



DEPARTMENT OF  
**COMMERCE**  
COMMUNITY AND  
ECONOMIC DEVELOPMENT

Regulatory Commission of Alaska

*Sarah Palin, Governor*  
*Emil Notti, Commissioner*  
*Robert M. Pickett, Chairman*

April 13, 2009

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U.S. Department of Commerce  
1401 Constitution Ave., N.W.  
Washington, DC 20230

The Honorable Tom Vilsack  
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U.S. Department of Commerce  
1401 Constitution Ave., N.W.  
Washington, DC 20230

Re: Comments of the Regulatory Commission of Alaska

Secretary Locke, Secretary Vilsack and Assistant Secretary Gomez:

The Regulatory Commission of Alaska appreciates the opportunity to respond to questions from the National Telecommunications and Information Administration (NTIA) and the Rural Utilities Service (RUS) regarding the awarding of broadband loans and grants under the American Recovery and Reinvestment Act of 2009 (ARRA). Our responses to specific questions are attached to this letter. We have not attempted to address each of the many questions posed by the NTIA and RUS and in some cases simply note our concurrence with the separate comments to be submitted by the State of Alaska and the University of Alaska.

Sincerely,  
Regulatory Commission of Alaska

Robert M. Pickett  
Chairman

Attachment: RCA Responses to NTIA/RUS Questions

## Table of Contents

<u>Section</u>	<u>Page Number</u>
Executive Summary.....	2
The Purposes of the Grant Program (NTIA #1).....	4
The Role of the States (NTIA #2).....	5
Eligible Grant Recipients (NTIA #3).....	6
Establishing Selection Criteria for Grant Awards (NTIA #4).....	7
Grants for Expanding Public Computer Center Capacity (NTIA #6).....	8
Broadband Mapping (NTIA #8).....	8
Financial Contributions by Grant Applicants (NTIA #9).....	9
Timely Completion of Proposals (NTIA #10).....	10
Coordination with USDA's Broadband Grant Program (NTIA #12).....	11
Definitions of the terms Unserved area, Underserved area, and Broadband (NTIA #13).....	11
Other NTIA Issues (NTIA #15).....	13
Alignment of NTIA and RUS Efforts (RUS #2).....	13
Facilitating Economic Development (RUS #3).....	13
RUS Evaluation Factors (RUS #4).....	13

### **Executive Summary**

In awarding grants, it should be NTIA's general goal to address as many of the purposes of the BTOP grant program as possible (NTIA Question No. 1); however, an application should not be primarily judged on whether one or several of the goals are met or whether the application has dedicated a certain percentage of funds to each category, as it would unfairly disadvantage deserving applicants. We recommend that the NTIA create flexible rules when determining how to apportion grant funding to each state and within each state. These rules should not overlook the specific challenges of remote, sparsely populated, communities such as those in Alaska.

Regarding the role of the states (NTIA Question No. 2), we recommend adoption of NARUC's<sup>1</sup> proposal to allow each state to perform an initial, advisory review and ranking of proposals for NTIA and RUS final consideration. State governors should not be precluded from including representatives of federal agencies with strong state components, such as the Denali Commission, when selecting the state's review and ranking panels.

Regarding eligible grant recipients (NTIA Question No. 3), we believe that there is an important role for private-for-profit entities in the BTOP grant program. However, because Congress did not see fit to make private-for-profit entities automatically eligible for funding, we recommend that the NTIA consider providing a grant to a private-for-profit entity only if the entity can satisfactorily demonstrate that its project 1) will accomplish at least one of the first four purposes of the BTOP program, 2) will accomplish the fifth purpose of the BTOP program, and 3) will not result in unjust enrichment to the entity or its shareholders. Regarding the third requirement, we recommend that the NTIA ensure that ratepayers fully benefit from grant awards by placing a requirement on grant recipients to provide customer rate information as part of any application. NTIA should also make it clear that rate information may be used as a factor in the evaluation of proposals.

