

Before the  
U.S. DEPARTMENT OF AGRICULTURE  
Rural Utilities Service  
and the U.S. DEPARTMENT OF COMMERCE  
National Telecommunications and Information Administration

Broadband Initiatives Program and Broadband  
Technology Opportunities Program

Docket No. 0907141137-91375-05

**COMMENTS OF QWEST CORPORATION**

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## EXECUTIVE SUMMARY

RUS and NTIA have the ability to bring the Nation closer to the goal that all people have access to broadband capability by unleashing the full potential of their respective BIP and BTOP programs through changes in several rules that limited participation in the first round. Program participation was suppressed among existing wireline broadband service providers, who have a proven record for deploying and operating reliable and sustainable communications networks. Changing the funding structure for rural infrastructure projects would have a significant impact on the number and quality of applications to build facilities in those areas, and a few targeted changes in other rules would increase participation in the programs as a whole.

Qwest is a prime example of a company that was prevented from participating in the first round. Qwest was prepared to file applications to build broadband to a substantial number of homes and businesses that are currently unserved, but to make the applications financially viable, Qwest needed more than 50 percent grant funding. But the 50 percent cap on BIP grant funding in non-remote rural areas, in conjunction with the requirement that applications to fund infrastructure projects in areas that are at least 75 percent rural had to be submitted for consideration under BIP, limited the potential grant funding to Qwest to 50 percent of any award. Had that limit not been imposed, Qwest would have filed last mile broadband infrastructure applications in round one. Criticism of the round one rural area funding structure has been widespread. Qwest joins Members of Congress and industry stakeholders in urging the elimination of the remote area classification and an increase in rural area grant funding under BIP to at least 80 percent.

Qwest also proposes changes to certain BIP and BTOP program requirements such as elimination of the program income reinvestment requirement, modification of the restriction on

the sale of funded assets, allowing submission of an alternative to pro forma 5-year forecasts and assumptions, and identification and mapping of service areas based on distribution areas instead of census blocks that would make applying and operating under the programs less burdensome. Simple, but significant, modifications and upgrades of the Mapping Tool are recommended. Improvements in the Mapping Tool, along with retention of the existing service provider review process, will better ensure that RUS and NTIA have accurate information about the level of service available in proposed service areas with which to make eligibility and funding decisions.

RUS and NTIA state in the RFI that they are not inclined to make significant changes to the round one nondiscrimination and network interconnection requirements. Qwest believes that uniform nondiscrimination and network interconnection requirements across broadband networks is in the public interest, and it encourages RUS and NTIA to inform applicants that the round two nondiscrimination and network interconnection requirements will be replaced by any final rules from the FCC's *Open Internet Proceeding* that take effect.

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**COMMENTS OF QWEST CORPORATION**

**I. INTRODUCTION**

Qwest Corporation (Qwest) hereby submits its comments in response to the second joint Request for Information (RFI) of the Rural Utilities Service (RUS), U.S. Department of Agriculture, and the National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce,<sup>1</sup> which solicits public comment on certain issues concerning the second round of funding for the Broadband Initiatives Program (BIP) and the Broadband Technology Opportunities Program (BTOP). Qwest filed comments in response to the first joint RUS and NTIA RFI concerning the initial implementation of BIP and BTOP and the first funding round. In addition to responding to the questions presented in the first RFI, Qwest discussed its local service area and its experience in deploying broadband facilities in high cost rural areas.<sup>2</sup> It will not repeat that discussion here.

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<sup>1</sup> Federal Register, Vol. 74, No. 219, Nov. 16, 2009, at p.58940.

<sup>2</sup> Comments of Qwest Corporation, American Recovery and Reinvestment Act of 2009 Broadband Initiatives, Docket No. 090309298-9299-01, Apr. 13, 2009 (Qwest's Round One comments).

## II. DISCUSSION

### A. All Last Mile Projects Should Be Eligible For At Least 80 Percent Grant Funding

No BIP or BTOP implementation decision has proven more controversial across all stakeholder groups than the capping of RUS grant funding at 50%, except in “remote areas,”<sup>3</sup> in conjunction with the requirement that applications to fund broadband infrastructure projects in areas which are at least 75 percent rural must be submitted to RUS for consideration under BIP.<sup>4</sup> Congressional committees, individual Members of Congress and broadband service providers have registered their strong dissatisfaction with the BIP-BTOP funding structure for rural areas. Considering that infrastructure applications for projects in areas that are less than 75 percent rural could be submitted to NTIA for grant funding of 80 percent or more of the project’s eligible funding costs, the belief that this funding structure dramatically reduces the economic feasibility of infrastructure projects in unserved rural areas and places them at a significant disadvantage is understandable.<sup>5</sup> Illustrative of the depth of this discontentment is the statement of the Chairman of the Subcommittee on Communications, Technology and the Internet, Congressman Rick Boucher:

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<sup>3</sup> A “remote area” is defined as “an unserved, rural area 50 miles from the limits of a non-rural area.” Notice of Funds Availability, Federal Register, Vol. 74, No. 130, July 9, 2009, at p.33104 (NOFA), at p.33109. “Grants under BIP are to be used to fund applications proposing to exclusively serve remote, unserved, rural areas. BIP loan and loan/grant combination funds are to be used to provide funding to applications proposing to serve non-remote and underserved rural areas. Projects which include non-remote and remote areas will be funded by loans or loan/grant combinations. The size of the grant portion of any loan/grant combination award is determined by the applicant, but cannot exceed the amount of the loan portion of the award.” *Id.* at p.33106.

<sup>4</sup> *Id.* at p.33105.

