

Before the
NATIONAL TELECOMMUNICATIONS & INFORMATION ADMINISTRATION
AND THE
RURAL UTILITIES SERVICE
Washington, D.C

Joint Request for Information)
To: NTIA & RUS)

Docket No. 090309298-9299-01

COMMENTS OF SUNESYS, LLC

Respectfully submitted,

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SUMMARY

NTIA should declare any private sector entity eligible for BTOP funding so long as such entity is authorized to do business in the State in which its project is proposed to be deployed (if such authorization is required under state law) and the following baseline public interest requirements are present: (i) Any infrastructure to be utilized in connection with the applicant's proposal must be IP-based, and technology neutral; and (ii) The private sector applicant's proposal must be compliant with the FCC's 2005 Broadband Policy Statement.

In defining "underserved" areas, it is critical that the FCC and NTIA serve the overriding objective of the BTOP – namely, to greatly increase the use of broadband service in the United States. The most effective means of increasing such use is to stimulate demand for broadband services in low income areas via "Community Anchors." Sunesys proposes that the definition of "underserved" areas include, at a minimum, those geographic areas defined by the boundaries of school districts eligible for at least an 80% discount under the federal e-rate program. Under this definition, the following is ensured: (i) Only areas with very low income levels will be defined as "underserved"; (ii) Prompt implementation within the BTOP's deadlines will be enabled; and (iii) Most or all Community Anchors will be subject to funding.

No more than one-half of ARRA broadband funding (\$3.35 billion) should be apportioned to unserved areas, and the remaining \$3.35 billion should be apportioned to the provision of broadband services to Community Anchors in low income areas. Apportioning a high percentage of the ARRA's available broadband funds to areas that are *not unserved* will provide the most benefit to the greatest number of consumers.

"Highest Priority" treatment should be afforded to applications that demonstrate that proposed projects will (i) Guarantee a substantial transmission speed to ensure that the project will be future proof (utilize an infrastructure capable of transmission speeds of at least 100 Mbps to each location/user in the proposed design, and be upgradeable to at least 1Gbps); (ii) Ensure the greatest increase in broadband utilization for the greatest number of people; and (iii) Be scalable and sustainable throughout the lifetime of the network.

Applications identified for "Highest Priority" treatment should be weighted using the following criteria: (i) No 20% "Matching Fund" Waiver; (ii) High Certainty of Timely Commencement/Successful Completion of Project; (iii) High Certainty of Future "Follow-On" Projects Outside of BTOP; and (iv) Enhancement to Public Safety. In the event that the weighting of "Highest Priority" applications results in a tie, NTIA should use early completion commitments as a tiebreaker factor.

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COMMENTS OF SUNESYS, LLC

Sunesys, LLC (“Sunesys”), by undersigned counsel, hereby submits these comments to the National Telecommunications & Information Administration (“NTIA”) and the Rural Utilities Service (“RUS”) pursuant to a joint request for information¹ relating to the implementation of the American Recovery & Reinvestment Act² by such agencies. Sunesys’ comments focus primarily on the Broadband Technology Opportunities Program (“BTOP”) to be administered by NTIA.

Sunesys, a leading provider of digital fiber-optic communications networks capable of providing high-speed broadband access and services, has designed, built and maintained fiber optic networks for over a decade. Where feasible, Sunesys’ network deployment has increasingly targeted less wealthy areas where Sunesys serves community anchor institutions in those areas, including schools, libraries and health care facilities. However, the company desires to extend deployment to community anchor institutions in very low income areas with extremely low broadband utilization rates, for which grant funding is necessary to make such deployment practical.

Community anchor institutions in those areas desperately need broadband services that will provide their multiple user environments with the necessary broadband capabilities

¹ Joint Request for Information and Notice of Public Meetings, 74 Fed. Reg. 10716 (Mar. 12, 2009).

and Congressionally-mandated benefits contemplated under BTOP. Such institutions are the key to greatly increasing broadband utilization in such areas. As discussed herein, community anchor institutions uniquely address the two primary barriers to underutilization of broadband services in low income areas: (i) the perception that broadband services have little or no utility; and (ii) the lack of affordability of such services. Given Sunesys' track record of providing such services to community anchor institutions, it is in an excellent position to offer its comments as to the most effective and efficient way to implement the BTOP in order to overcome these substantial barriers and greatly increase broadband utilization.

I. Eligibility of Private Sector Entities

Under the BTOP, Congress vested in NTIA the authority to declare private sector entities eligible for broadband grants.³ NTIA should promptly exercise such authority and confirm that – subject to certain baseline public interest requirements – private sector entities are eligible for grants under the BTOP to the same extent as the other categories of eligible entities specified in the statute.