In establishing criteria for grant awards (NTIA Question No. 4), the NTIA should not establish a rigid weighting formula for evaluating projects. Instead, the NTIA should adopt the NARUC proposal and place great deference on each state's prioritization of projects as the states are in the best position to know which projects best promote the public interest in their state.

Development of state maps (NTIA Question No. 8) will be crucial in assisting in the identification of unserved and underserved areas for the awarding of grants. We encourage the NTIA to provide as much guidance as possible so that states -- regardless of where they are in their mapping efforts -- can begin moving toward a common, minimum standard regarding the type of information to be collected and how it is mapped. States should also have the authority to exceed the minimum standard if necessary to properly identify underserved and unserved areas since we believe the FCC's current use of census tracts to identify broadband availability may not provide sufficient granularity in rural

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<sup>1</sup> National Association of Regulatory Utility Commissioners

communities of Alaska. We encourage the NTIA and FCC to establish a uniform confidentiality standard so the production of maps is not needlessly delayed in state by state disputes over disclosure agreements. NTIA and RUS should consider requiring grant applicants to agree to the public release and public use of mapping data that is consistent with the confidentiality standards established by NTIA and FCC.

Regarding financial contributions by grant applicants (NTIA Question No. 9), we request that the NTIA clarify whether a 20% contribution is required for eligible entities applying for broadband mapping grants under the DBIA.<sup>2</sup> While it appears to us that a 20% contribution may be required,<sup>3</sup> there also appears to be confusion about this requirement based upon testimony at a NTIA/RUS public meeting. To the extent that NTIA does not interpret the ARRA to include an automatic exemption of the 20% contribution for broadband mapping, we would encourage NTIA to find good cause to grant an exemption under its own authority.<sup>4</sup>

We believe the most efficient, effective, and fair way for the NTIA and RUS to align their efforts (RUS Question No. 2) and to timely meet the requirements of the ARRA (NTIA Question No. 10) is for those agencies to 1) focus on a simplified and uniform application form and application process, and 2) allow states to review and rank applications through the process proposed by NARUC.

In defining "broadband" (NTIA Question No. 13), NTIA is encouraged to take into consideration factors such as upload speed, latency, symmetry, and price, in addition to the most common definition of broadband -- download speed. If NTIA defines broadband purely in terms of speed (i.e., kbps or mbps) the definition of the terms "unserved" and "underserved" should incorporate factors such as latency, symmetry, and price. NARUC has proposed a definition of unserved that means "no facilities-based Internet access other than dial-up and satellite based access." We support this definition. Another approach we could support is to assume that any community without direct middle mile fiber access to a major Internet hub or that relies on satellite transport for any portion of its access is by definition unserved.

Finally, we concur with the comments of the State of Alaska and the University of Alaska.

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<sup>2</sup> Broadband Data Improvement Act

<sup>3</sup> Public Law 110-385, Section 106(c)(2).

<sup>4</sup> ARRA, Section 6001(f).

## Questions and Responses

### NTIA Questions:

1. *The Purposes of the Grant Program: Section 6001 of the Recovery Act establishes five purposes for the BTOP grant program.*<sup>5</sup>

- a. *Should a certain percentage of grant funds be apportioned to each category?*
- b. *Should applicants be encouraged to address more than one purpose?*

**RCA Response:** In awarding grants, it should be NTIA's general goal to address as many of the purposes of the BTOP grant program as possible; however, an application should not be primarily judged based on whether one or several of the goals are met or whether the application has dedicated a certain percentage of funds to each category as it would unfairly disadvantage deserving applicants. For example, in certain locations in rural Alaska and possibly other parts of the nation there may be no community colleges, institutions of higher education, libraries or job-creating strategic facilities nearby, making it impossible to meet each of the goals. Nevertheless, these rural areas may merit funding and should not be dissuaded from applying. Nor should funding to states be awarded solely based on how many people benefit under any one of the goals as this would disadvantage the lower population states, such as Alaska. Clearly one of the goals for the BTOP is to benefit people across the nation, including the smaller communities and Alaska's rural villages. We therefore recommend that the NTIA not create inflexible rules when determining how to apportion grant funds to each state and within each state. The purposes of the act are numerous, disparate, and in some cases potentially in conflict.<sup>6</sup> Therefore, it is our recommendation -- given the short time for preparing and awarding broadband grants and the wide variety of circumstances from state to state and between competing applicants --

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<sup>5</sup> Sec. 6001(b) states that the purposes of the program are to—

- (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.

