increasing broadband access in underserved areas (Goal 2), and providing broadband education, awareness, training, access, equipment, and support to the various organizations listed in the Act (Goal 3), would all enhance access to, and use, of broadband service by public safety agencies (Goal 4), and would stimulate the demand for broadband, economic growth, and job creation (Goal 5). Thus, no matter how NTIA allocated the funds among the five categories, it would inevitably spawn confusion and disputes over whether it was overfunding some categories and underfunding others. Furthermore, even if NTIA came up with a rational allocation scheme, it would encounter further difficulties in

⁴ See, e.g., Ed Gubbins, "So you want stimulus funds," *TelephonyOnline* (March 23, 2009), <http://tinyurl.com/c9dly6> (quoting Mark Seifert and Dr. Bernadette McGuire-Rivera).

applying the scheme to the very projects that it seek to encourage -- multi-purpose projects that simultaneously meet several of the Act's goals.

APPA recommends that NTIA defer deciding this issue until it is sure that it actually needs a decision. For now, APPA recommends that NTIA establish criteria for its first tranche of funding without allocating a percentage of the available funds to the various statutory goals. If it turns out that the proposals, taken together, effectively address all five of the goals, then the issue will effectively have resolved itself. If the proposals do not adequately address all five goals, then NTIA can make whatever adjustments may be warranted for subsequent tranches.

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

Yes, absolutely, for the reasons discussed in the previous response.

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?

APPA strongly encourages NTIA to permit applicants for BTOP funds to use federal funding from other sources to develop projects that serve multiple purposes and beneficiaries.

The only constraints should be that an applicant (1) meet all relevant BTOP requirements for the portion of the project supported by BTOP grants (including matching requirements); (2) disclose all other federal subsidies supporting the project; and (2) refrain from “double dipping” – i.e., using more than one source of federal funding for the same purpose. For example, a participant should be able to use both BTOP grant funds and Department of Energy smart grid subsidies to support a multiple-purpose project that meets the goals of both programs, provided that two programs do not subsidize the same costs.

Q2. The Role of the States: The Recovery Act states that NTIA may consult the States (including the District of Columbia, territories, and possessions) with respect to various aspects of the BTOP. The Recovery Act also requires that, to the extent practical, the BTOP award at least one grant to every State (footnotes omitted).

- a. How should the grant program consider State priorities in awarding grants?*
- b. What is the appropriate role for States in selecting projects for funding?*
- c. How should NTIA resolve differences among groups or constituencies within a State in establishing priorities for funding?*
- d. How should NTIA ensure that projects proposed by States are well-executed and produce worthwhile and measurable results?*

The Recovery Act vests NTIA with authority to make all of the critical decisions under the BTOP. Knowing that administration of the BTOP would be a massive undertaking for which NTIA was not yet prepared, Congress could have given the States responsibility for *designating* or even *recommending* projects within their borders for BTOP funding. Congress did neither. In fact, Congress did not even require NTIA to consult with the States, but left that within NTIA's sole discretion.

Even so, APPA believes that the NTIA should welcome good advice from any source, including the States. As a result, APPA believes that NTIA should respectfully consider the States' recommendations on any matter on which they wish to be heard. In doing so, however, NTIA should take several considerations into account.

First, the States vary widely in expertise and experience with broadband stimulation. Some states, such as North Carolina, Massachusetts, New York, and California, have dealt with such issues for years. Other States have dealt with broadband only in a regulatory capacity, if at all. Some State programs are consistent with the purposes of the Recovery Act; others are not.

Second, as Congress recognized in Section 6001(e)(1)(A)-(C) of the Recovery Act, the States are likely to be competitors for BTOP funding with several other expressly enumerated categories of eligible entities, including political subdivisions (local governments), Indian tribes, public-private partnerships, and non-profits. As such, States have an inherent conflict of interest and cannot be expected to screen applications and make recommendations in an unbiased manner.

Third, a number of States are heavily influenced by opponents of broadband initiatives involving local governments, public-private partnerships, and non-profits. That is particularly true of the approximately 15 States that currently have state laws posing barriers to public communications initiatives.

