



UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and
Information Administration
Washington, D.C. 20230

MAY 14 2009

The Honorable Henry A. Waxman
Chairman
Committee on Energy and Commerce
House of Representatives
Washington, DC 20515

Dear Chairman Waxman:

Thank you for your letter of May 1, 2009, with follow-up questions to the April 2, 2009 hearing before the Energy and Commerce Committee's Subcommittee on Communications, Technology, and the Internet to discuss the oversight of the broadband stimulus provisions of the American Recovery and Reinvestment Act. I appreciated the opportunity to testify before the Subcommittee regarding the efforts of the National Telecommunications and Information Administration (NTIA) and the Broadband Technology Opportunities Program (BTOP).

Enclosed are my responses to your questions. If you have any additional questions, please do not hesitate to contact me or James Wasilewski, NTIA's Director of Congressional Affairs, at (202) 482-1551.

Sincerely,

Mark G. Seifert
Senior Advisor to the Assistant Secretary for
Communications and Information

Post-Hearing Questions for the Record
Mark Seifert, Senior Policy Advisor
National Telecommunications and Information Administration
U.S. Department of Commerce
May 14, 2009

Responses to Questions from Representative Mike Doyle

Question 1: I'd like to focus today on the distinction in the stimulus bill between what we intended for your agencies, and the distinction between unserved and underserved. When we voted for the stimulus bill, we envisioned that unserved rural areas to be served by the funds given to the Rural Utility Service. We knew there are a lot of communities out there that are unserved, so we are also letting the NTIA take a crack at it too. But by talking about the underserved in the bill too, we didn't want this to be a simply rural conversation.

If they haven't already, I'd like to task each of the witnesses to listen to the two panels from the July 21st, 2008 public hearing on the future of the internet that the FCC held in Pittsburgh at Carnegie Mellon. I was there for the whole thing and I thought it was fascinating. There were several witnesses at that hearing - mostly on the 2nd panel - whose testimony and their time during Q and A focused directly on the issues before us today.

To me, and other Members who represent more concrete than corn fields, it doesn't matter if a wire passes by their house, or electromagnetic waves radiate broadband through their body - we are underserving our citizens if they're not actually on the Internet. At the Pittsburgh hearing, a constituent and CMU professor, Rahul Tongia pointed out his research that as news and information, government applications, and other services move online and as more people around the world get online - the effect is not only that those who get online can get ahead, but this is the important party -- those who aren't online are left exponentially further behind.

Scott Wallsten, an economist and frequent witness before this Committee, said in his statement at the Pittsburgh hearing that the real underserved populations are not rural per se but poorer communities in general.

I found that interesting, in light of the public perception that there's a broadband duopoly of cable and DSL - and that we urban areas have plenty of broadband choices. In the city of Pittsburgh - many of my constituents can only pick from 1 of those providers. Not even a duopoly there. If we find there are two types of underserved regions, low-income rural and non-rural communities, then it would be important to understand the differences and then to solve each problem in a different way.

The day after that field hearing now-Chairman Copps and my staff visited some computer labs in the Bloomfield and Hill District neighborhoods in Pittsburgh that are served by a non-profit wireless network - their board chair Rendell Harper testified at the

FCC hearing. And we came across a 10 year old girl who was on her way to one of the labs. After some prodding, she told us that the group had set her grandmother and her up with a computer surplussed from her school. And her grandmother bought broadband for her grandchildren. But after a few months, the computer got infected with viruses and spyware. That malware knocked her connection offline. The ISP couldn't help, and the grandmother couldn't afford a service that didn't work. In this case, it isn't a network issue, it isn't a demand stimulation issue. It's a training issue. **Do you have a commitment to connecting underserved populations in non-rural areas, and how will you do this?**

Answer: The Broadband Technology Opportunities Program (BTOP) in the American Recovery and Reinvestment Act of 2009 (Recovery Act) directs NTIA to address the broadband needs of both “unserved” and “underserved” areas, whether they be urban, suburban, rural, or frontier – and facilitating greater use of broadband services. The statute directs NTIA to provide access to broadband services to consumers in unserved areas and to provide improved access to broadband service to consumers residing in underserved areas. Our goal is to address both of these critical needs in advancing the Nation’s broadband infrastructure needs. NTIA recognizes that the broadband infrastructure development and demand challenges facing rural Pennsylvania may differ markedly from the challenges facing downtown Pittsburgh. To that end, NTIA has been directed to provide support for broadband education, awareness, training, access, equipment and support to strategic institutions, including schools, job-creating facilities, libraries, and healthcare providers. In carrying out this responsibility, NTIA will be coordinating closely with the U.S. Department of Agriculture Rural Utilities Service (RUS) to ensure that program funds are used in the most effective and efficient way possible. NTIA will dedicate considerable attention to the needs of underserved Americans in non-rural as well as rural communities.