<sup>5</sup> See July 29, 2009 letter to the Honorable Thomas J. Vilsack, Secretary of Agriculture, and to the Honorable Gary F. Locke, Secretary of Commerce, from 43 bi-partisan Members of the House of Representatives (Vilsack/Locke Letter) at p.1.

*My first concern [with the first round BIP and BTOP funding structure] regards access to grant funding for rural applicants. In many circumstances involving very small communities that lack broadband, only through grant funding can broadband access be achieved. While in some situations loan funding can be sufficient, for communities with small populations that are isolated by mountains the cost of building broadband can be great and with populations as few as 100 homes, that cost can't be recovered through the revenues to be realized from the broadband service.*

*In these situations, which are commonly found, only through the award of grants can a broadband infrastructure be built.*

*In Virginia, West Virginia and other states in the Appalachian region, hundreds of communities in isolated mountain valleys may be within only a few miles of a city but because of the high cost of building the fiber optics or wireless links in such challenging topography and given the small size of the population to be served, only through grants of 80 percent or more of the project cost can these communities receive broadband.<sup>6</sup>*

The existence of communities within only a few miles of cities that have high costs to build broadband infrastructure and only stand to get broadband under BIP with access to grants of 80 percent or more is not limited to communities in the Appalachian region. They also exist in the Rocky Mountain region and throughout Qwest's 14-state local service area.

Qwest was prevented from participating in round one as a result of the BIP-BTOP funding structure. Qwest was ready to file applications to build broadband to a substantial number of unserved homes and businesses and thereby bring broadband to unserved rural communities throughout its local service area. But, the BIP-BTOP funding structure required that infrastructure applications for these communities be filed with RUS for consideration under the BIP program. Qwest could not, though, prepare financially viable applications that were limited to the 50 percent grant funding opportunity available under BIP. It therefore had to forgo

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<sup>6</sup> Congressman Rick Boucher, Chairman, Subcommittee on Communications, Technology and the Internet, Committee on Energy and Commerce, House of Representatives, from the Chairman's Opening Statement at the Subcommittee's hearing on Oversight of the American Recovery and Reinvestment Act: Broadband, Part 2, Sept. 10, 2009.

participating in the programs. But for the 50 percent cap on BIP grants for non-remote rural areas, and that those applications had to be filed with RUS for consideration under BIP, Qwest would have filed last mile infrastructure applications in round one.

Qwest has been an advocate for a federal broadband infrastructure grant program since July 2007.<sup>7</sup> Qwest continues to believe that broadband infrastructure grants have the most immediate, widespread and dramatic impact on the problem of bringing broadband to unserved rural communities. In the FCC staff's September 29, 2009, National Broadband Plan presentation to the FCC Commissioners, it was shown that the estimated annual capital cost per subscriber to provide wireline broadband service was nearly ten times more in rural areas than in urban areas.<sup>8</sup> In many unserved rural areas, service provider access to subsidized loans is insufficient to overcome this cost differential and produce an economically feasible business case for broadband build-out. In such cases, only the availability of grant funding can make broadband build-out viable and broadband service sustainable.

For the second funding round, rural communities should be relieved of the funding disadvantage imposed on them by the first round funding structure. This can be accomplished by first eliminating the remote area classification.<sup>9</sup> There should be a single rural area classification that is defined using the definition of rural area set forth in the first round notice of funds

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<sup>7</sup> See *Ex Parte* of Melissa E. Newman filed in FCC Docket No. 96-45 on July 9, 2007, presenting the FCC with Qwest's proposal for expanding the nation's access to high-speed Internet service.

<sup>8</sup> FCC NBP staff presentation, Sept. 29, 2009, at p.44.

<sup>9</sup> "As written, the definition of 'remote' and the BIP loan/grant cost structure limits the amount of grant funding available to rural providers. The Committee recommends that the rules established in a subsequent round of funding modify or remove the definition of 'remote.'" Letter to the Honorable Lawrence E. Strickling and the Honorable Jonathan Adelstein from the Committee on Small Business, House of Representatives, November 17, 2009 (Small Business Committee Letter), at p.3. In addition to being an element of the unfair funding structure, it is also difficult to apply with any precision.

availability (NOFA). RUS should then increase the grant funding opportunity under BIP for any project proposed in a rural area to at least 80 percent of the eligible project costs. Applicants under BIP should also have the ability to seek a waiver from the Administrator of the 80 percent, or higher, grant opportunity limit. In the alternative, if RUS does not make these changes in the BIP program for the second funding round, RUS and NTIA should permit any applicant proposing an infrastructure project in a rural area to submit its application directly to NTIA for consideration under the BTOP program rules.

**B. Eliminate The Program Income Reinvestment Requirement**

Section V.E. of the NOFA states that “any program income generated by a proposed project during the grant period shall be retained by the grant recipient and shall be added to the funds committed to the project by RUS or NTIA and the recipient.”<sup>10</sup> Program income has been interpreted to mean “gross income earned by the recipient that is either directly generated by a supported activity, or earned as a result of the award during the funding period.”<sup>11</sup> The NOFA states that a project must be “substantially completed within two years of the date of issuance of the grant, loan or loan/grant award and finished within three years of the date of the award.”<sup>12</sup> The grant period is therefore up to three years. Accordingly, any gross income generated by a project from the date of issuance of the award until completion of the project (maximum three years) must be retained by the grant recipient and added to the funds committed to the project by RUS or NTIA and the recipient.

For a broadband service provider, the revenue generated from the sale of services in the project area during the grant period provides the capability to operate and maintain the network

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<sup>10</sup> NOFA at p.33113.

