
**Before the
DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration
and the
DEPARTMENT OF AGRICULTURE
Rural Utilities Service
Washington, DC**

In the Matter of)
)
American Recovery and Reinvestment Act of) Docket No. 090309298-9299-01
2009 Broadband Initiatives)
)

To: The Under Secretary of Agriculture for Rural Development and the Assistant Secretary of
Commerce for Telecommunications and Information

COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

Jennie Chandra
Windstream Communications
1101 17th Street, NW, Suite 802
Washington, DC 20036
(202) 223-7667

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Its Attorney

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SUMMARY OF WINDSTREAM COMMENTS

The paramount goal of the Recovery Act's broadband programs should be deployment to consumers who lack access to broadband at speeds capable of supporting core services, such as remote conferencing, online banking, and distance education. Providing access to these services can transform how Americans work, play, are cared for and protected, and otherwise live their lives. Furthermore, broadband deployment offers a critical foundation for construction of cutting-edge energy, health, education, and transportation services, as called for in the Recovery Act.

Together broadband providers, including Windstream, have invested many tens of billions of dollars to connect much of the Nation to broadband services. Congress, however, recognized that a subset of consumers are not able to benefit from this tremendous effort because of the high costs of reaching their areas. Provided by the Recovery Act, grants hold the substantial promise of altering the economic barriers blocking new investment in the most remote and costly areas of the Nation to serve.

Windstream's recommendations are based on its significant experience in deploying broadband to rural consumers. Windstream serves primarily rural regions, where often costs are high and subscriber density is low.¹ Yet Windstream has devoted hundreds of millions of dollars to deploy broadband to 88 percent of its voice customers. Now more than one million of Windstream's three million voice customers subscribe to broadband.

Windstream, however, currently cannot make an economically rational case for deploying to much of the remaining 12 percent of its voice customers who lack broadband

¹ With an average subscriber density of approximately 20 access lines per square mile, Windstream offers telecommunications services to approximately 3.0 million access lines across 16 states. Windstream's annual capital expenditures exceed \$300 million, or approximately 10 percent of its annual revenues.

access. To deploy broadband to the vast majority of these customers, Windstream must install fiber facilities and digital loop carrier systems along rural roads to reach closer to individual residences. Up-front costs incurred in deploying these network facilities are prohibitive, because Windstream cannot be certain of sufficient subscription rates to earn back its investment over time or because it could not earn back that investment at affordable rates, even assuming high and steady subscription.

To address these issues and similar challenges faced by hundreds or thousands of other broadband providers, both NTIA and RUS should offer broadband funds *solely* in the form of grants to experienced broadband providers as well as other entities. Grants can fundamentally alter the economics for deploying broadband in high-cost areas by offsetting up-front costs, thereby enabling a broadband provider to successfully deploy service in areas that otherwise would be unserved or underserved. Loans, in contrast, are largely irrelevant. They generally will not improve the economics of deploying broadband in an area that otherwise is uneconomic to serve.

Well before accepting any grant applications, NTIA should take steps to ensure that experienced broadband providers are offered a meaningful opportunity to compete for funding. First, NTIA should extend eligibility to all experienced broadband providers. The public interest demands that eligible grant recipients include those entities most capable of deployment at a large scale and with great efficiency. There is no valid basis for excluding the most experienced broadband providers from directly participating in the most significant public broadband investment program ever undertaken. Second, NTIA should clarify that the Recovery Act's nondiscrimination and network interconnection obligations will be satisfied by compliance with the FCC's Internet Policy Statement (FCC 05-15, adopted August 5, 2005) for two years

following a grant award. Imposing any further obligations would produce uncertainty and delay, and could discourage the most qualified applicants from seeking funds.

NTIA and RUS together should develop a uniform, cross-program approach to addressing definitions of “broadband service”; “unserved” and “underserved” areas; and “sufficient access.” This common understanding should recognize the wide diversity in the level of broadband service to which Americans enjoy access, and should award applications different degrees of priority according to the state of service currently available and speeds an Applicant plans to offer. Specifically NTIA should rank applications by the degree to which they would address areas lacking access to terrestrial broadband at downstream advertised speeds of 768 Kbps, 1.5 Mbps, and 3 Mbps (in rank order of importance). Additional priority should be awarded to applications proposing to offer advertised speeds of 1.5 Mbps in one direction, and even greater priority if such speeds are offered at 3 Mbps or 6 Mbps. In addressing areas lacking broadband service, Applicants should be given discretion in how they draw the precise contours of their proposed project areas, as pockets of unaddressed consumers are unlikely to fall neatly within existing geographic units.

NTIA and RUS also should develop a common application and overlapping, objective scoring criteria for proposals to deploy broadband in areas lacking access to core services. As detailed in Attachment A to these comments, joint scoring criteria should address the following:

- 1) Stimulus for economic growth (24% of total possible points), as measured by the extent to which the project will bring broadband to unserved or underserved users; will serve a remote region, where ready access to strategic institutions offering services for health care delivery, education, or children typically is limited and broadband would play an especially important role in connecting citizens to such services; and/or will create new work.
- 2) Sustainability (24% of total possible points), as measured by the Applicant’s experience in operating a broadband network, its first-hand knowledge of the project area, and/or its financial commitment to ensuring the long-term viability of the proposed project.

- 3) Speeds offered (16% of total possible points), as measured by the downstream and upstream advertised speeds proposed and by the Applicant's proven ability to provide service at those speeds.
- 4) Timeliness of construction (10% of total possible points), as measured by the Applicant's commitment to prompt action and/or its direct financial stake in prompt completion of the project.
- 5) Affordability of broadband service (10% of total possible points), as demonstrated by the Applicant's willingness to price a service offering downstream advertised speeds of 1.5 Mbps or more at \$40 or less per month, to commit to pricing comparable to that offered in similar nearby areas, to provide discounted computers to end users, and/or to maintain a standard installation option – including peripheral equipment – priced at \$75 or less.
- 6) Cost effectiveness (8% of total possible points), as demonstrated by a high ratio of unserved and underserved homes passed per public dollar spent, viewed in conjunction with the degree to which an area is challenging to serve.
- 7) Network scalability (8% of total possible points), as demonstrated by the Applicant's future ability to use, with further investment, the vast majority of facilities deployed with Recovery Act funds to offer residential subscribers in the project area downstream advertised speeds in excess of 10 Mbps.

Windstream describes the specific statutory bases for these scoring criteria and recommends common application information requirements in the proposal attached to these comments.

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COMMENTS OF WINDSTREAM COMMUNICATIONS, INC.

Windstream Communications, Inc., on behalf of itself and its affiliates (collectively “Windstream”), submits these comments in response to the Joint Request for Information² on how to distribute broadband funding appropriated in the Recovery Act.³ Windstream, in particular, focuses its remarks on how federal policymakers can best allocate funding to promote deployment of new and enhanced broadband services in rural areas.

Windstream’s recommendations are informed by its significant experience in deploying broadband to rural consumers. Windstream serves primarily rural regions, where often deployment and operating costs are high and subscriber density is low.⁴ Yet Windstream has devoted hundreds of millions of dollars to deploy broadband to 88 percent of its voice customers.

² Department of Commerce, National Telecommunications and Information Administration; Department of Agriculture, Rural Utilities Service, Docket No. 090309298-9299-01, Joint Request for Information and Notice of Public Meetings, 74 Fed. Reg. 10716-21 (March 12, 2009).

³ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“Recovery Act”).

Now approximately one million of Windstream’s three million voice customers subscribe to its broadband offerings – a statistic that places Windstream’s broadband penetration ahead of its mid-sized incumbent local exchange carrier peers and the Regional Bell Operating Companies.⁵

To facilitate review by officials from the National Telecommunications and Information Administration (“NTIA”) and the Rural Utilities Service (“RUS”), Windstream’s comments respond to the specific questions set out in the Request for Information.

⁴ With an average subscriber density of approximately 20 access lines per square mile, Windstream offers telecommunications services to approximately 3 million access lines across 16 states. Windstream’s annual capital expenditures exceed \$300 million, or approximately 10 percent of its annual revenues.

⁵

Company	Access Lines	Broadband Lines in Service	Broadband Penetration
AT&T	55,610,000	15,077,000	27.1%
Verizon	36,161,000	8,673,000	24.0%
Qwest	11,565,000	2,847,000	24.6%
Embarq	5,696,000	1,412,000	24.8%
Windstream	3,037,800	978,800	32.2%
Frontier	2,254,333	579,943	25.7%
CenturyTel	1,998,000	641,000	32.1%
Fairpoint	1,426,349	295,360	20.7%

Sources: Company financial reporting for 4th Quarter 2008 for total access line counts; Press Release, Leichtman Research Group, 5.4 Million Added to Broadband from Top Cable and Telephone Companies in 2008 at 2 (Mar. 6, 2009) (“Leichtman Group Press Release”), for broadband line counts. Broadband penetration is the quotient of broadband lines divided by access lines.

A. RESPONSE TO NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION QUESTIONS

1. The Purposes of the Grant Program: Section 6001 of the Recovery Act establishes five purposes for the BTOP grant program.⁶

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

The vast majority of grant funds should be allocated to deploying broadband in areas that lack access to broadband at speeds capable of supporting core services, such as remote conferencing, online banking, and distance education. It is critical that the millions of Americans who lack this access be afforded the opportunity to subscribe. In recognition of the importance of deployment to these individuals, Congress declined to indicate any specific limit on the Broadband Technologies Opportunities Program (“BTOP”) funding that could be allocated for improved end-user connectivity. Rather, Congress made clear that such funding would be limited only by the specific carve-outs for other goals. In short, the Recovery Act offers no hint that funding for unserved and underserved areas should be anything other than the first priority for NTIA.⁷

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

Windstream recommends that NTIA require separate applications for each of the following: (1) broadband deployment designed to expand or improve consumer connectivity in unserved and underserved areas; (2) broadband deployment to strategic institutions that are likely

⁶ Windstream uses bold text to highlight questions it is answering, and italics when it declines to provide a response.

⁷ In contrast, the Recovery Act allocated “up to \$350,000,000” for use in conjunction with the Broadband Data Improvement Act’s broadband mapping goals, Recovery Act BTOP Preamble, and the Conference Report states that “\$200,000,000 shall be for competitive grants for expanding public computer center capacity [and] \$250,000,000 (continued on next page)

to create jobs or provide significant public benefits; (3) establishment of the State Broadband Data and Development Grant Program, as authorized by Public Law 110-381, and the development and maintenance of a national broadband inventory map; (4) expansion of public computer center capacity; and (5) innovative programs to encourage sustainable broadband adoption. Each of these categories was delineated in the Statement of Managers report for BTOP.

Applicants proposing to deploy broadband to end users in unserved and underserved areas should not be required to document how their proposals address multiple purposes. There is no doubt that these applications will generate benefits addressing many or all of the Section 6001(b) “purposes” for federal funding. Applications for deployment in unserved and underserved areas will bring more individuals online, thereby maximizing the network effects of the Internet and facilitating greater use of broadband services offered by strategic institutions for education, healthcare, and economic growth. With greater broadband availability, public safety agencies will have new and enhanced abilities to reach their constituencies. Broadband adoption rates will increase, as more consumers become aware of the great benefits broadband service can bring to all aspects of their lives. Commerce over the World Wide Web will grow, as new rural broadband subscribers act as both buyers and sellers. And with modern infrastructure in place, more businesses and organizations will be attracted to rural regions, and rural residents will have more job opportunities. Indeed, the inherent overlap between deployment in unserved and underserved areas and other purposes of BTOP funding provides further support for prioritizing these infrastructure projects above all others.

shall be for competitive grants for innovative programs to encourage sustainable broadband adoption,” Recovery Act, Joint Explanatory Statement of the Conference Committee (“Conference Statement”).

Moreover, a close focus on improving service to unserved and underserved areas will streamline and expedite the review of applications seeking to facilitate end-user deployments. By adopting a framework permitting “apples to apples” comparisons among various applications, policymakers will be able to readily score and rank proposed projects. This streamlined review process will result in prompt grant awards to worthy projects for broadband deployment.

c. How should BTOP leverage or respond to the other broadband-related portions of the Recovery Act, including the USDA grant and loan programs as well as the portions of the Recovery act that address smart grids, health information technology, and transportation infrastructure.

