

**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 MOTOROLA

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I. INTRODUCTION AND EXECUTIVE SUMMARY

Motorola, Inc. (“Motorola”) commends the Rural Utilities Service (“RUS”) and the National Telecommunications and Information Administration (“NTIA”) for their efforts to date in implementing the Broadband Initiatives Program (“BIP”) and the Broadband Technology Opportunities Program (“BTOP”). But, as both RUS and NTIA correctly recognize,¹ these programs can and should be improved in order to help the United States achieve the goals of the American Recovery and Reinvestment Act (“Recovery Act” or “ARRA”).

The most important improvement is for RUS and NTIA to simplify the application process for obtaining broadband infrastructure funds under BIP and BTOP. As set forth in greater detail below, Motorola offers three proposals for streamlining the application process which will allow applicants to more readily apply for funds without impacting the ability of RUS and NTIA to distinguish qualified from unqualified projects. If adopted, these measures also would eliminate the need for RUS and NTIA to review extraneous materials, thereby allowing the agencies to approve more quickly pending applications. RUS and NTIA also should make the application process more transparent by publicly disclosing state lists of prioritized projects as well as non-proprietary information provided by an applicant in its broadband infrastructure application.

Motorola also recommends that RUS and NTIA more appropriately target the remaining broadband infrastructure funds to ensure that the goals of the Recovery Act are met. However, Motorola does not believe that the specific proposals described in the *Request for Information* will accomplish these goals. Instead, RUS and NTIA should target funds to last-mile

¹ See Department of Agriculture, Rural Utilities Service, Department of Commerce, National Telecommunications and Information Administration, *Broadband Initiatives Program and Broadband Technology Opportunities Program*, Joint Request for Information, 74 Fed. Reg. 58940 (Nov. 16, 2009) (“*Request for Information*”).

infrastructure projects that will bring broadband to currently unserved households. In addition, RUS and NTIA should ensure that adequate funds are available to improve access to and use of broadband by public safety, which was largely overlooked in the first funding round.

II. DISCUSSION

A. The Application Process Should Be Streamlined.

As RUS and NTIA have tentatively concluded, the application process should be streamlined to lessen the burden (both financially and logistically) on applicants.² Although RUS and NTIA received almost 2,200 applications requesting nearly \$28 billion in the first round of funding,³ a number of qualified providers decided not to apply for broadband infrastructure funding under BIP and BTOP because the application process was very complicated and overly burdensome.⁴ In particular, in Motorola's experience, the cumbersome and costly nature of the application process caused various wireless broadband providers to "sit out" the first funding round, even though wireless broadband may be the most appropriate technology to reach unserved and underserved areas. The goals of the Recovery Act will never be realized if would-be applicants with the operational and technical capabilities to deploy broadband infrastructure are deterred from even applying for funding.

² *Id.* at 58941.

³ Press Release, *Commerce and Agriculture Announce Strong Demand for First Round of Funding to Bring Broadband, Jobs to More Americans* (Aug. 27, 2009) (available at http://www.ntia.doc.gov/press/2009/BTOP_BIP_090827.html).

⁴ *See, e.g.*, Letter to the Honorable Lawrence E. Strickling and the Honorable Jonathan Adelstein from Rep. Nydia M. Velázquez (D-NY), Chairwoman of the House Committee on Small Business, and Rep. Sam Graves (R-MO), Ranking Member of the House Committee on Small Business (Nov. 17, 2009) ("The significant paperwork and data collection requirements have made the application process very expensive for many small firms," noting testimony of an applicant concerning \$50,000 in up-front costs to apply for funds under BIP or BTOP).

To eliminate unnecessary impediments to qualified applicants seeking infrastructure funds from RUS and NTIA, Motorola recommends that RUS and NTIA take the following steps to streamline the BIP and BTOP application process. First, RUS and NTIA should only require an applicant to provide information that relates directly to the scoring criteria established to evaluate whether an application meets the goals of the Recovery Act. Information that is not directly related to those criteria should be eliminated from the application process.

