



South Dakota Telecommunications Association

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*Via Electronic E-mail to [broadbandrfi@ntia.doc.gov](mailto:broadbandrfi@ntia.doc.gov)*

Broadband Initiatives Program  
RUS, U.S. Department of Agriculture  
1400 Independence Avenue, SW, Stop 1599  
Washington, DC 20250

Broadband Technology Opportunities Program  
NTIA, U.S. Department of Commerce  
HCHB Room 4887  
1401 Constitution Avenue, NW  
Washington, DC 20230

***Re: Comments Responding to Joint RUS and NTIA Request for Information (RFI)  
- Docket No. 0907141137-91375-05 – Published November 16, 2009***

Dear RUS and NTIA:

The South Dakota Telecommunications Association (SDTA) submits the attached comments in response to the above referenced Joint Request for Information (RFI) issued by the Rural Utilities Service (RUS) and the National Telecommunications and Information Administration (NTIA). We extend our thanks to both RUS and NTIA for providing this opportunity to express concerns and suggest improvements to the current procedures for seeking “Broadband Stimulus” funds under the Broadband Initiatives Program (BIP) and/or the Broadband Technology Opportunities Program (BTOP). SDTA is comprised of 31 community-based cooperative, privately owned, municipal and tribal telecommunications companies (attached as Appendix A to these comment is a listing of the current SDTA members), all providing broadband services in the State of South Dakota. Collectively, these companies serve approximately 80 percent of the State’s land mass, and roughly three-quarters of the State’s incorporated communities.

Respectfully submitted,

Richard D. Coit  
General Counsel and Executive Director  
South Dakota Telecommunications Association

**SOUTH DAKOTA TELECOMMUNICATIONS ASSOCIATION (SDTA)  
COMMENTS RESPONDING TO NTIA AND RUS  
REQUEST FOR INFORMATION**

**EXECUTIVE SUMMARY**

The South Dakota Telecommunications Association (SDTA) files these comments in response to the Joint Request for Information (RFI) issued by RUS and NTIA on or about November 9, 2009 regarding the established broadband stimulus funding programs (BIP and BTOP). While we do not comment on all of the issues/questions raised in the RFI, we do believe that certain changes should be made to the existing application procedures and/or requirements. These changes would simplify the application process and at the same time enhance the agencies' abilities to make funding award decisions that are consistent with American Recovery and Reinvestment Act of 2009 (ARRA) objectives.

SDTA agrees that RUS and NTIA should do everything possible to disburse broadband stimulus funding efficiently and effectively. We understand the tremendous difficulties that are presented as a result of the compressed timelines for reviewing filed applications and making award decisions, and it certainly appears that some changes could be made to the current BIP and BTOP application procedures to simplify and improve upon the entire process. In regards to any changes that may be considered at this time, however, we urge RUS and NTIA give the highest priority to maintaining procedures and requirements that will best serve the overall broadband stimulus objectives. While there may be valid reasons, in the short term, to push for a speedy application process that will more quickly inject stimulus dollars into the nation's economy, acting in a manner consistent with ARRA's broadband deployment and

adoption objectives requires a long term view and a careful implementation of the funding authority given to both RUS and NTIA under the ARRA provisions.

It is clear under the ARRA that the broadband stimulus dollars are intended to increase consumer access to and consumer adoption of broadband services. These objectives will only be met if the funds are targeted to broadband infrastructure projects serving areas that currently lack sufficient broadband access and if these new projects ultimately do have the effect of bringing more affordable broadband services to consumers desiring the services. This can only be achieved if the projects being funded with broadband stimulus dollars are economically feasible and sustainable over a long period of time. Loan and or grant decisions that result in unnecessary and duplicative network facilities in the most sparsely populated, highest cost areas of the country will only increase the per capita cost of delivering broadband service and over the long term only threaten existing telecommunications networks and related operations. For these reasons, any changes being considered to the current application processes that are aimed primarily at simplifying or making the application filing or application review process easier should not be implemented at the expense of ARRA objectives. The first and highest priority must be given to establishing an application process that best targets the broadband stimulus dollars and which will, in fact, deliver on the ARRA's broadband promises.

