STATE OF ALABAMA
ALABAMA BROADBAND INITIATIVE

DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration
and the
DEPARTMENT OF AGRICULTURE
Rural Utilities Service

Comments Regarding
Docket No. 090309298–9299–01
American Recovery and Reinvestment
Act of 2009 Broadband Initiatives
April 13, 2009

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STATE OF ALABAMA

April 13, 2009

Broadband Technology Opportunities Program
Attn: Ms. Barbara Brown
U.S. Department of Commerce, Room 4812
1401 Constitution Avenue, NW.
Washington, DC 20230

RE: Docket No. 090309298-9229-01 - ARRA

Dear Ms. Brown,

In May 2008, Governor Bob Riley launched the Alabama Broadband Initiative and Connecting ALABAMA—a comprehensive statewide effort to address supply and demand of broadband. The ConnectingALABAMA Advisory Board is comprised of state agencies, including the Departments of Agriculture & Industries, Children's Affairs, Conservation & Natural Resources, Economic & Community Affairs, Education, Homeland Security, Information Services, Postsecondary Education, Public Health, and Tourism, the Alabama Supercomputer Authority, Alabama Development Office, Commission on Higher Education, Rural Action Commission and members from the Alabama Legislature.

The Board also includes representatives from the Alabama League of Municipalities, Alabama Power Company, Alabama Wireless Association, Alabama Farmer's Federation, AL-MS Telco Association, Ashland Computer Systems, Association of County Commissions of Alabama, AT&T, Auburn University Montgomery, Bright House Cable, CenturyTel, Chamber of Commerce Association of Alabama, Comcast Cable, HudsonAlpha Institute for Biotechnology, the Phoenix Center for Advanced Legal and Economic Public Policy Studies, Troy Cable, Troy University and Verizon.

This document is presented on behalf of the Governor's broadband project, but is not intended to speak for each member of our Advisory Board. A number of board members will submit comments on their organization's behalf, and we encourage the NTIA and RUS to consider their positions, as well.

We appreciate the opportunity to provide comments pursuant to this ARRA Docket.

Sincerely,

Kathy Johnson
Director

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Executive Summary

The State of Alabama submits the following comments pursuant to the American Recovery and Reinvestment Act of 2009 broadband grant and loan programs, Docket No. 090309298-9229-01.

The ConnectingALABAMA team believes the advancement of (a) broadband deployment on the supply-side and (b) broadband-based applications on the demand-side are vital enablers to the economic opportunity and quality of life for all Americans. As such, we stand in strong support of the Broadband Technology Opportunity Program (BTOP) advanced by the American Recovery and Reinvestment Act (ARRA).

ARRA offers an extraordinary opportunity to bring much needed reliable data on broadband availability, cost, and use to the state's effort to connect all Alabamians to the 21st Century information economy.

As one of the most rural states in the country, Alabama has experienced the best and worst of communications services. We are proud of the fact that in many areas, we have affordable, quality broadband via a hybrid of fiber, DSL, cable, wireless and broadband over powerline solutions. We also have a quality state network and partnership with Alabama's ISPs to deliver government services, distance learning and connectivity to multiple public libraries. However, like many other rural states, we have many "dead zones" where mobile data service and high-speed Internet are either not available at all or deliver low bandwidth that falls beneath the tiered classifications as set forth by the FCC in late 2008. Rural healthcare, economic development, agriculture and other areas are at a distinct disadvantage due to broadband inaccessibility.

ISPs operating in Alabama have become outstanding partners in the Governor's Alabama Broadband Initiative, known as ConnectingALABAMA. However, like many rural areas of the country, deploying broadband to areas with ten or fewer potential customers per mile presents a ROI challenge. We believe that the new broadband grant and loan programs funded under the American Recovery and Reinvestment Act (ARRA) of 2009 are a unique opportunity for states like Alabama to address some of the most pressing needs to expand broadband service and address key community needs, such as job creation, public safety, telehealth, distance learning and public access to computers—area that have been difficult to address without federal financing support.

We appreciate the opportunity to provide comments pursuant to this ARRA Docket.

I. The Role of the States

The Recovery Act states that NTIA may consult the States 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.

We believe the ARRA statute suggests that states play an important role in these programs, including having a say in how key terms are defined and applied in the programs (e.g., broadband, unserved, and underserved).

State submitted, supported and/or endorsed applications should be given considerable weight. In addition, the two agencies should provide some deference to the states with respect to what are considered priorities in their states, and the programs should allow for some flexibility in program eligibility and implementation.