<sup>6</sup> For example, awarding a grant to an underserved area may create more jobs than awarding the same funds to a smaller, less populous, unserved area. Nevertheless, the NTIA may still find good reasons based on other criteria to award the grant to the unserved area.

that the NTIA craft a flexible set of universal rules that will not forget the specific challenges of the sparsely populated communities in Alaska.

*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?*
- 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?*

RCA Response: The ARRA states that the NTIA may consult with the states regarding (1) the identification of areas in a State that are unserved or underserved; and (2) the allocation of grant funds within that State for projects in or affecting the State. According to the National Association of Regulatory Utility Commissioners (NARUC), “the Conference report characterizes §6001 as ‘direct[ing] the NTIA to consult with States’”.<sup>7</sup> This legislative intent suggests a strong role for the states. However, there are also practical reasons for NTIA and RUS to take advantage of state assistance given the existing resources of those agencies and the enormous task ahead.

On April 2, 2009, NARUC submitted a letter to NTIA and RUS, signed by 90 regulators from 39 states, recommending that states be allowed to review and rank grant proposals to be considered by the NTIA in each state.<sup>8</sup> Under the NARUC’s proposal:

- A state’s governor would specify an entity to conduct the reviewing and ranking of grant proposals;
- The state’s entity would review and rank grant proposals from that state based upon NTIA/RUS criteria;
- NTIA and RUS would make the final choices and distribute funds;
- State agencies would be compensated for their short term administrative expense by NTIA and RUS, estimated to be between 2 to 4 full time equivalents;
- As an incentive for state participation, NTIA and RUS would establish, for the first round, a minimum state standard NTIA allocation of between \$36 million and \$48 million, and an RUS allocation of \$15 million.

The RCA supports NARUC’s proposal and also supports the comments of the State of Alaska which encompass partnering with the Denali Commission and other federal agencies. We concur with NARUC that it will save resources, put the people with the information needed to make reasonable and rapid decisions in a strong advisory role, provide an additional layer of accountability, and

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<sup>7</sup> NARUC Letter to NTIA and RUS, April 2, 2009,  
[http://www.naruc.org/Testimony/09%200402%20\\_NTIA-RUS%20FINAL.pdf](http://www.naruc.org/Testimony/09%200402%20_NTIA-RUS%20FINAL.pdf)

<sup>8</sup> Ibid.

significantly increase the chances that the money will actually be disbursed.

Finally, we note that it is our understanding that the state entity reviewing and ranking proposals would not necessarily be limited to state agencies and could entail a collaborative process among state and joint state-federal agencies. For example, we believe the proposal would not prohibit the State of Alaska from including a representative from an agency such as the Denali Commission<sup>9</sup> simply because it is a federal agency.

*3. Eligible Grant Recipients: The Recovery Act establishes entities that are eligible for a grant under the program.<sup>10</sup> 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?*

RCA Response: We believe that there is an important role for private-for-profit entities in the BTOP grant program. Many private entities have a proven track record of providing services that meet the purposes of the ARRA. Private entities have operational resources that can help ensure that projects remain sustainable after grant funding is no longer available. Established private entities are also often very familiar with the local economic, demographic and market conditions that could contribute to the success of a particular project. Similarly in Alaska the private entities are also more likely to have the engineering and construction expertise to be able to build broadband projects under arctic conditions. However, Congress did not see fit to make private-for-profit entities automatically eligible for funding.