It is critical that NTIA and RUS coordinate closely with each other during each step of the grant making process. The Recovery Act instructs NTIA to “establish and implement the grant program as expeditiously as practicable”⁸ Consistent with that directive, NTIA and RUS, as permitted by the statute, should streamline the application process by developing overlapping, objective scoring criteria and application information requirements. Attachment A to these comments provides details on how NTIA and RUS can construct a joint application and scoring criteria for end-user deployment projects in unserved and underserved areas, and provides citations to specific statutory provisions that justify use of uniform elements. With only a few exceptions, there is a substantial overlap in the purposes and priorities established for how the two programs should support deployment in unserved and underserved areas.

NTIA should respond to portions of the Recovery Act that address smart grids, health information technology (“IT”), education, and transportation infrastructure by placing the highest priority on applications that propose to deploy broadband in unserved and underserved areas.

⁸ Recovery Act § 6001(d)(1).

The overlap between these applications and other portions of the Recovery Act is self evident: Broadband deployment in unserved and underserved areas provides the critical foundation for constructing cutting-edge energy, health, education, and transportation services. So by providing funding for deployment in unserved and underserved areas, NTIA will simultaneously advance initiatives focused on smart grids, health IT, education, and transportation infrastructure.

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?

The grant program should consider state priorities when determining the degree to which grant funds should be apportioned to various funding categories. States can report facts that assist NTIA in conducting a high-level needs assessment. This assessment, which also should be informed by the statute's text and comments received from other stakeholders, will ensure NTIA develops a funding strategy that results in appropriate distribution of Recovery Act funds.

It could be problematic, however, for NTIA to consider state priorities when reviewing individual applications. First, this consideration could unduly disadvantage Applicants in states where officials do not identify broadband priorities or otherwise fail to participate actively in the pursuit of broadband funding. The lack of such state engagement may indicate broadband initiatives need more, rather than less, federal support. Second, a state may have a conflict of interest when establishing its priorities, as the state is permitted to seek funding directly. It would be inappropriate for any state to unduly influence the selection process when, as a competing participant, it has a vested interest in the disposition of individual applications.

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

NTIA possesses ultimate responsibility for selecting projects for funding. While “the Assistant Secretary *may* consult a state,”⁹ the Recovery Act expressly directs NTIA to “implement the grant program.”¹⁰ Indeed, Congress could have awarded block grants to states, but instead it vested decision-making authority with NTIA.

A state, however, can play a significant role in advising NTIA on the extent to which various areas lack access to core broadband services. A state, for example, may provide NTIA a map of unserved and underserved areas, if such a map is available. Alternatively, a state may survey local residents to determine whether an application accurately describes the extent to which broadband is available (or lacking) in a particular region, as long as this advisory role does not delay the processing of applications.

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

NTIA should rely principally on the statute when seeking to resolve differences among various groups or constituencies within a state. In particular, NTIA should consider the extent to which various categories of projects would serve the purposes of the Recovery Act. Some projects, such as those for end-user deployment in unserved and underserved areas, are capable of fulfilling multiple purposes. In addition, NTIA should pay heed to Congressional guidance regarding relative funding levels for the various BTOP initiatives.¹¹ This consideration also likely will lead NTIA to focus more on deploying broadband in areas lacking access to core

⁹ *Id.* § 6001(c) (emphasis added).

¹⁰ *Id.* § 6001(d)(1). *See also* Conference Statement (“NTIA retains the sole authority to approve the awards”).

¹¹ Recovery Act § 6001(a).

broadband services, as Congress did not adopt any limits or benchmarks that would suggest deployment in these areas should be anything other than NTIA's first and foremost priority.

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

To ensure projects are well executed and produce worthwhile and measurable results, NTIA should evaluate state projects under the same objective standards applied to all other projects. Windstream provides recommendations on the substance of these standards in response to Questions A.4 and A.14 below.

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?

It is in the public interest for NTIA to extend eligibility to experienced broadband providers, whether or not they apply in partnership with public or nonprofit entities. Specifically NTIA, at a minimum, should extend eligibility to any entity that has two or more years of service as a broadband provider, as evidenced by proof that the Applicant has submitted Federal Communications Commission ("FCC") Form 477 filings throughout the last two years. Extending eligibility in this manner is consistent with Recovery Act language that seeks to ensure Applicants are capable of "carrying out projects" they propose in an "efficient and expeditious manner" and "in a competent manner in compliance with all applicable Federal,

State, and local laws.”¹² Private sector for-profit broadband providers include Applicants that can deploy broadband and facilitate higher adoption rates at the largest scale and with the greatest speed. These entities have already invested many billions of dollars in deploying the lion’s share of broadband to the Nation and have obtained an unmatched expertise in deploying networks through their extensive hands-on experience.¹³ They also enjoy access to capital, existing supply chains and labor agreements, hiring flexibility, and other attributes consistent with achievement of the Recovery Act’s goals. Extending existing commercial networks often will offer the most efficient way to reach unserved and underserved areas. There is no valid basis for excluding the most experienced broadband providers from directly participating in the most significant public broadband investment program ever undertaken.

Windstream strongly urges NTIA to extend eligibility to experienced broadband providers well before it begins accepting any grant applications. The public interest demands that NTIA place commercial entities with demonstrated expertise and capabilities on equal footing with all other applicants at the *outset* of the review process. It would be inefficient and potentially wasteful for NTIA to solicit applications before making clear that the best candidates for performing many of the projects envisioned will have a meaningful opportunity to compete for the funding.

4. Establishing Selection Criteria for Grant Awards: The Recovery Act establishes several considerations for awarding grants under the BTOP. In addition to these considerations,

¹² *Id.* § 6001(e)(2). *See also* Conference Statement (“It is the intent of the Conferees that, consistent with the public interest and purposes of this section, as many entities as possible be eligible to apply for a competitive grant, including . . . wireline carriers . . .”).

¹³ *See* Leichtman Group Press Release at 1 (reporting that the twenty largest cable and telephone providers in the United States now account for nearly 67.7 million broadband subscribers).

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?

(i) Selection criteria

Attachment A provides a detailed proposal regarding factors NTIA should consider in establishing selection criteria for projects addressing unserved and underserved areas. In summary, Windstream recommends that NTIA rank these applications according to the following criteria:

- 1) Stimulus for economic growth (24% of total possible points), as measured by the extent to which the project will bring broadband to unserved or underserved users; will serve a remote region, where ready access to strategic institutions offering services for health care delivery, education, or children typically is limited and broadband would play an especially important role in connecting citizens to such services; and/or will create new work.
- 2) Sustainability (24% of total possible points), as measured by the Applicant's experience in operating a broadband network, its first-hand knowledge of the project area, and/or its financial commitment to ensuring the long-term viability of the proposed project.
- 3) Speeds offered (16% of total possible points), as measured by the downstream and upstream advertised speeds proposed and by the Applicant's proven ability to provide service at those speeds.
- 4) Timeliness of construction (10% of total possible points), as measured by the Applicant's commitment to prompt action and/or its direct financial stake in prompt completion of the project.
- 5) Affordability of broadband service (10% of total possible points), as demonstrated by the Applicant's willingness to price a service offering downstream advertised speeds of 1.5 Mbps or more at \$40 or less per month, to commit to pricing comparable to that offered in similar nearby areas, to provide discounted computers to end users, and/or to maintain a standard installation option – including peripheral equipment – priced at \$75 or less.

- 6) Cost effectiveness (8% of total possible points), as demonstrated by a high ratio of unserved and underserved homes passed per public dollar spent, viewed in conjunction with the degree to which an area is challenging to serve.
- 7) Network scalability (8% of total possible points), as demonstrated by the Applicant's future ability to use, with further investment, the vast majority of facilities deployed with Recovery Act funds to offer residential subscribers in the project area downstream advertised speeds in excess of 10 Mbps.

These selection criteria can be used to evaluate a single application filed for both RUS and NTIA funding. Attachment A provides the specific statutory bases for the various factors proposed.

(ii) Federal funding need

To determine whether a federal funding need exists, NTIA may consider three primary sources of information. First, NTIA may require and review a corporate officer's certification testifying that the proposed project otherwise would not have been implemented during the grant period. Second, NTIA may assess current conditions in the project area. In particular, the presence of consumers who lack access to core broadband services in and of itself provides significant additional evidence that no broadband provider has been able to produce a rational economic case for deployment in the area. The twenty largest cable and telephone providers accounted for nearly 67.7 million broadband subscribers in the United States at the end of 2008.¹⁴ If an economically rational case could be made for deploying in an area, most likely some entity already would have constructed broadband facilities. Third, NTIA may evaluate application information that describes how federal funds will be used, and compare the projected costs to the costs projected by other proposals aiming to serve the same or similar project areas. Key insights on a project's underlying economics can be gleaned from the number of unserved and underserved households passed in relation to anticipated project costs. On that account,

¹⁴ Leichtman Group Press Release at 1.

NTIA will receive significant, sufficient data on deployment expenses if it requires Applicants to produce information equivalent to what Schedule Q on RUS Form 532 requires on project costs.

(iii) Long-term feasibility of the investment

The long-term feasibility of an investment can be judged through careful consideration of an Applicant's financial and technical capabilities. First, NTIA should require an Applicant to demonstrate financial competence by showing that it is subject to obligations incumbent on publicly traded companies (e.g., by filing its most recent Form 10-K), or by making an equivalent showing via other means specified by NTIA. Second, NTIA should require a demonstration of technical competence. For experienced broadband providers, it should be sufficient, at a minimum, for an Applicant to demonstrate that it has two or more years of experience offering broadband service, as evidenced by a declaration stating that it submitted FCC Form 477 filings throughout the last two years. NTIA also should assess the sustainability of each proposed project. As noted above, factors considered in this assessment should include whether the Applicant (i) has demonstrated its ability to operate a broadband network at the scale proposed, (ii) possesses first-hand knowledge of local operating conditions, and/or (iii) has made a significant financial commitment to ensuring the long-term viability of the proposed project.

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

The seven categories of Windstream's proposed selection criteria (see response to Question A.4.a above) are listed in rank order of importance. Further details on how to weight specific factors within each category are provided in Attachment A.

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?

BTOP should place the highest priority on proposals to deploy broadband in unserved and underserved areas. As explained in Windstream’s response to Question A.1.b above, projects for deployment in areas lacking core broadband services will necessarily fulfill multiple BTOP purposes. Moreover, Congress declined to adopt any limit or benchmark regarding the magnitude of such funding. This choice suggests that the provision of robust service to unserved and underserved areas should be BTOP’s top priority.¹⁵

While RUS and NTIA should coordinate closely in awarding funds, the potential for RUS funding in the context of infrastructure deployment proposals should not cause NTIA to place a lesser priority on funding unserved and underserved area projects. There is a significant need for NTIA to provide grants for deployment in areas that lack access to core broadband services, above and beyond the funding available through RUS. Indeed, the funding required to deploy broadband facilities nationwide far surpasses the \$7.2 billion that the Recovery Act allocated to *both* the NTIA and RUS broadband programs.¹⁶

Moreover, NTIA plays a special role in encouraging deployment in high-cost areas, because BTOP funds must by law be distributed in the form of grants. Based upon Windstream’s experience, areas that remain unserved or underserved do so because broadband providers cannot make a rational case for deployment in those areas. These conditions, however,

¹⁵ Recovery Act §§ 6001(b)(1)-(2).