<sup>11</sup> See BIP/BTOP Frequently Asked Questions, Section VI.C., Q&A 1, p.31 (July 31, 2009).

<sup>12</sup> NOFA at p.33110.

and recover the service provider's capital contribution. Because BIP and BTOP projects must be fully funded at the outset, additional capital investment in the project is not needed. Qwest believes, therefore, that the three-year program income reinvestment requirement should be eliminated. In the alternative, if the requirement is retained, program income should be redefined as net income instead of gross income, and a service provider should be permitted to reinvest it in any new or additional broadband facilities.

**C. Conform The Nondiscrimination And Network Interconnection Requirements With The Final *Open Internet Proceeding* Rules**

It is disappointing that RUS and NTIA are disinclined to make significant changes to the nondiscrimination and network interconnection requirements adopted and published in the round one NOFA.<sup>13</sup> NTIA's statutory duty to develop and impose nondiscrimination and network interconnection obligations as contractual conditions to BTOP infrastructure grants could have been satisfied by adopting the four principles contained in the FCC's 2005 *Policy Statement*<sup>14</sup> and applying those principles as the BTOP nondiscrimination and network interconnection requirements. Instead, NTIA and RUS chose to adopt a common and more severe set of nondiscrimination and network interconnection requirements for both BTOP and BIP in the first funding round.

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<sup>13</sup> RFI at p.58944.

<sup>14</sup> See *In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review -- Review of Computer III and ONA Safeguards and Requirements; Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, CC Docket Nos. 02-33, et al., *Policy Statement*, 20 FCC Red 14986, 14987-88 ¶ 4 (2005).

The round one nondiscrimination and network interconnection requirements proved to be disincentives for existing wireline broadband service providers.<sup>15</sup> The RFI asks if there are minor adjustments that should be made to the first round nondiscrimination and network interconnection requirements.<sup>16</sup> The prospect for conflicts resulting from a broadband service provider having to carve out segments of its broadband network for the application of BIP/BTOP nondiscrimination and network interconnection requirements while applying a different FCC regime to the remainder of its broadband network remains a serious concern. Tinkering with the BIP/BTOP obligations will not ameliorate the conflicts.

The FCC has initiated a rulemaking proceeding on *Preserving the Open Internet*<sup>17</sup> in which it will consider rules amending the four principles. Qwest believes that uniform requirements across broadband networks is the better national broadband policy approach and the only way to resolve the conflicts. Accordingly, NTIA and RUS should make it clear in the round two NOFA that their round two nondiscrimination and network interconnection requirements will be replaced by any final rules that are adopted in the *Open Internet Proceeding* and take effect.

**D. Any Restriction On The Sale Of BIP Or BTOP-Funded Assets Must Accommodate Reasonable And Prudent Business Practices**

It is understandable that when the federal government awards taxpayer funds to an entity for a specific purpose, it wants to ensure that the funds awarded are used in a manner that is

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<sup>15</sup> See *Large Broadband Providers Pass up Stimulus Funding*, Grant Gross, IDG News Service, August 14, 2009, <http://www.pcworld.com/printable/article/id,170232/printable.html>.

<sup>16</sup> RFI at p.58944.

<sup>17</sup> *In the Matter of Preserving the Open Internet, Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, Notice of Proposed Rulemaking, FCC 09-93 (*Open Internet Proceeding*) (rel. Oct. 22, 2009). Reply comments in the *Open Internet Proceeding* are not due until March 5, 2010, so final rules from this proceeding are unlikely to be effective when round two BIP and BTOP funding decisions are made.

consistent with the purpose for which they are awarded and that the awardee does not unjustly enrich itself in its use of the funds or disposal of assets acquired with the funds. These objectives are at the heart of the sale or lease of project assets restriction in the first round NOFA. While Qwest appreciates the government's need to protect the interest of taxpayers, Qwest is concerned with how the sale aspect of the restriction may be applied should it become a BIP or BTOP awardee, and it limits its comments to that part of the restriction.

The restriction prohibits the sale of any portion of the award-funded broadband facilities during their life. A sale may be approved if adequate consideration is provided; the purchaser assumes the responsibility to fulfill the terms and conditions of the award; and the sale is either identified in the original project application and is part of the funding proposal, or the agency waives this condition after the tenth year from the date of the award's issuance.<sup>18</sup> The RFI asks whether the restriction should be revised "to adopt a more flexible approach toward awardee mergers . . . while still ensuring that awardees are not receiving unjust enrichment from the sale of award-funded assets for profit."<sup>19</sup> Qwest believes that the asset sale restriction should be revised to accommodate reasonable and prudent businesses practices. This accommodation can be achieved without compromising the completion or operation of a funded infrastructure project or unjustly enriching an awardee.

It is unreasonable to expect a private sector entity to foresee every possible merger, divestiture or asset sale opportunity that may present itself over a ten-year period. Reducing the waiting period for agency consideration of a waiver of the upfront disclosure condition would provide awardees with greater flexibility to respond to unforeseeable circumstances. Doing so would not compromise the government's ability to secure adequate consideration and

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<sup>18</sup> NOFA at p.33123.