Question 2: Do you intend to fund projects that do not propose to get people online, but will instead help underserved communities understand the benefits of getting connected, as well as how best to use an internet connection?

Answer: The Recovery Act specifies that BTOP be designed to “stimulate the demand for broadband, economic growth, and job creation” and provides at least \$250 million for sustainable broadband adoption. This amount is a floor, not a ceiling. NTIA has also been directed to provide support for broadband education, awareness, training, access, equipment and support to strategic institutions, including schools, job-creating facilities, libraries, and healthcare providers. The statute, therefore, encompasses training and “demand-side” projects that will assist communities in developing an understanding of the benefits of broadband. There is a wide range of possible methods that NTIA may employ to solicit demand-side projects, and the agency is seeking input from the public on these issues. NTIA is reviewing the public comments submitted in response to its March 12, 2009 Request for Information and will structure the several programs within BTOP to ensure the most efficient and effective distribution of competitive grant funds consistent with the statute.

Question 3: Your agencies are not alone in funding the wires in buildings that could be connecting people to the Internet - and certainly others are funding projects to create rich internet applications that rely on broadband connections, such as those for after-school programs. **Is your agency working with other federal departments that are or should be funding broadband connectivity or innovative applications and tools that depend on broadband connectivity? If so, how have those communications impacted your grant making processes under the responsibilities of the ARRA?**

Answer: Since the passage of the Recovery Act, NTIA has coordinated closely and regularly with the RUS, the Federal Communications Commission (FCC), as well as a number of other relevant Federal agencies. Given that RUS has received \$2.5 billion in the Recovery Act for broadband grants and loans, it is critical that these funds be leveraged with NTIA's \$4.7 billion. To that end, NTIA and RUS are coordinating their definitions of important terms, such as "broadband." The agencies are also ensuring proposed service areas—whether they are in "rural," "unserved," or "underserved" areas—be carefully defined to eliminate redundancy across the broadband programs. Finally, NTIA and RUS are coordinating closely on their respective application kits and guidelines to leverage efficiencies and to minimize the burden on applicants to the extent practicable.

NTIA is also closely coordinating with the FCC in at least two important ways. First, NTIA is consulting with the FCC on defining key policy terms for purposes of BTOP, such as the definition of broadband, unserved, and underserved—as well as key interconnection and non-discrimination program requirements. Second, NTIA is working with the FCC in developing the national broadband mapping program, with the FCC providing expert policy and technical advice in implementing the mapping program.

Furthermore, NTIA has been sharing information and coordinating closely with other Federal agencies through an interagency broadband coordination group convened by the White House. It is critical that NTIA's broadband infrastructure investments dovetail with and leverage other important and related infrastructure development initiatives, such as the national smart grid, the advancement of electronic medical records, and the building of roads and highways. To that end, NTIA is coordinating with the U.S. Department of Energy, U.S. Department of Health and Human Services, and the U.S. Department of Transportation, among others, to ensure maximum coordination and leverage.

Because NTIA will be providing grants to expand public computer center capacity, the agency is also working with the Institute of Museum and Library Services (IMLS) and the U.S. Department of Education to ensure NTIA is not duplicating efforts. Moreover, NTIA is working with the Office of Advocacy at the Small Business Administration (SBA) and the U.S. Department of Housing and Urban Development (HUD) to benefit from their expertise in advancing innovative programs to encourage sustainable adoption of broadband service.