¹⁶ Multiple reports establish that it will cost a good deal more than \$7.2 billion to build out networks in unserved areas. See NATIONAL EXCHANGE CARRIER ASSOCIATION, THE PACKET TRAIN NEEDS TO STOP AT EVERY DOOR: EXECUTIVE SUMMARY at 3 (2006), https://www.neca.org/portal/server.pt/gateway/PTARGS_0_0_307_206_0_43/https%3B/prodnet.www.neca.org/source/NECA_Publications_4729.asp (estimating a cost of \$11.9 billion to extend broadband service at 8 Mbps speeds to just 5.9 million of the nation’s rural lines); BALHOFF & WILLIAMS, LLC, AMERICA AT A CROSSROAD: UNDERSTANDING THE CHALLENGE OF BROADBAND IN RURAL AMERICA at 4 (2009), <http://www.balhoffrowe.com/pdf/America%20at%20a%20Crossroad.pdf> (estimating that “the network investment to achieve 1.5 megabits per second broadband services provided over already-installed telephone plant in unserved (continued on next page)

will not be changed with loan guarantees or loans, which are irrelevant if companies cannot generate profits needed to repay these commitments. Only grants can significantly change a broadband provider's economic case and spur new deployment. BTOP will therefore play an indispensable role in fomenting infrastructure deployment.

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

As explained in response to Question A.1.c above, proposals to deploy broadband in areas lacking access to core broadband services will necessarily benefit other Recovery Act projects, because broadband deployment in unserved and underserved areas provides the critical foundation for building new edge energy, health IT, education, and transportation services. Thus, NTIA should further other Recovery Act projects by placing a priority on funding applications for deployment in areas lacking access to core broadband services.

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?

Proposals to deploy broadband in areas lacking access to core broadband services should be given the highest priority for BTOP funding. As explained in response to Question A.1.b above, such applications inherently address several purposes of BTOP. In addition, granting such applications will most certainly result in greater service to several populations identified in the Recovery Act, as “[r]ural Americans are, on average, older, less educated, and with lower incomes than people living in other parts of the United States – all factors associated with lower

rural regions is estimated to be \$2,000 to \$3,000 for each unserved home,” \$4,000 to \$6,000 per line for 6 Mbps, and \$8,000 to \$12,000 per line for 12 Mbps).

levels of online use.”¹⁷ Any meaningful effort to reach such consumers who lack access to core broadband services necessarily will span many areas in multiple states – and will serve numerous important policy objectives at once.

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

With respect to broadband deployment in unserved and underserved areas, Windstream recommends that NTIA give three factors priority in determining whether proposals will encourage sustainable adoption of broadband service:

- Demonstrated ability to operate a broadband network at the scale proposed: Priority should be afforded to Applicants that currently provide broadband service to households in other areas at a scale (as measured by number of households passed) and advertised speed at or above the levels contemplated by the application.
- First-hand knowledge of local operating conditions: Priority should be afforded to Applicants that currently provide communications service in the project area or in a contiguous area; comprise a governmental subdivision with sovereignty over the project area (whether at the state or local level); or can make a separate, equivalent showing.
- Direct financial commitment to ensuring long-term viability of the project: Priority should be afforded to Applicants that will use their own capital funds to pay for 20 percent of project costs.

These showings (described in detail in Attachment A) will provide federal policymakers significant assurances that an Applicant is capable of and committed to operating a network that will support sustainable adoption of broadband service in the proposed project area.

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

¹⁷ Data Memo from John Horrigan, Associate Director, Pew Internet & American Life Project, Rural Broadband Internet Use at 3 (Feb. 2006), http://www.pewinternet.org/~media/Files/Reports/2006/PIP_Rural_Broadband.pdf.pdf.

purposes of the statute should be promoted in a technologically neutral fashion?

As expressly required by the Recovery Act, NTIA must consider “whether an application to deploy infrastructure in an area . . . will, if approved, provide the greatest broadband speed possible to the greatest population of users in the area”¹⁸ This consideration of speeds is consistent with the statute’s directive that, to the extent practicable, the purposes of the statute be promoted in a technologically neutral fashion. A focus on advertised speeds will permit objective comparison of the functionality offered to consumers by a given proposal, regardless of the technological platform on which the proposal relies.

Other service characteristics should be considered only if they are directly relevant to whether the Applicant will be able to provide a robust broadband experience that enables the use of core services, such as remote conferencing, online banking, and distance education. Congress directs NTIA to consider how various providers are likely to “enhance service for health care delivery, education, or children to the greatest population of users in the area.”¹⁹ The Recovery Act, however, does not call upon NTIA to consider technology-specific characteristics, such as mobility or use of dedicated or shared links. Such instruction would be *contrary* to express Congressional intent to promote the purposes of the statute in a technologically neutral manner.

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

The Recovery Act instructs NTIA to consider, to the extent practical, “whether an application to deploy infrastructure in an area . . . will, if approved, increase the affordability

¹⁸ Recovery Act § 6001(h)(2)(B).

¹⁹ *Id.* § 6001(h)(2)(C).

of . . . service to the greatest population of users in the area”²⁰ Consistent with this instruction, Windstream urges NTIA to place priority on applications submitted by entities willing to adhere to the following commitments for two years after the proposed project is completed:

- Guaranteed \$40 pricing period for broadband service: Residential consumers in the project area will be able to purchase its broadband service at advertised speeds of at least 1.5 Mbps downstream for a price not to exceed \$40 per month.
- Regional comparability of broadband service prices: Residential consumers in the project area will be able to purchase broadband service at a retail price equivalent to what it offers to residential consumers for comparable advertised speeds in the closest city, town, or incorporated area of similar population density. This certification will only apply to broadband services offered by Applicants at the time the application is submitted.
- Discounted computers: Residential consumers in the project area will be able to purchase, through the Applicant, computers capable of supporting core broadband services, such as remote conferencing and distance education, at a rate discounted by at least 25 percent relative to Manufacturer’s Suggested Retail Price.
- Reasonable equipment charges: For standard installation, the Applicant will make available to residential consumers in the project area at least one option providing the equipment needed to connect personal computers to its broadband service (e.g., modems, antennas) at a price not to exceed \$75 during the two years after service is provisioned. This certification will only apply to broadband services offered by the Applicant to residential subscribers at the time the application is submitted.

Details regarding these proposed factors are provided in Attachment A, which recommends objective scoring criteria for applications to deploy service in unserved and underserved areas.

- 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?*

²⁰ *Id.* § 6001(h)(2)(A).

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

- 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?*

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

- 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?**

A comprehensive broadband map should be able to identify areas that lack access to core broadband services and correlate these areas with U.S. Census demographic data. Such a map will be useful in focusing demand-side initiatives pursuant to the State Broadband Data and Development Grant Program, as authorized by Public Law 110-

385.²¹ A comprehensive map also will help policymakers evaluate the success of broadband programs adopted pursuant to the Recovery Act, and provide valuable information permitting legislators and regulators to determine whether further broadband initiatives should be pursued at the state or federal level.

The development of the comprehensive broadband map, however, must not be viewed as a precondition to the award of grants for broadband deployment in unserved and underserved areas. A comprehensive map is not needed to determine whether adequate broadband service is available in an individual region. That information can be – and, under the proposal set forth in Attachment A, would be – provided by Applicants themselves, and subject to public review and challenge. Furthermore, conditioning grant awards on a complete map would delay “demand for broadband, economic growth, and job creation” envisioned by Congress when it adopted the Recovery Act broadband programs.²² Accordingly, Congress made it clear that NTIA could take up to two years before completing the broadband inventory map,²³ but it directed the Assistant Secretary to “establish and implement the grant program as expeditiously as practicable.”²⁴

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 broadband map should identify the number and types of broadband providers offering service within specified geographic areas. Such information may be gleaned from existing broadband data sets and data obtained from other sources. In particular, NTIA may

²¹ Broadband Data Improvement Act of 2008, Pub. L. No. 110-385, 122 Stat. 4096 (2008) (“Broadband Data Improvement Act”).

²² Recovery Act § 6001(b)(4).

²³ *Id.* § 6001(l).

want to include maps produced by public-private partnerships under the State Broadband Data and Development Grant program, as authorized by Public Law 110-385.

NTIA, however, should not seek to include broadband availability data on an address-by-address basis. Many of the nation's small and mid-sized carriers, including Windstream, do not maintain a list of prospective customer households to which broadband service is available. Developing the engineering capability to collect and produce the data would require considerable time and expense – resulting in delay to the development of the broadband map and diverting resources that otherwise would be focused on stretching high-speed networks to reach our nation's most remote regions.

The broadband map also should not reveal sensitive, company-specific information. Congress ordered that broadband mapping entities, when carrying out provisions establishing the State Broadband Data and Development Grant Program, “shall treat any matter that is a trade secret, commercial or financial information, or privileged or confidential, as a record not subject to public disclosure except as otherwise . . . agreed to by the broadband service provider”²⁵ This statutory directive recognizes that disclosure of competitively sensitive broadband data could encourage cherry-picking by new entrants, to the detriment of broadband providers that have invested in facilities offering service to whole communities.²⁶

²⁴ *Id.* § 6001(d)(1).

²⁵ Broadband Data Improvement Act § 106(h)(2).

²⁶ *See also* Letter from Kirk S. Burgee, Wireline Competition Bureau, FCC, to Drew Clark, Center for Public Integrity, at 3 (Sept. 26, 2006) (recognizing that release of broadband providers' data could “harm their competitive interests by revealing to competitors their market strategies, their customer identities and counts and where they have deployed their services” and competitors could use the data “to decide where to target their service offerings, facilities construction, and marketing”); Brief for Defendant at 21-28, *Center for Public Integrity v. FCC*, 515 F. Supp. 2d 1 (D.D.C. 2007) (No. 06-1644) (FCC outlining various competitive harms that could result from public disclosure).

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

See response to Question A.8.b above.

- 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?**

Windstream has found that the best entities to map broadband data are regional public-private partnerships. These partnerships, which generally have close ties to the service areas mapped, are well equipped to respond to the particular, widely varying, and changing conditions at the local level. In particular, Windstream, as one of the largest broadband providers in Kentucky, can speak to the success of the Connect Kentucky model. Over multiple years Windstream has worked closely with Connect Kentucky to refine depictions of its service territory, while a nondisclosure agreement has prevented release of competitively sensitive data. Windstream urges NTIA to support, not supplant, such valuable public-private partnership efforts.

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

For reasons expressed in response to Question A.8.e above, public-private partnerships, rather than states, should be awarded statewide inventory grants. Thus, state governments should not play a role in collecting broadband data. Applying state government oversight to mapping would undermine public-private cooperation and collaboration, which have been critical to producing valuable maps that evolve in response to changing conditions over time.

Windstream's response to Question A.8.b above provides recommendations regarding types of data that public-private partnerships should collect pursuant to 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?**

Statewide inventory grants should require grant recipients to aggregate filed data published in any public documents in a way that does not identify company-specific information. As explained in response to Question A.8.b above, a failure to impose this protection would discourage further region-wide broadband deployment, and would be contrary to the statutory provisions that established the State Broadband Data and Development Grant Program.

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

U.S. Census demographic data also should populate the broadband map. Specifically NTIA should correlate broadband data with U.S. Census information on topics including, but not limited to, age, gender, race, education, and income. These census tract data should be mined for a deeper understanding of how socioeconomic conditions and other variables impact broadband adoption.

- 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?*

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

If the proposal is to deploy broadband in an unserved or underserved area, NTIA should find that the only showing necessary is a corporate officer certification testifying that the proposal otherwise would not have been implemented during the grant period. The fact that an area lacks access to core broadband services in and of itself provides significant additional evidence that no broadband provider has been able to produce a rational economic case for deployment. The twenty largest cable and telephone providers accounted for nearly 67.7 million broadband subscribers in the United States at the end of 2008.²⁷ If an economically rational case could be made for deploying in an area, most likely some entity already would have deployed broadband facilities.

NTIA also may consider application information that describes how federal funds will be used, and compare the projected costs to the costs projected by other proposals aiming to serve

²⁷ Leichtman Group Press Release at 1.

the same or similar project areas. Key insights on the economics of a project can be gleaned from the number of unserved and underserved households passed in relation to anticipated project costs. On that account, NTIA will receive significant, sufficient data on deployment expenses if it requires Applicants to produce information equivalent to what Schedule Q on RUS Form 532 requires on project costs.

