

**Before the
DEPARTMENTS OF COMMERCE AND AGRICULTURE
Washington, D.C.**

National Telecommunications and Information Administration)	
)	
Rural Utilities Service)	Docket No. 0907141137-91375-05
)	
Broadband Initiatives Program and Broadband Technology Opportunities Program)	
)	

COMMENTS OF RURAL BROADBAND CORPORATION (RBC)

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I. INTRODUCTION AND SUMMARY

Rural Broadband Corporation (RBC) hereby files comments with the Rural Utilities Service (“RUS”) and the National Telecommunications and Information Administration (“NTIA”) and recognizes the substantial effort both agencies have undertaken to bring broadband to currently unserved households. In response to the request for comments on the Round Two NOFA, Rural Broadband Corporation offers the following suggestions.

Background: RBC worked with Long Lines, Inc. of Sergeants’ Bluff, IA, on three different Round One applications in IA, NE, and SD. RBC is currently working with several potential Round Two applicants in a variety of states. Our experience in Round One and the issues potential Round Two applicants will face have led us to the following suggestions for the next Round.

Overview: Understandably, although the agencies attempted to make their intent clear, it was not apparent through the application process what the agencies’ priorities were. The RUS self-scoring requirement came close to telegraphing how that agency was making the trade-offs between various evaluation factors. In Round Two, if possible, the agencies should try to state more clearly how they will weigh the various evaluation criteria. Every application involves an inherent trade-off between different criteria, and the more explicit the weighting factors are, the more responsive the applications will be.

Suggestions for the Round Two Application Process: RBC encourages the agencies to consider the following:

Timing Overlap: There have been public statements that the NOFA for Round Two will be issued before the awards for Round One have been finalized. We think this would be a grave mistake unless there is a minimum of 60 days between the completion of the Round One election process and the deadline for filing Round Two applications. We understand the timing difficulties facing the agencies. However, Round Two applicants will not know how to proceed until Round One is complete. They will not know what geographic areas have been awarded in Round One, or what types of projects (middle mile vs. last mile vs. broadband adoption) have been funded and how. Without this information, they will not know where and how to structure their applications and will incur significant expense without clear direction. Also, Round One applicants who might want to modify an unfunded application for Round Two will not know if they need to do so when the Round Two NOFA is issued. And, if they wait until Round One is completed, they may not have enough time to modify and resubmit for Round Two unless at least 60 days are provided.

Service Area Definitions: RUS and NTIA should allow applicants to specify proposed service areas at the county, census tract or census block level, as long as the proposed service area covers 100% of the designated area.

Under-served vs. Un-served: There was wide-spread dissatisfaction with the definitions of un-served, under-served, and rural remote. We suggest that these definitions be reviewed in light of the Round One experience of both applicants and reviewers, with an eye towards eliminating the uncertainty that applicants face as to whether a given area is eligible for funding. Also, we suggest that “affordability” be an additional criteria in determining whether an area is under-served or un-served. The mere availability of service does make an area served. If the cost

of service is beyond the reach of a majority of the residents, then the area is effectively under-served or un-served.

Cost of Application: The requirements of the application process and the lack of clarity in the definitions require applicants to spend a lot of time and money on their applications. Some smaller potential applicants have had to refrain from applying because of cost. Having to prove whether a proposed service is under-served, and having to do extensive engineering and financial modeling as part of the application can involve significant expense that are a barrier to potentially worthwhile applications. Easing some of the detailed financial information and eliminating some of the network build attachments could both streamline the process and reduce the cost.

Support: Both NTIA and RUS could improve on the support given to applicants. Frequently it took the agencies 7 to 10 days to respond to questions, and responses were not always consistent. For greater transparency, the agencies should frequently post ALL questions and answers at broadbandusa.gov, rather than the Round One process of infrequent posting of selective FAQs.