Specifically, NTIA should declare any private sector entity eligible for BTOP funding so long as such entity is authorized to do business in the State in which its project is proposed to be deployed (if such authorization is required under state law) and the following baseline public interest requirements are present:

- Any infrastructure to be utilized in connection with the applicant's proposal must be IP-based, and technology neutral.
- The private sector applicant's proposal must be compliant with the FCC's

² Pub. L. 111-5, 123 Stat. 115 (2009) ("ARRA").

³ BTOP, §6001(e)(1)(C).

II. Defining “Underserved” Areas

In defining “underserved” areas, it is critical that the Federal Communications Commission (“FCC”) and NTIA serve the overriding objective of the BTOP – namely, to greatly increase the use of broadband service in the United States. For the reasons discussed herein, the most effective means of increasing such use is to stimulate demand for broadband services in low income areas via “Community Anchors.” For the purposes of these Comments, “Community Anchors” is defined to include: (i) Schools – Including K-12 education, and institutions of higher education (e.g., universities and community colleges); (ii) Libraries – Including regional and local public libraries, and any other libraries located in schools; (iii) Medical and health care facilities – Including regional and local hospitals, clinics and telehealth facilities; and (iv) Civic community centers.

A. **To Increase Broadband Utilization for the Greatest Number of Consumers, Broadband Demand Must Be Stimulated In Low Income Areas, Via Community Anchors**

1. **The BTOP’s Overriding Objective is to Substantially Increase Actual Utilization of Broadband Services**

The very first factor Congress identified for Commerce Department consideration of BTOP applications is whether an application will “[p]rovide the *greatest increase in the number of users* of the service in that area (while also increasing the affordability of the service).”⁵ Similarly, in the BTOP, Congress required the FCC’s national broadband plan to include, among other things, a “strategy for achieving affordable service and *maximizing utilization*

⁴ “Appropriate Framework for Broadband Access to the Internet over Wireline Facilities”, Policy Statement, CC Docket No. 02-33 et al. (2005).

⁵ BTOP, §6001(h)(2)(A) (emphasis added).

of broadband infrastructure and services.”⁶ These statements, taken together with Congress’ repeated demands for the provision of improved broadband access,⁷ broadband education, awareness and access,⁸ and the “stimulat[ion of] demand for broadband”,⁹ make it clear that Congress’ overriding objective in the BTOP is to substantially increase the number of consumers actually using broadband service.

This, of course, makes perfect sense. The benefits of broadband in any area can be realized *only if* consumers in such area actually use broadband services. BTOP funding must, therefore, be distributed in ways that ensure that such broadband usage will greatly increase.

2. Given the BTOP’s Overriding Objective, the Definition of Underserved Areas Must Encompass Areas with Low Broadband Utilization Rates

a. The most urgent need for stimulus funds is in areas where broadband access technically exists but in reality utilization is quite low. In common vernacular, such areas are “underserved” because relatively few people in those areas use broadband service. More importantly, the definition of “underserved” for purposes of the BTOP should include those areas. After all, given the overriding purpose of the BTOP (see Section II(A)(1), *supra.*) if areas that have low utilization are overlooked, and somehow not considered underserved, such areas may inequitably be left out in the cold when it comes to stimulus funding.

⁶ BTOP, §6001(k)(2)(B) (emphasis added).

⁷ See, e.g., BTOP, §6001(b)(2).

⁸ See, e.g., BTOP, §6001(b)(3).

b. Some parties may claim that the definition of “underserved” should be based solely on the number of broadband providers in an area or the speed in which the service is provided. Such suggestions are unworkable because an area may have several providers offering broadband services, and/or one or more providers offering such services at high speeds, yet still have relatively few people actually using the services. Accordingly, those approaches for defining “undeserved” areas are not the most suitable means of defining the term. At best, they are under-inclusive because they do not ensure that the definition is sufficiently broad to include the most important areas -- areas in which relatively few people are actually using the services. Accordingly, at a minimum, “underserved” areas must include areas in which relatively few people are actually using broadband services.

3. Underutilization of Broadband Services is by far the Most Prevalent in Low Income Areas

- a. The number of low income consumers utilizing broadband services is far too low. Considering broadband usage at home,
- 42% of consumers with household incomes under \$20,000, and 30% of consumers with household incomes between \$20,000-\$30,000, do not utilize broadband at home *at all*.¹⁰

⁹ See, e.g., BTOP, §6001(b)(5).