Questions 4 - 6: I believe in the power of open networks and have experienced the benefits of members of the public using government-collected information in vibrant, exciting and

useful ways that the data gathers never themselves foresaw, but nonetheless use every day. **If the underlying data, such as availability, speed and pricing information, collected for the FCC and NTIA's mapping efforts is collected by or placed under a non-profit entity: Would it still be subject to the same due process and open records obligations of a government entity? Would that data be verifiable? Could members of the public use that underlying data to mashup, so to speak, with other public information providing new benefits to the public that the mere map alone would not provide?**

Answer: Section 6001(l) of the Recovery Act directs that “the Assistant Secretary shall develop and maintain 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.” Congress further directed that such a map be available on NTIA’s website “in a form that is interactive and searchable” no later than February 17, 2011. On March 12, 2009, NTIA and RUS published a joint Request for Information (RFI) seeking public comment on a number of policy and procedural issues related to establishing the BTOP, including detailed questions relating to broadband mapping. NTIA received over 1,000 comments in response to the RFI by the April 13, 2009 deadline. NTIA is currently reviewing the record, which included many comments exhibiting a wide range of opinions about the treatment of data obtained in the broadband mapping process. It is NTIA’s intention to maximize the value of such information to the American people, in an appropriate manner, while fulfilling the intention of Congress that the map be “comprehensive” and “interactive”—and achieving the President’s goals of openness, transparency, and accountability.

Post-Hearing Questions for the Record
Mark Seifert, Senior Policy Advisor
National Telecommunications and Information Administration
U.S. Department of Commerce
May 14, 2009

Responses to Questions from Representative Donna Christensen

Question 1: Section 6001(e) (1) (A) of the Recovery Act includes both states and territories of the United States as entities eligible for a broadband grant. Section 6001(c) of the Recovery Act authorizes NTIA to consult with a state or territory of the United States in identifying unserved or underserved areas or allocating grant. Both provisions treat a territory and state synonymously. This same approach should extend to all aspects of the broadband provisions of the Recovery Act, specifically Section 6001(h) (1) which directs NTIA, to extent practical, to award not less than one grant to each State. Although territories are not specifically mentioned in Section 6001(h) (I), Congress presumably intended to include territories within this provision when the statute is read as a whole. **Does NTIA follow this interpretation of the statute?**

Answer: Thank you for sharing your views on the matter of how NTIA should implement the Broadband Technology Opportunities Program with respect to U.S. Territories. Your views on this matter will be included in the public record of this proceeding and given every consideration as the agency develops the Notice of Funds Availability (NOFA) that it plans to publish in the summer of 2009. NTIA intends to adhere to the intent of Congress that grants be awarded in a geographically-neutral manner, and will take all appropriate measures to ensure that States and territories are treated fairly and that funding criteria are transparent to the American people.

Question 2: NTIA and RUS have conducted a series of public meetings during which various organizations were permitted to offer their views on the numerous issues confronting both agencies in implementing the broadband grant program. While the meetings have been informative in helping to frame issues, little information was shared by either NTIA or RUS concerning how the program will actually be implemented. **NTIA and RUS have indicated that funding will be awarded in three phases. If an applicant applies in the first phase but the application is not successful, will the applicant automatically be considered in the second phase or must the applicant reapply?**

Answer: The statute requires that all funds be obligated by September 2010. In order to meet this requirement and to allow all participants a chance to apply, NTIA plans to allow applicants three opportunities to apply for BTOP funds over the life of the Program. The agency's current plan is to publish a NOFA this summer and to hold workshops across the country soon thereafter to answer questions about the application process. This process would be repeated in late calendar year 2009 and again in spring 2010, so that prospective applicants who are not ready this summer can prepare to apply for BTOP funds during the second or third rounds. The three rounds would also allow NTIA to make program adjustments based on the experience from the earlier rounds. NTIA

believes that having several opportunities for organizations to apply is equitable and effective. Some applicants will be ready to go from the beginning of the program while others will need more time to undertake planning activities, develop business plans, map broadband availability, and build the necessary partnerships to assure project sustainability. These activities may take some applicants months to complete. Additionally, applicants that do not succeed in the first round may consider retooling their application and possibly submitting it jointly along with other applicants in later rounds. While NTIA has not made a determination yet as to whether applicants will be automatically considered in subsequent rounds, NTIA anticipates that this and other questions will be clarified in the NOFA planned for publication this summer.

Question 3: In order for the Broadband Technology Opportunities Program to be successful, it is imperative that parties interested in obtaining funding from NTIA and RUS understand the process by which such funding will be disbursed. **Will NTIA and RUS accept consolidated applications through which multiple entities may partner together in order to receive a federal grant?**

Answer: NTIA views these grants as a test-bed or proof of concept for sustainable, viable, and scalable projects. As such, NTIA encourages partnerships between small businesses, municipalities, and others that may demonstrate nontraditional but effective ways of getting broadband into communities. As mentioned previously, NTIA and RUS have solicited public input through a joint RFI, and have received more than 1,000 responses. NTIA is in the process of reviewing these comments and will incorporate them as appropriate into the NOFA the agency intends to publish this summer, which will explain in great detail the application process, criteria for evaluation, as well as how grantees will be held accountable. Soon after the NOFA is published, NTIA plans to hold regional workshops to raise awareness of BTOP and answer questions about the grant application process.