Environmental Questionnaire (EQ): In their recent guidance, the agencies have created a “Catch 22” with the Environmental Questionnaire that needs to be completed as part of step two of the review process. In essence, the questionnaire would require applicants to complete costly and time consuming engineering that is normally part of the construction process before knowing whether or not their project will be funded and which would not be possibly completed within the time frames allowed. We suggest that the agencies be flexible in addressing the questionnaire so that otherwise qualified applicants proceed with the provision that funding is

dependent upon satisfactory completion of the EQ. Please see the Environmental Questionnaire section of this document, which discusses this more fully.

II. DISCUSSION

Streamlining the Applications

In what ways should the RUS and NTIA streamline the application to reduce the burden on applicants, which still obtaining the requisite information to fulfill the statutory requirements set forth in the Recovery Act?

Give the applicants at least 60 days from the time Round One application processing is finished to complete a Round Two application. Prior to the beginning of Round Two, applicants **MUST KNOW** what awards have been made in Round One, and must have access to the mapping data for successful Round One applications so they can determine precisely what areas have been funded and for what purpose. Round One applicants also need to know the fate of their applications so they can decide if they will modify and resubmit for Round Two. New applicants need to know what areas and what types of awards have been made in Round One to determine if the expense of an application in Round Two is merited.

Should the agencies modify the two-step process, and if so, how?

The objective in the first step should be to eliminate the applications that are not realistic or economically feasible. The application process can be simplified by eliminating some of the pro forma financial information, PE certifications, legal opinions and other material which are not central to the application, and which can be provided during the step two if the application is selected for due diligence review.

Should certain attachments be eliminated, and if so, which ones?

Reduce and simplify the Network Build attachments. Eliminate some of the pro forma financial information, which can be provided during the step two due diligence phase.

Should the agencies re-examine the use of a single application for applicants applying to both BIP and BTOP to fund infrastructure projects?

One application format should be sufficient. However, the agencies should attempt to eliminate unnecessary differences in their application requirements that impose additional burdens on applicants (such as RUS's requirement that the certifying Professional Engineer be licensed in the state of the project, while NTIA recognizes that any licensed PE can properly certify a project).

New Entities: should the agencies eliminate the requirement to provide historical financial statements for recently-created entities?

Yes

Consortiums and Public-Private Partnerships: Should certain critical information be requested from all members of such groups, in addition to the designated lead applicant, to sufficiently evaluate the application?

Yes

Specification of Service Area: The broadband infrastructure application required applicants to submit data on a census block level in order to delineate the proposed funded service areas. Some applicants found this requirement burdensome. What level of data collection and documentation should be required of applicants to establish the boundaries of the proposed funded service areas?

RUS and NTIA should allow applicants to specify proposed service areas at the county, census tract or census block level, as long as the proposed service area covers 100% of the designated area.

Relationship between BIP and BTOP: The Recovery Act prohibits a project from receiving funding from NTIA in areas where RUS has funded a project. Section VI.C.1.a.i of the NOFA required that infrastructure applications consisting of proposed funded service areas

which are at least 75 percent rural be submitted to and considered under BIP, with the option of additional consideration under BTOP. According to the NOFA, NTIA will not fund such an application unless RUS has declined to fund it. RUS and NTIA are presently reviewing joint applications consistent with the process set forth in the NOFA. Are there situations where it is better to give a loan to an applicant as opposed to a grant? Are there applicants for which a loan would not be acceptable, and if so, how should the programs consider them?

Applications which do not have significant equity investments should be down-graded.

RUS should evaluate seeking loans as much preferable to grants. Grant only applications should be marginalized by RUS. Those seeking grants from either agency should have a heavy burden to establish that the project would not be viable and sustainable absent a substantial grant.

Outreach and Support: For the initial round of funding, RUS and NTIA provided multiple means of applicant support and outreach, including hosting national workshops and minority outreach seminars, publicly releasing an application guidance manual, posting responses to Frequently Asked Questions on www.broadbandusa.gov, and establishing a Help Desk that fielded thousands of telephone and e-mail inquiries. What should be done differently in the next round of funding to best assist applicants?

Better support is needed from both RUS and NTIA. In some cases it took the agencies 7 to 10 days to respond to simple questions, and responses were not always consistent. The agencies should consider frequent posting on their websites ALL questions and answers.