¹⁰ Horrigan, John, Pew Internet & American Life Project, “Barriers to Broadband Adoption – The User Perspective,” December 19, 2008, available at http://otrans.3cdn.net/fe2b6b302960dbe0d7_bqm6ib242.pdf (p.3).

- Consumers with household incomes under \$20,000 reported *no growth* in home broadband use from 2007 to 2008.¹¹

b. As a 2008 NTIA report demonstrates, it is abundantly clear that, for both rural and urban areas, broadband utilization is dramatically less in low income areas than in middle-income and wealthier areas.¹² In fact, as the chart below shows, broadband usage is far greater even in rural areas for persons earning over \$25,000 than it is in urban areas for persons earning less than that amount.¹³

	Income Greater Than \$24,999		Income Less Than \$25,000	
Broadband Usage	Urban	Rural	Urban	Rural
	61%	45%	26%	15%

4. Demand for Broadband Services is Far Less in Low Income Areas Primarily Because of Two Barriers: A Perceived Lack of Need for Such Services, and Affordability

- a. In a survey of those consumers who are either using only dial-up or not using the internet at all at home, *51% cite reasons related to the irrelevance of broadband to their lives*. Similarly, 33% of consumers not using the internet at home cite “not interested” as their primary reason for not using the internet.¹⁴
- b. Further, as indicated by TIA, where broadband services are available but underutilized in rural areas, the top barriers to broadband utilization are a

¹¹ Id.

¹² See Comments of the Consumer Federation of America and Consumers Union to the FCC, Gn. Dkt. 09-29, p. 2 (March 25, 2009), citing NTIA, “Networked Nation, Broadband in America”, (January 2008), Appendices.

¹³ Id.

perceived lack of need for such services and a lack of computer ownership. TIA states that only nineteen percent (19%) of consumers who do not use broadband services in rural areas claim it is due to a lack of availability. Forty-two percent (42%) indicate they believe they do not need broadband services and thirty-four (34%) state that they do not have a computer.¹⁵ This data would almost certainly hold true in low-income, non-rural areas where broadband is greatly underutilized.

- c. It is axiomatic that if in the first instance residents of low income areas do not even perceive a need to use broadband service, widespread broadband utilization in such communities will never be achieved. Moreover, even once such residents recognize the importance of broadband use and the benefits it can bring, many of them may still be unable to use it unless issues concerning affordability are also adequately addressed.

5. The Most Effective Way to Increase Broadband Utilization in Low Income Areas is to Stimulate Demand through Community Anchors

As demonstrated above, inadequate demand for broadband services in low income areas has resulted in unacceptably low broadband utilization rates. To fulfill Congress' mandate to stimulate the demand for broadband service in these areas, demand must be stimulated not only effectively - to ensure maximization of the number of users, but also efficiently - given the finite amount of funds available under the BTOP.

¹⁴ Id.

¹⁵ See Comments of The Telecommunications Industry Association to the FCC, Gn. Dkt. 09-29, p.4.

In other words, in defining “underserved” areas, the FCC and NTIA must adopt a solution that stimulates demand in a manner that gives the nation the “most bang for the buck.” To this end, and consistent with Congress’ stated purpose to “provide broadband education, awareness, training, access, equipment and support,”¹⁶ the BTOP must stimulate demand for low income consumers by substantially increasing affordable, community-based broadband education and access opportunities, *specifically via Community Anchors*.

As described below, Community Anchors in low income areas are in the best position to overcome the barriers that are impeding broadband utilization in such areas. Yet these institutions are themselves burdened by affordability issues due to the anti-competitive nature of closed, incumbent networks. In low income areas, Community Anchors simply cannot afford service that will provide its multiple-user environment with the necessary broadband capabilities and Congressionally-mandated benefits contemplated under BTOP.

a. The Language of the BTOP Demonstrates Congress’ Recognition that Community Anchors are Critical to Stimulating the Demand for Broadband Services

A recurring theme throughout the BTOP is the critical importance of “ensuring” broadband access to Community Anchors. Congress recognized the critical importance of ensuring access to such institutions in the BTOP with respect to: (i) the permitted uses for competitive grants,

¹⁶ BTOP, §6001(b)(3).