Question 4: In addition to the process by which broadband grants will be awarded, NTIA and RUS must resolve a host of issues that were left unresolved by the legislation. These include defining such critical terms as "unserved" and "underserved," as well as specifying the role of the states and territories. **What guidance will be used to define "unserved" vs. "underserved?" How long will applicants be given to submit their applications once guidance has been issued?**

Answer: The Recovery Act requires NTIA to define the terms "unserved" and "underserved," as well as to define "broadband," and adopt non-discrimination requirements and network interconnection obligations. NTIA, FCC, and RUS are working in close coordination – and have solicited substantial public input – with regard to these definitions. The FCC has sought and received public comment on its appropriate role in defining such terms, and NTIA and RUS published a joint RFI on March 12, 2009, seeking the public's input on these definitions, as well as a number of other policy and procedural issues related to establishing the BTOP. NTIA received over 1,000 comments in response to the RFI by the April 13, 2009 deadline. NTIA is in the process of reviewing the public comments filed in response to the RFI and plans to issue a Notice of Funds Availability (NOFA) this

summer to allow eligible entities to apply for BTOP funds. NTIA will hold workshops across the country soon thereafter to answer questions about the application process.

Question 5: As the FCC, NTIA and RUS are well aware, deploying broadband in rural areas remains a substantial challenge. Territories, in particular, higher cost in deploying broadband due to geography and topography. Adding to this cost are excise tax, gross receipt tax and custom duty fees. **What provisions, if any, are being considered to mitigate the higher cost of broadband deployment in the territories and insular areas?**

Answer: NTIA appreciates you bringing this issue to our attention and understands that broadband deployment costs depend on geography, topography, as well as local, State, or territorial taxes and fees. The Recovery Act states that the Assistant Secretary may consult a State, the District of Columbia, or territory or possession of the United States with respect to the identification of unserved or underserved areas and the allocation of grants funds within or affecting that area. NTIA has already begun actively soliciting input from these entities through its RFI process as well as through their consultative role and will continue to work closely with them so that the common goals of expanding broadband access and growing the economy may be achieved.

Question 6: Will the Broadband Technology Opportunities Program be a technology neutral program; not favoring one technology over another? For example, will applicants be allowed to have a broadband deployment plan that may consist of a combination of wireless, fiber and copper?

Answer: NTIA intends to operate the BTOP in a manner that is fully consistent with the principle of technological neutrality. As stated earlier, NTIA encourages partnerships that may demonstrate nontraditional but effective ways of getting broadband into communities. This may include a combination of technologies and innovative approaches. As instructed by the Recovery Act, NTIA will award grants based on whether an application will increase affordability, subscribership, and speeds; enhance service for health care delivery, education, or children; and will not result in unjust enrichment. The Recovery Act states that to be eligible for a grant under the program, an applicant shall be a government, non-profit, or broadband provider found by rule to be in the public interest. Congress further instructs NTIA to promote the purposes of this section “in a technologically neutral manner.” NTIA is also mindful that the Recovery Act’s Conference Agreement instructs NTIA to award grants, to extent practicable, for projects that provide the “highest possible, next-generation broadband speeds to consumers.”

Post-Hearing Questions for the Record
Mark Seifert, Senior Policy Advisor
National Telecommunications and Information Administration
U.S. Department of Commerce
May 14, 2009

Responses to Questions from Representative Cliff Stearns

Question 1: The American Recovery and Reinvestment Act of 2009 (ARRA) requires grant recipients participating in NTIA's Broadband Technology Opportunities Program to submit quarterly reports on their "use of the assistance and progress fulfilling the objectives for which such funds were granted." In addition, NTIA "may establish additional reporting and information requirements" and "shall establish appropriate mechanisms to ensure appropriate use and compliance with all terms of any use of funds." While the ARRA does not contain specific language addressing reporting requirements for recipients of RUS grants, loans, or loan guarantees, we believe it is within the discretion of the RUS to collect such information.