We recommend that the NTIA consider providing a grant to a private-for-profit entity only if the entity can satisfactorily demonstrate that its project 1) will

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<sup>9</sup> “Introduced by Congress in 1998, the Denali Commission is an independent federal agency [directed by Federal and State (Alaska) co-chairs] designed to provide critical utilities, infrastructure, and economic support throughout Alaska. With the creation of the Denali Commission, Congress acknowledged the need for increased inter-agency cooperation and focus on Alaska’s remote communities. Since its first meeting in April 1999, the Commission is credited with providing numerous cost-shared infrastructure projects across the State that exemplify effective and efficient partnership between federal and state agencies, and the private sector.” [http://www.denali.gov/index.php?option=com\\_content&view=section&id=4&Itemid=8](http://www.denali.gov/index.php?option=com_content&view=section&id=4&Itemid=8)

<sup>10</sup> *Section 6001(e) states that eligible applicants shall—*

*(1)(A) be a State or political subdivision thereof, the District of Columbia, a territory or possession of the United States, an Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450(b)) or native Hawaiian organization;*  
*(B) a nonprofit—*

*(i) foundation,*  
*(ii) corporation,*  
*(iii) institution, or*  
*(iv) association; or*

*(C) any other entity, including a broadband service or infrastructure provider, that the Assistant Secretary finds by rule to be in the public interest. In establishing such rule, the Assistant Secretary shall to the extent practicable promote the purposes of this section in a technologically neutral manner . . . .*

accomplish at least one of the first four goals of the BTOP program,<sup>11</sup> 2) will accomplish the fifth purpose of the BTOP program,<sup>12</sup> and 3) will not result in unjust enrichment to the entity or its shareholders. Regarding the last point, we do not believe that users should be forced to pay for investments twice, once through taxes and again through rates. For example, public utilities are not permitted to include recovery of grant funds in their rate base. State utility commissions are tasked to be vigilant against inappropriate ratemaking practices, but may have little control over broadband rates. For entities that charge market rates, and are not subject to effective competition, the rate benefit to consumers of the grants provided may be especially important and should be a part of the application review process. We recommend that the NTIA ensure that ratepayers fully benefit from grant awards by placing a requirement on grant recipients to provide customer rate information and making it clear that rate information may be used as a factor in the evaluation of proposals.

*4. Establishing Selection Criteria for Grant Awards: The Recovery Act establishes several considerations for awarding grants under the BTOP.<sup>13</sup> In addition to these considerations, NTIA may consider other priorities in selecting competitive grants.*

- a. What factors should NTIA consider in establishing selection criteria for grant awards? How can NTIA determine that a Federal funding need exists and that private investment is not displaced? How should the long-term feasibility of the investment be judged?*
- b. What should the weighting of these criteria be in determining consideration for grant and loan awards?*
- 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?*
- d. Should priority be given to proposals that leverage other Recovery Act projects?*
- 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?*
- f. What factors should be given priority in determining whether proposals will encourage sustainable adoption of broadband service?*
- 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*

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<sup>11</sup> See footnote 1 for the purposes of the BTOP.

<sup>12</sup> As noted earlier, the fifth purpose of the BTOP is to stimulate the demand for broadband, economic growth, and job creation.

<sup>13</sup> 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).

*extent practicable, the purposes of the statute should be promoted in a technologically neutral fashion?*

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

RCA Response: These are all important considerations that the NTIA may want to take into consideration when evaluating the merits of individual projects. However, the NTIA should be wary of establishing a rigid formula for evaluating projects (for example by using predetermined arbitrary weights) that overrules common sense and good judgment. Instead the NTIA should place great deference on each state's prioritization of projects as the states are in the best position to know which projects best promote the public interest in their state.

*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?*

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

RCA Response: We concur with the comments of the University of Alaska.

*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?*

*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)?*

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

*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)?*

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

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

*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?*

*h. Should other conditions attach to statewide inventory grants?*

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

*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?*

RCA Response: We believe the primary purpose of a national broadband inventory map should be to "encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans..." [47

U.S.C. 157] However, in the short term, before a national map is available, state maps will assist in the identification of unserved and underserved for the awarding of BTOP and RUS grant funding.