Given the foregoing considerations, APPA recommends that NTIA, itself, accept applications for BTOP funding from any entity enumerated in Section 6001(e)(1)(C) or designated by NTIA by rule as being eligible for BTOP funding. If a State submits an application for BTOP funding or has a barrier to public entry, NTIA should give the State's recommendations no weight in NTIA's evaluation of applications from that State. If neither of these conditions exists, NTIA should consider the State's recommendations and give them such weight as they deserve on their merits. The appropriate weight should depend on the State's experience and expertise and, in particular, on the extent to which the State's recommendations advance the purposes of the Recovery Act.

Q4. Establishing Selection Criteria for Grant Awards: The Recovery Act establishes several considerations for awarding grants under the BTOP.^[6] In addition to these considerations, NTIA may consider other priorities in selecting competitive grants.

^[6] Section 6001(h) states that NTIA, in awarding grants, shall, to the extent practical--

(2) Consider whether an application to deploy infrastructure in an area--
a. Will, if approved, increase the affordability of, and subscribership to, service to the greatest population of users in the area;

b. will, if approved, provide the greatest broadband speed possible to the greatest population of users in the area;

c. will, if approved, enhance service for health care delivery, education, or children to the greatest population of users in the area; and

d. will, if approved, not result in unjust enrichment as a result of support for non-recurring costs through another Federal program for service in the area;

(3) consider whether the applicant is a socially and economically disadvantaged small business concern as defined under section 8(a) of the Small Business Act (15 U.S.C. 637).

- a. ... 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?*

To determine whether a Federal funding need exists and whether private investment will be displaced, NTIA can require an applicant to (1) describe in detail the services it intends to provide, (2) explain why such services will fill unmet needs in the community, and (3) show that Federal funding will not displace resources that had previously been committed to the applicant's proposed project. If other parties have not previously provided comparable services under comparable terms and conditions in the community in question, neither the applicant nor NTIA should have to speculate whether or when other parties may do so. NTIA can determine whether projects will be feasible in the long term by requiring applicants to discuss long-term feasibility in their applications and by evaluating the reasonableness of their responses.

- ...
- 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?*

Bringing service to unserved areas and improving service in underserved areas are both important goals of the Recovery Act. They are not, however, the only important goals. For one thing, as Rep. Rick Boucher noted during a recent oversight hearing on the broadband grant program, "We want to ensure that everyone has access to broadband, and we also want to ensure that everyone has access to broadband at meaningful speeds and affordable prices and can

benefit from competition among service providers.”⁵ Also, as Mark Seifert testified on behalf of NTIA at that hearing, the agency views BTOP as “a test bed or proof of concept for sustainable, viable, and scalable projects. For example, we encourage partnerships between small businesses, municipalities, and others that may demonstrate nontraditional but effective ways of getting broadband into communities.”⁶

Despite the growing and transformative significance of broadband connectivity to the Internet in every walk of American life, the United States has fallen increasingly behind the leading Asian and European nations on a wide range of internationally accepted criteria, including broadband penetration, speed, cost, growth of subscribers, etc.⁷ As a result, NTIA should not give improving service in unserved and underserved areas disproportionate weight, as compared to the other important stated purposes of the BTOP, in evaluating proposals under the BTOP.

Furthermore, the Recovery Act is not the last step, but the first step, in addressing America’s broadband needs. As Blair Levin has aptly put it, “Don’t confuse a piece of the puzzle with the puzzle. Don’t confuse an inning of the baseball game with the baseball game.”⁸

⁵ Statement of Congressman Rick Boucher, Subcommittee on Communications, Technology, and the Internet, Oversight of the American Recovery and Reinvestment Act: Broadband, April 2, 2009, <http://tinyurl.com/c47fxv>.

⁶ Testimony of Mark G. Seifert, Hearing on Oversight of the American Recovery and Reinvestment Act of 2009: Broadband,” Before the House Commerce Committee’s Subcommittee on Communications, Technology and the Internet, at 6 (April 2, 2009), <http://tinyurl.com/c9khhu>.

⁷ Organisation for Economic Cooperation and Development, “Broadband Portal,” <http://tinyurl.com/ywads5> (US 15th in broadband penetration, 22nd in average monthly subscription price, 14th in average advertised download speed, 11th in average price per megabit per second of advertised download speed); Akami, “The State of the Internet, 4th Quarter 2008,” <http://tinyurl.com/dkh32z> (US 17th in actual measured download speed).

