

**TRIANGLE J COUNCIL OF GOVERNMENTS
CABLE BROADBAND CONSORTIUM**
PO BOX 12276
RESEARCH TRIANGLE PARK, NC 27709
PHONE: 919.549.0551

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National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, N.W.
Washington, D.C. 20230

Rural Utilities Service
U.S. Department of Agriculture
1400 Independence Avenue, S.W.
Washington, D.C. 20250

***Re: Comments of the Triangle J Council of Governments Cable Broadband
Consortium in Docket No. 090309298-9299-01***

To Whom It May Concern:

Attached are the comments of the Triangle J Council of Governments (“TJCOG”) Cable Broadband Consortium. We are submitting these comments in response to the Joint Request for Information and Notice of Public Meetings (“RFI”) issued on March 9, 2009, by the National Telecommunications and Information Administration (“NTIA”) and the Rural Utilities Service (“RUS”) in connection with their implementation of the broadband provisions of the American Recovery and Reinvestment Act of 2009 (“ARRA”).¹

Our key recommendations with respect to NTIA’s implementation of ARRA’s Broadband Technology Opportunities Program (“BTOP”) fall into the following six areas:

Objective Point System for Scoring Applications²: NTIA should establish an objective 100-point scoring system for evaluating all grant applications. This scoring system would assign points to each proposal based on the extent to which it would fulfill ARRA’s key statutory purposes. Under this system, the maximum points available in the five main scoring categories would be:

- 30 points for serving residents of unserved and underserved census tracts (with the point total calculated based on the relative percentage of unserved, under-served, and served in the area)
- 20 points for serving core community institutions
- 20 points for speed and technical innovation
- 15 points for affordability
- 15 points for synergies with other ARRA programs.

¹ 74 Fed. Reg. 10,716 (March 12, 2009).

² See response to Inquiry # 4 for further details.

Limited Role for State Governments³: NTIA should not give state governments a role in prioritizing or selecting grant recipients or allow state governments to serve as gatekeepers for applications by local governments and other statutorily eligible entities. As a general proposition, state governments do not have the institutional capability to evaluate broadband grant proposals. Further, a number of states have enacted, or are considering the enactment of, anticompetitive laws, and very few states have done much to foster the deployment of advanced broadband systems. Finally, state governments, as possible grant applicants, would have an obvious conflict of interest in rating the applications of their competitors. Instead, NTIA should establish a non-political and objective process for reviewing applications that relies on teams of neutral and expert reviewers to review and score applications.

Limited Role for Private Sector Entities⁴: NTIA should strictly limit the eligibility of private sector entities for BTOP funds. After all, it is the failure of the private sector to provide high-quality and affordable broadband services in many areas of the nation that is a key reason for Congress' decision to establish BTOP. One possible approach would be for NTIA to allow public-private partnerships between statutorily eligible entities (except for nonprofit entities)⁵ and private providers but to impose strict requirements on those partnerships, including that there be a binding agreement between the parties and that both parties would be fully liable under that agreement.

Easily Applicable Definitions of Unserved and Underserved Areas⁶: We recommend that NTIA define “unserved” and “underserved” areas for purposes of BTOP eligibility based on readily available objective census data such as population density, median income, and poverty rate in a census tract that represent reliable surrogates for the lack of availability of broadband or the unaffordability of broadband service. Reliable data on the actual availability of broadband service in particular geographic areas is generally unavailable or inaccurate due to problems in data collection methodology.

No Artificial Allocations to Program Categories⁷ or to Technologies⁸: NTIA should not establish artificial allocations of funds to particular statutory purposes or technologies. Rather, NTIA should establish an objective scoring system (as described) above that allows NTIA to take into account all the statutory factors and to encourage the submission of proposals that either meet as many statutory purposes as possible or meet a smaller number of statutory purposes but show unusual strength in particular areas. Similarly, NTIA should not establish separate categories for wireless and wireline applications but rather should rank proposals on the basis of scoring factors (as described above) that take into account such disparate factors as affordability, speed and technical capability, and meeting unmet needs for service in unserved and underserved areas.

³ See responses to Inquiry # 2 for further details.

⁴ See responses to Inquiry # 3 for further details.

⁵ Nonprofit entities are not accountable to the public in the same way that governmental entities and tribal organizations are and can easily be created as front groups for private sector entities. Our proposed limitation is not intended to restrict the right of nonprofit entities to enter into *bona fide* contracts for goods and services.

⁶ See responses to Inquiry # 13.a for further details.

⁷ See responses to Inquiry # 1 for further details.

⁸ See responses to Inquiry # 13.b for further details.

Uniform Collection of Data on Broadband Availability and Capability by a Single Agency⁹:

We recommend that NTIA not provide any funding via the Broadband Services Data Improvement Act (“BSDIA”) to designated state entities for the collection of broadband data. It would be far more efficient and cost effective and consistent with ARRA’s requirements for NTIA to work with the Federal Communications Commission (“FCC”) to tap into (and work to improve as necessary) established FCC data collection practices with respect to broadband data pursuant to such mechanisms as FCC Form 477. Through a partnership with the FCC, NTIA can more readily ensure that data as to the availability and capability of broadband service will be collected on a uniform and consistent basis throughout the United States.

Attached are our detailed comments in response to the questions contained in the RFI that are applicable to members of the TJCOG Cable Broadband Consortium. We thank NTIA and RUS for the opportunity to participate in helping to shape the rules for BTOP and RUS’s related broadband programs.

Sincerely,



Cynthia M. Pols
Consultant, TJCOG Cable
Broadband Consortium
(202)328-0654
polscm@aol.com



Catharine Rice
Consultant, TJCOG Cable
Broadband Consortium
(919)439-9084
ricecb@yahoo.com

attachment

cc: Renée Boyette, TJCOG
Robert F. Sepe, Action Audits

⁹ See responses to Inquiry # 8 for further details.

**NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION (NTIA)
U.S. DEPARTMENT OF COMMERCE**

and

**RURAL UTILITIES SERVICE (RUS)
U.S. DEPARTMENT OF AGRICULTURE**

Docket No. 090309298-9299-01

COMMENTS OF THE TJOG CABLE BROADBAND CONSORTIUM¹ IN RESPONSE TO NTIA'S AND RUS'S JOINT REQUEST FOR INFORMATION² WITH RESPECT TO ARRA'S³ BROADBAND INITIATIVES

NTIA⁴:

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

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

No. Allocating broadband funds to “unserved” areas, for example, is best accomplished by establishing a point system for scoring grant applications and assigning a certain number of points to proposals that provide service to “unserved” areas. Also, some proposals are likely to aggregate both unserved and underserved areas and would be penalized if the NTIA were to draw artificial lines between unserved and underserved areas or might not be able to ensure sustainability and affordability (as is required by ARRA) if limited in their ability to combine diverse service areas. Finally, the most complete proposals (and the best equipped to accomplish all of ARRA’s goals for the BTOP program) are likely to be those that serve all five purposes set forth in ARRA for the BTOP program.