(ii) the BTOP’s list of purposes, and (iii) the BTOP’s categories of entities to be benefited by grants:

- i. The BTOP specifies a list of permitted uses for competitive grants. In that list, Congress provides that competitive grants will be provided in connection with, among other things, “ensur[ing] access to broadband service” by Community Anchors.¹⁷ None of the other permitted uses incorporates such mandatory language (i.e., “ensuring”), which underscores the importance that Congress places on securing broadband access via Community Anchors.
- ii. One of the express purposes of the BTOP is to provide “broadband education, awareness, training, access, equipment and support to ...[s]chools (including institutions of higher education), libraries, medical and health care providers, and other community support organizations to promote greater use of broadband by and through these organizations.”¹⁸
- iii. The BTOP further provides that in determining to whom grants should be allocated, NTIA shall consider whether “an application to deploy infrastructure will ... enhance services for health care delivery, education or children to the greatest population of users in the area.”¹⁹

¹⁷ BTOP, §6001(f)(3).

¹⁸ BTOP, §6001(b)(3)(A).

¹⁹ BTOP, §6001(h)(2)(C).

b. Ensuring Broadband Service to Community Anchors Addresses Both the Perception and Affordability Barriers that Otherwise Prevent Greater Utilization of Broadband in Low Income Areas

Broadband deployment to Community Anchors, including schools, libraries and health care facilities, best addresses both the “perception” and “affordability” barriers that have impeded utilization of broadband in low income areas.²⁰

With regard to “perception”, as discussed above, far too many residents in low income areas do not perceive a need to use broadband service. As described more fully below, Community Anchors not only provide the opportunity for citizens to learn the tremendous benefits of broadband services, but those institutions also provide education as to how to most effectively utilize broadband services to realize the benefits. With regard to “affordability,” Community Anchors generally serve as the only no-fee access point to broadband or telemedicine services. For these reasons, Community Anchors are in the best position to stimulate broadband demand in the areas where such demand is low.

²⁰ In these comments, references to broadband services for Community Anchors refer to services at speeds that allow each user, in such multi-user environments, to actually obtain the benefits of broadband that Congress contemplated under the BTOP.

i. Broadband Access Via Schools

Ensuring unfettered broadband access to schools in low income areas would provide the following immediate benefits to students and other persons accessing the facilities:

- Free access to broadband services, and training on how to utilize such services.
- Distance education opportunities, enabling students to learn from teachers in other cities, states and countries, as well as from students in other locales, and to learn subjects not taught at the local school.
- A primary source of long-term job creation, by providing students with the education and training required to eventually join the workforce.

With respect to the critical role broadband plays in education, a recent report from the Benton Foundation aptly concluded as follows:

“The competitiveness and vibrancy of our economy, as well as our homeland security, depend on our ability to maintain a highly-skilled workforce. We must educate new generations of digitally literate citizens to ensure they are able to compete successfully in today’s global workforce and participate in our increasingly knowledge-based society. Our education system, however, is failing to meet this challenge....The bottom line is that rather than “no child left behind,” the failure to fully infuse technology and broadband throughout the education system has left behind many of America’s children.”²¹

²¹ Rintels, Jonathan, “An Action Plan for America; Using Technology And Innovation To Address Our Nation’s Critical Challenges”, Benton Foundation, 2008, p.20 (internal citation omitted) (“Benton Report”).

ii. **Broadband Access Via Libraries**

The American Library Association recently reported that:

“Millions of people throughout the United States depend on libraries for their access to online educational opportunities, job-seeking assistance, e-government interactions, and help in using information resources. Almost 73 percent of libraries report they are the *only* source of free access to computers and the Internet in their communities.”²²

This synopsis confirms that ensuring broadband access via libraries in low income areas provides these critical benefits:

- Broadband services generally provided at no charge.
- Training, via librarians and other staff, in the use of broadband services, and education as to the benefits of such services.
- Enabling use, by consumers otherwise without access, of broadband services to access online resources allowing them to pursue additional education or retooling of skills.
- Supporting consumers in job searches and career development.
- Providing access to government e-services, homework assistance, and access to health care information.

iii. **The Link Between Broadband in Schools and Libraries, and Job Creation**

An important purpose of the Recovery Act itself is to “preserve and create jobs and promote economic recovery.”²³ Thus, the importance of the potential for job creation resulting from broadband access in schools and libraries cannot be understated.

²² Davis, Denise, et al., “Libraries Connect Communities; Public Library Funding & Technology Access Study 2007-2008”, American Library Association, 2008, p.12 (emphasis in original).

²³ ARRA, §3(a)(1).