SDTA does believe that certain changes should be made and implemented under the second "Notice of Funds Availability" and that these changes can be made without compromising the agencies' abilities to effectively review applications and make funding awards that are consistent with the ARRA's broadband purposes. In sum, these changes

are highlighted below:

- RUS and NTIA should continue to use a single application for applicants who choose to apply to both BIP and BTOP. Use of a single application should more easily maintain the necessary coordination between the two programs and should help to prevent any applicants from “double dipping” (receiving funding awards under both programs). SDTA also strongly believes that RUS is in the best position to review most rural applications and, in particular, to analyze any protests that are filed as to whether a proposed service area is actually “unserved” or “underserved.” The roles of each of the agencies within the singular application process as they are established under the first NOFA should not be changed.
- SDTA strongly recommends that NTIA and RUS should generally use Census Tract information, rather than Census Block information, to review the existing broadband capabilities and adoption rates within proposed service areas. Many applicants in “Round One” had great difficulty building their proposed service areas by Census Blocks or getting data for Census Blocks from their customer billing or provisioning systems. SDTA members do not keep any customer records related to the provisioning of broadband services by Census Block. With the FCC revisions to “Form 477” filing rules early this year, the FCC requires the Form 477 to be completed by broadband service providers at the Census Tract level. Therefore, all providers, including SDTA members, have made changes to their billing and customer support systems to track broadband data and report it by Census Tract. SDTA members currently have Census Tract data readily available and, thus, using this data as the default to establish and review proposed service

areas would substantially reduce applicant data gathering burdens and provide a clearer view of served, unserved and underserved areas on a nationwide level.

- The RUS Traditional Loan and Broadband Loan programs have been very successful in delivering broadband to much of rural America. If a current RUS Borrower has an active traditional or broadband loan design for an existing service area(s), the area(s) should be deemed off limits by rule to any new applicant which seeks through the ARRA programs to overbuild an existing RUS borrower's last mile broadband facilities. It makes no economic sense to use the ARRA programs to fund competitive, duplicative last mile facilities in high cost, rural areas that already have broadband services. Implementing the ARRA programs without regard to what has already occurred under other federal programs is wasteful and may be counterproductive to the continued provisioning and upgrade of broadband services that is already occurring with the assistance of other federal programs.

***South Dakota Telecommunications Association's Comments Responding to RUS and NTIA Joint Request for Information (Docket No. 0907141137-91375-05***

**I.A. Streamlining the Applications**

Due to the fact that applicants may apply to both BIP and BTOP, SDTA believes the agencies should continue to use a single application form and single application filing within the established process. This is most important in those situations where the applicants are either required to or have the option of applying for both BIP and BTOP funds. A single application would seem to better ensure the necessary coordination between the separate agencies in reviewing proposed projects and should assist in preventing any single entity from double dipping and receiving excess funding through the filing of applications under both programs. In regards to the established single application process, however, SDTA does have some concerns with the application review process as it relates to projects in areas “which are at least 75 percent rural”. The first NOFA requires that “[a]ll applications to fund broadband infrastructure in proposed funded service areas which are at least 75 percent rural are required to be submitted to RUS for consideration under BIP.” An application covering these rural areas may also be submitted under BTOP, but it is indicated in the first NOFA that NTIA may only make awards on these dual BIP and BTOP designated applications if RUS has already “reviewed the application and determined not to fund.” At present, it is not clear from the text of the first NOFA the extent to which RUS and NTIA are required to communicate or correspond related to those applications that must undergo a review under both of the funding programs. When the applicant is seeking loans and/or grant

monies under both BIP and BTOP, SDTA believes some safeguards or procedures should be established to ensure that these particular applications, when passed on to NTIA for funding in the later stages of the application review process, are not disadvantaged or given a lesser consideration than other BTOP applications.