- 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?**

NTIA and RUS should work together to create a common application process for broadband deployment to end users in unserved and underserved areas.²⁸ As previously noted in response to Question A.1.c, there is a substantial overlap in the purposes and priorities established for how the two programs should support deployment in these areas. Consequently it

²⁸ NTIA should create separate applications for additional funding categories delineated in the Statement of the Managers report of BTOP. Specifically separate applications should be used for each of the following: (1) broadband deployment to strategic institutions that are likely to create jobs or provide significant public benefits; (2) establishment of the State Broadband Data and Development Grant Program, as authorized by Public Law 110-381, and the development and maintenance of a national broadband inventory map; (3) expansion of public computer center capacity; and (4) innovative programs to encourage sustainable broadband adoption.

makes sense for NTIA and RUS, as permitted by the statute, to streamline the application process by developing overlapping, objective scoring criteria and evidentiary requirements. Attachment A to these comments describes how NTIA and RUS can construct a joint application and common scoring criteria for deployment projects in unserved and underserved areas, and provides citations to specific statutory provisions that justify use of uniform elements.

The two agencies' review of applications and distribution of funds should be expedited and standardized. Congress instructs NTIA to "establish and implement the grant program as expeditiously as practicable" ²⁹ Consistent with that directive, scoring criteria should be as objective as possible, to ensure that the two agencies can consistently and efficiently process and rank applications. Descriptions of applications tentatively approved should be posted online to allow meaningful public comment on whether project areas proposed are as depicted (i.e., whether they lack service at the specified speed threshold). NTIA and RUS also should require that applications be submitted by a single established date for each funding round. Likewise, notice of awards should be distributed on a uniform date, and Applicants should be given 10 business days to either accept or reject an award. These common deadlines will afford NTIA and RUS a clear view of which entities are filing for funding in each round, and for what projects. Finally, funding should be provided quickly and without delay when it is due.

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)?

To ensure substantial completion of a project within required time frames, NTIA should require that Applicants agree either (i) to receive funding only upon completion of each project,

²⁹ Recovery Act § 2001(d)(1).

with disbursement reduced by 10 percent of total project costs for every month by which the completion date of the project extends past the two-year deadline; or (ii) to receive funding in advance but be obligated to post bond for 100 percent of the funding, 10 percent of which would be forfeited for every month by which the completion date extends past two-year deadline. Each of these clear-cut measures will provide a significant financial incentive helping to ensure that all Applicants complete projects within two years. Exceptions to these penalties should be permitted only if the Applicant's deployment is delayed by circumstances beyond its reasonable control and without the fault or negligence of the Applicant itself.³⁰ As required by statute, entities receiving a grant also should report quarterly on their use of the assistance and their progress in fulfilling the objectives for which grants were funded.³¹

For broadband deployment projects, NTIA, however, should not require an Applicant to make commitments to specific build-out timelines before determinations have been made on all of the Applicant's grant applications. Many Applicants will likely submit multiple applications, and the specific timeline for deploying each proposed project will depend on the extent to which their applications for other projects are granted. To take the most obvious example, projects in nearby or contiguous project areas would benefit greatly from coordinated scheduling. To ensure that an Applicant engages in the most efficient deployment possible, NTIA should afford an Applicant flexibility to coordinate construction efforts and set timelines for projects accordingly, so long as all broadband deployment projects can be completed by the Applicant within two years following an award.

³⁰ Such circumstances could include, for example, fire, flood, earthquake, or like acts of God; civil commotion; or acts of a public enemy.

³¹ Recovery Act § 6001(i)(1).

11. *Reporting and De-obligation: 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?*

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

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?**

See response to Question A.10.a. above.

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)?*

- 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?”**

As a preliminary matter, NTIA should afford Applicants discretion in how they draw the precise contours of their proposed project areas. Pockets of unserved and underserved consumers are unlikely to fall neatly within existing, arbitrary geographic units, such as ZIP codes or Census Block Groups. These geographic units also often do not track the footprints of existing communications facilities, which may be leveraged for efficient design of new deployments. For these reasons, Windstream urges NTIA to allow Applicants to delineate the specific areas in which they propose to deploy broadband.

In addressing whether an area is “unserved” or “underserved,” NTIA should avoid adopting two new bright-line tests. Instead, NTIA should recognize that there is wide diversity in the level of broadband service to which Americans enjoy access today, and should afford applications different degrees of priority according to the state of available broadband service in the proposed project area. This approach recognizes that virtually any community, from an aspirational standpoint, could be deemed to lack sufficient access to certain broadband services. Considering multiple tiers of broadband service also is consistent with how broadband products typically are marketed, and how the FCC collects broadband data.

Under this approach, each tier of broadband service should be defined by whether terrestrial (i.e., non-satellite) broadband service is available at a specified advertised speed in one

direction. First, the presence of a satellite broadband provider at a chosen service threshold should not impact the assessment of whether an area is “unserved” or “underserved.” Satellite services are not comparable to terrestrial services in terms of pricing or functionality. Satellite broadband providers typically charge their customers far more for equipment and ongoing service costs as compared to terrestrial providers. Satellite broadband service also may require strict bandwidth caps at the user level, as well as overall caps on capacity at the network level. Thus, reliance on the availability of satellite service will punish areas that are “served” by satellite by overstating the degree to which residents can access robust, affordable broadband.

Second, advertised speeds provide a better metric than “actual” speeds. Determining “actual” speeds poses a number of difficult issues, as speeds vary over time due to a number of conditions outside a broadband provider’s control. Moreover, it would be very challenging for a program Applicant to ascertain whether an area is “unserved” or “underserved” by *other* providers at specified “actual” levels.

Third, NTIA should only consider speeds in one direction when assessing the degree to which an area lacks access to broadband services.³² Typically, only downstream speeds are prominently advertised, as they have the most significant impact on a user’s broadband experience. While the Internet is a two-way communications path, the vast majority of Internet traffic originates from website content *downloaded* by users (e.g., in the form of video streams, music, or photographs), rather than user content uploaded to websites (most often conveyed in the form of typed content or mouse clicks).

³² Windstream, however, would recommend consideration of *both* downstream and upstream advertised speeds when evaluating broadband service that an Applicant proposes to offer. While upstream speeds are not a significant marker of whether an area is “unserved” or “underserved” and should not be weighted as heavily as downstream (continued on next page)

The distinct degrees of “unservedness” used to classify areas “lacking sufficient access to broadband service” should be quantified consistent with the categories adopted last year by the FCC. Specifically NTIA should rank applications according to whether they address areas lacking access to terrestrial broadband at downstream advertised speeds of 768 Kbps, 1.5 Mbps, and 3 Mbps. The highest value should be assigned to applications proposing to serve areas lacking access to terrestrial broadband at downstream advertised speeds of 768 Kbps, which is the low end of the range of services that the FCC defines as “basic broadband tier 1.”³³ The second highest value should be assigned to areas lacking access to terrestrial broadband at downstream advertised speeds of 1.5 Mbps, at the high end of “basic broadband tier 1” services.³⁴ Finally, the third highest value should be assigned to areas lacking access to terrestrial broadband at downstream advertised speeds of 3 Mbps. Speeds of 3 Mbps are required to support many applications (including those employing standard definition streaming video) that are important for stimulating economic growth by, for example, enabling online education and remote conferencing.

b. How should the BTOP define “broadband service?”

NTIA should define “broadband service” as what Section 706(c) of the 1996 Act describes as “advanced telecommunications capability”: “high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice,

speeds, upstream advertised speeds nevertheless are one of many factors that should be considered in evaluating various applications for deployment in areas lacking access to core broadband services.

³³ *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 07-38, 23 FCC Rcd 9691, ¶ 20, n.66 (rel. June 12, 2008) (“*Broadband Data Order*”).

³⁴ *Id.*

data, graphics, and video telecommunications using any technology.”³⁵ This approach recognizes that the concept of “broadband” is always evolving, due to changing technologies and consumer expectations. As recognized by the Conference Agreement, this understanding also affords policymakers the greatest flexibility in applying the term in a manner most appropriate to the demands of specific circumstances. Conferees, when they declined to adopt a specific speed threshold, were “mindful that a specific speed threshold could have the unintended result of thwarting broadband deployment in certain areas”³⁶

The definition of “broadband” notwithstanding, NTIA should seek to invest taxpayer dollars in facilities offering speeds that will deliver the greatest returns in the future. The Recovery Act instructs NTIA, to the extent practical, to “consider whether an application to deploy infrastructure in an area . . . will, if approved, provide the greatest broadband speed possible to the greatest population of users in the area . . . [and] enhance service for health care delivery, education, or children to the greatest population of users in the area”³⁷ Consistent with this directive, NTIA should prioritize applications according to whether the Applicant will offer downstream advertised speeds at levels at or greater than 1.5 Mbps, 3 Mbps, or 6 Mbps, and/or whether it will offer upstream advertised speeds at levels at or greater than 384 Kbps or 768 Kbps. This measure will help ensure that more consumers can benefit from core broadband services, such as remote conferencing and distance education.

NTIA also should place priority on applications proposing to deploy broadband networks that can be scaled up to support advertised speeds in excess of 10 Mbps. This measure is

³⁵ 47 U.S.C. § 257 nt.

³⁶ Conference Statement.

consistent with the Conference Agreement recognition 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.”³⁸ To ensure that the potential to deliver next-generation speeds exists, any Applicant seeking priority under this prong should be required to (i) identify a specific instance where it has used the technology that would be deployed in the project area to offer residential subscribers broadband at advertised speeds in excess of 10 Mbps in one direction and (ii) certify that there are no technological limitations that would prevent it from upgrading its network so that, with further investment, it can use the vast majority (i.e., at least 75%) of facilities deployed with Recovery Act funding to offer such speeds to residential subscribers in the project area. If it has never offered such speeds, an Applicant seeking this priority should be required to certify and provide facts conclusively demonstrating that it is capable of using the vast majority of the facilities deployed with Recovery Act funding to offer residential subscribers in the project area advertised speeds in excess of 10 Mbps in one direction.

- (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?**

See response to Question A.13.a above.

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

³⁷ See also Conference Statement (instructing “NTIA to seek to fund, to the extent practicable, projects that provide the highest possible, next-generation broadband speeds to consumers”).

³⁸ *Id.*

No. The threshold speeds for broadband should be the same for all technologies and providers. Congressional calls for “greatest broadband speed possible” and “enhance[d] service for health care delivery, education, or children” were not limited to specific technologies.³⁹ The public interest demands that speed thresholds be based upon the quality and quantity of online services made available to consumers, rather than the specific type of technology employed. Any different approach would be inconsistent with the express Congressional intent that NTIA promote the purposes of BTOP in a “technologically neutral manner.”⁴⁰

(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)?

See response to Question A.13.a above.

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

NTIA should avoid any consideration of symmetrical threshold speeds. Windstream is not aware of any significant mass market residential broadband product offering symmetrical speeds. The reason for this is that a consumer’s online experience is defined more by downstream speeds, rather than upstream speeds. While the Internet is a two-way communications path, the vast majority of Internet traffic originates from website content downloaded by users (e.g., in the form of video streams, music, or photographs), rather than user content uploaded to websites (most often conveyed in the form of typed content or mouse clicks). Pushing broadband providers to change course and begin offering symmetrical speeds

³⁹ Recovery Act §§ 6001(h)(2)(B)-(C).

⁴⁰ *Id.* § 6001(e)(1)(C).

would be unwarranted – and ultimately would compromise a user’s total online experience, as downstream speeds would need to be reduced to offer greater capacity for upstream traffic.

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

NTIA should not attempt to regulate the impacts of network congestion and the use of shared facilities by service providers. Network management is complicated, dynamic, and – for these reasons – best left to experienced broadband providers. This consideration provides further support for focusing Recovery Act funds on projects deployed by broadband providers with a track record of competent network management.

To best address concerns about a broadband provider’s ability to offer advertised speeds, NTIA should award priority to an Applicant that certifies that (i) all consumers in the project area will be able to purchase broadband service based upon the same network design assumptions as those currently used for its provision of broadband service at comparable advertised speeds and (ii) no court or regulatory utility commission, as of the time of the application, has adjudicated a final, unappealable decision finding that the Applicant has produced commercial advertisements containing inaccurate information regarding advertised speeds. This test offers objective and clear-cut assurance that a broadband provider is capable of engaging appropriate network management. If an Applicant currently does not offer broadband service, the Applicant nevertheless should be able to obtain this priority if it (i) certifies and demonstrates that its network design assumptions are equivalent to those used by a specified broadband provider that currently uses the same technology to offer comparable advertised speeds to similar user populations, without legal challenge as specified in above or (ii) certifies and produces facts demonstrating that its network design assumptions are appropriate for its offering broadband at advertised speeds proposed in its Application.