In this regard, the Congressional Research Service recently reported on the results of a 2007 Brookings Institution report that found that “for every one percentage point increase in broadband penetration in a state, employment is projected to increase by 0.2 to 0.3% per year. For the entire U.S. private non-farm economy, the study projected an increase of about 300,000 jobs.”²⁴ Another report concluded that “1.2 million jobs could be created if next-generation broadband technology were rapidly and ubiquitously deployed.”²⁵

As explained in (a) and (b) above, schools and libraries represent the primary source for no-fee access to broadband, which thereby enhances both short-term and long-term job creation. Accordingly, ensuring broadband access via schools and libraries is arguably the most important goal to be achieved by BTOP and to be implemented by the FCC and NTIA.

iv. Broadband Access Via Health Care Facilities

It is beyond dispute that “[t]elecommunications technology such as broadband offers a tremendous opportunity to make America healthier and allow Americans to live longer, while at the same time saving our nation what some have estimated to be *as much as \$165 billion a year, enough to insure 37 million individuals, more than three-quarters of*

²⁴ Kruger, Lennard, and Gilroy, Angele, “Broadband Internet Access and the Digital Divide: Federal Assistance Programs”, Congressional Research Service, February 20, 2009, p.3.

²⁵ Windhausen, John Jr., “A Blueprint for Broadband”, Educause, January 2008, p.15 (“Blueprint”).

*all uninsured Americans.... Widespread adoption of [telehealth and digital health information technology] will significantly stimulate both the build-out, and demand, for universal, affordable, and robust broadband.”*²⁶ In brief, ensuring broadband access via health care facilities in low income areas will allow physicians to:

- “[R]emotely monitor patients,
- [F]acilitate collaboration between medical professionals,
- [E]xchange medical data and images”,²⁷ and
- Provide “higher quality medical care”... “more conveniently to patients at a significantly lower cost....”²⁸

B. Therefore, the Definition of “Underserved” Areas Must Include Low Income Areas Encompassing Most or All Community Anchors – Namely Low Income/High E-Rate Discount (80% or More) School Districts

In light of the foregoing, any definition of “underserved” areas must:

- Specify areas with dramatically low income levels (to address significant underutilization of broadband by the largest number of persons); and
- Specify areas the boundaries of which have already been defined (to address the need to quickly implement the BTOP within the statute’s deadlines); and
- Specify areas which encompass most or all of the Community Anchors for low income populations (to most effectively stimulate demand for broadband).

²⁶ See, e.g., Benton Report, p.15, citing “Upgrade America’s Health Care System: Pass Health IT Legislation Now,” Business Roundtable, April 2, 2008 at www.businessroundtable.org/publications/publication.aspx?; and Blueprint, p.13.

²⁷ Benton Report, p.15, citing Julie Schwartz, “Telehealth: Merging of Technology and Medicine Leads to Improved Healthcare,” Progressive States Network, May 19, 2008 at www.progressivestates.org/content/840/telehealth-merging-of-technology-and-medecine-leads-to-improved-healthcare#4.

²⁸ Benton Report, p.15.

Accordingly, Sunesys proposes that the definition of "underserved" areas include, at a minimum, those geographic areas defined by the boundaries of school districts eligible for at least an 80% discount under the federal e-rate program.

Under this definition, the following is ensured:

1. Only areas with very low income levels will be defined as "underserved"

E-rate discount levels are directly tied to objective federal poverty statistics (i.e., the percentage of students in a school district eligible for the National School Lunch Program). Under Sunesys' proposal, a school district would be defined as "underserved" *only if more than 50%* of the students in that district are eligible for the National School Lunch Program.²⁹ In addition, this approach would also ensure that most "enterprise communities", "empowerment zones" and Section 45D low-income populations are included in "underserved" areas.

2. Prompt implementation within the BTOP's deadlines will be enabled

The BTOP's two year build-out deadline requires that any definition of "underserved" not involve 're-inventing the wheel.' Instead RUS and NTIA should utilize an existing geographic definition already used by the federal government for communications-related matters. In this regard, Sunesys' proposal ensures prompt implementation, because identification of "underserved" districts will simply require reference to the appropriate

²⁹ An 80% e-rate discount is available in school districts where between 50-74% of students are eligible for the National School Lunch Program, and a 90% e-rate discount is

website link(s) where the e-rate discount levels of individual districts can be identified and sorted.

3. Most or all Community Anchors will be subject to funding

Perhaps most importantly, school districts are useful boundaries for defining “underserved” areas under the BTOP because such boundaries will invariably encompass most or all of the Community Anchors in every low income/high e-rate area. For all of the reasons discussed above, maximizing service to these Community Anchors is essential to the fulfillment of Congress’ objectives. Thus, defining “underserved” areas using low income/high e-rate school district boundaries is simple, logical and enormously effective.