Tracking how the money is used will help combat waste, fraud, and abuse. Since the funding will be distributed in waves, reporting requirements can also help the agencies fine tune the programs as they progress. Moreover, monitoring the extent to which projects succeed in meeting the goals of the ARRA-and do so in a cost-effective manner-will increase accountability and provide valuable information as we continue efforts to promote broadband deployment and adoption.

The ARRA contains several goals, including those set forth in the purposes and selection criteria. NTIA and RUS should develop performance measures for each goal. Specifically, NTIA and RUS should create at least one associated outcome measure and one associated efficiency measure to determine whether the goal is being achieved, and in an economically efficient way.

For example, one purpose of the ARRA is to "provide access to broadband service to consumers residing in unserved areas of the United States." An appropriate outcome measure for this goal would be to track the change in availability of broadband service to households and businesses in unserved areas as a result of the program. An appropriate efficiency measure for this goal would be to calculate, per million dollars spent, the change in the number and percent of homes to which broadband becomes available as well as in the number and percent that subscribe.

Another purpose of the ARRA is to increase broadband use by schools and libraries, healthcare providers, and public safety entities - presumably to improve educational, health, and public safety outcomes. Therefore, to use health care as an example, an appropriate outcome measure would be to track the increase in use of broadband by health care providers as a result of the program. An appropriate efficiency measure would be to measure, per million dollars spent, the improvement in health outcomes and the reduction in health care costs attributable to the increased broadband access.

The ARRA selection criteria provide another source of potential goals. For instance, NTIA must consider, to the extent practical, whether an application will "result in the highest possible broadband speeds." Should NTIA make selections based on this criterion, it should implement performance measures to evaluate the success in meeting this goal. An appropriate outcome measure would be to track the change in available broadband speeds as a result of the program. An appropriate efficiency measure would be to measure the change in speed per million dollars spent.

Similarly, NTIA must consider, to the extent practical, whether an application will "increase affordability and subscribership." If NTIA makes selections based on this criterion, an appropriate outcome measure would be the change in price and subscription rates as a result of the program. Appropriate efficiency measures would include measuring, per million dollars spent, the change in ratio of price as a percent of income and the change in penetration rate or number of subscribers.

Once NTIA and RUS have designed and implemented specific performance measures based on the goals of the ARRA, NTIA and RUS should require recipients to report on progress towards meeting those goals that are relevant to the particular project, using the relevant performance measures. The agencies should also provide estimates of the expected results for each measure for each approved project.

In addition, NTIA and RUS should consider instituting relevant benchmarks and issuing payments in installments as recipients meet the benchmarks. If a recipient fails to meet a benchmark, NTIA and RUS should require the recipient to submit a detailed plan describing how it will meet future benchmarks. If the recipient misses a second benchmark, NTIA and RUS should de-obligate funding and require return of the previously committed funds related to the missed benchmarks.

All this information should be made publically available, including on the agencies web sites.

Please explain whether your agencies agree or disagree with these recommendations, and why. If your agencies are considering different oversight and reporting requirements or performance measures, please describe them.

Answer: Thank you for your input regarding oversight, accountability, and performance measures. NTIA shares your commitment to combating waste, fraud, and abuse, and in ensuring the highest levels of accountability and transparency for grant recipients as well as NTIA. NTIA will carefully consider these ideas as it develops the Notice of Funds Availability (NOFA), which will be published this summer and will describe in detail how the application process will work, how applications will be evaluated, as well as how grantees will be held accountable -- such as requirements concerning progress reports or job creation measurements -- to ensure that taxpayer investments are protected. One of the very first actions undertaken by the BTOP Program was the transfer of ten million dollars to the Inspector General (IG), as required by the Recovery Act, to ensure vigorous

oversight of these grant funds. NTIA has been meeting with the IG and his staff to ensure that the program design incorporates appropriate safeguards from the outset to protect taxpayers' investment. NTIA and RUS published a joint RFI on March 12, 2009 seeking public comment on development of the BTOP program, and, in particular, seeking input on selection criteria, measuring success of the program, as well as reporting requirements for grant recipients. NTIA received over 1,000 comments in response to the RFI by the April 13, 2009 deadline. NTIA is presently reviewing and analyzing the record and will incorporate these ideas into the NOFA it intends to publish this summer.