We believe the agency can foster coordination with State priorities by giving considerable weight to applications filed either by states, in conjunction with states, endorsed by states, or if the applicant can demonstrate that its proposed service addresses previously identified priorities of a state. In addition, considerable weight should be given to a State in determining projects that address the purposes listed in Section 6001(b) of the American Recovery and Reinvestment Act (ARRA), but the agency does not need to allow States to delay the grant processing or surrender its discretion entirely to the States. The ARRA encourages, but does not mandate that NTIA consult with the States on BTOP grants and the criteria for considering eligibility and awarding grants. While the flexibility in the statute permits States to apply directly and to become re-granters, some States may not want to apply directly. States may prefer to maintain a coordination role with applications seeking BTOP grants for their State. We suggest the program rules should allow this as a viable option. In addition, we recommend against limiting eligibility only to States and public sub-divisions.

In addition, we suggest that the two agencies consider state block grants for redistribution to sub-grantees, if states elect to make such application. While we are comfortable with states submitting a block-grant plan, holding public hearings to encourage input and identify priorities, we suggest that at a minimum, NTIA and RUS should give weight to projects that are consistent with the state's overall broadband plan.

For states not electing to submit block-grant applications, we suggest that an appropriate role for states may be that of "validator" with respect to priority projects within their jurisdiction. For example, NTIA should take into account what a State designates as its unmet needs, provided those needs are consistent with the statutory criteria. Thus, NTIA's definitions of "unserved" and "underserved" should provide enough flexibility for a State to identify a unique circumstance for what it considers unserved or underserved and thus favorably consider applications that meet that need identified by a State. Further, States should retain broad flexibility in determining which public safety, educational, or healthcare applications it considers important to the State and therefore, should be considered a priority application by

the agency. In particular, deference should be given to States in identifying priorities for educational awareness and training; [1] public safety projects;[2] and projects that stimulate demand and economic growth.[3]

NTIA should not seek to resolve differences among groups or constituencies within a State in establishing priorities for funding or between competing interests. Rather, the agency should focus on creating objective scoring criteria that will differentiate applications to the degree that they can successfully serve the highest possible number of the criteria specified in the statute. All other things being equal, applications that are submitted either by the state, jointly with a State or with the State's endorsement should score higher than applications without such coordination.

NTIA should ensure that projects proposed by States are well executed and produce worthwhile and measurable results by judging project viability and effectiveness under the same criteria used to judge all other applications.

Ensuring proper execution and effectiveness of grant applications requires clear criteria that applicants must make the case they can achieve the outcomes. It should also ensure that post-award follow up should include manageable reporting on progress towards the goals pledged in a particular application. Post-award reporting requirements need to be manageable for both the applicant and the agency. In evaluating a State proposal, the NTIA needs to give special attention to the ability to not just obligate funds, but to complete projects promptly.

II. 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.

Congress was clear in its legislative language and history to that a large number of entities should be eligible for BTOP funding. The private sector is the engine of economic growth and job creation. Making BTOP funds available to private sector entities will facilitate the primary goal of the ARRA, which is to retain and create jobs. The statute does not suggest that the agency prioritize among applications from the eligible entities specified in Section 6001(e). Therefore, NTIA should not discriminate among eligible entities. Applications from any eligible entity should be considered on its merits and how it achieves the goals established in the statute and adheres to the criteria in the statute—not based on the nature of the applicant, provided the applicant is eligible under the terms specified in the statute.

[1] Section 6001(b)(3)
[2] Section 6001(b)(4)
[3] Section 6001(b)(5)

III. Establishing Selection Criteria

The Recovery Act establishes several considerations for awarding grants under the BTOP. The State of Alabama would recommend the following suggestions for establishing grant criteria.

NTIA should limit its scoring criteria to the criteria established in the statute. The agency should consider the criteria specified in Section 6001(b)(3), (4), and (5) and Section 6001(h)(2) as criteria that can distinguish applications. Projects proposed that will serve these criteria should receive favorable points for including such service in the application.

It will be difficult for NTIA to determine where needs exist and are not replacing private investment. No real objective information exists for the agency to judge against applications. With respect to BTOP grants for unserved areas, applicants should be required to make their best case that their proposal requires federal grant assistance to make the deployment possible. This suggests that NTIA only consider applications for unserved areas that are deploying new infrastructure or facilitating new broadband service that is not otherwise available. Applications for underserved areas are required under the statute to be considered; and in these cases, the burden should be on the applicant to make a showing that private investment could not ensure affordable service with respect to the new service that is being proposed in the application.