III. No More than One-Half of ARRA Broadband Funding (\$3.35 Billion) Should Be Apportioned to Unserved Areas, and the Remaining Funds Should be Apportioned to the Provision of Broadband Services to Community Anchor Institutions in Low Income Areas

For the reasons set forth below, no more than one-half of ARRA broadband funding (\$3.35 billion) should be apportioned to unserved areas, and the remaining \$3.35 billion should be apportioned to the provision of broadband services to Community Anchors in low income areas.

A. \$6.7 Billion is Available for Broadband Funding under ARRA

1. Of the \$7.2 billion available under the ARRA for broadband-related activities, approximately \$500 million in the aggregate is available for broadband mapping and related studies together with audits and oversight of funds, and administrative costs, under the BTOP.

available in school districts where between 75-100% of students are eligible. See:

2. The remaining \$6.7 billion is available for funding under the BTOP and the Distance Learning, Telemedicine and Broadband Program to be administered by RUS (“RUSDLT”). A portion of these funds will be provided to “unserved” areas, and the remainder of the funds will be provided to other areas, including “underserved” areas.

B. Apportioning a High Percentage of the ARRA’s Available Broadband Funds to Areas that are *Not Unserved* Will Provide the Most Benefit to the Greatest Number of Consumers

1. Under virtually any measure or definition, “a greater percentage of the population is underserved than unserved.”³⁰ In fact, there are approximately three to four times (i.e., 300% to 400%) as many non-broadband users in underserved areas, as there are residents in unserved areas.³¹
2. Demand for broadband can be more efficiently and effectively stimulated in “underserved” areas than in “unserved” areas, thereby enabling a more efficient and effective deployment and utilization of BTOP funds.

“Underserved” areas will in most cases already have in place at least some basic communications infrastructure that can be utilized, upgraded or expanded for the purposes of broadband deployment. In addition, in many cases, existing broadband networks already effectively surround “underserved” areas and their critical Community Anchors, which as

<http://www.usac.org/sl/applicants/step05/discount-matrix.aspx>.

³⁰ See Comments of PCIA and the DAS Forum to the FCC, GN Dkt. 09-29, p. 3 (March 25, 2009).

³¹ See Comments of National Cable & Telecommunications Association to the FCC, Gn. Dkt. 09-29, p. 13,15 (DATE 2008) (Explaining that “9-10 million” consumers are unserved, while the underserved population is “35 million households”).

discussed herein are the key to stimulating demand in low income areas (see Section II(A)(5), *supra.*). For example, Sunesys estimates that on the average the broadband infrastructure it has deployed in the New Jersey area is within only 1 mile from low income Community Anchors. Accordingly, it will be far less costly to greatly increase utilization in underserved areas than it will be to provide access in unserved areas.

C. In Light of the Foregoing, at Least Fifty Percent of the Available \$6.7 Billion ARRA Broadband Funds Should be Apportioned to Areas Other than Unserved Areas

1. Of the remaining \$6.7 billion available for broadband funding referenced in Section III(A) above, \$2.5 billion is already allocated to areas under RUSDLT that likely will be, in large part, categorized as both “unserved” under the BTOP and “rural” under the overlapping RUSDLT. There is undoubtedly substantial overlap with “unserved” populations for whom funding will be allocated under the BTOP, and “rural” populations for whom funding will be allocated under RUSDLT.
2. Accordingly, to ensure that areas other than “unserved” areas receive at least 50% of the 6.7 billion dollars in funding, at least \$3.35 billion of the BTOP funds should be allocated to such underserved and other areas. Simply put, because “unserved” populations will necessarily be funded in part by two different programs – RUSDLT and the BTOP, but the “BTOP” is the *only* avenue for funding of all other areas, NTIA should ensure that at least one-half of ARRA broadband funding (\$3.35 billion) is apportioned to such other

areas, including low-income areas where broadband utilization rates are extremely low.

3. The reasoned approach set forth above is necessary to fulfill Congress' overriding objective in the BTOP (to substantially increase the number of residents actually using broadband service - See Section II(A)(1) herein). By taking this approach, NTIA will be providing consumers with the most efficient utilization of the funds available, while still providing additional funds to "unserved" areas, which are the primary focus of the RUSDLT program.