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

The substance of nondiscrimination and network interconnection obligations should be limited to compliance with the FCC's Internet Policy Statement (FCC 05-15, adopted August 5, 2005), as expressly permitted by the Recovery Act.⁴¹ The Policy Statement has been tested by time, and broadband providers have widely conformed their policies and practices to its provisions. Imposing obligations above and beyond compliance with the Policy Statement would produce uncertainty and delay, and could discourage the most qualified applicants from seeking funds. Broadband providers cannot easily cabin off one portion of their network from the rest. It would make little sense to impose special burdens on the subset of broadband providers that deploy new broadband infrastructure in areas that are already expensive to reach. Furthermore, to the extent additional prophylactic rules regarding nondiscrimination or interconnection are warranted (and there is no record suggesting that they are), any such obligations are most properly assessed and adopted in the context of a traditional rulemaking conducted by the expert agency – which here is the FCC.

Windstream further recommends that NTIA place clear limits on the scope and duration of any nondiscrimination and network interconnection obligations it adopts. First, NTIA should only seek to apply the obligations to specific project areas funded by BTOP. Second, the duration of the obligations should be limited to a period not to exceed two years following the

⁴¹ *Id.* § 6001(j).

grant award. Imposing this term limit is consistent with terms placed on merger commitments previously accepted by the FCC.⁴²

- (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?**

See response to Question A.13.c. above.

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

See response to Question A.13.c. above.

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

No, any nondiscrimination and network interconnection standards should apply uniformly across technology platforms. Congress did not provide certain platforms an exemption from these standards.⁴³ To do so would have been tantamount to picking winners and

⁴² See *SBC Communications, Inc. and AT&T Corp. Applications for Approval of Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 05-65, 20 FCC Rcd 18290, App. F (rel. Nov. 17, 2005) (“*SBC/AT&T Order*”) (FCC accepting SBC/AT&T commitment to conduct business in a manner that comports with the FCC’s Policy Statement for two years after the merger closing date); *Verizon Communications, Inc. and MCI, Inc. Applications for Approval of Transfer of Control*, WC Docket No. 05-75, Memorandum Opinion and Order, 20 FCC Rcd 18433, App. G (rel. Nov. 17, 2005) (“*Verizon/MCI Order*”) (FCC accepting Verizon/MCI commitment to conduct business in a manner that comports with the FCC’s Policy Statement for two years after the merger closing date); *AT&T Inc. and BellSouth Corporation Application for Transfer of Control*, Memorandum Opinion and Order, WC Docket No. 06-74, 22 FCC Rcd 5662, App. F (rel. Mar. 26, 2007) (“*AT&T/BellSouth Order*”) (FCC accepting AT&T/BellSouth’s offer to supplement AT&T’s prior Policy Statement commitment, which was effective through November 2007, with a new commitment to conduct business in a manner comporting with the FCC’s Policy Statement for 30 months after the AT&T/BellSouth merger closing date).

⁴³ See Recovery Act § 6001(j) (declaring that the “non-discrimination and network interconnection obligations . . . shall be contractual conditions of grants awarded under this section,” with no qualification placed upon the type of grants subject to these conditions).

losers in the marketplace, and inconsistent with the Congressional intent that NTIA promote the purposes of BTOP in a “technologically neutral manner.”⁴⁴

- (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?**

See response to Question A.13.c. above.

- 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?**

Windstream discusses the role retail price should play in prioritizing applications in response to Question A.4.h above.

As explained in response to Question A.13.a, Windstream also notes that the existence of a satellite broadband provider should not impact NTIA’s analysis of whether an area is “unserved” or “underserved.” Higher retail prices for service and equipment, along with other issues previously enumerated, distinguish satellite broadband service from other broadband services, and significantly decrease the likelihood that satellite broadband will “increase the affordability of, and subscribership to, service to the greatest population of users in the area,” a factor Congress specifically instructs NTIA to consider to the extent practicable.⁴⁵ Consequently

⁴⁴ *Id.* § 6001(e)(1)(C).

⁴⁵ *Id.* § 6001(h)(2)(A).

the presence of satellite broadband alone should not be deemed to be a sufficient basis for categorizing an area as “served.”

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?

NTIA should measure compliance with statutory obligations by referencing data produced in the application and subsequent reports. As proposed by Windstream in Attachment A, each grant application should include (i) a detailed explanation of the need for federal funds, including a description of existing broadband offerings (or lack thereof) as identified pursuant to reasonable investigation; (ii) a description of how requested funds will be used; (iii) a map showing project area boundaries, along with a list of overlapping Census Block Groups; (iv) number of potential subscribers to be served in the project area (by households); and (v) advertised speeds to be offered. This information, when coupled with data included in mandatory quarterly reports and the more detailed report submitted upon project completion, will provide NTIA sufficient basis for assessing an Applicant’s progress and impact.

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?

See response to Question A.14.a above.

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.*

B. RESPONSE TO RURAL UTILITIES SERVICE QUESTIONS

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?

The most effective way RUS can offer broadband funds is to provide support *solely* in the form of grants. Most rural residents lack access to broadband, because there is no rational economic case for deploying high-speed networks in their high-cost, low density areas. As RUS well knows, telecommunications network deployment involves sizable up-front costs, which must generally be recovered over time through recurring end-user charges. In many areas, up-front costs to deploy are simply prohibitive – either because the network operator cannot be certain of sufficient subscription rates to earn back its investment over time or because it could not earn back the investment at acceptable monthly rates, even assuming high and steady subscription rates. Grants for deployment can fundamentally alter the economics of serving an area by offsetting up-front costs and blunting risks faced by investors, permitting a broadband provider to deploy and earn sufficient returns at affordable rates collected from a smaller customer base.

The same cannot be said for loans or loan guarantees. The most significant impediment to broadband deployment is not the cost (or absence) of credit – it is the high cost of deployment coupled with the difficulties providers face in recouping their investment. Indeed, loans are almost entirely irrelevant if RUS intends to reach areas lacking a rational economic case for deployment of new broadband facilities. It is irrational for a broadband provider or other investor to borrow money, even at very low rates, to finance projects that will not produce an appropriate return on its investment. Likewise, it would make no sense for RUS to loan money to projects that lack a clear economic case for deployment, as it would result in the government's assuming excessive, undue risk to its loan securities.

Congress recognized that loans would not be a sufficient means for addressing broadband deployment in rural areas when it adopted the Recovery Act. Rather than replicating the Rural Broadband Access Loan and Loan Guarantee Program structure by limiting RUS to loans and loan guarantees, Congress expressly permitted RUS to fund similar projects with grants. It is critical that RUS embrace this new opportunity by distributing Recovery Act funding in the form of grants. This measure will help ensure that RUS is successful in motivating broadband deployment in the unserved areas that stand to benefit the most from this opportunity.

RUS also can best streamline the new funding process if it focuses exclusively on grants. First, grants do not require the burdensome and time-intensive financial analysis required of loans. The issuance of governmental loans necessitates detailed reporting and evaluation of a company's financial plans to ensure the debtor's ability to repay the public. These safeguards are, of course, very important, but they are also quite burdensome and inimical to the expedition envisioned by the Recovery Act. While grants will of course be subject to detailed oversight as well, they will require far less reporting and governmental involvement prior to the award – RUS will need only to find that a project is viable and sustainable. Second, a common focus on grants will enable more direct and efficient coordination between RUS and NTIA, which will be distributing BTOP funding exclusively in the form of grants. If both RUS and NTIA are focused exclusively on grants, the two entities can produce a common application and adopt largely overlapping, objective scoring criteria that will streamline processing of funding requests. Windstream provides a detailed proposal suggesting common application and scoring criteria in Attachment A.⁴⁶

⁴⁶ Of course, Windstream's proposal would not eliminate RUS's ability to issue loans more broadly. The Broadband Loan Program and Distance Learning & Telemedicine Program will continue to rely significantly on loans, and the (continued on next page)

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?**

For the reasons provided in response to Question B.1 above, RUS should provide Recovery Act support solely in the form of grants. Windstream also recommends (as explained in response to Question B.1.b below) that RUS best leverage Recovery Act funds by heeding the direction that Congress gave to NTIA and limiting the federal share of any project to 80 percent. This approach will require Applicants to attain additional funding from other sources, which include, but are not limited to, private investment.

If RUS nevertheless decides to bundle loan and grant funding, RUS should apply this option only in the limited instance when an area would remain unserved even if RUS assumes 80 percent of the project costs, using loans only to cover part or all of the *remaining* project costs. As a matter of process, applications for loan/grant projects should be considered after RUS reviews and makes determinations on proposed projects that do *not* require loans to supplement grants for 80 percent of project costs. Use of the same 80/20 ratio as NTIA will help streamline the application process for Applicants seeking funding from both RUS and NTIA. And by prioritizing applications seeking grants over those seeking both grants and loans, RUS

Recovery Act’s provision of funding for broadband deployment could actually increase the proportion of these other programs’ funds that can be disbursed in that form.

will ensure that loans do not replace private investment that otherwise could have been used to supplement grant funding.

b. promote leveraging of Recovery Act funding with private investment that ensures project viability and future sustainability?

Consistent with the statutory framework for NTIA's BTOP program, RUS should limit the federal share of any project to 80 percent. Stretching the reach of each federal dollar spent on broadband deployment, this measure will prompt Applicants to seek funding from private investment, as well as other potential funding sources. Companies will have a heightened interest in ensuring projects area sustainable. An 80 percent cap also will help NTIA and RUS streamline joint consideration and processing of applications to deploy broadband in areas lacking access to core broadband services. Windstream provides a detailed proposal for how RUS and NTIA could construct such a joint application process in Attachment A.

In addition, Windstream recommends that RUS award priority to Applicants that commit to use their own capital funds to pay remaining project costs, rather than relying on government loans or other third-party funding directed at broadband deployment. When combined with the requirement for such costs to constitute at least 20 percent of total project costs, this provision will encourage Applicants to make a direct financial commitment to the long-term viability of the project. Such a commitment will help ensure project viability and future sustainability.

c. ensure that Recovery Funding is targeted to unserved areas that stand to benefit the most from this funding opportunity?

See response to Question B.1 above.

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?

See response to Question A.10.a. above.

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?”**

As a preliminary matter, RUS should afford Applicants discretion in how they draw the precise contours of their proposed project areas. Pockets of unserved and underserved consumers are unlikely to fall neatly within existing, arbitrary geographic units, such as ZIP codes or Census Block Groups. These geographic units also often do not track the footprints of existing broadband facilities, which may be leveraged for efficient design of new deployments. For these reasons, Windstream urges RUS, along with NTIA, to allow Applicants to delineate the specific areas in which they propose to deploy broadband. Such an area also should qualify as “rural” if it meets the definition of “rural area” included in the 2008 Farm Bill.⁴⁷

Also consistent with Windstream’s recommendations to NTIA, RUS should avoid adopting a bright-line speeds test for what constitutes “sufficient access to high speed broadband service to facilitate rural economic development.”⁴⁸ Instead, RUS should recognize that there is wide diversity in the level of broadband service to which Americans enjoy access today, and should afford applications different degrees of priority according to the state of available broadband service in the proposed project area. This approach recognizes that virtually any

⁴⁷ Public L. 110-246, 122 Stat. 1651 (Jun. 18, 2008).

⁴⁸ Recovery Act RUS Preamble.

community, from an aspirational standpoint, could be considered to lack sufficient access to certain broadband services. Considering multiple tiers of broadband service also is consistent with how broadband products typically are marketed, and how the FCC collects broadband data.