For example, for both last mile and middle mile projects, an applicant in the first funding round was required to provide the total number of businesses in the proposed funded service area.⁵ This information is not readily available from the census, and applicants frequently were required to obtain the number of businesses from a third-party source, usually for a fee. However, it is unclear how information concerning the number of businesses in the proposed funded service area was used in the review process, if at all; the tests for determining whether an area is unserved or underserved are based on households, not businesses, and none of the scoring criteria disclosed by RUS and NTIA appears to relate to the number of businesses located in a particular area.⁶

Similarly, an applicant seeking BIP or BTOP funds for a last mile or middle mile project in the first round was required to provide: (i) a list of “individual census designated communities or ‘other areas’” in the proposed funded service area; and (ii) the total population, total number of households, total number of businesses, and total subscriber numbers “for all areas of an

⁵ Broadband Infrastructure Application, Questions 13 & 14 (available at <http://broadbandusa.sc.egov.usda.gov/forms/BTOP-BIP/Broadband%20Infrastructure%20Application%20for%20BIP-BTOP.pdf>)

⁶ Although the economic viability of a particular broadband infrastructure project may depend on the number of business (and residential) customers to which the provider is able to sell its service, this issue can adequately be addressed in the projections the applicant is required to provide. *See id.*, Attachments H-J.

applicant's service area that will not be funded by BIP or BTOP.”⁷ Again, how such information was used in the application review process is unclear, since it does not appear to relate directly to any specific scoring criteria.

Second, NTIA and RUS should eliminate the requirement that an application seeking more than \$1 million in funding must provide a certification from a professional engineer attesting “that: a) the system will deliver the stated performance; and b) the proposed project will be substantially completed within two years, and fully complete it with three years.”⁸ In Motorola’s experience, potential applicants opted not to apply for funding in the first round because they were unable to locate a qualified engineer capable of providing this certification or were unwilling to pay the cost of having an engineer do so. Alternatively, if NTIA and RUS conclude that an engineering certification is essential to evaluating a broadband infrastructure application, the certification should only be required as part of the second step of the application process. This approach will reduce the likelihood that the engineering certification requirement deters qualified applicants from applying and is more consistent with the purpose of step two, which “is to fully validate the submissions in step one and identify the most highly qualified applications for funding.”⁹

Third, NTIA and RUS should start the second funding round after March 1, 2010, when the broadband mapping initiative currently underway is expected to be complete.¹⁰ The

⁷ *Id.*, Question Nos. 13-15.

⁸ *Id.*, Question No. 31.

⁹ See Department of Agriculture, Rural Utilities Service, Department of Commerce, National Telecommunications and Information Administration, *Broadband Initiatives Program and Broadband Technology Opportunities Program*, Notice of Funds Availability, 74 Fed. Reg. 33104, 33105 (Jul. 9, 2009) (“NOFA”).

¹⁰ See Department of Commerce, National Telecommunications and Information Administration, *State Broadband Data and Development Grant Program*, Notice of Funds

requirement that applicants submit data on a census block level in order to demonstrate the status of the proposed funded service area as “unserved” or “underserved” is “burdensome.”¹¹ It also is one of the more contentious aspects of the application process.¹² Commencing the second funding round after broadband mapping data are available will simplify the information that an applicant will be required to provide in demonstrating that the proposed funded service area is eligible for funding.

In addition to streamlining the application process, these measures proposed by Motorola would have the added benefit of facilitating NTIA’s and RUS’s review and approval process. By not having to review and consider extraneous information included with a broadband infrastructure application, NTIA and RUS can more readily identify qualified applications. It goes without saying that the sooner NTIA and RUS can complete their review and approval process, the sooner qualified broadband infrastructure projects can get underway and thereby achieve the Recovery Act’s goals of promoting broadband as well as creating jobs.

B. The Application Process Should Be More Transparent.

As RUS and NTIA correctly note, “the Administration’s policy and the Recovery Act’s objective [are] to ensure greater transparency in government operations”¹³ And while RUS

Availability and Solicitation of Applications, 74 Fed. Reg. 32545, 32552 (Jul. 8, 2009) (requiring applicants for broadband mapping grants to “provide a substantially complete set of all broadband mapping data on or before February 1, 2010 and to complete such data collection by March 1, 2010”).

¹¹ *Request for Information*, 74 Fed. Reg. at 58941.

¹² *See id.* at 58944 (questioning whether the period “for existing broadband providers to comment on the applicants’ assertions that their proposed funded service areas are unserved or underserved” should “be superseded where data becomes available through the State Broadband Data and Development Grant Program that may be used to verify unserved or underserved areas”)

¹³ *Id.* at 58942.

and NTIA have made important strides in making transparent the application process under BIP and BTOP, more work remains to be done in that regard.

For example, RUS and NTIA should post on their website for public review the lists of prioritized projects provided by each state.¹⁴ Although many Governors and state agencies released their lists to the public, this information should be available in a central location on the BIP and BTOP websites. In fact, NTIA routinely posts “correspondence” it receives regarding BTOP, but for whatever reason, the state lists of prioritized projects are not posted there.¹⁵ Access to such information is not only essential to ensuring transparency but is necessary for interested parties to understand the types of projects that states are more likely to prioritize and to compare those projects prioritized by a state with those that are ultimately funded by NTIA and RUS.