¹ TJCOG refers to the Triangle J Council of Governments, which is the voluntary organization of about 50 municipal and county governments in the Raleigh-Durham area that make up North Carolina's Region J (Region J consists of Chatham, Durham, Johnston, Lee, Moore, Orange, and Wake counties). TJCOG is one of 17 regional councils established in 1972 by the North Carolina legislature to improve the capabilities of local governments throughout the state. About 25 of TJCOG’s members and other area jurisdictions formed the TJCOG Cable Broadband Consortium in the late 1990s to work together in franchising and regulating cable systems and developing broadband policies and practices.

² 74 Fed. Reg. 10,716 (March 12, 2009).

³ ARRA refers to the American Recovery and Reinvestment Act of 2009 (Pub, Law No. 111-5).

⁴ The TJCOG Cable Broadband Consortium’s answers are in blue; NTIA’s and RUS’s Inquiries are repeated verbatim as the appeared in the Joint Request for Information and are in black.

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

Yes. Not only should such proposals be encouraged but applicants for BTOP grants should be rewarded under NTIA's point system for responding to, and achieving, as many of ARRA's goals as possible.

c. How should the BTOP leverage or respond to the other broadband-related portions of the Recovery Act, including the United States Department of Agriculture (USDA) grants and loans program as well as the portions of the Recovery Act that address smart grids, health information technology, education, and transportation infrastructure?

The BTOP program should be coordinated with other portions of ARRA to the extent possible. In order to realize ARRA's goals, which include creating jobs, improving economic efficiency through advances in science and health (*e.g.*, improving the health care system), investing in transportation, environmental protection and other infrastructure that will provide long-term economic benefits (*e.g.*, improving the energy delivery and consumption system and the transportation system),⁵ proposals should be scored on the basis of their ability to assist in helping realize as many of ARRA's goals as possible. For example, a broadband system that works in tandem with new smart grid technology to improve the efficiency of energy use will produce quantifiable and essential benefits for both the affected community and for the nation as a whole by establishing the viability and value of smart grid technology. Similarly, a broadband system that connects together all health care facilities in the community and allows for the electronic storage and dissemination of all health care records in the community will help control health care costs in the community and provide a model for other communities.

2. 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.

a. How should the grant program consider State priorities in awarding grants?

NTIA should not establish a black-and-white policy of giving consideration or weight to state

⁵ Section 3 of ARRA specifies the law's overarching purposes as follows:

(a) STATEMENT OF PURPOSES.—The purposes of [ARRA] include the following:

(1) To preserve and create jobs and promote economic recovery.

(2) To assist those most impacted by the recession.

(3) To provide investments needed to increase economic efficiency by spurring technological advances in science and health.

(4) To invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits.

(5) To stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive state and local tax increases.

(b) GENERAL PRINCIPLES CONCERNING USE OF FUNDS.—The President and the heads of Federal departments and agencies shall manage and expend the funds made available in this Act so as to achieve the purposes specified in subsection (a), including commencing expenditures and activities as quickly as possible consistent with prudent management.

recommendations or priorities in awarding BTOP grants although it may make use of such recommendations to the extent that they are supported by hard data and are consistent with BTOP's policies. State governments bring a mixed record to the BTOP process. For example, many states have enacted laws, which, either directly or indirectly, preclude local governments from providing broadband service and have generally been hostile toward local government participation in the broadband market.⁶ These state actions are not compatible with ARRA's objectives, which include designating local governments as one of a five types of entities that are automatically eligible by statute to file BTOP applications (*i.e.*, state governments (and possessions and territories), local governments, nonprofit entities, Indian tribes, and native Hawaiian organizations).

b. What is the appropriate role for States in selecting projects for funding?

While NTIA should retain the option to consult with state entities on a case-by-case basis as it deems appropriate and useful, NTIA should not assign state governments any defined or specific role in selecting projects⁷ for BTOP funding for the following seven reasons:

- (1) Many state governments have enacted industry-sponsored legislation⁸ and have failed to require broadband build outs or promote the deployment of advanced broadband technology.⁹
- (2) State governments have little to no established capability to process applications for broadband infrastructure grants. The states' lack of institutional capability was underscored by the National Association of Regulatory Utility Commissioners' (NARUC) April 2 request for BTOP funds so that each state could hire two to four new state employees to administer the program.¹⁰ In spite of this lack of capability, NARUC has proposed that \$2.6 billion be allocated to the states and the District of Columbia in the form of "'use or lose' minimum standard state allocation[s]."¹¹

⁶ These states include: Florida, Missouri, Ohio, Pennsylvania, South Carolina, Texas, Utah, Virginia, and Washington.

⁷ ARRA's legislative history makes clear that NTIA has "sole authority" to approve the award of BTOP funds and is to seek advice and assistance from the states only "at its discretion." H. Rep. No. 16, 111th Cong., 1st Sess. 775 (Feb. 12, 2009) ("ARRA Conference Report").

⁸ In fact, several state legislatures, including the North Carolina legislature, are now considering legislation that would bar municipalities from receiving BTOP grants. SB 1004 and HB 1252, North Carolina General Assembly, Session 2009 (2009)

⁹ Our own state of North Carolina, for example, enacted legislation in 2006 that presumed the existence of competition in communities where it did not exist and stripped local governments of their ability to franchise cable systems and establish common sense rules for broadband systems that are necessary to ensure access to service in unserved areas such as build-out requirements. N.C. Gen. Stat. §§ 350-360. This law has resulted in the deregulation of Time Warner and AT&T (U-Verse) and the elimination of build-out requirements in most of the TJCOG communities.

¹⁰ Letter of National Regulatory Utility Commissioners to Gary Locke, Tom Vilsack, and Anna Gomez, April 2, 2009 at2 ("NARUC April 2 Letter") ("Like NTIA, States are also likely to need some temporary extra personnel to help with grant review as well as to audit/monitor and report back to the federal agencies on implementation. *NTIA and RUS should allow each State that 'opts-in' to seek sufficient funds to create two-to-four full time (job) equivalents immediately* to do just that." (emphasis supplied)).