⁸ Ted Hearn, “Obama Advisor Lowers Broadband Expectations,” *Multichannel News*, January 14, 2009, <http://tinyurl.com/dl58vr>.

There is simply not enough money available in the BTOP to meet all of the Recovery Act's worthy goals at the same time. APPA therefore urges NTIA to spread BTOP grants among a variety of creative projects of various kinds, to stimulate innovation, learn what works best, and pave the way for a comprehensive national strategy to upgrade America's communications infrastructure and broadband ecosystem.

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

Yes, for the reasons set forth in APPA's response to Question 1.

e. Should priority be given to proposals that address several purposes, serve several of the populations identified in the Recovery Act, or provide service to different types of areas?

Same answer.

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

There are many factors that will contribute to sustainable adoption of broadband service. Among the most important, though by no means the only ones, are: a well-conceived and adequately-financed business plan; technology that is capable of meeting the community's current and future needs; a project team that includes strong leadership, expertise in all essential areas, and an organizational culture that emphasizes excellence in service to the community; and a potentially large and diverse range of users of the broadband network; strong community involvement in the project; and fair and reasonable rates.

g. Should the fact that different technologies can provide different service characteristics, such as speed and use of dedicated or shared links, be considered given the statute's direction that, to the extent practicable, the purposes of the statute should be promoted in a technologically neutral fashion?

NTIA need not, and should not, choose among technologies in the context of the BTOP. Rather it should establish aggressive performance standards based on current and foreseeable community needs, and these standards should include substantial headroom to accommodate

unforeseeable new products and services. Speed and information-carrying capacity are unquestionably important factors, as bandwidth requirements will inevitably continue to grow rapidly, particularly as high definition video of all kinds and user-created content become increasingly popular over the next few years. Indeed, Congress recognized the importance of speed in Section 6001(h)(2)(b), by requiring NTIA to give priority to projects that “will, if approved, provide the greatest broadband speed possible to the greatest population of users in the area.”

While some technologies – i.e., fiber optics – are better suited than others to accommodate growing bandwidth demands, NTIA should nevertheless avoid targeting specific technologies. After all, there are always tradeoffs in performance and cost, and new and improved technologies are always emerging. As NTIA is also undoubtedly aware, picking and choosing among technologies would surely create political entanglements for the agency.

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

Affordability is an important consideration in the adoption and use of broadband. For example, ultra-high speed broadband connectivity, with speeds of 100 Mbps downstream, is widely available in Japan for about \$0.13 per Mbps.⁹ In contrast, in the United States, broadband speeds generally top out at 50 Mbps downstream, are available only in selective markets, and cost about \$2.83 per Mbps downstream. *Id.* If rates here were comparable to those in Japan, demand for ultra-high speed broadband connectivity in the United States would undoubtedly be much higher than it currently is.

Even so, APPA does not believe that NTIA should attempt to regulate retail rates, as rate regulation is often cumbersome, costly, and disruptive for all concerned. In evaluating

⁹ Organisation for Economic Cooperation and Development, “Price Ranges, Mbit/s (October 2007),” <http://www.oecd.org/dataoecd/22/43/39574979.xls>

proposals, however, NTIA should be mindful of the impact that its grants can have on retail rates. That is, a recipient of an 80% BTOP capital grant should be paying substantially lower finance costs associated with the funded project than it would otherwise have to pay. As a result, in negotiating the terms and conditions of grant awards, NTIA could reasonably insist that the grantee pass through a portion of these savings via lower retail rates.

Q13. 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, adopted August 5, 2005) (footnotes omitted).

a. For purposes of the BTOP, how should NTIA, in consultation with the FCC, define the terms "unserved area" and "underserved area?"

As discussed in response to NTIA's Question 4c, the United States has fallen far behind the leading Asian and European nations on a broad range of internationally accepted broadband metrics. This is extremely important, because broadband connectivity to the Internet has become, and will increasingly be, vital to American's global competitiveness and quality of life. As a result, NTIA should not define "unserved" and "underserved" only in terms of how Americans are doing compared to each other but should also take into account how Americans are faring compared to their counterparts in the leading nations of the world.