In setting standards for inventory maps, the NTIA should recognize that some states have already completed maps and some states are only beginning. In addition, states with completed maps may not have used uniform standards. We encourage the NTIA to provide as much guidance as possible so that states can begin moving toward a common, minimum standard regarding the type of information to be collected and how it is mapped. States should also have the authority to exceed the minimum standard if necessary to properly identify underserved and unserved areas. For example, a minimum standard may require that mapping occur by census tract, with the ability of states to require data below the census tract level if appropriate.

We also believe that it may be necessary for the FCC and NTIA to address confidentiality. It is clear from the NTIA/RUS public meetings that concerns about confidentiality have on occasion delayed the production of state maps and according to some have resulted in maps that are of limited use and difficult to verify.<sup>14</sup> There is clearly a balance between the legitimate confidentiality concerns of a provider and the public interest in disclosure. We encourage the NTIA and FCC to establish a uniform standard so the production of maps is not needlessly delayed in state by state disputes over disclosure agreements. We would also encourage the NTIA and RUS to consider requiring grant applicants to agree to the public release and public use of mapping data that is consistent with the confidentiality standards established by NTIA and FCC.

Finally, we believe the FCC's current use of census tracts to identify broadband availability may not provide sufficient granularity in rural communities of Alaska. While use of census tracts may provide greater detail than zip codes (the FCC's previous method) in urban areas; in rural areas of Alaska and possible other states, multiple communities (each with a different zip code) can be subsumed into a single census tract. This will preclude identification of unserved and underserved areas by community, and may cause funding agencies to incorrectly conclude that a community already has access to broadband when it does not. We encourage the FCC to re-examine this aspect of its mapping program.

*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?*

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

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<sup>14</sup> NTIA March 23, 2009 public meeting Roundtable on Broadband Mapping.

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

RCA Response: We request that the NTIA clarify whether a 20% contribution is required for eligible entities applying for broadband mapping grants under the BDIA.<sup>15</sup> While it appears to us that a 20% contribution may be required,<sup>16</sup> there appears to be confusion about this requirement based upon testimony at the NTIA/RUS public meeting. At the March 10, 2009 public meeting a member of the public stated his belief that the "80/20" did not apply to broadband mapping grants,<sup>17</sup> and was not corrected by the members of the panel or NTIA officials in attendance. We attempted, but did not receive, clarification by email from NTIA about this requirement; however we were encouraged to submit comments addressing this issue.

To the extent that NTIA does not interpret the ARRA to include an automatic exemption of the 20% contribution for broadband mapping, we would encourage NTIA to find good cause to grant an exemption under its own authority.<sup>18</sup> We believe good cause exists for the following reasons. The NTIA needs to determine which areas in each state are unserved and underserved in order to award grants. However, NTIA's national broadband map will not be complete until 2011, well after the deadline for awarding grants. NTIA will need to depend therefore on states to assist them with this crucial function. Many states in turn will be depending on mapping funds to help generate this data. To the extent state agencies must obtain matching funds from their legislatures, the process could be delayed. In some cases, a state's legislative budget cycle may preclude obtaining funds until it is too late to be of any use to assist NTIA in awarding of funds.

As a last point, if a 20% contribution is required, clarification will be needed regarding what types of costs (e.g., personnel costs, state funds) qualify towards the 20% contribution.

*10. Timely Completion of Proposals: The Recovery Act states that NTIA shall establish the BTOP as expeditiously as practicable, ensure that all awards are made before the end of fiscal year 2010, and seek assurances from grantees that projects supported by the programs will be substantially completed within two (2) years following an award. The Recovery Act also requires that grant recipients report quarterly on the recipient's use of grant funds and the grant recipient's progress in fulfilling the objectives of the grant proposal. The Recovery Act permits NTIA to de-obligate awards to grant recipients that demonstrate an insufficient level of performance, or wasteful or fraudulent spending (as defined by NTIA in advance), and award these funds to new or existing applicants.*

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

*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)?*

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<sup>15</sup> Broadband Data Improvement Act

<sup>16</sup> Public Law 110-385, Section 106(c)(2).