NTIA Expert Review Process: During the first round of funding, NTIA utilized panels of at least three independent reviewers to evaluate BTOP applications. A number of stakeholders have questioned whether this is the most effective approach to evaluating BTOP applications. To further the efficient and expeditious disbursement of BTOP funds, should NTIA continue to rely on unpaid experts as reviewers?

Yes, provided the guidelines are clear to all.

Policy Issues

Funding Priorities and Objective: Section IV.B of the NOFA establishes the funding limits for the first round of BIP and BTOP funding. In particular, RUS set aside approximately \$2.4

billion in funding, with up to \$1.2 billion available for last mile projects, up to \$800 million available for middle mile projects and up to \$325 million available for a national reserve. NTIA allocated up to \$1.2 billion for broadband infrastructure projects, up to \$50 million for public computer center projects, up to \$150 million for sustainable broadband adoption projects, and up to \$200 million as a national reserve. Many parties have publicly made suggestions as to how the NOFA could be modified to ensure that the Recovery Act funds make the greatest impact possible. RUS and NTIA welcome suggestions for targeted funding proposals and seek comment on how they can better target their remaining funds to achieve the goals of the Recovery Act. Below we set forth some examples of types of projects we could specifically target. We seek comment on these proposals as well as any others. RUS and NTIA request commenters that are proposing a more targeted approach for round 2 projects to support their proposal with quantitative estimates of the projected benefits of adopting such an approach. For example, commenters should quantify the impact of their proposal based on such metrics as the number of community anchor institutions committing to service, the number of last mile providers committing to utilize middle mile projects, the number of end users reached by the proposal, the number of new jobs created, directly and indirectly, and the projected increase in broadband adoption rates, as well as any other metrics necessary to justify the adoption of their proposal and ensure that the benefits of the Recovery Act are being realized. Commenters should explain the basis and method of calculation for the quantifications they provide.

Middle Mile “Comprehensive Community” Projects: Should certain institutions, such as educational facilities, be given greater weight to reflect their impact on economic development or a greater need or use for broadband services?

Yes.

Should we consider the number of existing community anchor institutions that intend to connect to the middle mile network as well as the number of unserved and underserved communities and vulnerable populations (i.e., elderly, low-income, minority) that it will cover?

Yes.

In addition, should we consider the extent of the geographic footprint as well as any overlap with existing service providers?

No.

Economic Development: Should RUS and/or NTIA allocate a portion of the remaining funds available under the BIP and BTOP programs to promote a regional economic development approach to broadband deployment? This option would focus the Federal broadband investment on communities that have worked together on a regional basis to develop an economic development plan. It would encompass a strategy for broadband deployment, and would link how various economic sectors benefit from broadband opportunities. Such a regional approach would seek to ensure that communities have the “buy-in,” and the

capacity, and the long-term vision to maximize the benefits of broadband deployment. Using this option, NTIA and RUS could target funding toward both the short term stimulus of project construction and the region's longer term development of sustainable growth and quality jobs.

Should funds be targeted toward areas, either urban or rural, with innovative economic strategies, or those suffering exceptional economic hardship?

Yes. It is important that the program recognize that the economically deprived can be “under-served” by the cost of service as much as rural areas are “under-served” by the availability of service. A \$50 per month subscription rate can be a significant barrier to adoption in poor neighborhoods, whether urban or rural.

Should states or regions with high unemployment rates be specifically targeted for funding?

See answer above. The issue is affordability, not unemployment per se, although the two can be linked.

Targeted Populations: Similarly, should public housing authorities be specifically targeted for funding as entities serving low-income populations that have traditionally been unserved or underserved by broadband service?

Absolutely. See above.

How can funds for Public Computer Centers and Sustainable Broadband Adoption projects be targeted to increase broadband access and use among vulnerable populations?

There needs to be more funds available for these purposes.

Should NTIA shift more BTOP funds into public computer centers than is required by the Recovery Act?

Yes.