Additionally, information beyond the summary and executive summary that an applicant submits in connection with a broadband infrastructure application should be publicly available. RUS and NTIA should take reasonable steps to protect from public disclosure confidential and proprietary information of an applicant or existing service provider – including, for example, cost information, subscriber projections, financial statements, and the exact locations and details of network serving areas and infrastructure. But other information the applicant submits that is unlikely to raise competitive or proprietary concerns – such as the basis by which an applicant has determined that the proposed funded service area is unserved or underserved – should be available to the public.

¹⁴ See *NOFA*, 74 Fed. Reg. at 33107 (noting that “the Governor’s office of each state will receive a list of the applications under consideration. States may provide a list and prioritization of recommended projects, along with an explanation of why the selected proposals meet the greatest needs of the state.”)

¹⁵ See <http://www.ntia.doc.gov/broadbandgrants/correspondence.html>.

C. **Broadband Infrastructure Funds Should Be More Appropriately Targeted.**

RUS and NTIA have offered several proposals to “better target their remaining funds to achieve the goals of the Recovery Act.”¹⁶ Motorola agrees that the remaining broadband infrastructure funds should be better targeted; however Motorola does not believe that the specific proposals outlined in the *Request for Information* would accomplish the Recovery Act’s goals.

As set forth in the Recovery Act, the primary objective of broadband stimulus funding is to provide broadband to consumers “residing in unserved areas in the United States.”¹⁷ However, it is unclear how this objective could reasonably be achieved if second round funding were limited to middle mile “comprehensive community” projects, as proposed in the *Request for Information*. According to Federal Communications Commission staff tasked with developing the National Broadband Plan, approximately 10 percent of households in the United States currently lack access to some form of wireline broadband service.¹⁸ Many of these currently unserved households lack access to the last mile facilities necessary to support broadband service – facilities that may never be built if the remaining funds under BIP and BTOP are limited to middle mile projects. And, while broadband deployment in certain geographic areas may be hindered by the lack or cost of middle mile facilities, identifying those

¹⁶ *Request for Information*, 74 Fed. Reg. at 58942.

¹⁷ ARRA § 6001(b)(1); *id.* at Div. A, Title I (“priority for awarding funds [by RUS] ... shall be given to projects that provide service to the highest proportion of rural residents that do not have access to broadband service”).

¹⁸ FCC, Broadband.gov National Broadband Plan, *September Commission Meeting*, at 3435 (Sept. 29, 2009) (available at http://www.fcc.gov/Daily_Releases/Daily_Business/2009/db0929/DOC-293742AI.pdf).

specific geographic areas – which presumably would be where funding for middle mile facilities should be targeted – is a difficult undertaking.

Without being able to identify those areas where middle mile facilities would not be deployed in the foreseeable future in the absence of broadband stimulus funding, limiting remaining BIP and BTOP funds to middle mile “comprehensive community” projects runs the risk that RUS and NTIA will end up subsidizing the overbuild of middle mile infrastructure. In addition to not making economic or competitive sense, overbuilding would not advance the goals of the Recovery Act. Furthermore, there are a host of administrative challenges that an applicant group would face in implementing middle mile “comprehensive community” projects, including coordinating between anchor institutions involved in the project and establishing “commitments” for use of the middle mile infrastructure by last mile service providers.¹⁹ Those challenges are unlikely to be overcome quickly, and thus there is no reason to believe that middle mile “comprehensive community” projects would be particularly well suited to deploying broadband or creating jobs in the near term as required by the Recovery Act.

Motorola agrees that RUS and NTIA should direct funds to projects designed to meet the needs of those constituencies identified in the broadband stimulus provisions of the Recovery Act.²⁰ But in addition to improving the deployment to and use of broadband by anchor institutions and vulnerable populations, Congress plainly intended that BTOP would “improve access to, and use of, broadband service by public safety agencies.”²¹ However, public safety was largely overlooked in the first funding round by virtue of requirements which essentially

¹⁹ *Request for Information*, 74 Fed. Reg. at 58942.

²⁰ *Id.* at 58943.

²¹ ARRA § 6001(b)(4).

necessitated that a public safety entity act as a public network operator in order to receive broadband infrastructure funding. Because there is no higher priority for government than ensuring the safety and welfare of its citizens, NTIA should modify the requirements in the second funding round so that BTOP funds are available in sufficient size and scope to meet the broadband needs of public safety agencies.

Respectfully submitted

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