<sup>17</sup> "The second question I have, *it seems like the mapping dollars, there is no 80-20, it's a grant I presume to an organization in each state to do mapping?*" [Transcript p. 54, lines 12-15].

<sup>18</sup> ARRA, Section 6001(f).

RCA Response: We believe the most efficient, effective, and fair way for the NTIA and RUS to meet the requirements of the ARRA is for those agencies to 1) focus on a simplified and uniform application form and application process, and 2) allow states to review and rank applications through the process proposed by NARUC (see discussion above in response to Question No. 2).

*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?*

*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)?*

RCA Response: We concur with the comments of the State of Alaska.

*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?"*

*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?*

*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?*

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

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

*(4) Should failure to abide by whatever obligations are established result in deobligation*

*of fund awards?*

*(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?*

*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?*

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

RCA Response: In defining "broadband", "unserved", and "underserved" NTIA is encouraged to take into consideration factors such as upload speed, latency, symmetry, and price, in addition to the most common definition of broadband -- download speed. As Commissioner Gillett of Massachusetts has noted, any location, in theory, has access to broadband over satellite.<sup>19</sup> However, there is a heavy a price to pay in terms of cost, latency and other factors compared to fiber based access. These issues should be considered in defining "broadband", "unserved", and "underserved".

For example, GCI's DeltaNet network is a terrestrial microwave network, funded through Rural Alaska Broadband Internet Access Grant Program, which connects 47 remote communities in the western part of the state to a satellite link in Bethel, a regional hub. Residential Internet access provided through this network is available to customers at an advertised speed of 256 kbps downstream and 56 kbps upstream for about \$50 per month. While this represents a significant improvement over dial-up, residential Internet services in many urban areas of the U.S. are available at much greater speeds, less latency, and much lower price. Providing 3 Mbps bandwidth over satellite to western Alaska could be done but would be prohibitively expensive as a residential service offering. Our point here is that determining whether an area is served or unserved should not be a simple question of what speeds are possible.

If NTIA defines broadband purely in terms of speed (i.e., kbps or mbps) the definition of the terms "unserved" and "underserved" should incorporate factors such as latency, symmetry, and price. For example, if broadband is defined as 1 mbps download, any area where access to those speeds is not generally available for a reasonable price should be considered unserved. An area where access to those speeds is generally available but not at a reasonable price or for which latency is a major factor should be considered unserved, or at a minimum, underserved.

NARUC has proposed a definition of unserved that means "no facilities-based Internet access other than dial-up and satellite based access." We support this definition. Another approach we could support is to assume that any

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<sup>19</sup> "[I]t could be said that broadband is available everywhere in this country if everyone is willing to pay for a T-1 circuit, most people are not so the price that is available is relevant in terms of thinking it's not just availability, it's availability with what price." "[I]f one is capable of paying a lot of money broadband is available everywhere. The question is how much does it cost and what do you get for the money." Sharon Gillett, Commissioner, Massachusetts Department of Telecommunications and Cable, at NTIA March 23, 2009 public meeting Roundtable on Broadband Mapping.

community without direct middle mile fiber access to a major Internet hub or that relies on satellite transport for any portion of its access is by definition unserved.

*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.*

RCA Response: We concur with the comments of the State of Alaska.

### **RUS Questions:**

*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?*

RCA Response: The most effective way for RUS and NTIA to combine their activities and to ensure that applicants do not receive duplicate resources and are not hampered in their ability to apply for funds from both agencies is 1) to let applicants apply using a single application form that can be submitted to one or both agencies, and 2) allow states to review and rank applications as proposed by NARUC.

*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)?*

RCA Response: We concur with the comments of the State of Alaska.

*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.*

RCA Response: We concur with the comments of the State of Alaska.