<sup>19</sup> RFI at p.58944.

commitments that ensure fulfillment of the original award terms, conditions and purposes; as well as prevent any awardee from being unjustly enriched at the taxpayers' expense. In order to discourage the flipping of award funded property, a waiver of the upfront disclosure condition should not be granted during the first three years from the date of the awards' issuance unless approved by the Secretary of Agriculture in the case of BIP or the Secretary of Commerce in the case of BTOP. Thereafter, the awarding agency should be free to consider and grant a waiver of the upfront disclosure condition. The need to secure government approval of an awardee's transaction involving award funded assets should end at the earlier of ten years from the date of the award's issuance or at the expiration of the life of a financed asset. To the extent that an applicant has knowledge of a future merger or asset sale and discloses it in its funding application, the applicant should be allowed confidential treatment of proprietary or sensitive information to protect it from public disclosure.

**E. Retain And Enhance The Existing Service Provider Review Process**

The RFI asks whether alternative methods exist for the verification of applicant representations that their proposed funded service areas are unserved or underserved that could be used to replace the existing service provider review and comment process employed in the first funding round.<sup>20</sup> The RFI notes that some stakeholders have suggested that this process “may reduce incentives for applicants to participate in the BIP and BTOP programs because of the risk that their applications may be disqualified from funding on the basis of information submitted by existing broadband service providers that they have no means to substantiate or rebut.”<sup>21</sup> Qwest believes that the stakeholders having the highest priority in the application review and verification process are the American taxpayers that have funded BIP and BTOP.

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<sup>20</sup> RFI at pp.58943-58944.

<sup>21</sup> *Id.*

The American taxpayers' interest in being protected from fraud, waste and abuse in the award of BIP and BTOP funds is paramount. The potential for fraud, waste and abuse in government funded broadband programs is a significant concern. As noted by the Government Accountability Office (GAO) in a recent report to the respective chairmen and ranking members of the Senate Committee on Commerce Science and Transportation and the House Energy and Commerce Committee, "prior reports by GAO and the Inspectors General of USDA, DOC, and FCC [have] found that broadband programs pose certain challenges -- including difficulties in identifying broadband coverage, targeting rural areas, and completing projects -- and may present risks of waste, fraud and abuse."<sup>22</sup>

RUS and NTIA should employ those application review and verification processes that will be most effective in ensuring that only truly eligible projects are funded. It is in no one's interest to find out after BIP or BTOP funds have been awarded and spent that a funded service area was neither unserved nor underserved. Applicants that have performed their due diligence in identifying a proposed funded service area as either unserved or underserved<sup>23</sup> have no reasonable basis to fear an incumbent service provider's submission of data concerning the broadband services that it offers in the proposed service area. Qwest believes that potential applicants can take comfort in the fact that the RUS and NTIA staffs, under the supervision, respectively, of the RUS Administrator and the NTIA Assistant Secretary for Communications

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<sup>22</sup> GAO Report to Congressional Committees, *RECOVERY ACT, Agencies Are Addressing Broadband Program Challenges, but Actions Are Needed to Improve Implementation*, GAO-10-80 (November 2009), *Letter* (November 16, 2009), at p.2.

<sup>23</sup> RUS and NTIA left it to applicants to select the methodology to be used to determine whether an area is unserved or underserved. Applicants were counseled to "utilize state broadband mapping data if such data exists." "Otherwise, a customer or market survey, statistical sampling, or other valid methodology will be necessary." BIP/BTOP Frequently Asked Questions, Section II.A., Q&A 2., p.9.

and Information, are fully capable of assuring that applications will be disqualified only when the evidence to support disqualification or rejection is credible and persuasive.

Until accurate maps depicting broadband deployment nationally are available (which will likely not coincide with the second round of funding), the best source of information about existing broadband deployment is existing broadband service providers. Accordingly, the existing service provider review process should be retained and enhanced.<sup>24</sup> Further, not only should existing broadband service providers be allowed to comment on the applications in the second funding round, but there should also be very explicit requirements for an applicant to map its entire deployment plan and not merely end points, as Qwest observed during application reviews in the first funding round.<sup>25</sup>

In Section G of these comments, Qwest recommends upgrades and enhancements to the Broad USA Mapping Tool (Mapping Tool) that would facilitate the existing service provider review process. Further, existing service providers should not be placed in the position of spending time reviewing applications in the Mapping Tool that on their face are ineligible for funding or are not in compliance with the NOFA. An initial agency screening of applications should be done for facially deficient applications. Applications found to be deficient should immediately be rejected, removed from the Mapping Tool and not posted on the public notice list of filed applications.

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<sup>24</sup> “[Committee] Members are concerned by the process that existing service providers must undergo to demonstrate where broadband service is already provided. A formal process should be implemented to reconcile conflicting data received from an applicant and from existing service providers. This will ensure fairness and accuracy for all parties involved.” Small Business Committee Letter at p.2.

<sup>25</sup> See November 20, 2009, letter from R. Steven Davis, Sr. VP-Public Policy and Government Relations, Qwest, to the Honorable Jonathan S. Adelstein, Administrator, RUS, and the Honorable Lawrence E. Strickling, Assistant Secretary for Communications and Information, NTIA, concerning the BIP and BTOP Broadband USA Mapping Tool.

## **F. Census Blocks Do Not Align With Distribution Areas**

In the first funding round, an infrastructure applicant was required to “identify the census block(s) selected for [its] project and provide documentation supporting the applicant’s determination that the proposed funded service area is either unserved or underserved.”<sup>26</sup> Service areas were required to be comprised of contiguous census blocks, and a presumption existed that the applicant would provide service throughout “the entire territory of each census block included in the proposed funded service area, unless the applicant file[d] a waiver and provide[d] a reasoned explanation as to why providing coverage for the entire census block [was] infeasible.”<sup>27</sup> Service area boundaries for telephony facilities generally, and broadband facilities specifically, are wholly unrelated to co-existing census blocks.<sup>28</sup> Requiring service areas to be defined and mapped as contiguous census blocks significantly increases the difficulty of preparing an Application, especially an Application proposing to extend broadband to multiple, non-contiguous unserved communities. The presumption that an applicant will provide service throughout each census block included in the applicant’s proposed service area can dramatically increase the cost of an applicant’s proposed project without producing a corresponding benefit.