¹¹ NARUC April 2 Letter at 2. NARUC states that NTIA will make the "final decision" on the states' recommendations as to which broadband projects should be financed. In fact, NTIA will have *de facto* turned over decision-making authority to the states as it will have handed off its financial resources for processing BTOP applications to

- (3) Due to this lack of institutional capability, injecting the states into the process is likely to slow down the process.¹²
- (4) State governments are eligible to apply for BTOP funds for their own projects and would have a conflict of interest if given the right to rank the projects of their competitors.
- (5) State governments (through a NARUC representative) have proposed that private entities be allowed to seek BTOP funds through partnerships with state governments, local governments, nonprofit entities, and other statutorily eligible entities.¹³ It would not be appropriate for state governments to rate the proposals of their own private sector partners or to tip the scales against private entities that have entered into partnerships with local governments or other eligible entities.
- (6) ARRA's broadband program is a national program, which means that all proposals should be ranked against each other based on their relative merits and no proposal should be disregarded simply because it is to be located in a state for which an above-average number of high-quality proposals have been made. For example, a project that is ranked sixth in one state could be superior to all the proposals from another state.
- (7) Some projects may cross state lines and could not be properly assessed under a state-based system.

c. How should NTIA resolve differences among groups or constituencies within a State in establishing priorities for funding?

Differences among groups or constituencies within a state should play no role in how NTIA selects grantees and distributes BTOP funds. Instead, NTIA should establish an objective scoring system and an objective system for reviewing proposals. With such a system, differences among groups or constituencies within a state would be irrelevant in assessing the merits of one proposal over another except in the rare case of identical scores.

d. How should NTIA ensure that projects proposed by States are well-executed and produce worthwhile and measurable results?

NTIA should not allow state governments to aggregate the BTOP proposals for their state of other eligible entities such as local governments and nonprofit entities. Those entities have the statutory right to submit their own proposals directly to NTIA and that right should not be taken away by adopting rules that require local governments and other applicants to submit their appli-

the states and will not have the institutional capability to review the applications and make its own independent judgment as to which projects are worthy of funding.

¹² Brad Ramsay, NARUC's General Counsel, stated in the March 23 broadband initiatives public meeting that the states would expect NTIA and RUS to give the states four to five months to review broadband grant proposals ("if our proposal were implemented the state would get between [f]our and five months to do the evaluations, which is not a good deal of time"). Statement of Brad Ramsey, Broadband Initiatives Public Meeting, Roundtable on the Role of the States, Department of Commerce, Washington, D.C., March 23, 2009.

¹³ Betty Ann Kane, Chairman, Public Service Commission of the District of Columbia, Broadband Initiatives Public Meeting, Roundtable on Private Sector Eligibility, Department of Commerce, Washington, D.C., March 16, 2009 ("But, again, writing a rule, I think NARUC would say the rules should say, if you are not one of the statutorily named entities, state or a subdivision or nonprofit -- even the case of a nonprofit -- that an other entity would be deemed in the public interest if it was working in partnership.")

cations to the state or that give the state any other control over the application process. Further, state governments generally do not have the ability or the authority to guarantee the effective implementation of projects that are the responsibility of third-party applicants. The role of state governments should consist of the role that has actually been assigned to them by statute: to submit proposals for broadband projects that the state itself plans to implement (*e.g.*, a state-built broadband network interconnecting state-controlled facilities).

Further, if NTIA decides to provide funds to state governments for broadband mapping under section 6001(l) of ARRA,¹⁴ it should establish strict standards that require that such maps actually depict the “the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State” as is required by ARRA.

ARRA allows (but not does not require) that up to \$350 million be spent pursuant to the Broadband Data Services Improvement Act (Public Law 110-385 (47 U.S.C. 1301 note)) (“BDSIA”) and for the purposes of developing and maintaining the broadband inventory map required by section 6001(l) of ARRA. BDSIA includes various limitations that render it ineffective as a data collection tool for purposes of compiling the broadband maps required by section 6001(l) of ARRA and therefore should not be funded through BTOP funds. For example, as NARUC has pointed, BDSIA does not allow for the competitive grant application process contemplated by ARRA, instead limiting BDSIA funding eligibility to only the “single” entity designated in each state by the state.¹⁵ Due to alliances with industry interests, a number of states have chosen to designate an industry-financed nonprofit entity to map broadband availability in the state, resulting in severe restrictions on the type of data collected and in inaccurate and incomplete broadband maps for a number of states.¹⁶ Granting BTOP funds to these entities would be inconsistent with the purposes of section 6001(l), which requires broadband maps for each state that specify where broadband service has been deployed and is available.

3. Eligible Grant Recipients: The Recovery Act establishes entities that are eligible for a grant under the program. The Recovery Act requires NTIA to determine by rule whether it is in the public interest that entities other than those listed in Section 6001(e)(1)(A) and (B) should be eligible for grant awards. What standard should NTIA apply to determine whether it is in the public interest that entities other than those described in Section 6001(e)(1)(A) and (B) should be eligible for grant awards?

Private sector entities should be eligible to apply for BTOP funds on their own only to provide service in areas that have been unambiguously documented as unserved and then only if they are

¹⁴ It is not necessary for the states to collect broadband data as the data that would be collected by the states would effectively duplicate data that the FCC already collects under its existing data collection program. Further, ARRA does not require that NTIA provide any funds for data collection efforts by the states; rather, it simply grants NTIA the discretionary authority to do so if it deems such data collection to be necessary (“up to \$350,000,000 *may* be expended pursuant to Public Law 110–385 (47 U.S.C. 1301 note) and for the purposes of developing and maintaining a broadband inventory map pursuant to division B of [ARRA] (emphasis supplied), ARRA, Div. A, Tit. II).

¹⁵ “NTIA cannot give any entity funds [under BDSIA] UNLESS it is “the single eligible entity in the State that *has been designated by the State to receive a grant under this section.*” NARUC April 2 Letter (emphasis in original).

¹⁶ See <http://www.publicknowledge.org/node/2037> for further information on the work of “Connected Nation” in various states (*Privatizing the Public Trust: A Critical Look at Connected Nation*, Public Knowledge, Common Cause, the Media and Democracy Coalition, and Reclaim the Media, March 23, 2009.)

willing to enter into social contracts that guarantee affordable prices for the useful life of the equipment and facilities acquired and installed with ARRA funds (*e.g.*, 15 years for purposes of IRC § 168(c)).