In establishing its criteria for ranking BTOP proposals, NTIA should not only consider an area "unserved" if there is no broadband connectivity in the area at all. Rather, NTIA should also consider whether broadband connectivity is widely available at reasonable speeds, quality, and price. Similarly, in defining whether an area is "underserved," NTIA should not merely focus on whether an area has one or more existing providers of broadband, but should also take speed, quality, and price into account.

In particular, bearing in mind the need to improve America's global rankings and Congress's preference for projects that would provide affordable broadband connectivity at the greatest speed to the greatest number of residents in an area, NTIA should not define "underserved" in absolute terms, but in terms of the speed, quality, or affordability *of the services that an applicant is proposing*. For example, if DSL or cable modem service was already widely available in an area, an applicant proposing to provide comparable services on similar terms and conditions would not get credit for improving access in an area that was "underserved" for *that* service. If, however, the applicant proposed to provide services that were materially different from the services already present in the area – such as the much higher bandwidth services of a fiber-to-the-home system – then NTIA should treat the area as "underserved" for the particular service that the applicant was proposing.

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?*
- (2) Should the BTOP establish different threshold speeds for different technology platforms?*
- (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?*
- (5) How should the BTOP consider the impacts of the use of shared facilities by service providers and of network congestion?*

Yes. For the reasons set forth in the Fiber to the Home Council's comments filed on March 26, 2009, APPA urges NTIA to establish thresholds for wireline and fixed point-to-point wireless service of at least 25 Mbps downstream and at least 6 Mbps upstream. For mobile wireless service, APPA proposes threshold speeds of at least 3 Mbps downstream and 1 Mbps

upstream. All speeds should be minimum speeds, measured at the user level, and should be reasonably available to all users at peak times. Providers should build sufficient capacity to avoid sluggish performance due to shared facilities or network congestion over which the provider has control.

c. *How should the BTOP define the nondiscrimination and network interconnection obligations that will be contractual conditions of grants awarded under Section 6001?*

(1) *In defining nondiscrimination obligations, what elements of network management techniques to be used by grantees, if any, should be described and permitted as a condition of any grant?*

APPA recommends that NTIA make compliance with the FCC's "Four Principles" a condition of any grant, as the Recovery Act requires. NTIA should offer extra credit to applicants that volunteer to abide by more stringent requirements, but given the complexity of this issue, NTIA should not attempt to develop and impose more stringent requirements on all applicants. Rather, NTIA should leave this to the FCC in the course of its work on National Broadband Plan.

(2) *Should the network interconnection obligation be based on existing statutory schemes? If not, what should the interconnection obligation be?*

Yes.

(3) *Should there be different nondiscrimination and network interconnection standards for different technology platforms?*

Yes. Even where the governing principles may be similar, different technologies pose different technical challenges and should be addressed separately.

(4) *Should failure to abide by whatever obligations are established result in de-obligation of fund awards?*

This should be determined on a case-by-case basis, pursuant to clear standards defining the conduct that will lead to de-obligation of funds or lesser remedies.

- (5) *In the case of infrastructure paid for in whole or part by grant funds, should the obligations extend beyond the life of the grant and attach for the useable life of the infrastructure?*

Yes.

III. RESPONSES TO RUS'S QUESTIONS

- Q1. 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 ways 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;*
- 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.*

APPA agrees that RUS should offer grants as well as loans to stimulate investment in rural areas. In addition, APPA recommends that RUS offer the option of loan guarantees, which can vastly increase the leverage of the funds made available to RUS under the Recovery Act. For the reasons discussed in response to NTIA's questions 1, 4 and 13, APPA does not believe that RUS should target funds solely to unserved areas.

Q2. 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?

In the Recovery Act, Congress provided funding and authorities to both RUS and the NTIA to expand the development of broadband throughout the country. Taking into account the authorities and limitations provided in the Recovery Act, RUS is looking for suggestions as to how both agencies can conduct their Recovery Act broadband activities so as to foster effective broadband development. 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?"

APPA suggests that, to the maximum extent possible, NTIA and RUS use common definitions. In particular, NTIA and RUS could readily use the same definitions for “unserved” and “underserved.” While RUS is geographically restricted to areas that are 75% rural, APPA suggests that NTIA and RUS be as flexible as legally permissible in defining their target areas and that the two agencies can focus on different portions of an area covered by a particular project. For example, NTIA might focus on a large area, and RUS might focus on a smaller rural area within the larger area used by NTIA.