For the past several decades, the local telephone industry has deployed local facilities on the basis of Distribution Areas (DAs).<sup>29</sup> The local telephone industry has defined certain

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<sup>26</sup> NOFA at p.33132. *See* definitions of “underserved” and “unserved,” *id.* at p.33109. *See also* Broadband Infrastructure Application Submission to RUS (BIP) and NTIA (BTOP) (Application), Section D, pp.9-12.

<sup>27</sup> NOFA at p.33132. *See* Application, Section D, Instruction 16, p.11. *See also* BIP/BTOP Frequently Asked Questions, Section I.D., Q&A 2.(c), p.5.

<sup>28</sup> *See* Attachment hereto.

<sup>29</sup> The DA begins at the point where the central office feeder facility (either copper and/or digital loop carrier (DLC)) terminates and the distribution cable begins. A cross box (also know as a serving area interface (SAI)) is typically placed as close to the center of the DA as possible. It is

facilities characteristics (particularly electrical characteristics) required to support traditional voice service and other telephony services in relation to DAs. For example, in a new metro DA, the longest local loop is preferably no more than 4000 feet (including the drop wire to a premise), and it is a buried, 24-gauge wire without load coils or bridge taps. The overall cabling resistance must be no more than 900  $\Omega$  from a remote terminal (RT) (*i.e.*, digital loop carrier / DLC) to a customer, or 1500  $\Omega$ , from the central switching office (CO) to a customer, in order to support traditional telephony services. Based on these characteristics, a typical DA supports approximately 150 or fewer living units in low density areas to approximately 500 living units in high density areas. In rural areas, DAs can be very spread out because the density of the local service population is so low. DAs are created based on service demand. The drivers include: housing developments; multi-dwelling unit structures; and commercial complexes (*e.g.*, strip malls and business parks).

Qwest began remote DSL deployment in early 2000. It was then determined that the cross box was the logical network location at which to combine circuit switched voice and DSL services. At the cross box, the digital subscriber line access multiplexer (DSLAM) is typically within 4000 to 7000 feet (sometimes longer in rural areas) from the subscriber. Today, broadband/DSL services play a significant role in defining the electrical characteristics of new DAs.

Applicants that do not inventory or track their network facilities at the census block level should be permitted to map and determine at a distribution area level: that their proposed service areas are unserved or underserved; and, for BIP, that their proposed funded service areas are at least 75% rural. Since the presumption that an applicant will provide service throughout each

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sometimes not possible, due to the geography or other impediments, to locate the cross box in the center of the DA.

census block included in the applicant's proposed funded service area can dramatically increase the cost of an applicant's proposed project without producing an economically justifiable benefit, RUS and NTIA should forgo the presumption in the second funding round.<sup>30</sup>

### **G. The Mapping Tool Should Be Reconfigured And Upgraded**

Use of the Mapping Tool was excessively time and labor intensive for those applying for project funding<sup>31</sup> and those responding to applications for project funding.<sup>32</sup> The Mapping Tool should be reconfigured and upgraded prior to the filing of applications for the second funding round. There should also be a reasonable period prior to the deadline for submitting round two applications during which potential applicants for infrastructure projects could trial the reconfigured and upgraded Mapping Tool, including making a test filing.

With hard stop deadlines for filing applications and responding to filed applications, it is essential that the Mapping Tool be available twenty-four hours a day, seven days a week for the entirety of the filing and review periods. During the round one existing service provider review

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<sup>30</sup> Should RUS and NTIA decide to retain the presumption, waivers should be granted upon a showing that enforcing the presumption will increase the overall cost of the proposed project rather than upon a showing that complete coverage of one or more census blocks is infeasible.

<sup>31</sup> "Zufolo [RUS Deputy Administrator Jessica Zufolo] had been in the audience earlier in the day when a panel of three applicants criticized the process of applying for the \$7.2 billion in federal stimulus funding for its complexity, its confusing terminology and the difficulties in filing applications and supporting maps online as required." *RUS wants to improve stimulus application process*, TelephonyOnline (by Carol Wilson), 09/30/09, <http://telephonyonline.com/independent/news/rus-improve-stimulus-application-process-0930/>. Although Qwest ultimately did not apply for project funding in the first round, it nonetheless spent considerable time familiarizing itself with the Mapping Tool and preparing for the submission of service area maps in conjunction with one or more possible applications.

<sup>32</sup> "[T]he Committee urges improvements to the website used to display applications and receive comments from the public, including existing service providers. It is our understanding that the procedures for using this website are confusing and time/resource consuming, particularly for small businesses. Without such changes, the Committee is concerned that awards will be issued with an inaccurate or incomplete picture of existing service." Small Business Committee Letter at p.2.

period, the Mapping Tool was unavailable at least twice for extended periods of time, and intermittently as well. Additionally there were several times when it ran extremely slow. The outages and delays substantially affected Qwest's ability to efficiently use its personnel engaged in reviewing filed applications and significantly constrained Qwest's ability to respond to filed applications.<sup>33</sup>

The Mapping tool could be significantly improved by mechanizing the polygon functionality in the system and enabling applicants to electronically input and submit their polygon data by means of a shape file, an Excel spreadsheet or a Comma Delimited File (.csv). The user experience could be further streamlined if registered respondents were granted access to these mechanized files as downloads for purposes of analysis and comment.