Private sector entities should also be allowed to apply as partners in a public-private partnership (with a state or local government, an Indian Tribe, or a native Hawaiian organization but not with a nonprofit entity¹⁷) but only if the partnership has been formally incorporated into a binding agreement and both parties are liable under that agreement.¹⁸ The rules should set forth minimum standards for those contracts, including provisions requiring unambiguous commitments by the private partner to provide specific broadband technology, provide service to designated sites, and charge affordable rates (with initial rates and a formula for future adjustments in those rates specified in a contract that can be enforced by users) and unambiguous rights for the public partner to enforce the contract and levy substantial penalties, including liquidated damages, on the private partner for failure to perform and for NTIA to assume the right to enforce if the public partner fails to take prompt enforcement action.

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

a. What factors should NTIA consider in establishing selection criteria for grant awards?

NTIA should, in connection with this rulemaking process, establish quantifiable selection criteria that allow for each application that has passed a preliminary assessment as to financial sustainability and the absence of unjust enrichment¹⁹ to be assessed on the basis of objective criteria. For broadband projects, these criteria should be grouped into the following five categories:

- service to residents of unserved areas²⁰ (with “unserved” broadly defined as described in the response to Inquiry # 13.a to include households that have access to service but cannot afford it as well as those who are unlikely to have access to broadband service) and/or underserved areas²¹ (with “underserved” broadly defined as described in the response to Inquiry # 13.a to include households that may have access to service but may not be able to afford some of the services and or can only afford low-speed DSL or cable modem service) (30 points)²²

¹⁷ Industry interests have assisted in forming and funding various pseudo-public interest nonprofit groups for various purposes. Allowing private sector entities to enter into partnerships with nonprofit entities could end up creating an enormous loophole in the BTOP program that could result in limited federal funds being passed through to private sector entities by nonprofit entities that may not truly autonomous and are not accountable to the public in the same way that a governmental entity or a tribal or similar organization is.

¹⁸ This limitation on public-private partnerships is not intended to preclude standard contracts for goods and services between any eligible entity, including a nonprofit entity, and a private sector provider.

¹⁹ ARRA, § 6001(h)(2)(D).

²⁰ ARRA, § 6001(b)(1).

²¹ ARRA, § 6001(b)(2).

²² A project would be assigned 30 points if the entire service area is unserved and 20 points if it is underserved, with additional points added or subtracted as appropriate in mixed environments (*e.g.*, 25 points for an area that consists

- service to core community institutions (e.g., libraries, K-12 schools, hospitals, medical facilities, colleges),²³ organizations serving vulnerable segments of the population (e.g., low-income persons, senior citizens, unemployed persons),²⁴ certain job-creating facilities,²⁵ and public safety agencies²⁶ (20 points)
- speed and technical innovation²⁷ (20)
- affordability²⁸ (15)
- synergies with other ARRA programs (e.g., smart grid, intelligent transportation, health IT)²⁹ (15).

How can NTIA determine that a Federal funding need exists and that private investment is not displaced?

The RFI does not properly describe the relevant provisions of ARRA. ARRA requires only that the applicant show that “the project would not have been implemented during the grant period without Federal grant assistance.”³⁰ It does not in any way require that “private investment” not be “displaced.” The statutory requirement is limited in effect and appears to be aimed at preventing the grant recipient from being reimbursed for the costs of a project that it planned to implement even if federal funds were not available. The simplest way to resolve this question is to determine whether the grant applicant had completed planning for the project prior to the enactment of ARRA and, at the time of its grant application, had access to the necessary funds from its own resources or third-party financing sources.

How should the long-term feasibility of the investment be judged?

The long-term feasibility of the investment in the project should be assessed through detailed and complete pro formas that document projected future revenues and costs. One possible approach would be to establish initial reviewing committees of financial experts to screen grant applications for sustainability and evidence of possible unjust enrichment before conducting a complete evaluation of the proposal under the 100-point scoring system. Under this approach, resources would not be wasted on scoring projects that do not pass muster under the sustainability test or would result in unjust enrichment.

of a population that is 50% unserved and 50% underserved; 15 points for a community where 75% of the population is underserved and 25% served).

²³ ARRA, § 6001(b)(3)(A), (g)(3).

²⁴ ARRA, § 6001(b)(3)(B), (g)(4).

²⁵ ARRA, § 6001(b)(3)(C).

²⁶ ARRA, § 6001(b)(4), (g)(5).

²⁷ ARRA, § 6001(h)(2)(B). Points can also be awarded under this criterion for the deployment of new back-haul links or the establishment of long-haul connections to peering points that may be necessary for multiple purposes, including improving basic subscriber service and reducing and controlling costs of providing service to residences, public institutions, and businesses. *See also* ARRA, § 6001(g)(2)-(3); ARRA Conference Report at 774.

²⁸ ARRA, § 6001(h)(2)(A).

²⁹ ARRA, §§ 3, 6001(h)(2)(C).

³⁰ ARRA, § 6001(e)(3).

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

See response to Inquiry 4.a. for our proposed scoring system. Funding could be provided via grants³¹ requiring the grantee to provide a match of more than 20% for projects that score high in some areas but low in other areas (e.g., a project that falls short on the affordability criteria or a project that does not provide service to the general population).

c. How should the BTOP prioritize proposals that serve underserved or unserved areas?

It should use a scoring system that gives significant weight to the extent to which the area is unserved and/or underserved. The proposal could be assigned additional points under the affordability criterion and the speed and innovation criterion of the proposed scoring system if the applicant makes a binding commitment to affordable rates and high-speed service such as a fiber-to-the-home broadband system. An example of how the scoring system would work is that an applicant proposing to provide wireless service in a currently unserved area and to charge relatively high fees would receive 30 points for providing service in an unserved area but 5 points on a 15-point scale for affordability and, depending upon the speed of the service offered, perhaps only 3 points on the 20-point scale for speed and innovation.

Should the BTOP consider USDA broadband grant awards and loans in establishing these priorities?

Yes. BTOP and RUS should coordinate in distributing funds to projects for unserved and underserved areas since the RUS provisions of ARRA provide that “no area of a project funded with amounts made available under this paragraph may receive funding to provide broadband service under the [BTOP].”