HENRY A. WAXMAN, CALIFORNIA
CHAIRMAN

JOHN D. DINGELL, MICHIGAN
CHAIRMAN EMERITUS
EDWARD J. MARKEY, MASSACHUSETTS
RICK BOUCHER, VIRGINIA
FRANK PALLONE, JR., NEW JERSEY
BART GORDON, TENNESSEE
BOBBY L. RUSH, ILLINOIS
ANNA G. ESHOO, CALIFORNIA
BART STUPAK, MICHIGAN
ELIOT L. ENGEL, NEW YORK
GENE GREEN, TEXAS
DIANA DEGETTE, COLORADO
VICE CHAIRMAN
LOIS CAPPS, CALIFORNIA
MIKE DOYLE, PENNSYLVANIA
JANE HARMAN, CALIFORNIA
JAN SCHAKOWSKY, ILLINOIS
CHARLES A. GONZALEZ, TEXAS
JAY INSLEE, WASHINGTON
TAMMY BALDWIN, WISCONSIN
MIKE ROSS, ARKANSAS
ANTHONY D. WEINER, NEW YORK
JIM MATHESON, UTAH
G.K. BUTTERFIELD, NORTH CAROLINA
CHARLIE MELANCON, LOUISIANA
JOHN BARROW, GEORGIA
BARON P. HILL, INDIANA
DORIS O. MATSUI, CALIFORNIA
DONNA CHRISTENSEN, VIRGIN ISLANDS
KATHY CASTOR, FLORIDA
JOHN SARBANES, MARYLAND
CHRISTOPHER MURPHY, CONNECTICUT
ZACHARY T. SPACE, OHIO
JERRY MCNERNEY, CALIFORNIA
BETTY SUTTON, OHIO
BRUCE BRALEY, IOWA
PETER WELCH, VERMONT

JOE BARTON, TEXAS
RANKING MEMBER

RALPH M. HALL, TEXAS
FRED UPTON, MICHIGAN
CLIFF STEARNS, FLORIDA
NATHAN DEAL, GEORGIA
ED WHITFIELD, KENTUCKY
JOHN SHIMKUS, ILLINOIS
JOHN B. SHADEGG, ARIZONA
ROY BLUNT, MISSOURI
STEVE BLUYER, INDIANA
GEORGE RADANOVICH, CALIFORNIA
JOSEPH R. PITTS, PENNSYLVANIA
MARY BONO MACK, CALIFORNIA
GREG WALDEN, OREGON
LEE TERRY, NEBRASKA
MIKE ROGERS, MICHIGAN
SUE WILKINS MYRICK, NORTH CAROLINA
JOHN SULLIVAN, OKLAHOMA
TIM MURPHY, PENNSYLVANIA
MICHAEL C. BURGESS, TEXAS
MARSHA BLACKBURN, TENNESSEE
PHIL GINGREY, GEORGIA
STEVE SCALISE, LOUISIANA

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6115

MAJORITY (202) 225-2927
FACSIMILE (202) 225-2525
MINORITY (202) 225-3641

energycommerce.house.gov

May 1, 2009

Mr. Mark Seifert
Senior Policy Advisor
National Telecommunications and
Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW, Room 4898
Washington, DC 20230

Dear Mr. Seifert:

Thank you for appearing before the Communications, Technology, and the Internet on April 2, 2009, at the hearing entitled "Oversight of the American Recovery and Reinvestment Act: Broadband".

Pursuant to the Committee's Rules, attached are written questions for the record directed to you from certain Members of the Committee. In preparing your answers, please address your response to the Member who submitted the questions and include the text of the question with your response, using separate pages for responses to each Member.

Please provide your responses by May 15, 2009, to Earley Green, Chief Clerk, in Room 2125 of the Rayburn House Office Building and via e-mail to Earley.Green@mail.house.gov. Please contact Earley Green or Jennifer Berenholz at (202) 225-2927 if you have any questions.

Sincerely,



Henry A. Waxman
Chairman

Attachment

The Honorable Mike Doyle

I'd like to focus today on the distinction in the stimulus bill between what we intended for your agencies, and the distinction between unserved and underserved. When we voted for the stimulus bill, we envisioned that unserved rural areas to be served by the funds given to the Rural Utility Service. We knew there are a lot of communities out there that are unserved, so we are also letting the NTIA take a crack at it too. But by talking about the underserved in the bill too, we didn't want this to be a simply rural conversation.

If they haven't already, I'd like to task each of the witnesses to listen to the two panels from the July 21st, 2008 public hearing on the future of the internet that the FCC held in Pittsburgh at Carnegie Mellon. I was there for the whole thing and I thought it was fascinating. There were several witnesses at that hearing – mostly on the 2nd panel – whose testimony and their time during Q and A focused directly on the issues before us today.