D. At Least \$3.35 Billion of the Available \$6.7 Billion Should be Apportioned in connection with the Provision of Broadband Services to Community Anchor Institutions in Low Income Areas

1. As discussed in greater detail above,
 - a. The BTOP's overriding objective is to substantially increase actual utilization of broadband services. Therefore, the focus of the funding for areas that have broadband access must be on locations where there are very low utilization rates.
 - b. Underutilization of broadband services is by far the most prevalent in low income areas.
 - c. Demand for broadband services is far less in low income areas primarily because of two barriers: a perceived lack of need for such services, and affordability.
 - d. The most effective way to increase broadband utilization in low income

areas is to stimulate demand through providing broadband service to Community Anchors, which effectively addresses both of the barriers to broadband underutilization in low income areas.

- e. The language of the BTOP demonstrates that Congress also recognizes that Community Anchors are critical to stimulating the demand for broadband services.
2. Given the relatively limited amount of funds provided for in the BTOP, the greatest benefit can be provided to the most residents by providing considerable funding in connection with the provision of broadband services to Community Anchors in low income areas. Accordingly, at least \$3.35 billion should be apportioned for this purpose.
 3. Apportionment of ARRA broadband funding must result in the most widespread distribution of funds possible to the most needy populations. The unique circumstances underlying the passage of the ARRA, and the limited amount of funds available, require that apportionment should positively impact as many non-broadband users as possible. Thus, at this critical moment in history, apportionment of funds to underserved populations in low income areas cannot focus on achieving individual connections on a residence-by-residence basis, which approach is not the most efficient use of limited resources. Rather, as discussed herein, apportionment for underserved low income areas must ensure the most efficient use of ARRA funding through service to Community Anchors – institutions which can instantly and

simultaneously reach exponentially more low income non-broadband users and provide them with free broadband access and training.

By providing efficient and widespread access now to Community Anchors using ARRA's finite funds, the groundwork will be laid for future access to individual low income residents because (i) such residents will receive significant broadband access and training under ARRA funded projects; and (ii) future network extensions to residences will be greatly facilitated.

Accordingly, while statutory priorities may support apportionment of one-half of funding (\$3.35 billion) to unserved/rural populations, the remaining one-half of such funding (\$3.35 billion) should be apportioned for the provision of service to Community Anchors in underserved low income areas.

IV. Identification And Weighting of BTOP Application Criteria

Sunesys proposes that the following criteria and methodology govern NTIA's consideration and weighting of grant applications under the BTOP (except for "unserved" area applications, which are not directly addressed by these comments, and for which NTIA should separately evaluate proposed projects).

A. Identification and Weighting of "Highest Priority" Applications

1. Identification of "Highest Priority" Applications

As a general matter, "Highest Priority" treatment should be afforded to applications that demonstrate that proposed projects will (i) guarantee a substantial transmission speed to ensure that the project will be future proof; (ii) ensure the greatest increase in broadband utilization for the greatest number of people; and (iii) be scalable, and sustainable through the lifetime of the network. Accordingly, an application should

be afforded “Highest Priority” treatment only if the application meets the following critical requirements with respect to Speed, Increased Utilization via Community Anchors and Lifetime Network Sustainability:

- a. **Speed.** The application must propose to utilize an infrastructure capable of transmission speeds of at least 100 Mbps to each location/user in the proposed design, and be upgradeable to at least 1 Gbps;³² and
- b. **Increased Utilization through Community Anchors.** The application must propose deployment of broadband service to Community Anchors in low income areas, or otherwise demonstrate with reasonable certainty that the project will greatly increase broadband utilization.³³

c. **Lifetime Network Sustainability**

Lifetime network sustainability for low income areas can be achieved only via the deployment of a carrier neutral fiber network allowing any broadband carrier to access the physical infrastructure of the network.

Competition resulting from the presence of multiple carriers will naturally

³² It is very important that NTIA not award grants for projects that are just “band-aid” fixes, with technology soon to become out-dated. Yet, that will be the result unless applications are prioritized based on speed of the technology proposed. This is consistent with the Congress’ directive that projects “provide the greatest broadband speed possible...” BTOP, §6001(h)(2)(B).

³³ The overriding objective of the BTOP is to greatly increase broadband utilization. The most effective approach for achieving such goal is to increase utilization in low income areas via provision of service to community anchor institutions, such as schools, libraries and health care facilities. Demand is weak in low income areas due to issues relating to “perception”, i.e., a perceived lack of need for such services, and “affordability.” Community Anchors not only educate consumers as to the tremendous benefits of broadband services, but also provide education as to how to most effectively utilize broadband services to realize the benefits. In addition, these institutions generally serve as the only no-fee access point to broadband or telemedicine services. Thus, they address

drive broadband prices downward to prices that are affordable, foster demand for additional services, and consistently enable far more Community Anchors in low income areas to avail themselves of broadband service sufficient to provide their multiple-user environments with the necessary capabilities and Congressionally-mandated benefits contemplated under BTOP.