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

Yes. President Obama has issued an executive order that requires federal agencies to support projects that accomplish multiple ARRA’s goals by establishing selection criteria that will fund projects “that have, to the greatest extent, a demonstrated . . . or potential ability to: (i) deliver programmatic results; (ii) achieve economic stimulus by optimizing economic activity and the number of jobs created or saved in relation to the Federal dollars obligated; (iii) *achieve longterm public benefits by, for example, investing in technological advances in science and health to increase economic efficiency and improve quality of life; investing in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; fostering energy independence; or improving educational quality . . .*” Presidential Memorandum for the Heads of Executive Agencies and Departments, Ensuring Responsible Spending of Recovery Act Funds, 74 Fed. Reg. 12531 (March 25, 2009).

³¹ ARRA assumes a federal grant of up to 80% of the project costs but does not preclude NTIA from providing a smaller federal contribution. ARRA, § 6001(f).

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?

Yes. A scoring system should be employed as specified in the response to Inquiry 4.a that assigns points based on each of the statutory purposes that will be served by the project.

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

In the case of broadband infrastructure projects, the project's ability to encourage the sustainable adoption of broadband services should be measured primarily by: (1) whether proposed retail prices will be affordable for underserved segments of the population (e.g., low-income residents); (2) the availability of low-cost or free training and access to free computers at readily accessible community-based facilities; and (3) the availability of low-cost broadband service for households containing K-12 students.

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 should focus on the performance promised in the application rather than the nature of the technology proposed. At the same time, the grant applicant should have full discretion to propose whatever technology makes the most economic sense with respect to such matters as the project's long-term sustainability and the affordability of the prices charged for the applicant's services.

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

In order to establish sustainability, affordability, and ability to properly serve underserved or unserved markets, the grant recipient should be required to disclose initial retail prices, standards for future increases in retail prices, and the prices charged by other providers serving the same market.

5. Grant Mechanics: The Recovery Act requires all agencies to distribute funds efficiently and fund projects that would not receive investment otherwise.

a. What mechanisms for distributing stimulus funds should be used by NTIA and USDA in addition to traditional grant and loan programs?

USDA should consider establishing a loan guarantee program to supplement its traditional loan programs. NTIA does not appear to have authority under ARRA to establish a loan or a loan guarantee program or distribute BTOP funds by any method other than grants.

b. How would these mechanisms address shortcomings, if any, in traditional grant or loan mechanisms in the context of the Recovery Act?

A loan guarantee program, if properly designed, could provide a cost-effective way to enhance

access to the credit markets for projects that satisfy clearly defined standards for financial viability.

6. Grants for Expanding Public Computer Center Capacity: The Recovery Act directs that not less than \$200,000,000 of the BTOP shall be awarded for grants that expand public computer center capacity, including at community colleges and public libraries.

a. What selection criteria should be applied to ensure the success of this aspect of the program?

Eligibility should be limited to institutions that are open to all members of the public and whose facilities are both readily accessible to the public and open in the evenings and the weekends. The chances for the long-term sustainability of this program will increase if funding is provided to established institutions that have the ability to support and maintain public computer centers after the BTOP funds have been expended (*e.g.*, public libraries, public senior citizen and recreation facilities, community colleges, social service agencies, established community service organizations).

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

Examples of other institutions that should be eligible include publicly operated senior citizen and recreation facilities, social service agencies, established community service organizations (*e.g.*, YMCA), and established charitable organizations.

7. Grants for Innovative Programs to Encourage Sustainable Adoption of Broadband Service: The Recovery Act directs that not less than \$250,000,000 of the BTOP shall be awarded for grants for innovative programs to encourage sustainable adoption of broadband services.

a. What selection criteria should be applied to ensure the success of this program?

The likelihood of long-term success for this program will be enhanced by providing funding to institutions that have established relationships with target segments of the population (*e.g.*, low-income persons, senior citizens, K-12 students), established training capabilities, and the ability to continue, and interest in continuing, programs for sustainable adoption of broadband services after the BTOP funds have been expended (*e.g.*, social service agencies and organizations, public libraries, public senior citizen and recreation facilities, community colleges, public schools, public utilities, community service organizations, charitable organizations).

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

Increases in broadband subscription rates in the community among members of the target population groups.

8. Broadband Mapping: The Recovery Act directs NTIA to establish a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State.

a. What uses should such a map be capable of serving?

The maps should be capable of serving multiple uses, including providing information as to the capability and availability of broadband service in particular neighborhoods to governmental entities (planning and regulation; access to service as users), individual consumers, businesses, and educational and other public institutions (access to service), and other market entrants (identification of unserved or underserved markets).

b. What specific information should the broadband map contain, and should the map provide different types of information to different users (e.g., consumers versus governmental entities)?

The maps should provide comprehensive information as to the availability of broadband service, the number of broadband service providers, and service capability (e.g., speed) in every neighborhood in the nation, with data provided for both census tracts and census blocks. The broadband data should be accessible to all potential users via the web without distinction as to the user's interest in the data. There is, for example, no valid governmental interest in concealing data about broadband capability and availability based on the basis of the providers' stated claims of competitive concerns. In fact, consumers (and other potential users) are best served by a truly competitive market made up of informed providers who have ready access to data as to which markets are unserved or underserved.

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

To at least the census block so that existing and potential consumers and users will have access to data that is as specific as possible to their geographic location.

d. What other factors should NTIA take into consideration in fulfilling the requirements of the Broadband Data Improvement Act, Pub. L. No. 110-385 (2008)?

NTIA does not have any obligation under ARRA to implement the BSDIA. In fact, NTIA cannot rely on BSDIA in its current form for legal authority to collect geographically specific information as to the availability of broadband service because BSDIA gives broadband service providers the right to opt out of effective participation by simply declaring the requested information to be "confidential." Broadband Services Data Improvement Act, Pub. L. No. 110-385, § 601(h)(2) (2008). If for some reason, NTIA decides to use BTOP funds for BSDIA purposes, it should establish strict rules for state-based data collection undertakings. For example, it should require that entities designated by state governments pursuant to BSDIA as the state's broadband data collection entity are eligible for BTOP funding only if they secure written assurances from each broadband provider in their states that they will disclose geographically specific information as to the location of their customers and their service areas and that that information can be publicly disclosed.

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

California.