In order to review an application in round one, an applicant's polygon data had to be manually entered by inputting a series of latitude (LAT) and longitude (LON) points on to a map to create a service provider's polygon. Before a responding service provider could input into the Mapping Tool, it was required to manually log its LAT and LON points on a work sheet (*e.g.*, Excel spreadsheet). This needed to be done to ensure the appropriate network infrastructure and census block depiction. Once this cumbersome work was completed, then the respondent had to manually input these points into the Mapping Tool by locating the point on the map and finding all of the other points for the polygon. In some situations, polygons required locating and inputting 50 to 60 or more points. This process was required for each separate polygon entered

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<sup>33</sup> When Qwest attempted to contact someone to report the problem and check for a restoration status, no one was available who could either provide the status of the system or restore the system. In fact, because one particular outage was on a weekend, Qwest was told that there were no contact names available for anyone who could restore the system. At that time, we lost an entire day of analysis and input work due to the system outage. An emergency contact point should be established to report a problem. Resources should be available 24 hours every day during both the application filing and review periods in the event of a system outage so immediate recovery actions can be undertaken.

in the Mapping Tool. The mapping process would be more efficient and accurate if respondents were allowed to electronically download a shape file, spreadsheet or an equivalent .csv file.

Providing responding service providers with access to shape files or another type of file representing the LAT and LON of applicants' polygons would substantially reduce the time spent by respondents analyzing applications. In order for a responding service provider to analyze a filed application, it must manually decode the LAT and LONs of the filed polygons, convert these points to an Excel or .csv file, and finally input this data into its own Geospatial Information System (GIS). Doing this allows the responding service provider to compare the filed application to existing GIS coordinates of census blocks and against the responding service provider's own service area. Again, a mechanized process would be more efficient and accurate.

The manual methodology described above introduces a certain degree of imprecision into the application review process due to the required manual interpretation of LATs and LONs. LAT and LON accuracy is particularly critical when evaluating whether a filed application overlaps with the responding service provider's service area. Mechanizing the Mapping Tool should be relatively simple and quick for RUS and NTIA to implement. Mapping Tool compatibility with existing GIS input and analysis techniques and systems would benefit applicants, reviewing service providers, RUS and NTIA. If changes to the Mapping Tool are made, online training and help information should be revised to conform to those changes.

#### **H. NOFA/Application Clarifications And Revisions**

Below, Qwest offers suggested clarifications and revisions that should be made in the second round NOFA and/or application(s). Once the second round NOFA and application(s) have been published, prospective applicants will inevitably have questions about some of the provisions in them. Qwest encourages NTIA and RUS to again periodically publish questions of general interest that it receives concerning the NOFA, the application(s) and the Mapping Tool,

and the responses provided to those questions, as it did in the first funding round. Qwest also suggests that a link be placed on the BroadbandUSA website for the submission questions. This should not preclude interested persons from contacting agency staff for information, clarifications or answers to questions.

#### Network Diagram<sup>34</sup>

It should be clarified that where a proposed last mile project is composed of multiple service areas using the same network architecture, only one network diagram that is representative of the common network architecture to be used in each service area is required to be provided with the application. If more than one type of network architecture is to be used in a multi-service area project, then one representative network diagram for each type of network architecture to be used should be required to be provided with the application. Having to provide a network diagram for each service area that shows “[a]ll the network elements and the capacity, facilities, and mileage between each element,” as well as the other particulars set forth in Instruction 30 of the Application,<sup>35</sup> is impractical, if not virtually impossible, for applicants proposing large projects with hundreds of service areas. Such a requirement unnecessarily discourages the filing of large applications that could bring broadband to hundreds of unserved communities.

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<sup>34</sup> Application, Section F, Instruction 30, p.14.

<sup>35</sup> *I.E.*: The types of facilities used in connecting all the network elements (fiber, copper. Microwave, etc.); the points-of-connection with the backbone service providers, if applicable; and the proposed Aggregation Node facilities that will provide the egress point(s) from the broadband backbone to the networks of the selected service provider(s) and the selected Internet Service Provider(s) and any other value-added services that may be provided in the new infrastructure.

### Certification by Professional Engineer<sup>36</sup>

RUS should adopt the same approach for BIP that NTIA did for BTOP in round one. For projects requesting more than \$1 million in funding, RUS should require that network diagrams and system designs be certified by a professional engineer registered in any state irrespective of the location of the project<sup>37</sup> rather than each state where service will be provided.

### Pro Forma 5-Year Financial Forecast and Assumptions<sup>38</sup>

Sensitivity should be given to the reasonable and necessary business practices of companies relative to the disclosure of financial and business forecasts and assumptions. Producing a pro forma five-year forecast and assumptions can be problematic. Such a submission would necessarily be based on extremely sensitive projections concerning matters such as anticipated take rates, average revenue per user, gross/net revenues and other proprietary information. It is information that could be used by an applicant's competitors even outside of the service area for which BIP or BTOP funding is being sought. RUS and NTIA should allow applicants to demonstrate the financial viability of their proposed projects through the use of historic and other data that does not require the applicant to potentially compromise its competitive position either currently or in the future.<sup>39</sup> Should the agencies not adopt this recommendation, RUS should offer applicants the same alternative for BIP applications that NTIA did for BTOP applications in round one and allow applicants to explain why they cannot

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<sup>36</sup> Application, Section F, Instruction 31, p.14.

<sup>37</sup> See BTOP Grant Guidelines for the Recovery Act Broadband Technology Opportunities Program (BTOP), version 2.0-July 31, 2009 (BTOP Application Guidance) at p.41.