### **I.A.1 New Entities**

Funds should be awarded to entities that have a demonstrated history of ensuring that quality networks and broadband services will be provided. Start up entities in most cases will not have the experience or the same community commitment as established providers. It appears that many “Round One” applications came from applicant companies with little or no telecom provisioning experience that were looking for cheap federal money. The agencies should consider rule changes that would quickly weed-out one-time opportunists which lack the experience or commitment to efficiently or, otherwise, wisely use ARRA funding.

Existing rural telecommunications providers including the SDTA member companies have long track records, proven experience, established skills in providing broadband services to rural areas, and a commitment to the communities they serve, with a demonstrated history of continued infrastructure investment into those communities. In contrast, it appeared that many of the start-up entities filing applications for funding in response to the first NOFA, based on the information publicly available, showed little or no telecommunications experience, and were not likely to be either equipped or qualified to provide quality broadband services. It further appeared that many of them had no existing connection to any of the communities located within their proposed rural service

area. Many of them did not even have an existing presence within the state where they proposed to provide service.

To appropriately guard against any undue risk with the funding of new businesses or start-up entities, the agencies should continue to insist that these new entities provide historical financial statements. If the statements are not available from the entities themselves, the principal owners should be required to provide financial information that is sufficient to show adequate financial backing. In order for RUS and NTIA to have any reasonable assurance that a project is sustainable and financially feasible, it is especially important that any new entity or start-up firm provide its most recent financial statements and, in addition, any other data that would help in demonstrating their financial, managerial and technical abilities to provide broadband services and operate a viable company. Start-up entities have traditionally faced a very thorough review under the traditional RUS Telephone and Broadband Loan Programs and there is certainly no cause to take a different approach in distributing the ARRA broadband stimulus dollars. Without an adequate review, poorly conceived projects will be approved and the end result will be high loan default rates, wasted ARRA funds, and poor or no broadband service to the affected consumers.

### **I.A.3 Specification of Service Areas**

In discussing the data collection and documentation that should be required of applicants related to the level of existing service within the boundaries of the proposed funded service areas, we would strongly urge that RUS and NTIA use “Census Tract” information rather than “Census Block” information. The SDTA applicants in Round

One had great difficulty in identifying their proposed service areas by Census Blocks or getting data for Census Blocks from their customer billing or other service provisioning systems.

SDTA members have not historically kept customer records relative to broadband service subscription by Census Blocks. Moreover, with the FCC revisions to the “Form 477” filing rules early this year, the FCC required Form 477 information to be supplied at the Census Tract level, not at the more granular Census Block level. Therefore, currently, pursuant to the existing FCC regulations, all broadband providers, including SDTA members, have made changes to their billing and customer support systems to gather, track, and report broadband data by Census Tract. SDTA members have Census Tract data readily available based on these recent FCC requirements.

Requiring proposed service areas to be displayed and supported by broadband data gathered at the Census Tract level will give a clearer view of served, unserved and underserved areas on a nationwide level. It is also, obviously, data that is much more readily available to the applicants and existing service providers, which would streamline the process and allow for an easier validation of claims made that areas proposed for a particular project are, in fact, “unserved” or “underserved.”

Requiring the breakdown of service areas and the provisioning of broadband access and adoption data at the Census Block level simply results in a process that is in many situations too granular for the objectives at hand. Many of the Census Blocks within sparsely populated rural areas, the main target areas for much of the ARRA funding, are so limited geographically they do not even contain any households and, consequently, the provisioning of the data provides no value and only serves to

complicate the application process. The provisioning of Census Tract data, on the other hand follows a data collection process that is already in place and for purposes of many proposed broadband infrastructure projects would provide sufficient data to fairly determine whether the proposed service area meets the established “unserved” or “underserved” criteria. Certainly, there will be projects proposed for funding that will not follow Census Tract boundaries and it may be necessary for applicants, for at least portions of their described service area, to provide data that is less aggregated. In addition, any party protesting a filed application on the basis that the proposed serviced area is not actually “unserved” or “underserved,” should not be foreclosed from providing data that is more specific than by Census Tract to support their protest claim. Despite these needs, however, it should not be necessary to insist that all applicants must file and all applications must contain Census Block data covering the entirety of their proposed project service area. SDTA would urge the agencies to refine the current procedures for supplying Census Block data in a manner that would eliminate the requirement to file such data where it is either without value or not necessary to fairly evaluate whether the project will, in fact, bring broadband services to “unserved” or “underserved” areas.