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

If NTIA decides to grant data collection funds to the states, it should, at a minimum, require the states to collect the following items of information for each broadband service provider in the state: (1) the census blocks in the state in which the provider provides service to actual customers; (2) the number of housing units and customers in each census block contained in the provider's service areas; (3) the provider's delivery system (*e.g.*, fiber-to-the-home, hybrid fiber coaxial cable, copper distribution lines, 3G wireless, 4G wireless, satellite); and (4) broadband speed for both upstream and downstream transmissions in each census block in the service area (maximum, average, and typical).

g. What technical specifications should be required of state grantees to ensure that statewide inventory maps can be efficiently rolled up into a searchable national broadband database to be made available on NTIA's website no later than February 2011?

If NTIA decides to grant data collection funds to the states, it should require that all grantees use the same data collection variables and comply with the same technical specifications.

h. Should other conditions attach to statewide inventory grants?

All statewide grants should be conditioned on the right of NTIA (or its designee) to spot check the accuracy and completeness of the data collected and to terminate the grant if the data is found to be inaccurate or incomplete or the entity has entered into nondisclosure agreements.

i. What information, other than statewide inventory information, that should populate the comprehensive nationwide map?

The comprehensive nationwide map should be clickable or zoomable so that the user can obtain access to national, statewide, and local data from a single source. The nationwide map should also provide data that shows the service territories for the ten largest providers of broadband service in the nation.

j. The Recovery Act and the Broadband Data Improvement Act (BDIA) imposes duties on both NTIA and FCC concerning the collection of broadband data. Given the statutory requirements of the Recovery Act and the BDIA, how should NTIA and FCC best work together to meet these requirements?

The FCC compiles detailed data about broadband capability and subscribership on the basis of FCC Form 477. It collects this comprehensive data on the basis of census tract but releases the data to the public only in the form of aggregate statewide data. The possible distribution of ARRA funds via BTOP grants to duplicate an existing federal data collection program represents a misuse of scarce federal dollars and makes no sense. It would be far more cost effective and logical for NTIA and FCC to enter into an agreement for the FCC's sharing with NTIA of the data collected via FCC Form 477 and NTIA's developing of broadband maps based on that data.

9. Financial Contributions by Grant Applicants: The Recovery Act requires that the Federal share of funding for any proposal may not exceed 80 percent of the total grant. The Recovery Act also requires that applicants demonstrate that their proposals would not have been implemented during the grant period without Federal assistance. The Recovery Act allows for an increase in the Federal share beyond 80 percent if the applicant petitions NTIA and demonstrates financial need.

a. What factors should an applicant show to establish the “financial need” necessary to receive more than 80 percent of a project’s cost in grant funds?

The applicant should be required to submit complete financial information with respect to its assets, liabilities, operating expenses and revenues from existing operations and, in the case of a governmental entity, any legal restrictions that apply to the use of any or all of the aforementioned resources to finance the proposed broadband project. Other factors to consider should include whether or not the geographic area to be served by the broadband project is unserved or underserved. Finally, in view of the complexity of the Department of Commerce’s rules on matching³² and the difficult financial circumstances facing local governments, NTIA should construe the “financial need” exception to the 20% match requirement liberally and exempt from the 20% match requirement proposals by local governments to broadband build systems in unserved areas or to provide cutting edge broadband service via a fiber-to-the-home or similar system that provides symmetric service of 100 MB/s to homes.

b. What factors should the NTIA apply in deciding that a particular proposal should receive less than an 80 percent Federal share?

In the event that NTIA determines that partnerships between a private sector entity and a non-profit entity or that direct private sector participation in the BTOP program is in the “public interest,”³³ it should impose strict outside limits on the federal contribution (perhaps no more than 25%, with the money to be used for the limited purpose of jump starting a project that is in the public interest) and strict accounting rules to make certain that federal dollars are not used to subsidize the private sector entity’s broadband or other activities in other areas.

c. What showing should be necessary to demonstrate that the proposal would not have been implemented without Federal assistance?

The applicant’s president or other top official should be required to submit a declaration (under penalty of perjury) that it had not developed plans for the proposed project and had not secured financing commitments for the project in the six months prior to January 15, 2009 (the date of the release of the first draft of ARRA in the U.S. House of Representatives).

10. Timely Completion of Proposals: The Recovery Act states that NTIA shall establish the BTOP as expeditiously as practicable, ensure that all awards are made before the end of fiscal year 2010, and seek assurances from grantees that projects supported by the programs will be substantially completed within two (2) years following an award. The Recovery Act also requires that grant recipients report quarterly on the recipient’s use of grant funds and the grant recipient’s progress in fulfilling the objectives of the grant proposal. The Recovery Act permits NTIA

³² See, e.g., 15 C.F.R. § 24.24.

³³ ARRA § 6001(e)(1)(C).

to de-obligate awards to grant recipients that demonstrate an insufficient level of performance, or wasteful or fraudulent spending (as defined by NTIA in advance), and award these funds to new or existing applicants.

a. What is the most efficient, effective, and fair way to carry out the requirement that the BTOP be established expeditiously and that awards be made before the end of fiscal year 2010?

b. What elements should be included in the application to ensure the projects can be completed within two (2) years (e.g., timelines, milestones, letters of agreement with partners)?

NTIA should automatically deny any application for BTOP funds that does not include specific project and construction timetables. Further, NTIA should notify all applicants through its application instructions for BTOP grants that compliance with the proposed timetable will be a grant condition and that funding will be de-obligated for failure to comply with the timetable without a proper justification.

11. Reporting and Deobligation: The Recovery Act also requires that grant recipients report quarterly on the recipient's use of grant funds and progress in fulfilling the objectives of the grant proposal. The Recovery Act permits NTIA to de-obligate funds for grant awards that demonstrate an insufficient level of performance, or wasteful or fraudulent spending (as defined by NTIA in advance), and award these funds to new or existing applicants.

a. How should NTIA define wasteful or fraudulent spending for purposes of the grant program?

The federal government has already established cost principles for spending pursuant to federal grants that apply to state and local governments (OMB Cir. A87), nonprofit entities (OMB Cir. A-122), and educational institutions (OMB Cir. A-21). Similarly, it has established administrative requirements and audit requirements for such grant recipients (administrative: OMB Cir. A-102 for state and local governments and OMB Cir. A-110 for nonprofits, hospitals, and educational institutions; audit: OMB Cir. A-133 for state and local governments and nonprofit entities). The Department of Commerce has established additional rules that apply to grant recipients. 15 C.F.R. Part 24. Similar rules do not apply to private sector entities as such entities are more likely to be involved with the federal government as sellers of goods and services pursuant to various federal procurement rules than as grant recipients, underscoring once again why private sector entities should not be direct recipients of BTOP funds.