(b) How should the agencies structure their eligibility requirements and other programmatic elements to ensure that applicants that desire to seek funding from both agencies (i) do not receive duplicate resources and (ii) are not hampered in their ability to apply for funds from both agencies?

RUS and NTIA should reconcile and coordinate their definitions, forms, deadlines, and review processes to the maximum extent possible. Given the need for prompt action to meet the deadlines imposed by the Recovery Act, this can work only if RUS and NTIA develop tools and processes that are substantially more simple and streamlined than the ones that RUS has traditionally used.

Q3. How should RUS evaluate whether a particular level of broadband access and service is needed to facilitate economic development?

Seventy-five percent of an area to be funded under the Recovery Act must be in an area that USDA determines lacks sufficient "high speed broadband service to facilitate rural

economic development." RUS is seeking suggestions as to the factors it should use to make such determinations.

- (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?*
- (c) What factors should be considered, when creating economic development incentives, in constructing facilities in areas outside the seventy-five percent area that is rural (i.e., within an area that is less than 25 percent rural)?*

In coordinating their definitions and practices, RUS and NTIA should read the phrase “without sufficient access needed for economic development” in the light of Congress’s admonition in Section 6001(h)(2)(b) that NTIA should seek to foster deployment of infrastructure that will provide the “greatest broadband speed possible to the greatest population of users in the area.”

Nearly seven years ago, the Department of Commerce accurately predicted the demise of DSL and cable modem service:

It is important to note here that the current generation of broadband technologies (cable and DSL) may prove woefully insufficient to carry many of the advanced applications driving future demand. Today’s broadband will be tomorrow’s traffic jam, and the need for speed will persist as new applications and services gobble up existing bandwidth.¹⁰

“Tomorrow” has now arrived or will soon do so. With the world moving rapidly toward data speeds of 100 Mbps or more, NTIA and RUS should recognize that DSL and cable modem speeds are no longer adequate to support meaningful economic development, including in rural areas. It follows that NTIA nor RUS should encourage and reward projects that will provide the maximum possible speeds, especially speeds of 100 Mbps or more.

¹⁰ Office of Tech. Policy, U.S. Dep’t of Commerce, “Understanding Broadband Demand: A Review of Critical Issues,” at 6 (September 6, 2002), <http://tinyurl.com/csyzjr>

Q4. 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.

Inasmuch as Congress expressly included each of these considerations in the Recovery Act, RUS must honor them in some fashion, even though they appear to be inconsistent with one another. For example, (1) appears to promote competition in served areas, whereas (2) appears to promote new single-provider service in unserved areas. At the same time, (3) could be read to promote expansion of the systems of current and former RUS borrowers, even if they do not advance either goals (1) or (2). APPA recommends that RUS give (1) and (2) equal weight; that RUS give special weight to projects that will provide high-bandwidth capacity, especially at speeds of 100 Mbps or more; and that RUS treat the preference for current and former RUS borrowers only as a tie-breaker, to be used only if such an entity makes a proposal that is at least as strong as that of another applicant. In other words, if a current or former RUS borrower proposes to provide DSL in an unserved area and a well-qualified applicant that has not borrowed from RUS before proposes a fiber-to-the-home project in a comparably populated area that already has DSL or cable modem service, RUS should decide in favor of the latter. That is so because the latter's proposal is stronger, given the Recovery Act's preference for projects that provide the greatest speed to the greatest number.

Q5. *What benchmarks should RUS use to determine the success of its Recovery Act broadband activities?*

The Recovery Act gives RUS new tools to expand the availability of broadband in rural America. RUS is seeking suggestions regarding how it can measure the effectiveness of its funding programs under the Recovery Act. Factors to consider include, but are not limited to:

- a. Businesses and residences with "first-time" access.*
- b. Critical facilities provided new and/or improved service:
 - i. Educational institutions.*
 - ii. Healthcare providers.*
 - iii. Public service/safety.**
- c. Businesses created or saved.*
- d. Job retention and/or creation.*
- e. Decline in unemployment rates.*
- f. State, local, community support.*

These measures of success are reasonable.

Respectfully submitted,



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