Under this approach, each tier of broadband service should be defined by whether terrestrial (i.e., non-satellite) broadband service is available at a specified advertised speed in one direction. First, the presence of a satellite broadband provider at a chosen service threshold should not impact the assessment of whether an area is “unserved” or “underserved.” Satellite services are not comparable to terrestrial services in terms of pricing or functionality. Satellite broadband providers typically charge their customers far more for equipment and ongoing service costs as compared to terrestrial providers. Satellite broadband service also may require strict bandwidth caps at the user level, as well as overall caps on capacity at the network level. Thus, reliance on the availability of satellite service will punish areas that are “served” by satellite by overstating the degree to which residents can access robust, affordable broadband.

Second, advertised speeds provide a better metric than “actual” speeds. Determining “actual” speeds poses a number of difficult issues, as speeds vary over time due to a number of conditions outside a broadband provider’s control. Moreover, it would be very challenging for a program Applicant to ascertain whether an area is “unserved” or “underserved” by *other* providers at specified “actual” levels.

Third, RUS should only consider speeds in one direction when assessing the degree to which an area lacks access to broadband services.⁴⁹ Typically, only downstream speeds are

⁴⁹ Windstream, however, would recommend consideration of *both* downstream and upstream advertised speeds when evaluating broadband service that an Applicant proposes to offer. While upstream speeds are not a significant marker of whether an area lacks “sufficient access” and should not be weighted as heavily as downstream speeds, (continued on next page)

prominently advertised, as they have the most significant impact on a user's online experience. While the Internet is a two-way communications path, the vast majority of Internet traffic originates from website content *downloaded* by users (e.g., in the form of video streams, music, or photographs), rather than user content uploaded to websites (most often conveyed in the form of typed content or mouse clicks).

The distinct degrees of “unservedness” used to classify areas “lacking sufficient access to broadband service” should be quantified consistent with the categories adopted last year by the FCC. Specifically RUS should rank applications according to whether they address areas lacking access to terrestrial broadband at downstream advertised speeds of 768 Kbps, 1.5 Mbps, and 3 Mbps. The highest value should be assigned to applications proposing to serve areas lacking access to terrestrial broadband at downstream advertised speeds of 768 Kbps, which is the low end of the range of services that the FCC defines as “basic broadband tier 1.”⁵⁰ The second highest value should be assigned to areas lacking access to terrestrial broadband at downstream advertised speeds of 1.5 Mbps, at the high end of “basic broadband tier 1” services.⁵¹ Finally, the third highest value should be assigned to areas lacking access to terrestrial broadband at downstream advertised speeds of 3 Mbps. Speeds of 3 Mbps are required to support many applications (including those employing standard definition streaming video) that are important for stimulating economic growth by, for example, enabling online education and remote conferencing.

upstream advertised speeds nevertheless are one of many factors that should be considered in evaluating various applications for deployment in areas lacking access to core broadband services.

⁵⁰ *Broadband Data Order* at ¶ 20, n.66.

⁵¹ *Id.*

- 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?**

See response to Question A.10.a. above.

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

See response to Question B.2.a above.

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?**

See response to Question B.2.a above for discussion of what speeds are needed to facilitate “economic development.”

With respect to the meaning of “high speed broadband service,” RUS should approach this meaning in the same way that NTIA should address the definition of “broadband service,” consistent with Windstream’s recommendations in response to Question 13.b above.

- 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)?**

Each funding application should be considered as a whole, with uniform factors applied to assess the total impact of the proposal. In particular, RUS should be mindful of whether an application will “provide service to the highest proportion of rural residents that do not have access to broadband service,” a consideration mandated by the Recovery Act.⁵² This statutory provision establishes that RUS should focus its attention primarily on how a proposal will affect rural regions, before turning to how a proposal could affect any surrounding areas that are not “rural.”

In further evaluating projects, RUS must consider the following priorities for 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. What value should be assigned to those factors in selecting applications? What additional priorities should be considered by RUS?

RUS should place the highest value on the degree to which a project will serve the highest proportion of rural residents lacking access to broadband. The provision of broadband to these individuals will extend the reach of educational, health care, and business services that are transforming the ways in which Americans work, play, are cared for and protected, and otherwise live their lives. In particular, a focus on deployment to unserved and underserved areas will enhance commerce over the World Wide Web, as new rural broadband subscribers act as both buyers and sellers. The ability to telecommute will save workers and their employers money. With modern infrastructure in place, more businesses and organizations will be attracted to rural regions, and rural residents will have more job opportunities. Furthermore, broadband

⁵² Recovery Act RUS Preamble.

deployment will provide the critical foundation for construction of cutting-edge energy, health IT, education, and transportation services, as called for in the Recovery Act.

RUS should place the second-highest priority on projects that will be fully funded and ready to start once they receive funding. This priority is necessary to fulfill the first priority, as only funded projects will bring the benefits of broadband to those currently going without. Moreover, it will ensure Applicants are capable of producing an immediate impact on economic conditions, by creating more work and promptly deploying new broadband facilities.

Consistent with these two overarching priorities, RUS, along with NTIA, should rank applications based upon the following specific selection criteria:

- 1) Stimulus for economic growth (24% of total possible points), as measured by the extent to which the project will bring broadband to unserved or underserved users; will serve a remote region, where ready access to strategic institutions offering services for health care delivery, education, or children typically is limited and broadband would play an especially important role in connecting citizens to such services; and/or will create new work.
- 2) Sustainability (24% of total possible points), as measured by the Applicant's experience in operating a broadband network, its first-hand knowledge of the project area, and/or its financial commitment to ensuring the long-term viability of the proposed project.
- 3) Speeds offered (16% of total possible points), as measured by the downstream and upstream advertised speeds proposed and by the Applicant's proven ability to provide service at those speeds.
- 4) Timeliness of construction (10% of total possible points), as measured by the Applicant's commitment to prompt action and/or its direct financial stake in prompt completion of the project.
- 5) Affordability of broadband service (10% of total possible points), as demonstrated by the Applicant's willingness to price a service offering downstream advertised speeds of 1.5 Mbps or more at \$40 or less per month, to commit to pricing comparable to that offered in similar nearby areas, to provide discounted computers to end users, and/or to maintain a standard installation option – including peripheral equipment – priced at \$75 or less.

- 6) Cost effectiveness (8% of total possible points), as demonstrated by a high ratio of unserved and underserved homes passed per public dollar spent, viewed in conjunction with the degree to which an area is challenging to serve.
- 7) Network scalability (8% of total possible points), as demonstrated by the Applicant's future ability to use, with further investment, the vast majority of facilities deployed with Recovery Act funds to offer residential subscribers in the project area downstream advertised speeds in excess of 10 Mbps.

If an Applicant fulfills these selection criteria, rural residents will have both the means and the motivation for subscribing to broadband, as the service will be promptly offered to them at speeds supporting core services, which will entice new users to venture online. More details regarding Windstream's proposal for common RUS and NTIA scoring criteria are available in Attachment A.

Independent of NTIA, RUS also should give weight to whether an Applicant is a current or former RUS borrower. This provision establishes that an Applicant has experience deploying communications facilities with RUS support in high-cost areas. It does not, however, rise to the significance of the overarching priorities discussed above.

RUS should afford the lowest priority to whether an Applicant "will deliver end users a choice of more than one service provider."⁵³ This provision is best interpreted to require an Applicant to support competition among different online content providers. To receive special consideration under this priority, an Applicant should be required to certify that it will comply with the FCC's Internet Policy Statement (FCC 05-15, adopted August 5, 2005), for a period not

⁵³ *Id.*

to exceed two years following the grant award. Imposing this term limit is consistent with terms placed on merger commitments previously accepted by the FCC.⁵⁴

4. **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.**

As detailed above, the paramount goal of the Recovery Act’s broadband provisions must be the deployment of service to unserved and underserved end users. Fulfillment of this goal will have wide-reaching consequences and will serve many other federal priorities. Thus, RUS should evaluate the success of Recovery Act initiatives based upon the number businesses and residences that are eligible to receive first-time or enhanced broadband access. These measures are objective and direct markers of broadband deployment. Consistent with Windstream’s

⁵⁴ See *SBC/AT&T Order*, App. F (FCC accepting SBC/AT&T commitment to conduct business in a manner that comports with the FCC’s Policy Statement for two years after the merger closing date); *Verizon/MCI Order*, App. G (FCC accepting Verizon/MCI commitment to conduct business in a manner that comports with the FCC’s Policy Statement for two years after the merger closing date); *AT&T/BellSouth Order*, App. F (FCC accepting AT&T/BellSouth’s offer to supplement AT&T’s prior Policy Statement commitment, which was effective through November 2007, with a new commitment to conduct business in a manner comporting with the FCC’s Policy Statement for 30 months after the AT&T/BellSouth merger closing date).

recommendations in response to Question A.14.a, RUS can attain data needed for conducting this analysis from applications and any subsequent progress reports. As proposed in Attachment A, every grant application should include (i) a detailed explanation of the need for federal funds, including a description of existing broadband offerings (or lack thereof) in the proposed service area, as identified pursuant to reasonable investigation; (ii) a description of how requested funds will be used; (iii) a map showing project area boundaries, along with a list of overlapping Census Block Groups; (iv) the number of potential subscribers to be served in the project area (by households); and (v) advertised speeds to be offered. This information can be coupled with data produced in any subsequent reports to provide a sufficient basis for RUS to assess the overall effectiveness of its funding programs under the Recovery Act.

CONCLUSION

The first and foremost priority of both NTIA and RUS should be deployment in areas lacking access to core broadband services. Projects that deploy broadband to unserved and underserved areas will bring more individuals online, thereby maximizing the network effects of the Internet and facilitating greater use of health care, education, and business resources offered over the World Wide Web. To spur meaningful broadband deployment, NTIA and RUS should award funding solely in the form of grants to experienced broadband providers as well as other entities. The agencies also should closely coordinate their efforts, using a joint application and common, objective scoring criteria. A well-designed, streamlined application process will facilitate participation by experienced broadband providers and ensure that funds have an

immediate impact on “demand for broadband, economic growth, and job creation,” as Congress envisioned when it adopted the Recovery Act broadband programs.⁵⁵

Respectfully submitted,

/s/ Jennie B. Chandra

Jennie B. Chandra
Windstream Communications
1101 17th Street, NW, Suite 802
Washington, DC 20036
(202) 223-7667

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Its Attorney

⁵⁵ Recovery Act § 6001(b)(4).

ATTACHMENT A:

**WINDSTREAM PROPOSAL FOR A SINGLE NTIA AND RUS APPLICATION FOR
BROADBAND DEPLOYMENT IN UNSERVED AND UNDERSERVED AREAS**

(1) COMMON SCORING CRITERIA (pp. A1-A9)

(2) STREAMLINED APPLICATION INFORMATION REQUIREMENTS (pp. A10-A13)

COMMON SCORING CRITERIA

Note: Although specific points are not assigned to criteria in this proposal, Windstream lists the eight scoring categories in rank order of importance and indicates the percentage of total points that should be assigned to each category. Individual scoring criteria are listed in rank order of importance within each category, but a criterion's placement within a category is not necessarily indicative of its relative placement to criteria in all other categories. For example, "impact on employment" is included in the second most important category, but "downstream advertised speeds offered," which is ranked highest in the third most important category, should warrant more points than "impact on employment." Windstream envisions NTIA and RUS will assign points to each individual factor, and its intention is that these rankings will assist in that effort.

(1) **Stimulus for Economic Growth** (24% total possible points)

Statutory bases:

- Recovery Act §§ 6001(b)(1)-(2), §§ 6001(g)(1)-(2) & (g)(4), §§ 6001(h)(2)(A)-(C), § 6001(h)(3)
- RUS Preamble ("this amount is available for grants, loans and loan guarantees for broadband infrastructure") ("at least 75 percent of the area to be served by a project receiving funds from such grants, loans, or loan guarantees shall be in a rural area without sufficient access to high speed broadband service to facilitate rural economic development") ("priority for awarding funds . . . shall be given to projects that provide service to the highest proportion of rural residents that do not have access to broadband service") ("priority for such applications should be awarded for broadband systems that will deliver end users a choice of more than one service provider")

Note: This assessment is based upon conditions in the project area, which is to be defined by the Applicant at any level of geographic granularity. To confirm how the project would change conditions in the project area, the Applicant must submit the following: (i) a description of any broadband offerings in the project area, as can be determined with a reasonable investigation; (ii) a map showing project area boundaries, along with a list of overlapping Census Block Groups; (iii) number of potential subscribers to be served in the project area (by households, consistent with the U.S. Census Bureau definition); and (iv) advertised speeds to be offered.