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

NTIA should require grant recipients to periodically submit reports that document in detail progress toward stated project goals, construction progress and activation of service, and compliance with the technical specifications included in the recipient's application.

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

12. Coordination with USDA's Broadband Grant Program: The Recovery Act directs USDA's Rural Development Office to distribute \$2.5 billion dollars in loans, loan guarantees, and grants for broadband deployment. The stated focus of the USDA's program is economic development in rural areas. NTIA has broad authority in its grant program to award grants throughout the

United States. Although the two programs have different statutory structures, the programs have many similar purposes, namely the promotion of economic development based on deployment of broadband service and technologies.

a. What specific programmatic elements should both agencies adopt to ensure that grant funds are utilized in the most effective and efficient manner?

RUS should take the lead in providing funding to projects in rural areas that are traditionally served by small telephone and cable companies while NTIA should take the lead in funding projects in areas of the country that are generally served by large telephone and cable companies but are experiencing service deficiencies due to gaps in coverage and/or limited broadband technology.

b. In cases where proposals encompass both rural and non-rural areas, what programmatic elements should the agencies establish to ensure that worthy projects are funded by one or both programs in the most cost effective manner without unjustly enriching the applicant(s)?

ARRA includes provisions prohibiting the funding of RUS projects with BTOP dollars so unjust enrichment through double dipping is not permitted by law. Specifically, it provides that “no area of a project funded with amounts made available under [the USDA] paragraph may receive funding to provide broadband service under the Broadband Technology Opportunities Program.”³⁴

13. Definitions: The Conference Report on the Recovery Act states that NTIA should consult with the FCC on defining the terms “unserved area,” “underserved area,” and “broadband.” The Recovery Act also requires that NTIA shall, in coordination with the FCC, publish nondiscrimination and network interconnection obligations that shall be contractual conditions of grant awards, including, at a minimum, adherence to the principles contained in the FCC’s broadband policy statement (FCC 05-15, adopted August 5, 2005).

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

Due to the current lack of publicly available data as to the availability and capability of broadband technology in particular geographic areas,³⁵ it is not possible for NTIA to define the term “unserved area” on the basis of the actual availability and capability of broadband services in particular geographic areas. Perhaps even more important, Congress made clear that it intends that the BTOP program provide support for broadband projects throughout the nation, including in suburban and urban communities as well as rural communities.³⁶ As a result, NTIA should use established data clusters that constitute reliable surrogates for the limited availability of

³⁴ ARRA, Div. A., Tit. II.

³⁵ The FCC collects broadband data on the basis of connections in census tracts but does not make this data available to the public. Some states have begun their own data collection efforts but, because these state efforts are uneven and inconsistent and sometimes involve industry front groups and other unwarranted compromises with industry interests, they do not provide accurate or reliable data that can be used to compare competing applications.

³⁶ The Conferees intend that the NTIA award grants serving all parts of the country, including rural, suburban, and urban areas. ARRA Conference Report at 774.

broadband³⁷ in a census tract in a manner similar to the tax credit provisions of the Senate-passed version of ARRA.³⁸ For example, a census tract could be deemed to be “unserved” if it exhibited two or more of the following characteristics:

- a population per square mile of land area that does not exceed 80% of the state-wide average population per square mile of land area
- a median family income which does not exceed 80% of the greater of metropolitan area median family income or statewide median family income (or, for a non-metropolitan census tract, 80% of statewide median family income)
- a poverty rate for individuals of 20% or more

Similarly, a census tract would be deemed to be “underserved area” if it exhibited one or more of the above characteristics.

An applicant should be allowed to combine unserved, underserved, and served census tracts into a single application. Under this approach, points under the 30-point system for measuring whether an area is unserved or underserved (outlined in the response to Inquiry 4.a) would be assigned to the proposal using a system which weights the applicant’s score based on the proportion of the population that falls into each category. For example, if an applicant is proposing to deploy broadband infrastructure throughout a geographic area that contains 40,000 residents residing in underserved census tracts, 30,000 residents residing in unserved census tracts, and 30,000 residents residing in served census tracts, the application would score 17 points on the 30-point scale (40% of 20 = 8 points for the underserved areas; 30% of 30 = 9 points for the unserved areas; 30% of 0 points for the served areas).

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?

No. Affordability and service quality problems may be as important as slow speed in making an area “unserved” or “underserved” for purposes of determining eligibility for a BTOP grant. For example, broadband service is available via satellite in many rural areas of the country but may be unaffordable or of unacceptable quality due to latency problems. Further, due to industry secrecy, reliable data as to the actual speed of broadband service delivered to customers is generally not available.

Should thresholds be rigid or flexible?

In prioritizing grant awards (as opposed to establishing a threshold for eligibility to apply for BTOP grants), the threshold should be rigid to ensure that a minimum level of service is provided via BTOP funds.

³⁷ The term “unserved” should not be construed as actually meaning 100% unserved as virtually every community in the country has some access to satellite technology and can obtain access to broadband service in some form although it may be of poor quality and/or very expensive and is functionally equivalent to not having access to service.

³⁸ HR 1 (Amendment No. 98 in Senate), 111 Cong., 1st Sess. § 1271 (Jan. 30, 2009).

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

No. In deciding to make BTOP grants, the threshold should be sufficiently reasonable to accommodate a full range of technology but with additional points awarded under the scoring system outlined in the response to Inquiry 4.a for higher speeds (“speed and technical innovation”). The proposed scoring system also assigns points to “affordability,” which will allow NTIA to take both speed and cost considerations into account in evaluating a proposal.

(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)?

In deciding to make BTOP grants, threshold speeds should be at least 5 MB/s for downstream transmissions and 2 MB/s for upstream communications, with additional points awarded for speeds above that level under the 20-point system for rating speed and technical innovation. These would be the minimum speeds required for awarding any points under the speed and innovation criterion.³⁹ Speed should be measured at the home (and other service locations) and during the most active time of the day. Further, it should be calculated based on the speed that is provided to those locations at those peak times to at least 95% of users. The full 20 points would be awarded to a next-generation broadband system that might, for example, be a symmetric system that provides 100 MB/s in both directions.⁴⁰

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

The threshold speeds should be asymmetrical so as not to discourage applications for poorly served areas but additional points would be awarded to proposals for symmetrical distribution systems under the 20-point system for rating speed and technical innovation.

(5) How should the BTOP consider the impacts of the use of shared facilities by service providers and of network congestion?