<sup>38</sup> Application, Section H, Instruction 50, p.18.

<sup>39</sup> Publicly-traded companies should provide the publicly-available information that most closely corresponds to pro forma 5-year financial forecasts and assumptions.

produce pro forma 5-year financial forecasts and assumptions in a standard format and provide comparable data instead.<sup>40</sup>

### **I. Coordination Of First Round Decisions With Second Round Applications**

Final BIP and BTOP round one funding decisions have to be made and published well in advance of the round two application deadline in order for round two participants to make final determinations concerning the geographic boundaries of their proposed service areas, prepare their applications and timely file those applications. Without sufficient advance knowledge of the service areas approved for round one funding, including having access to maps clearing identifying service area boundaries, round two applicants run the risk of including service areas that, in whole or in part, have already received BIP or BTOP funding or a commitment for such funding. RUS and NTIA are each restricted from funding an area that the other has funded,<sup>41</sup> and an already funded area would presumably be ineligible for additional funding by the same agency. Round two applicants should not have to assume the risk of filing ineligible applications because of the lack of information concerning final round one funding awards. Accordingly, prior to the release of the second round NOFA, RUS and NTIA should announce how they will coordinate the timing of final round one funding award announcements with the commencement of the round two application process.

### **III. CONCLUSION**

There has been an overwhelming call for a change in the BIP/BTOP round one funding structure for infrastructure projects in rural areas. The rural area funding structure prevented Qwest from applying for funding in round one. RUS and NTIA should eliminate the remote area

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<sup>40</sup> See BTOP Applications Guidance at p.51.

<sup>41</sup> See *American Recovery and Reinvestment Act of 2009*, Pub. Law No. 111-5, 123 Stat. 115 (Feb. 17, 2009) at Division A, Title I, Rural Utilities Service, Distance Learning, Telemedicine, and Broadband Programs; and Division B, Title VI, Section 6001(h)(2)(D).

classification and have one rural area classification. BIP grant funding should be available up to at least 80 percent of eligible project costs. Absent these changes to the funding structure, applicants proposing infrastructure projects in rural areas should be free to submit their applications directly to NTIA for consideration under the BTOP program rules.

BIP and BTOP program requirements should accommodate the reasonable business practices of private sector companies. RUS and NTIA should eliminate the program income reinvestment requirement, modify the restriction on the sale of BIP or BTOP-funded assets, allow submission of the proposed alternative in lieu of pro forma five-year forecasts and assumptions, and permit service area identification and mapping on the basis of distribution areas instead of census blocks. Each of these changes will better align application and program operation requirements with customary business practices without compromising program integrity.

Until accurate, national broadband deployment maps are available, the existing service provider review process should be retained. Improvements in the Mapping Tool will facilitate the review and produce more accurate information with which to make eligibility and funding determinations.

Finally, should RUS and NTIA retain the nondiscrimination and network interconnection obligations adopted in round one as the contractual conditions for round two funding awards, they should clarify that these nondiscrimination and network interconnection requirements will be replaced by any final rules adopted in the FCC's *Open Internet Proceeding* that take effect.

Respectfully submitted,

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*Its Attorneys*

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# ATTACHMENT

## The Problem Associated with Overlaying DAs on Census Blocks

Diagram A is a hypothetical illustration, representative of many existing Qwest service areas, depicting how three distribution areas (DAs) overlay on a group of census blocks. As shown, the boundaries of a DA do not (except as the result of extraordinary coincidence) typically align with the boundaries of a census block. In some instances, census blocks cover all or part of more than one DA. Census blocks are the smallest geographic entities for which the Census Bureau presents data. Census blocks may represent individual city blocks and use roadways as boundaries, although a census block can comprise several or more square miles (especially in rural areas). Some census blocks are unpopulated. DA boundaries, though, are determined by customer demand and in rural areas can be spread out.