(a) Unserved/underserved consumers addressed¹

- Applicant will offer broadband service to a project area where access to terrestrial (i.e., non-satellite) broadband at advertised speeds of at least 768 Kbps in one direction is available (select only one):
 - to less than 95% households in the project area (*highest possible points*),
 - less than 75% of the households in the project area,
 - less than 50% of households in the project area, or
 - less than 25% of households in the project area.
- Applicant will offer broadband service to a project area where access to terrestrial (i.e., non-satellite) broadband at advertised speeds of at least 1.5 Mbps in one direction is available (select only one):
 - to less than 95% households in the project area,
 - less than 75% of the households in the project area,
 - less than 50% of households in the project area, or
 - less than 25% of households in the project area.
- Applicant will offer broadband service to a project area where access to terrestrial (i.e., non-satellite) broadband at advertised speeds of at least 3 Mbps in one direction is available (select only one):
 - to less than 95% households in the project area,
 - less than 75% of the households in the project area,
 - less than 50% of households in the project area, or
 - less than 25% of households in the project area (*lowest possible points*).

(b) Deployment in a remote region, where ready access to strategic institutions offering services for health care delivery, education, or children typically is limited and broadband would play an especially important role in connecting citizens to such services and institutions

- The average population density of the project area is less than 19 households per square mile.²

¹ The three speed tiers indicating the degree to which consumers lack service (at advertised speeds of 768 Kbps, 1.5 Mbps, 3 Mbps in one direction) are listed in rank order of importance. Total possible points should be assigned to each category accordingly. Individual scoring criteria are listed in rank order of importance within each category, but a criterion's placement within one category is not necessarily indicative of its relative placement to criteria in all other categories. For example, it would be prudent to award more points to a project proposing to offer broadband service to an area where all households lack access to broadband at advertised speeds of 1.5 Mbps, as compared to another project proposing to offer service to an area where (i) 10 percent of the households cannot access 768 Kbps and (ii) all other households can access broadband at advertised speeds greater than 3 Mbps. Evaluating applications in this manner allows NTIA and RUS to account for instances where there is significant variation in advertised speeds available to households in a single project area.

² This figure tracks the standard adopted by the FCC to identify "very low density" providers. See *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long-Distance Users; Federal-State Joint Board On Universal Service*, 15 FCC Rcd 12962, 13029 ¶ 162 (2000) ("For purposes of applying the 0.95-cent target rate, a very low-density price cap LEC is one with a holding company average of less than 19 End User Common Line charge lines per square mile served.").

(c) Impact on employment (by Applicant and its contractors)

- The following percentage of total project costs are attributable to labor (select one):
 - 67-100%
 - 34-66%
 - 0-33% (*no points assigned*)

(d) Socially and economically disadvantaged small business concern (NTIA only)

- Applicant produces facts demonstrating that it is a socially and economically disadvantaged small business.

(e) Competition among service providers

- Applicant certifies that it will abide by the FCC's Policy Statement (FCC 05-15, adopted August 5, 2005) in the project area for at least two years after the project is complete. For purposes of this application, "complete" means the time that the Applicant has made the necessary installations so that services are available throughout the project area.

(2) Sustainability (24% of total possible points)

Statutory bases:

- Recovery Act §§ 6001(d)(3)-(d)(5), § 6001(f)
- RUS Preamble ("priority for awarding such funds shall be given to project applications that demonstrate that, if the application is approved, all project elements will be fully funded") ("priority for awarding such funds shall be given to project applications for activities that can be completed if the requested funds are provided")

(a) Demonstrated ability to operate a broadband network at the scale proposed

- Applicant certifies that (i) it currently offers broadband service to households in other areas at a scale at or above the level contemplated by the application (as measured by number of households passed) and (ii) its proposal would offer broadband services consistent with its current offerings provisioned as advertised ("advertised speeds").

(b) First-hand knowledge of local operating conditions

- Applicant demonstrates that it possesses first-hand knowledge of the project area by (i) indicating that it currently provides communications service in the area or in a contiguous area, as evidenced by a FCC Form 477 filing, state certificate of public convenience and necessity, cable franchise, or other relevant certification or filing; (ii) showing that it is a governmental subdivision with sovereignty over the area (whether at the state or local level); or (iii) making an equivalent showing.

(c) Significant financial commitment to ensuring long-term viability of the project

- Applicant will use its own capital funds (i.e., rather than funds obtained from other federal or state government programs directed at broadband deployment) to pay remaining project costs, and such costs shall constitute at least 20 percent of the total project costs.

(3) Advertised Speeds Offered (16% total possible points)

Statutory bases:

- Recovery Act § 6001(b)(2), § 6001(g)(4), §§ 6001(h)(2)(A)-(C)
- RUS Preamble (“at least 75 percent of the area to be served by a project receiving funds from such grants, loans, or loan guarantees shall be in a rural area without sufficient access to high speed broadband service to facilitate rural economic development”) (“priority for such applications should be awarded for broadband systems that will deliver end users a choice of more than one service provider”)

(a) Downstream advertised speeds offered³

- Applicant will offer broadband service in the project area at downstream advertised speeds of at least 6 Mbps to (select only one):
 - more than 95% of households in the project area (*highest possible points*),
 - 75-95% of households in the project area,
 - 50-75% of households in the project area, or
 - 25-50% of households in the project area.
- Applicant will offer broadband service in the project area at downstream advertised speeds of at least 3 Mbps to (select only one):
 - more than 95% of households in the project area,
 - 75-95% of households in the project area,
 - 50-75% of households in the project area, or
 - 25-50% of households in the project area.
- Applicant will offer broadband service in the project area at downstream advertised speeds of at least 1.5 Mbps to (select only one):
 - more than 95% of households in the project area,
 - 75-95% of households in the project area,
 - 50-75% of households in the project area, or
 - 25-50% of households in the project area (*lowest possible points*).

³ The three speed tiers indicating advertised speeds offered (at downstream advertised speeds of 6 Mbps, 3 Mbps, and 1.5 Mbps) are listed in rank order of importance. Total possible points should be assigned to each category accordingly. Individual scoring criteria are listed in rank order of importance within each category, but a criterion’s placement within one category is not necessarily indicative of its relative placement to criteria in all other categories. For example, it would be prudent to award more points to a project proposing to offer 3 Mbps downstream advertised speeds to all households in an area, as compared to another project proposing to offer (i) 6 Mbps downstream advertised speeds to 25 percent of households in an area and (ii) no service enhancement to the remaining 75 percent of households. Evaluating applications in this manner allows NTIA and RUS to account for instances where an applicant may propose to offer different levels of downstream advertised speeds to households within a single project area.

(b) Upstream advertised speeds offered⁴

- Applicant will offer broadband service in the project area at upstream advertised speeds of at least 768 Kbps to (select only one):
 - more than 95% of households in the project area (*highest possible points*),
 - 75-95% of households in the project area,
 - 50-75% of households in the project area, or
 - 25-50% of households in the project area.
- Applicant will offer broadband service in the project area at upstream advertised speeds of at least 384 Kbps to (select only one):
 - more than 95% of households in the project area,
 - 75-95% of households in the project area,
 - 50-75% of households in the project area, or
 - 25-50% of households in the project area (*lowest possible points*).

(c) Ability to deliver consumers advertised speeds

- Applicant certifies that (i) all consumers in the project area will be able to purchase broadband service based upon the same network design assumptions as those currently used for Applicant’s provision of broadband service at comparable advertised speeds and (ii) no court or regulatory utility commission, as of the time of the application, has adjudicated a final, unappealable decision finding that the Applicant has produced commercial advertisements containing inaccurate information regarding advertised speeds.
- If it currently offers no such service, Applicant (i) certifies and demonstrates that its network design assumptions are equivalent to those used by a specified broadband provider that currently uses the same technology to offer comparable speeds, without legal challenge as specified in above or (ii) certifies and produces facts demonstrating that Applicant’s network design assumptions are appropriate for its broadband offerings at advertised speeds proposed in its Application.

(4) Timeliness of Construction (10% total possible points)

Statutory bases:

- Recovery Act §§ 6001(d)(1) & (d)(3), § 6001(e)(3)
- RUS Preamble (“priority for awarding . . . funds shall be given to activities that can commence promptly following approval”) (“priority shall be given to project applications

⁴ The two speed tiers indicating advertised speeds offered (at upstream advertised speeds of 368 Kbps and 768 Kbps) are listed in rank order of importance. Total possible points should be assigned to each category accordingly. Individual scoring criteria are listed in rank order of importance within each category, but a criterion’s placement within one category is not necessarily indicative of its relative placement to criteria in all other categories. For example, it would be prudent to award more points to a project proposing to offer upstream advertised speeds of 368 Kbps to all households in an area, as compared to another project proposing to offer (i) 768 Kbps service to 25 percent of households in an area and (ii) no service enhancement to the remaining 75 percent of households. Evaluating applications in this manner allows NTIA and RUS to account for instances where an applicant may propose to offer different levels of upstream advertised speeds to households within a single project area.

from borrowers or former borrowers under title II of the Rural Electrification Act of 1936 and for project applications that include such borrowers or former borrowers”)

(a) Project to commence promptly

- After being notified that it will receive the requested grant award, Applicant will initiate worker activity on the project (e.g., write work orders to procure equipment, hire employees or engage any contractors needed for the project) within:
 - 30 days
 - 60 days
 - 90 days

(b) Direct financial stake in prompt completion of the project

- Applicant agrees to receive grant payment only after the project is complete.

(c) Experience in using RUS support to build facilities in a high-cost area (RUS only)

- The project application is (i) submitted by a borrower or former borrowers under Title II of the Rural Electrification Act of 1936 or (ii) includes such borrowers or former borrowers. A former borrower includes any entity that participated in any of the RUS lending programs, including but not limited to, its parent companies, subsidiaries, and affiliates. “Affiliate” means any entity that is directly or indirectly controlling, controlled by, or under common control with the Applicant. In order to be deemed in control, be controlled by, or under common control, more than 50 percent equity ownership must be established.

(5) Affordability of Broadband Service (10% total possible points)

Statutory bases:

- Recovery Act § 6001(g)(4), §§ 6001(h)(2)(A)-(C)
- RUS Preamble (“priority for awarding funds . . . shall be given to projects that provide service to the highest proportion of rural residents that do not have access to broadband service”)

(a) Guaranteed pricing period for broadband service

- Applicant certifies that residential consumers in the project area will be able to purchase its broadband service at advertised speeds of at least 1.5 Mbps in one direction for a price not to exceed \$40 per month for two years after the project is complete.
- If it only offers broadband service at advertised speeds of 1.5 Mbps in one direction in conjunction with other services, Applicant certifies that it will offer residential consumers in the project area at least one option that will permit them to purchase such broadband in conjunction with other services for a price not to exceed \$40 per month for two years after the project is complete.

(b) Reasonable equipment charges

- For standard installation, Applicant certifies that it will make available to residential consumers in the project area at least one option providing the equipment needed to connect personal computers to its broadband service (e.g., modems, antennas) at a price not to exceed \$75 during the two years after service is provisioned.
- This certification shall govern for two years after the project is complete, and it shall apply only to broadband services offered by the Applicant to residential subscribers at the time the application is submitted.

(c) Regional comparability of broadband service prices

- Applicant certifies that residential consumers in the project area will be able to purchase broadband service at a retail price equivalent to what it offers to residential consumers for comparable advertised speeds in the closest city, town, or incorporated area of similar population density where Applicant offers service but has not received funding from a Recovery Act broadband program. This certification shall govern for two years after the project is complete and only apply to broadband services offered by the Applicant to residential subscribers at the time the application is submitted.
- If Applicant offers no such service within the same state, Applicant instead certifies and produces persuasive facts demonstrating that its retail price for broadband service offered to residential consumers in the project area will be equivalent to what Applicant offers to residential consumers for comparable advertised speeds in similarly situated areas, as indicated by a reasonable metric proposed by the Applicant. This certification shall govern for two years after the project is complete and only apply to broadband services offered by Applicant to residential subscribers at the time the application is submitted.