Program Definitions: Section III of the NOFA describes several key definitions applicable to BIP and BTOP, such as “unserved area,” “underserved area,” and “broadband.” These definitions were among the most commented upon aspects of the NOFA. For example, a number of applicants have suggested that the definitions of unserved and underserved are unclear and overly restrictive; that they kept many worthy projects, particularly those in urban areas, from being eligible for support; that there was insufficient time to conduct the

surveys or market analyses needed to determine the status of a particular census block area; and that they discouraged applicants from leveraging private investment for infrastructure projects.

Should they be modified to include a specific factor relating to the affordability of broadband service or the socioeconomic makeup of a given defined service area, and, if so, how should such factors be measured?

See answers above. Affordability is a significant factor in low-income areas.

Environmental Questionnaire

Consistent with recent guidance, RBC urges NTIA and RUS to take a flexible approach to reviewing and approving the responses of Step Two applicants to the Environmental Questionnaire (“EQ”). In particular, the agencies should impose project-specific special award conditions where needed to allow otherwise qualified applicants to receive an award while the environmental review process is ongoing.

RBC’s applicant-affiliates intend to fully comply with all environmental requirements prior to construction. Nonetheless, there is inherent tension between the need to submit an EQ ten to thirty days after being selected for Step Two on the one hand,¹ and the more time consuming real-world construction planning and scoping process during which environmental issues are typically addressed on the other. For example, based on the agencies’ recent environmental guidance, the EQ must contain complete descriptions of each project site, cable or structure, including dimensions; indicate whether any lines will be in rights-of-way (“ROW”); depict ROWs, easements and other land encumbrances on a map;

¹ See Applicant Guidance for Preparing the Environmental Questionnaire and U.S. Department of Commerce Environmental Checklist for the Broadband Technology Opportunities Program and Broadband Initiatives Program, at 5 (Oct. 30, 2009) (“Environmental Guidance”), available at <http://broadbandusa.gov/files/EnvironmentalGuidancetoApplicants.pdf>.

and in some instances include written agency determinations, *e.g.*, from State Historic Preservation Officers (“SHPOs”).²

Much of this information may not be available until more than thirty days after the Step Two designation, particularly for large scale projects. As the agencies are aware, funding is limited to projects that would not be built “but for” the award of funds. Accordingly, for the private companies working with RBC, the proposed projects are typically new proposals that are not already “in the pipeline.” Absent a reasonable expectation of funding, private businesses cannot justify the expenditure of significant funds to complete the construction and environmental scoping process, especially larger projects that will bring broadband services to more users across a wider geographic area. As a result, the scoping process for many projects is unlikely to begin in earnest until a Step Two designation – meaning that the process of selecting and securing tower sites, negotiating leases for lines in rights-of-way, contacting agencies for environmental determinations and other scoping efforts can take more than thirty days.

The agencies appear to have considered this situation by allowing, for example, the depiction of “proposed service area territories” on maps “[i]f specific locations of project components are unknown.”³ Likewise, grants can be made where all environmental information is not yet available by “include[ing] project-specific special award conditions

² See Environmental Guidance at 6-9.

³ Environmental Guidance at 6.

that may have to be satisfied before funds are made available to the applicant.”⁴ The agencies also appear to recognize that taking the steps required by the EQ would not commence until Step Two and could take long than the ten- to thirty-day EQ submission period. For instance, the recent guidance provides that “[a]t the initiation of Step Two, applicants must contact the appropriate [SHPO/THPO] as soon as possible,” as “[i]t can take up to thirty (30) days to receive a response.”⁵ The guidance also provides that if a response “is not forthcoming,” applicants should state this fact in their response.⁶

Consistent with this guidance, RBC urges the agencies to apply a flexible approach to evaluating EQ responses that takes into account these construction planning and scoping realities. In particular, the agencies should make awards to otherwise qualified applicants conditioned on completion of any environmental clearances prior to the receipt of funds for the construction at issue. This will enable the agencies to timely grant meritorious applications that promise to bring broadband services to rural and underserved areas, while at the same time ensuring that environmental review is completed prior to the disbursement of funding.

⁴ *Id.* at 5.

⁵ *Id.* at 8.

⁶ *Id.*