Diagram A

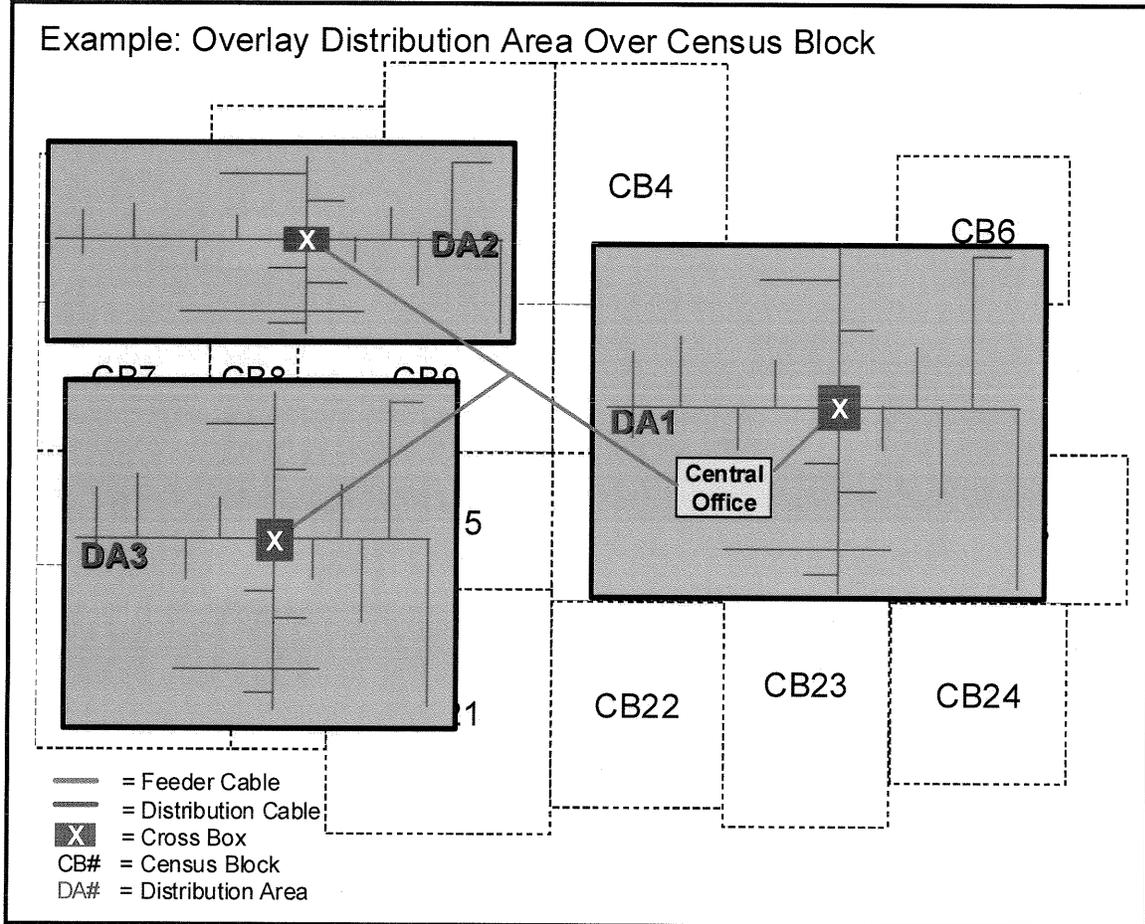
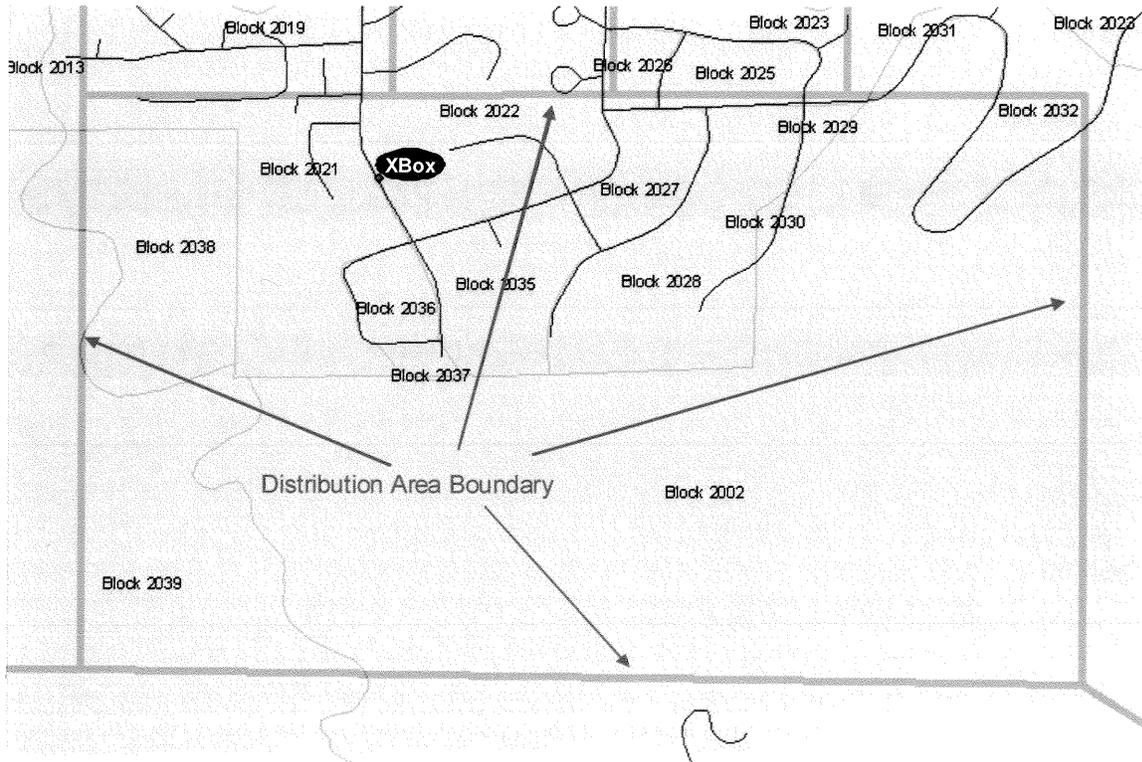


Diagram B depicts an actual DA (within the large grey rectangle) in a “remote area”<sup>1</sup> overlaid on census blocks using GPS coordinates. Again, the DA boundaries and the census block boundaries do not align.

Diagram B



### Impact of the Census Block Requirement

The requirement to identify the census blocks selected for a proposed infrastructure project, and provide documentation at a census block level on service area maps to support a determination that the proposed funded service area is unserved or underserved, is impractical and exceedingly burdensome. Qwest’s facilities management systems inventory and track its network facilities at the DA level. Qwest has determined that its DAs frequently overlap multiple census blocks.<sup>2</sup> This makes a census block level showing that proposed funded service areas are unserved a manually intensive and time consuming undertaking, particularly for a multi-service area application.

<sup>1</sup> As the term is defined in the NOFA.

<sup>2</sup> It is also the case that a particular census block may be served from multiple DAs or that it may encompass the service areas of multiple local service providers. Factors such as these increase the complexity of producing the required showing.