(d) Discounted computers

- Applicant certifies that it will offer computers capable of supporting core broadband services, such as remote conferencing and distance education, to all of its residential broadband customers in the project area at a rate discounted by at least 25 percent relative to Manufacturer’s Suggested Retail Price. This certification shall govern for two years after the project is complete.

(6) Cost Effectiveness (8% total possible points)

Statutory bases:

- Recovery Act §§ 6001(e)(3)-(e)(5), § 6001(f)
- RUS Preamble (“priority for awarding funds . . . shall be given to projects that provide service to the highest proportion of rural residents that do not have access to broadband service”)

(a) Funds requested per potential customer⁵

- Applicant indicates the average amount of public funding needed to pass a household, considered in conjunction with the degree to which an area is challenging to serve (as indicated by the level of broadband service currently available to the vast majority of households in the project area), meets the following criteria:

Average Amount of Public Funding Requested to Deploy New or Enhanced Broadband Service to an Unserved or Underserved Household in the Project Area	Project Area Where 95%+ of the Households Lack Access to Terrestrial Broadband at Advertised Speeds of 768 Kbps in One Direction	Project Area Where 95%+ of the Households Lack Access to Terrestrial Broadband at Advertised Speeds of 1.5 Mbps in One Direction	Project Area Where 95%+ of the Households Lack Access to Terrestrial Broadband at Advertised Speeds of 3 Mbps in One Direction
\$0-499	<i>(highest possible points)</i>		
\$500-999			
\$1,000-1,499			
\$1,500-1,999			
\$2,000-2,499			
\$2,500+			<i>(no points assigned)</i>

(7) Network Scalability (8% total points possible)

Statutory bases:

- Recovery Act § 6001(b)(2), §§ 6001(h)(2)(A)-(C)
- RUS Preamble (“at least 75 percent of the area to be served by a project receiving funds from such grants, loans, or loan guarantees shall be in a rural area without sufficient access to high speed broadband service to facilitate rural economic development”) (“priority for such applications should be awarded for broadband systems that will deliver end users a choice of more than one service provider”)
- 47 U.S.C. § 254(c) (stating federal goal of providing American public an “evolving level of telecommunications services”)

⁵ The three advertised speed tiers indicating the degree to which consumers lack service (at advertised speeds of 768 Kbps, 1.5 Mbps, 3 Mbps in one direction) are listed in rank order of importance. Total possible points should be assigned to each category accordingly. Individual scoring criteria are listed in rank order of importance within each category, but a criterion’s placement within one category is not necessarily indicative of its relative placement to criteria in all other categories. For example, it would be prudent to award more points to a project proposing to offer broadband service at a government cost of \$1,000/household passed in a project area where all households lack access to broadband at advertised speeds of 1.5 Kbps, as compared to another project proposing to offer service at \$1,000/household passed in a project area where (i) 10 percent of the households cannot access 768 Kbps and (ii) all other households have access to 1.5 Mbps, but not 3 Mbps. Evaluating applications in this manner allows NTIA and RUS to account for instances where there is significant variation in advertised speeds offered to households in a single project area.

(a) Demonstrated ability to scale network up to next-generation speeds

- Applicant (i) identifies a specific instance where it has used the technology that would be deployed in the project area to offer residential subscribers broadband at advertised speeds in excess of 10 Mbps in one direction and (ii) certifies that there are no technological limitations that would prevent it from upgrading its network so that, with further investment, it can use the vast majority (i.e., at least 75%) of facilities deployed with Recovery Act funding to offer such advertised speeds in excess of 10 Mbps to residential subscribers in the project area.
- If it has never offered residential subscribers advertised speeds in excess of 10 Mbps in one direction, Applicant has certified and has provided facts conclusively demonstrating that, with further investment, it could use the vast majority (i.e., at least 75%) of the facilities deployed with Recovery Act funding to offer such advertised speeds in excess of 10 Mbps to residential subscribers in the project area.

STREAMLINED APPLICATION INFORMATION REQUIREMENTS

(1) NTIA and RUS Applicants must demonstrate the following:

(a) Funds will be used to deploy broadband services and related infrastructure.

Statutory bases:

- Recovery Act §§ 6001(g)(1)-(2)
- RUS Preamble (“this amount is available for grants, loans and loan guarantees for broadband infrastructure”)

Specific information required: Applicant can make this showing with VISIO or other mapping technology that provides granular information regarding facilities deployed and area to be served. A narrative equivalent may satisfy this requirement as well.

(b) Funds will be used in an efficient and effective manner.

Statutory bases:

- Recovery Act §§ 6001(e)(3)-(e)(5), § 6001(f)
- RUS Preamble (“priority for awarding such funds shall be given to project applications that demonstrate that, if the application is approved, all project elements will be fully funded”) (“priority for awarding such funds shall be given to project applications for activities that can be completed if the requested funds are provided”)

Specific information required: Applicant should provide a detailed explanation of the need for federal funds and how these funds will be used. Details regarding the economics of the proposed project, however, need not include more information than what Schedule Q on RUS Form 532 requires on project costs. Any and all such information shall be kept strictly confidential.

(c) Project would not be implemented before the end of fiscal year 2010, absent federal funding.

Statutory bases:

- Recovery Act § 6001(e)(3)
- RUS Preamble (“priority for awarding funds . . . shall be given to projects that provide service to the highest proportion of rural residents that do not have access to broadband service”)

Specific information required: Applicant can make this showing via a certification executed by a corporate officer.

(d) Applicant is financially and technically capable of carrying out the project competently, in compliance with the law.

Statutory bases:

- Recovery Act § 6001(e)(4)
- RUS Preamble (“priority for awarding such funds shall be given to project applications that demonstrate that, if the application is approved, all project elements will be fully funded”) (“priority for awarding such funds shall be given to project applications for activities that can be completed if the requested funds are provided”)

Specific information required: Applicant can demonstrate financial competence, in compliance with all applicable laws, by showing that it is subject to obligations incumbent on publicly traded companies (e.g., by filing its most recent Form 10-K), or by making an equivalent showing via other means specified by NTIA and RUS.

Applicant can demonstrate technical competence, in compliance with all applicable laws, by showing it has two or more years of service as a broadband provider, as evidenced by a declaration that it submitted FCC Form 477 filings throughout the last two years. NTIA and RUS may designate additional means by which an Applicant can make a showing of technical competence.

(e) Granting the application will not result in unjust enrichment.

Statutory bases:

- Recovery Act § 6001(h)(2)(D)
- RUS Preamble (“no area of a project funded, with amount made available under [RUS’s broadband program,] may receive funding to provide broadband service under the Broadband Technology Opportunities Program”)

Specific information required: Applicant can make this showing by providing documentation of any federal or state grants, loans, or loan guarantees directly relating to the provision of broadband that it has either received or applied for, and a corporate officer’s certification that there have been no other such grants, loans, or loan guarantees. All disclosure obligations relating to this showing shall exclude support received from the federal Universal Service Fund or analogous state programs.

(f) Applicant has set out prescribed assurances and procedures to ensure that funds are used and accounted for appropriately.

Statutory bases:

- Recovery Act § 6001(e)(7)
- RUS Preamble (“priority for awarding such funds shall be given to project applications for activities that can be completed if the requested funds are provided”)

Specific information required: Applicant can make this showing by keeping detailed records that enable a matching of grant funds received to support for the expenses incurred in individual project areas. An Applicant must provide certification by an officer that adequate internal accounting controls are in place to appropriately track the construction spending and funding received for each project.⁶ If total expenses for a project area exceed 110 percent of projected total project costs, funds should be adjusted to account for actual expenses only if the Applicant can demonstrate good cause for the variance.

An Applicant must provide NTIA and RUS quarterly reports that describe its use of federal funding and progress fulfilling the objectives for which such funds were granted.

⁶ These certifications might resemble those required in certain cases by the Sarbanes-Oxley Act of 2002 (“Sarbanes-Oxley”). Sarbanes-Oxley provides that the Chief Executive Officer and Chief Financial Officer of each company filing securities reports under the Securities Exchange Act must execute annually or quarterly certifications testifying to the presence of sufficient internal controls to ensure the veracity of such reports. *See Sarbanes Oxley* § 302.

(g) Project will be substantially complete within two years of award.

Statutory bases:

- Recovery Act §§ 6001(d)(1) & (d)(3), § 6001(e)(3)
- RUS Preamble (“priority for awarding . . . funds shall be given to activities that can commence promptly following approval”)

Specific information required: To ensure substantial completion within required time frames, Applicant must (i) agree to receive funding only upon completion, with disbursement reduced by 10% of total grant funds for every month by which completion date extends past two-year deadline; or (ii) receive funding in advance but post bond for 100% of the funding, 10% of which would be forfeited for every month by which the completion date extends past two-year deadline. Exceptions to these penalties should be permitted only if the Applicant’s deployment is delayed by circumstances beyond the reasonable control and without the fault or negligence of the Applicant.⁷

(h) The Federal share of the project shall not exceed 80 percent (unless Applicant has received a waiver).

Statutory bases:

- Recovery Act § 6001(f)
- RUS Preamble (“priority for awarding funds . . . shall be given to projects that provide service to the highest proportion of rural residents that do not have access to broadband service”)

Specific information required: Applicant can make this showing by filing a certification detailing the total project cost and the Federal share of the project.

(i) The degree to which granting the Application would benefit the public.

Statutory basis: See statutory references for scoring criteria above.

Specific information required: This determination will be based upon on declarations and associated data submitted by the Applicant, evaluated according to the recommended scoring criteria (as previously proposed on pp. A1-A9).

(j) Applicant will appropriate or obligate sufficient funds.

Statutory basis:

- Recovery Act § 6001(e)(5), § 6001(f)
- RUS Preamble (“priority for awarding such funds shall be given to project applications that demonstrate that, if the application is approved, all project elements will be fully funded”) (“priority for awarding such funds shall be given to project applications for activities that can be completed if the requested funds are provided”)

Specific information required: Applicant can make this showing by describing how it will appropriate (if the Applicant is a State or local government agency) or otherwise unconditionally obligate funds from non-Federal sources, as necessary to meet the requirements of § 6001(f).

⁷ Such circumstances could include, for example, fire, flood, earthquake, or like acts of God; civil commotion; or acts of a public enemy.

(2) Only NTIA Applicants must demonstrate the following:

(a) Applicant is one of the types of entities that are eligible to apply for NTIA funding.

Statutory basis:

- Recovery Act § 6001(e)(1)

Specific information required: Applicant certifies that it falls within a class of entities that are automatically eligible to apply (pursuant to §6001(e)) or that it is an experienced communications carrier or broadband service provider. With respect to the latter class, an entity, at a minimum, can establish its eligibility by demonstrating that it has two or more years of service as a broadband provider, as evidenced by a certification that it has made FCC Form 477 filings throughout the last two years. To satisfy non-discrimination and network interconnection obligations, the Applicant must certify that it will abide by the FCC's Policy Statement (FCC 05-15, adopted August 5, 2005) in the project area for at least two years following completion of the project.

(3) Only RUS Applicants must demonstrate the following:

(a) 75 percent or more of the project area is in a rural area without sufficient access to high speed broadband service to facilitate rural economic development.

Statutory basis:

- RUS Preamble (“at least 75 percent of the area to be served by a project receiving funds from such grants, loans, or loan guarantees shall be in a rural area without sufficient access to high speed broadband service to facilitate rural economic development”)

Specific information required: Applicant must document that 75% or more of the project area is rural (as defined in the 2008 Farm Bill, Public L. 110-246, 122 Stat. 1651 (Jun. 18, 2008)) and lacks access to terrestrial (i.e., non-satellite) broadband service at advertised speeds of at least 3 Mbps in one direction.