To me, and other Members who represent more concrete than corn fields, it doesn't matter if a wire passes by their house, or electromagnetic waves radiate broadband through their body – we are underserving our citizens if they're not actually on the Internet. At the Pittsburgh hearing, a constituent and CMU professor, Rahul Tongia pointed out his research that as news and information, government applications, and other services move online and as more people around the world get online – the effect is not only that those who get online can get ahead, but this is the important party -- those who aren't online are left exponentially further behind.

Scott Wallsten, an economist and frequent witness before this Committee, said in his statement at the Pittsburgh hearing that the real underserved populations are not rural per se but poorer communities in general.

I found that interesting, in light of the public perception that there's a broadband duopoly of cable and DSL – and that we urban areas have plenty of broadband choices. In the city of Pittsburgh – many of my constituents can only pick from 1 of those providers. Not even a duopoly there. If we find there are two types of underserved regions, low-income rural and non-rural communities, then it would be important to understand the differences and then to solve each problem in a different way.

The day after that field hearing now-Chairman Copps and my staff visited some computer labs in the Bloomfield and Hill District neighborhoods in Pittsburgh that are served by a non-profit wireless network – their board chair Rendell Harper testified at the FCC hearing. And we came across a 10 year old girl who was on her way to one of the labs. After some prodding, she told us that the group had set her grandmother and her up with a computer surplus from her school. And her grandmother bought broadband for her grandchildren. But after a few months, the computer got infected with viruses and spyware. That malware knocked her connection offline. The ISP couldn't help, and the

grandmother couldn't afford a service that didn't work. In this case, it isn't a network issue, it isn't a demand stimulation issue. It's a training issue.

1. Do you have a commitment to connecting underserved populations in non-rural areas, and how will you do this?
2. Do you intend to fund projects that do not propose to get people online, but will instead help underserved communities understand the benefits of getting connected, as well as how best to use an internet connection?
3. Your agencies are not alone in funding the wires in buildings that could be connecting people to the Internet – and certainly others are funding projects to create rich internet applications that rely on broadband connections, such as those for after-school programs. Is your agency working with other federal departments that are or should be funding broadband connectivity or innovative applications and tools that depend on broadband connectivity? If so, how have those communications impacted your grant making processes under the responsibilities of the ARRA?

I believe in the power of open networks and have experienced the benefits of members of the public using government-collected information in vibrant, exciting and useful ways that the data gatherers never themselves foresaw, but nonetheless use every day.

If the underlying data, such as availability, speed and pricing information, collected for the FCC and NTIA's mapping efforts is collected by or placed under a non-profit entity:

4. Would it still be subject to the same due process and open records obligations of a government entity?
5. Would that data be verifiable?
6. Could members of the public use that underlying data to mashup, so to speak, with other public information providing new benefits to the public that the mere map alone would not provide?

The Honorable Donna Christensen

1. Section 6001(e) (1) (A) of the Recovery Act includes both states and territories of the United States as entities eligible for a broadband grant. Section 6001(c) of the Recovery Act authorizes NTIA to consult with a state or territory of the United States in identifying unserved or underserved areas or allocating grant. Both provisions treat a territory and state synonymously. This same approach should extend to all aspects of the broadband provisions of the Recovery Act, specifically Section 6001(h) (1) which directs NTIA, to extent practical, to award not less than one grant to each State. Although territories are not specifically mentioned in Section 6001(h) (1), Congress presumably intended to include territories within this provision when the statute is read as a whole.

Does NTIA follow this interpretation of the statute?

2. NTIA and RUS have conducted a series of public meetings during which various organizations were permitted to offer their views on the numerous issues confronting both agencies in implementing the broadband grant program. While the meetings have been informative in helping to frame issues, little information was shared by either NTIA or RUS concerning how the program will actually be implemented.

NTIA and RUS have indicated that funding will be awarded in three phases. If an applicant applies in the first phase but the application is not successful, will the applicant automatically be considered in the second phase or must the applicant reapply?

3. In order for the Broadband Technology Opportunities Program to be successful, it is imperative that parties interested in obtaining funding from NTIA and RUS understand the process by which such funding will be disbursed.

Will NTIA and RUS accept consolidated applications through which multiple entities may partner together in order to receive a federal grant?

4. In addition to the process by which broadband grants will be awarded, NTIA and RUS must resolve a host of issues that were left unresolved by the legislation. These include defining such critical terms as “unserved” and “underserved,” as well as specifying the role of the states and territories.