Even with the deployment of a carrier neutral fiber network, however, lifetime network sustainability - by definition - cannot be achieved through half-hearted, short-term commitments. Accordingly, applications seeking “Highest Priority” treatment must be required to demonstrate a commitment to abide by all net neutrality and network interconnection obligations imposed by NTIA throughout the entire time the technology is utilized – rather than just for some fixed duration of time , e.g., merely the 2 year build-out period under BTOP.

Applicants afforded “Highest Priority” treatment would be considered first for grant opportunities under the BTOP.³⁴ Applicants not eligible for “Highest Priority” evaluation would be considered secondarily based on the totality of commitments and representations in the applications, and any other criteria NTIA elects to utilize.

both the “perception” and “affordability” issues that are currently undermining broadband utilization in low income areas.

2. Initial Weighting Factors for “Highest Priority” Applications

Applications identified for “Highest Priority” treatment should be weighted using the following criteria – the more criteria present, the more weight should be afforded to a given application:

a. No 20% “Matching Fund” Waiver

While the amount of available BTOP funding is significant, the difficult truth is that such amount is simply insufficient to ensure that the goals of the BTOP are fully realized nationwide. Waivers of the 20% matching fund requirement, therefore, will negatively impact the ability of the BTOP to most efficiently enhance broadband utilization, given limited funds. Thus, weight should be afforded to “Highest Priority” applicants who will be responsible for payment of at least 20% of project costs, with no waiver request.

b. High Certainty of Timely Commencement/Successful Completion of Project

Broadband grants under the BTOP are effectively investments by the government in broadband projects. Applicants who can demonstrate a high certainty of timely commencement/successful completion of such projects present a better investment risk, and therefore should be weighted more favorably. An application containing each of the following showings should be considered to have demonstrated a high certainty of timely commencement/successful completion:

³⁴ As mentioned above, the criteria for evaluating projects for “unserved” areas are not addressed in these comments, and such projects should be separately evaluated under

- i. The project is “shovel ready,” meaning the applicant represents that it will commence construction within ninety (90) days after the grant is awarded, and commencement can and will occur prior to actual issuance of funds;
- ii. The applicant demonstrates a successful track record of completing the same types of projects in the same region;
- iii. The applicant possesses the existing managerial and technical expertise necessary to successfully complete the project (i.e., such personnel and expertise has been in place for more than 2 years prior to the application);
- iv. The application includes supporting documentation/commitments from prospective customers (e.g., letters of intent, joint application/deployment commitments);
- v. The application includes a conditional commitment to secure a performance bond for 100% of the grant amount within thirty (30) days after the grant is awarded.

c. High Certainty of Future “Follow-On” Projects Outside of BTOP

NTIA must encourage BTOP-funded projects to lead to the creation of additional “follow-on” broadband projects that would not have otherwise occurred absent the original BTOP grant (i.e., the applicant agrees to reinvest revenues it receives from the BTOP-funded project back into the community for follow-on projects). Such leveraging of BTOP grant funding will ensure that consumers receive the greatest benefit from the limited BTOP funds available under the ARRA. Accordingly, weight should be afforded to “Highest Priority” applicants who clearly establish that the proposed BTOP project, if funded, will lead to significant follow-on projects outside of the BTOP that would not otherwise have been economically feasible.

their own criteria.

d. Enhancement to Public Safety

One of the express purposes of the BTOP is to “improve access to, and use of, broadband service by public safety agencies.”³⁵ Applicants who demonstrate the creativity and flexibility to address this critical goal of Congress while also ensuring increased broadband utilization to the greatest number of consumers should be weighted favorably vis-as-vis other “Highest Priority” applicants.

B. “Early Completion” Tiebreaker for “Highest Priority” Applications

In the event that the weighting of “Highest Priority” applications results in a tie, NTIA should use early completion commitments as a tiebreaker factor. For example, between evenly weighted competing applications, an applicant proposing project completion within 12 months would receive tiebreaking credit over an application proposing completion only within the 24 month statutory deadline.

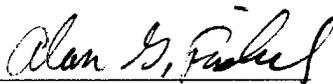
³⁵ BTOP, §6001(b)(4).

V. Conclusion

For the foregoing reasons, rules implementing the BTOP should be adopted consistent with the above Comments of Sunesys.

Respectfully submitted,

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