#### **I.A.4 Relationship between BIP and BTOP**

The Traditional Loan and Broadband Loan programs administered by RUS have already had significant success in delivering broadband to many of the rural areas within this country and SDTA would strongly urge RUS and NTIA to not forget in this process the existing infrastructure financing provided through these programs. Both RUS and

NTIA should consider adopting criteria that is more specifically designed to prevent the financing of similar, duplicative infrastructure within proposed service areas. As an example, the criteria could be changed to directly declare ineligible projects proposing duplicative broadband infrastructure in areas where there is a current RUS Borrower and where that borrower has an “active” traditional or broadband loan for the same area. As part of any change along these lines, an “active loan,” for purposes of the new criteria could, perhaps, be defined as a loan that has been approved within the past 12 months or a loan where the applicant has drawn down funds within the past 12 months.

As already noted herein, loan and/or grant decisions under the BIP and BTOP programs that result in unnecessary and duplicative network facilities in the most sparsely populated, highest cost areas of the country will only increase the per capita cost of delivering broadband service and over the long term only threaten existing telecommunications networks and related operations. The use of the one-time broadband stimulus monies in such a manner, to fund redundant broadband facilities and to establish or subsidize competition within rural areas, is completely unjustified from a taxpayer perspective and simply lacks any economic sense. It is a waste of taxpayer dollars and counterproductive to the objectives of already existing federal programs.

### **I.B Transparency and Confidentiality**

SDTA supports efforts by NTIA and RUS to bring greater transparency to the application process. More information concerning each application should be made publicly available and this should occur as early as possible after the applications are filed. At minimum, an “Executive Summary” should be made accessible to interested

parties and the public for review. For this to occur, however, it may be necessary to change the requirements on what should be contained in the Executive Summary. It should be made clear that the Summary should not contain information that the applicant considers confidential that would potentially pose an obstacle to public disclosure. The requirements as to what information should be contained in the Summary should also be very clear and should also be adequately enforced to ensure that existing providers or other entities affected by the application are in a position to fairly review the application for a possible protest. At minimum, the Executive Summary that is made public should disclose sufficient details as to the funds requested, details providing a fair overall description of the proposed broadband project, a specific description of the proposed service area(s), and accurate descriptions of the services that will actually be provided and the technologies and standards that will be deployed.

With respect to any efforts to improve on the transparency of the application process, however, it will continue to be important that information rightly claimed to be confidential continue to be protected. This would include information like historical financial data and other documents provided as support including pro-forma business plans, revenue and expense projections, and detailed engineering or network deployment diagrams. RUS, with its Traditional Loan and Broadband Loan programs, has always kept certain important applicant information confidential. Similar procedures should be continued here with the BIP and BTOP programs.

As part of the first NOFA issued under BIP and BTOP, Section J (Confidentiality of Applicant Information), it is stated that “Applicants are encouraged to identify and label any confidential and proprietary information contained in their applications. The

agencies will protect confidential and proprietary information from public disclosure to the fullest extent authorized by applicable law, including the Freedom of Information Act, as amended (5 U.S.C. § 552), the Trade Secrets Act, as amended (18 U.S.C. § 1905), and the Economic Espionage Act of 1996 (18 U.S.C. § 1831 *et seq.*). Despite this statement indicating clearly that both RUS and NTIA will take actions necessary to protect confidential and proprietary information, it has been somewhat unclear to this point what information filed with the BIP and/or BTOP applications will or will not actually be protected. SDTA encourages the agencies to indicate more precisely in advance of receiving “Round Two” applications what information will or will not be considered eligible for confidential treatment. We would recommend specifically that the same confidentiality rules/procedures applied to documentation under RUS’s Traditional and RUS Broadband loan programs be applied under the ARRA broadband application process. While some degree of openness in this process is necessary and expected for the benefit of either other parties that may be financially affected by an application or the public in general, there are important reasons to keep more detailed financial or technical network information protected, based not only on competitive market considerations, but also for network and customer security reasons.