The agency can ensure long-term feasibility by requiring applicants to demonstrate how the proposed project, if awarded, is part of a sustainable business plan. The agency should avoid overly burdensome capital or equity requirements. In other words, applicants should not be forced to lock up capital in advance of being awarded a grant under BTOP or as a condition of drawing down a BTOP grant award.

Factors such as determining a "need for federal funding," "replacement of private investment" and "long-term sustainability" should be given a "yes" or "no" test. It will become too burdensome on the agency to establish reasonable criteria to make judgments between applicants that meet these criteria better or poorer than another applicant.

Previous USDA grant and loan awards should not be permitted to trump or prevent NTIA from awarding a BTOP grant in the same area or an area that may have some overlap with the previous USDA grant or loan, provided that the BTOP application is for new broadband service that is not being provided or will be provided under a previous USDA grant or loan.

However, with respect to grants and loans awarded by the USDA under the ARRA, the two agencies should coordinate and not make certain that an RUS grant or loan does not block a worthy BTOP grant award. For example, it may be logical and desirable for an area to have a BTOP grant to a mobile wireless provider and an RUS grant to fund a wire line broadband provider. If both projects create jobs and both projects create needed infrastructure, the rules or implementation of the statute should not prevent both technologies from qualifying for funding. If an entity seeks a USDA ARRA broadband loan, a BTOP or USDA grant should not (all

things being equal) be a barrier to loan eligibility. The USDA, of course, would still need to consider that ability of the borrower to repay the loan.

Given the level of interest in the ARRA broadband grant and loan programs, and given the urgent need to create jobs, the NTIA and the RUS should look to every opportunity to simplify the application and evaluation process.

Involving other ARRA programs in the already complex broadband programs may further complicate the application and evaluation process. Any addition of complexity could seriously impair each agency's ability to issue grant awards in a timely manner. NTIA should not attempt to condition or score a BTOP application based on decisions of other agencies. The only exception to this is the statutory requirement that NTIA and the RUS coordinate and prevent any double dipping. Further, NTIA is required under Section 6001(h)(2)(D) to prevent unjust enrichment. Suggesting that NTIA should provide favorable treatment towards an applicant that may receive or have received other federal grants seems to run afoul of this requirement. In circumstances when the agency is considering competing applications (and only in such circumstances), the agency should provide greater weight and priority to applications that address several purposes specified in the statute. Further, the agency should establish a cap for the total amount of grant funds that any one entity can receive under BTOP grants. This will ensure diversity among applicants and prevent one or two large entities from dominating the BTOP grant awards.

Applicants should be required to make a showing that their BTOP application is part of a sustainable business plan. The business plan should be judged by realistic standards of take rates and churn appropriate for the given market. These requirements will encourage sustainable adoption of broadband service.

Technological neutrality requires not only that the agency avoid establishing definitions for eligibility, minimum broadband speeds, unserved, and underserved that would favor a particular technology (among technologies that meet the same basic performance established by the agency for the BTOP program), but it also requires that the agency remain mindful that different technologies may provide very distinct broadband service and therefore, should not be considered duplicative. For example, the presence of a mobile broadband service meeting the minimum broadband performance required under the BTOP program should not preclude consideration of a BTOP grant application for fixed broadband service in a particular area and vice versa. Mobile broadband and fixed broadband services are very distinct services and will address different needs in a given community. Technological neutrality requires NTIA and the RUS to consider this different technology as not duplicative when considering applications.

All applications for grants should propose affordable service. The agency should not impose a hard and fast rule, but take into consideration various factors affecting the market for which the project is proposed. No one factor should establish the agency's definition of affordability. The agency should take into consideration the full compliment of factors - including but not limited to - the price of services in areas where there is a vibrant competitive market.

IV. Grant Mechanics

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

All eligible entities should be allowed to compete for the grants and loans from both agencies.

Both agencies should adopt a streamlined application process using objective criteria that permits quick review by the agencies and allows for early decision making on the application.

If an application advances to the stage of contract negotiation, the application should only then be required to provide full documentation to the agency regarding engineering, business plans, build-out schedule, proof of legal existence and other documents and attestations typically included in a federal grant application.

Processing time has been the most significant shortcoming of traditional grant and loan application consideration. Establishing a streamlined application process and shorter decision making period should be one of the top priorities for distributing ARRA funds. A streamlined, pre-approval process would allow both agencies to make fast determinations of the most feasible applications, while still allowing the agencies to obtain the full compliment of information necessary to make a final determination on the application.

V. Broadband Mapping

In January 2009, the Governor's ConnectingALABAMA office contracted with CostQuest Associates, Inc. to assist with project management, mapping and sustainable adoption planning. They are currently working with over fifty (50) ISPs operating in Alabama to produce a comprehensive static broadband map. ARRA funds would allow the state to convert the data into an online interactive map to better meet economic development, public safety and other community needs in Alabama.