What guidance will be used to define “unserved” vs. “underserved?”

How long will applicants be given to submit their applications once guidance has been issued?

5. As the FCC, NTIA and RUS are well aware, deploying broadband in rural areas remains a substantial challenge. Territories, in particular, higher cost in deploying

broadband due to geography and topography. Adding to this cost are excise tax, gross receipt tax and custom duty fees.

What provisions, if any, are being considered to mitigate the higher cost of broadband deployment in the territories and insular areas?

6. Will the Broadband Technology Opportunities Program be a technology neutral program; not favoring one technology over another? For example, will applicants be allowed to have a broadband deployment plan that may consist of a combination of wireless, fiber and copper?

The Honorable Cliff Stearns

1. The American Recovery and Reinvestment Act of 2009 (ARRA) requires grant recipients participating in NTIA's Broadband Technology Opportunities Program to submit quarterly reports on their "use of the assistance and progress fulfilling the objectives for which such funds were granted." In addition, NTIA "may establish additional reporting and information requirements" and "shall establish appropriate mechanisms to ensure appropriate use and compliance with all terms of any use of funds." While the ARRA does not contain specific language addressing reporting requirements for recipients of RUS grants, loans, or loan guarantees, we believe it is within the discretion of the RUS to collect such information.

Tracking how the money is used will help combat waste, fraud, and abuse. Since the funding will be distributed in waves, reporting requirements can also help the agencies fine tune the programs as they progress. Moreover, monitoring the extent to which projects succeed in meeting the goals of the ARRA—and do so in a cost-effective manner—will increase accountability and provide valuable information as we continue efforts to promote broadband deployment and adoption.

The ARRA contains several goals, including those set forth in the purposes and selection criteria. NTIA and RUS should develop performance measures for each goal. Specifically, NTIA and RUS should create at least one associated outcome measure and one associated efficiency measure to determine whether the goal is being achieved, and in an economically efficient way.

For example, one purpose of the ARRA is to "provide access to broadband service to consumers residing in unserved areas of the United States." An appropriate outcome measure for this goal would be to track the change in availability of broadband service to households and businesses in unserved areas as a result of the program. An appropriate efficiency measure for this goal would be to calculate, per million dollars spent, the change in the number and percent of homes to which broadband becomes available as well as in the number and percent that subscribe.

Another purpose of the ARRA is to increase broadband use by schools and libraries, healthcare providers, and public safety entities – presumably to improve educational, health, and public safety outcomes. Therefore, to use health care as an example, an appropriate outcome measure would be to track the increase in use of broadband by health care providers as a result of the program. An appropriate efficiency measure would be to measure, per million dollars spent, the improvement in health outcomes and the reduction in health care costs attributable to the increased broadband access.

The ARRA selection criteria provide another source of potential goals. For instance, NTIA must consider, to the extent practical, whether an application will "result in the highest possible broadband speeds." Should NTIA make selections based on this criterion, it should implement performance measures to evaluate the success in meeting this goal. An appropriate outcome measure would be to track the change in available

broadband speeds as a result of the program. An appropriate efficiency measure would be to measure the change in speed per million dollars spent.

Similarly, NTIA must consider, to the extent practical, whether an application will “increase affordability and subscribership.” If NTIA makes selections based on this criterion, an appropriate outcome measure would be the change in price and subscription rates as a result of the program. Appropriate efficiency measures would include measuring, per million dollars spent, the change in ratio of price as a percent of income and the change in penetration rate or number of subscribers.

Once NTIA and RUS have designed and implemented specific performance measures based on the goals of the ARRA, NTIA and RUS should require recipients to report on progress towards meeting those goals that are relevant to the particular project, using the relevant performance measures. The agencies should also provide estimates of the expected results for each measure for each approved project.

In addition, NTIA and RUS should consider instituting relevant benchmarks and issuing payments in installments as recipients meet the benchmarks. If a recipient fails to meet a benchmark, NTIA and RUS should require the recipient to submit a detailed plan describing how it will meet future benchmarks. If the recipient misses a second benchmark, NTIA and RUS should de-obligate funding and require return of the previously committed funds related to the missed benchmarks.

All this information should be made publically available, including on the agencies web sites.

Please explain whether your agencies agree or disagree with these recommendations, and why. If your agencies are considering different oversight and reporting requirements or performance measures, please describe them.