#### **I.D NTIA Expert Review Process**

To improve on the current process, SDTA would urge NTIA and RUS, to the extent they have the ability within the confined application timelines and given available resources, to consider a greater reliance on internal agency staff in the application review process. Within the first NOFA, it is indicated that the initial review panel would be

comprised of at least three peer/expert reviewers who have demonstrated subject-matter expertise. We suspect that it has been difficult to retain the number of individuals needed for these independent reviews and to retain individuals that have sufficient subject-matter expertise. Based on these and other concerns, the SDTA member companies would prefer that experienced employees within both the RUS and NTIA be given a greater role. To the maximum extent possible both of the agencies should use experienced staff to review all of the applications.

NTIA and RUS should also in our view try to better ensure that all incomplete applications – those that do not contain information in each of the areas outlined within the NOFA – are rejected early in the application process, before they move on to the more formal review and protest stages. There were numerous applications filed in Round One that when reviewed for purposes of a possible protest were clearly not complete based on the specific NOFA requirements. These incomplete and clearly noncompliant applications should be summarily rejected without proceeding to the formal review stage. Following the NOFA rules more literally and rejecting such applications earlier in the process will save the agencies’ precious time and also eliminate the burdens imposed on existing providers when having to prepare and file a protest to such applications.

### **II.A.3 Targeted Populations**

In regards to the questions raised concerning the possible targeting of the stimulus funding to “specific population groups,” SDTA does not support targeting infrastructure funding to specific populations. The funding is already targeted to “unserved” and “underserved” areas and it is most important to get infrastructure in place that will allow

service providers to offer broadband to the entire population within these areas. Targeting certain populations of users is probably a better approach with the programs that are not as closely related to broadband infrastructure -- the “Public Computer Center” and “Sustainable Broadband Adoption” programs. These programs may have the greatest impact and be most effective, given the limited dollars that has been allocated to each program, if they are more closely targeted to those population groups which today are underrepresented with respect to broadband usage.

#### **II.A.4 Other Changes**

Regarding the “Borrowers Environmental Report” (BER) that must be submitted as part of “due diligence” phase requirements, the amount of time permitted within the application process, thirty (30) days, is not a sufficient amount of time to contact and obtain approval for outside plant construction from the various local, state, and federal agencies. Obtaining the required responses/authorizations from these entities may often take anywhere from 30 – 90 days. As an example of the difficulties, in order for the “State Historical Preservation Office” (SHPO) to respond with any required authorizations, it is first often necessary for a site survey to be performed by a licensed archeologist. It is very difficult for this work to even be performed within the available thirty day period. In addition, depending upon the size of the project, this required site survey can be a significant expense. SDTA questions specifically whether it is necessary to require that SHPO responses/authorizations be submitted as part of the application process, within the due diligence phase. The timelines available within the application process are not accommodating and applicants invited to participate in the due diligence

phase, who may not ultimately be awarded any stimulus funds, are forced to incur a sizable expense for a project that may not be pursued any further. Given these concerns, SHPO responses/authorizations should not be required as part of the actual BTOP or BIP application, but rather as a requirement or condition prior to the release of funds under a BIP or BTOP award or loan. This change would speed up application processing and significantly reduce the burdens and expense imposed on many of applicants.

## **II.B Program Definitions**

In general, SDTA supports the definitions that were utilized in the first NOFA. SDTA does believe, however, that it should be clarified that satellite-based proposals, as is already somewhat indicated by the definitions of “unserved” and “underserved” definitions, should not qualify for any broadband infrastructure dollars. Satellite-based proposals should generally be viewed as ineligible because of the service limitations associated with the technology. At the very least, they should only be viewed as eligible for funding in those instances where remote, last mile projects are not financially feasible with the use of any other broadband deployment technology.