Applicants should be required to specify the extent to which the proposed broadband system involves the use of shared facilities and the projected impact of that sharing on broadband speed based on number of network users and network traffic. Applicants should do so with the understanding that the proposal will be assigned points under the 20-point system for speed and technical innovation on the basis of the extent to which the design for the system will eliminate the sharing of communications pathways and/or network congestion.

³⁹ The legislative history indicates that it is probably not appropriate for NTIA to establish an absolute bar on the consideration of proposals based on speed thresholds (“The Conferees are mindful that a specific speed threshold could have the unintended result of thwarting broadband deployment in certain areas,” ARRA Conference Report at 775.)

⁴⁰ “The Conferees are also mindful that the construction of broadband facilities capable of delivering next-generation broadband speeds is likely to result in greater job creation and job preservation than projects centered on current-generation broadband speeds. Therefore, the Conferees instruct the NTIA to seek to fund, to the extent practicable, projects that provide the highest possible, next-generation broadband speeds to consumers.” ARRA Conference Report at 775.

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

BTOP should not reward grant applicants for electing to operate on a wholesale and/or open access basis as has been proposed by Free Press.⁴¹ The wholesale/open access approach has been successful in France in large part because it was effectively required by the national government and became the dominant model.⁴² In the United States, in contrast, the wholesale model has failed when it has been imposed on one market participant—municipally owned broadband systems—but not on private sector competitors serving the same market.⁴³

(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?

NTIA should not impose nondiscrimination requirements on grantees beyond those, which apply under law to other providers of broadband service as such requirements might place grantees at a competitive disadvantage.

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

Yes. It does not make any sense for NTIA to use the BTOP program to develop interconnection requirements that are particular to the BTOP program and that deviate from the interconnection requirements of law. Grantees should be required to comply in full with all applicable provisions of law that relate to interconnections but should not be subject to requirements that are more stringent than those that apply to other providers of broadband service.

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

No. NTIA should require all grantees to comply with whatever law applies to the grantee's mode of distribution but should not use the BTOP program to go outside of the requirements of current law.

(4) Should failure to abide by whatever obligations are established result in deobligation of fund awards?

Yes. NTIA should require all grantees to comply with all provisions of applicable law, including those relating to nondiscrimination and interconnections, as they are in effect now or may be in the future.

⁴¹ *Suggested Scoring Criteria for BTOP Broadband Infrastructure Deployment Grants*, Free Press, press release, March 24, 2009.

⁴² Jim Baller and Casey Lide, *Capturing the Promise of Broadband for North Carolina and America*, June 2008 (http://www.e-nc.org/Baller-Herbst_Report.asp).

⁴³ Joe Pyrah, *Provo, Broadweave Work out Details of iProvo Sale*, Daily Herald (Provo, Utah), July 1, 2008 (<http://www.heraldextra.com/content/view/271917/>).

(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. NTIA should specify that the useful life for all proposed systems is 15 years and should require compliance with all applicable grant conditions, including any nondiscrimination and interconnection obligations, for the system's useful life.

d. Are there other terms in this section of the Recovery Act, such as “community anchor institutions,” that NTIA should define to ensure the success of the grant program? If so, what are those terms and how should those terms be defined, given the stated purposes of the Recovery Act?

NTIA should not attempt to define “community anchor institution” but rather should allow the applicant to spell out in its proposal why it considers a particular institution to constitute a “community anchor institution.” It could be a library, a municipal building, a school, a hospital, a local business, an established community service organization, or several facilities depending upon the nature and size of the community.

e. What role, if any, should retail price play in these definitions?

NTIA should consider retail prices for broadband service as supplemental information that substantiates or explains the assertion in a proposal that a geographic area is either “unserved” or “underserved.” For example, if the existing broadband service providers are charging excessive prices (*e.g.*, \$60/month for 1 MB/s service), then the local market is placing area residents at major disadvantage vis-à-vis residents of other areas that have access to higher speed service at lower prices.

14. Measuring the Success of the BTOP: The Recovery Act permits NTIA to establish additional reporting and information requirements for any recipient of grant program funds.

a. What measurements can be used to determine whether an individual proposal has successfully complied with the statutory obligations and project timelines?

b. Should applicants be required to report on a set of common data elements so that the relative success of individual proposals may be measured? If so, what should those elements be?

At a minimum, NTIA should require applicants to report the following items: the number of subscribers and users, the number of residents and businesses passed, the services provided, the prices charged for each service, and the amount spent on the project. This data should be reported for the time immediately before the project was implemented and at various intervals during the project's implementation (every 6 months, for example).

15. Please provide comment on any other issues that NTIA should consider in creating BTOP within the confines of the statutory structure established by the Recovery Act.

BTOP should be administered with sufficient balance and flexibility to ensure that a full range of the best projects rise to the top and are selected for implementation, with best projects including both projects whose primary goal is to bring quality broadband service to truly unserved areas and projects whose aim is to implement innovative and cutting-edge broadband technology (*e.g.*,

symmetric broadband service of 100 MB/s) and begin the move to the next generation of technology.

RUS:

The provisions regarding the RUS Recovery Act broadband grant and loan activities are found in Division A, title I under the heading Rural Utilities Service, Distance Learning, Telemedicine and Broadband Program of the Recovery Act.

1. What are the most effective ways RUS could offer broadband funds to ensure that rural residents that lack access to broadband will receive it? For a number of years, RUS has struggled to find an effective way to use the Agency's current broadband loan program to provide broadband access to rural residents that lack such access. RUS believes that the authority to provide grants as well as loans will give it the tools necessary to achieve that goal. RUS is looking for suggestions as to the best 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.

2. In what ways can RUS and NTIA best align their Recovery Act broadband activities to make the most efficient and effective use of the Recovery Act broadband funds? 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?"

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?

NTIA and RUS should not limit the ability of applicants to apply to both agencies to fund the same project. However, NTIA and RUS should establish a coordinating process for the review of related or identical proposals that are submitted to both agencies and agree on how to handle such proposals and avoid duplication in the review process.

3. 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 socioeconomic 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)?

4. In further evaluating projects, RUS must consider the priorities listed below. What value should be assigned to those factors in selecting applications? What additional priorities should be considered by RUS? Priorities have been assigned to projects that will: 1) give end-users a choice of internet service providers, 2) serve the highest proportion of rural residents that lack access to broadband service, 3) be projects of current and former RUS borrowers, and 4) be fully funded and ready to start once they receive funding under the Recovery Act.

5. 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