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.

The Broadband Map should provide NTIA, and consequently other federal agencies, States, and other entities with an objective source of information as to where the coverage gaps exist in the country with respect to broadband service. The map should also include a detailed assessment of radio spectrum use for fixed and mobile broadband in licensed spectrum bands. The spectrum assessment should be capable of showing wireless coverage gaps where service is not yet built out in various licensed spectrum bands. The map should provide sufficiently

accurate data that the RUS can rely on it for the purpose of establishing broadband loan eligibility under the 2008 farm bill.

The broadband map should make distinctions between the availability of landline and wireless, in particular, mobile wireless, broadband services. The mapping should assess both broadband availability and broadband adoption. To the extent feasible, the assessment should distinguish between residential and commercial/business availability and adoption. Also, the broadband map should include some detail on the availability of broadband services for public safety agencies and first responders that is provided by commercial providers, as well as State or local operated communications systems. Other important institutions that serve a community's educational and heathcare needs should be included in the assessment.

Other factors the NITA should consider to fulfill the requirements of the Broadband Data Improvement Act, Public Law 110-385 (2008) should include:

1) Assessing licensed spectrum use for licensed bands for mobile and fixed broadband service. This assessment should be comprehensive and provide enough detail to accurately identify coverage gaps in licensed spectrum.

2) Assess the availability and adoption of broadband services - fixed landline, as well as mobile wireless broadband - for public safety, healthcare, and educational entities in each state.

With respect to eligibility for broadband mapping grants, NTIA should consider applications directly from States or from non-government entities that apply either in conjunction with a State or with the endorsement of a State. In cases where a State neither applies directly or participates in an application from a non-governmental entity, the application should be eligible provided it proposes to address the minimum criteria established by the agency for broadband mapping

As conditions of receiving statewide inventory grants, states should assess mobile and fixed broadband service in licensed spectrum bands and unlicensed providers. In addition, each application should be able to provide the most comprehensive assessment of wireless broadband services in licensed spectrum bands and identify the coverage gaps.

Each State broadband map should assess the availability and adoption of broadband services for public safety, educational and healthcare entities and include:

- **Broadband coverage.** Broadband coverage by provider, by speed, and by technology makes up the critical baseline of mapping information.

- **Speed.** Broadband speed in and of itself can be a contentious issue if not addressed with clarity from the very beginning of a broadband deployment initiative. In terms of how we measure speed, our baseline recommendation is that a consistent definition of speed should be maintained across all Federal agencies. Speed tiers provide a discrete

measurement system and should be designed to identify end-user capability. Key issues that need to be considered in establishing speed standards are, of course, the point in time the measurement is taken (midnight vs. the busy hour) and variance between up and down speeds.

- **Wireless Coverage.** The comprehensive nationwide map should include assessment of mobile and fixed wireless services in licensed spectrum bands for both broadband as well as CMRS services.

- **Technologies.** In our view, broadband maps must accommodate all relevant technologies. Broadband deployment initiatives must be technology agnostic to be fair and open to all public policy and commercial interests involved. Therefore, it is important that mapping standards require that all technologies be considered including traditional telecom/wireline, cable, WISP (both WIMAX and WiFi), mobile wireless, broadband over power, fiber to the home, etc.

- **Infrastructure Elements.** Maps must also include all major components of broadband infrastructure (e.g., fiber, towers, etc.). Many times a rural provider will have the capacity to provide broadband 'last mile' access but not have sufficient information on how the middle mile / backhaul can be acquired. Knowing where the "on-ramps" to the internet exist provides important insight in the relevant commercial decisions at hand.

- **Demand and Demographic Data.** This would include not only residential and business locations but also a host of public sector elements including schools, libraries, hospitals/clinics, doctor offices, government locations, public computer centers, etc. In terms of demographic information, the map should address a variety of census demographics (income, age, education levels, etc.) and, as such, support a robust understanding of demand side issues.

- **Price.** Retail broadband price is also an important component to a broadband map because it has an obvious role in the decisions consumers will make and, as such, it is a vital driver in the pace and scale of any resulting growth in demand.

- **USF and current RUS support.** To understand the full economic picture of an area and to optimize the benefits of the ARRA funds, one needs to understand all the various sources of funding available and how those play into the assessment of how impaired an area may be.

NTIA should establish the criteria for assessing broadband availability and use based on the policy goals of the Administration. The FCC has unique expertise as a regulator and should be consulted by NTIA in establishing the criteria.