At this stage in the process, SDTA does not support a change to the definition of broadband, as set forth in the original NOFA. It is such a threshold item within the established BIP and BTOP programs that the original definition should remain constant between the two application rounds. Further, more specifically, the use of “advertised” speeds within the definition should not be changed to incorporate actual speeds due to the fact that currently actual speeds are not today consistently or reliably measured throughout the industry.

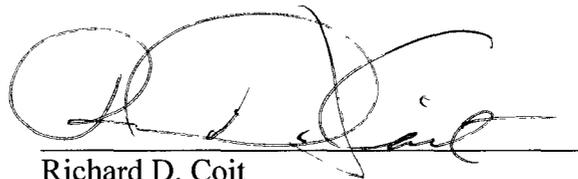
SDTA would support a change to the definition of “remote area” as set forth in the first NOFA. Remote areas should include any areas that are “unserved” and rural. Whether the particular project area proposed is 50 miles or 250 miles from the defined boundaries of a non-rural area has no relation to the area’s actual broadband needs. It is simply not a reliable indicator of whether an area is truly rural or, in fact, lacking broadband services. Accordingly, the arbitrary barrier of 50 miles should be dropped and, in turn, any rural unserved area should be considered eligible for up to 100% grant funding under the BIP program.

## **II.C Public Notice of Service Areas**

SDTA believes that the public notice process related to proposed service areas relies too heavily on existing incumbent broadband service providers to validate current broadband service levels. The burden of proving that an area is either “unserved” or “underserved” should primarily be imposed on the applicant and all applicants should be required to provide at least some proof of claims made respecting current broadband service levels. If no supporting documentation is provided with an application, it should be deemed incomplete and should be rejected. The protest process as established and followed under the first NOFA created a tremendous burden and expense for the existing broadband service providers. In order to ensure that applicants are, in fact, proposing projects focused on areas that are truly “unserved” or “underserved” and are not submitting frivolous applications, something more than general, unsupported assertions relating to the current levels of broadband service should be required as part of the initial application filing. Requiring greater proof earlier in the process, would likely give NTIA

and RUS the ability to review and reject many incomplete, unwarranted applications before the public notice process even begins. This would significantly streamline the public notice response process and lessen the burdens imposed on not only the agencies, but also the existing service providers.

Dated this 30<sup>th</sup> day of November, 2009.

A handwritten signature in black ink, appearing to read 'Richard D. Coit', written over a horizontal line.

Richard D. Coit  
General Counsel and Executive Director  
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**Members of the South Dakota Telecommunications Association**

1. Alliance Communications Cooperative, Inc.
2. Armour Telephone Company
3. Beresford Municipal Telephone Company
4. Bridgewater-Canistota Independent Telephone
5. Cheyenne River Sioux Tribe Telephone Authority
6. Faith Municipal Telephone
7. Fort Randall Telephone Company
8. Golden West Telecommunications Cooperative
9. Interstate Telecommunications. Cooperative
10. James Valley Telecommunications
11. Kadoka Telephone Company
12. Kennebec Telephone Company
13. Knology Community Telephone
14. Long Lines
15. McCook Cooperative Telephone Company
16. Midstate Communications
17. Roberts County Telephone Cooperative. Assn.
18. RC Communications, Inc.
19. Santel Communications
20. Sioux Valley Telephone Company
21. Splitrock Properties, Inc.
22. Stockholm-Strandburg Telephone Company
23. Swiftel Communications (Brookings Municipal Telephone)
24. Tri-County Telcom, Inc.
25. Union Telephone Company
26. Valley Telecomm. Cooperative Assn., Inc.
27. Venture Communications Cooperative
28. Vivian Telephone Company
29. West River Cooperative. Telephone Company
30. West River Telecommunications Cooperative
31. Western Telephone Company