Before the
UNITED STATES DEPARTMENT OF COMMERCE
BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM
Washington, DC 20230

In the Matter of	)	
	)	
Broadband Initiative Program and	)	Docket No. 0907141137-91375-05
Broadband Technology Opportunities	)	
Program, Joint Request for Comment	)	
	)	
	)	

COMMENTS OF CRICKET COMMUNICATIONS, INC.

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EXECUTIVE SUMMARY

Cricket Communications, Inc. ("Cricket") applauds NTIA's efforts to improve and clarify the application process and to strengthen the impact of its policies in the second BTOP funding round. In these comments, Cricket urges NTIA to establish a framework that more directly promotes the availability of affordable broadband services to millions of Americans that have limited financial resources. The Recovery Act specifically instructs NTIA to award grants that "facilitate access to broadband service by low-income, unemployed, aged, and otherwise vulnerable populations in order to provide educational and employment opportunities to members of such populations."[1] However, the structure of BTOP in the initial Notice of Funding Availability ("NOFA") was geared heavily toward proposals that would bring broadband facilities to rural and low-density areas. Although increasing the availability of broadband in such areas is an important goal, NTIA should not overlook the significant segment of the U.S. population who simply do not have access to affordable broadband services.

The purposes of BTOP will best be accomplished if NTIA maintains broad eligibility criteria for proposals in the second funding round. Cricket encourages NTIA to modify the definition of "underserved" to include an affordability component in addition to the subscribership threshold that is part of the current definition. NTIA should clarify and fine-tune the criteria for underserved areas to ensure eligibility for projects that bring broadband services to consumers who cannot afford such services, but who do not necessarily live in rural or lower-density areas. Cricket also encourages NTIA to expand funding available for sustainable adoption projects. Projects that provide the tools and knowledge necessary for underserved

populations to reap the benefits of broadband access are just as important as projects that bring broadband infrastructure and facilities to these underserved communities.

In addition, NTIA should maintain the current definition of "broadband" and decline to impose a higher speed requirement for qualifying services. Increasing the speed threshold would unnecessarily limit projects that can bring cost-effective broadband services and significant benefits to consumers who are currently unserved and underserved.

Further, Cricket urges NTIA to relax the categorical restriction on sales of funded assets and instead establish a process by which funding recipients may seek a waiver or other approval for a sale of funded assets in a transaction occurring within 10 years of the funding award. By adopting rules for the second BTOP funding round consistent with Cricket's proposals in these comments, Recovery Act funds can be distributed in a more targeted manner to bring *affordable* broadband access to low-income individuals and other disadvantaged groups that should not be left behind if the goals of the Recovery Act are to be achieved.

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[1] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) ("Recovery Act"), § 6001(g)(4).

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COMMENTS OF CRICKET COMMUNICATIONS, INC.

Cricket Communications, Inc. ("Cricket"), a leading provider of wireless voice and broadband services and a wholly owned subsidiary of Leap Wireless International, Inc., hereby submits these comments to the National Telecommunications and Information Administration ("NTIA") in response to the Joint Request for Information ("RFI") issued in connection with the second round of funding under the Broadband Technology Opportunities Program ("BTOP").[2]

I. OVERVIEW OF CRICKET

Cricket is committed to bringing broadband to underserved populations and is well-positioned to provide input in response to this RFI regarding the problems and challenges facing low-income and other demographic groups for whom broadband services are out of reach. Significant segments of Cricket's customer base include low-income and minority subscribers, as well as other vulnerable communities that larger carriers have not focused on serving.

[2] Department of Commerce, National Telecommunications and Information Administration, Broadband Initiatives Program and Broadband Technology Opportunities Program, Joint Request for Information, 74 Fed. Reg. 58,940 (Nov. 16, 2009) ("RFI").

A core component of Cricket's business model consists of service plans that are tailored to meet the wireless telecommunications needs of consumers who cannot afford or qualify for services from other wireless providers. For instance, Cricket offers unlimited voice and broadband service at affordable rates, without the typical long-term contract commitments or credit checks that prevent many economically disadvantaged customers from obtaining wireless services. Additionally, Cricket's flat-rate, unlimited-minute service plans offer consumers affordable and predictable monthly rates, which are critical for consumers with limited or fixed income levels. Unlike many other carriers, Cricket does not impose overage charges if consumers exceed usage limits. Small and mid-sized wireless service providers like Cricket fill a significant gap in the marketplace by providing affordable wireless telecommunications services, including wireless broadband, to many economically disadvantaged customers.

Moreover, Cricket has first-hand experience bringing advanced wireless technology to underprivileged communities through its partnership with the non-profit group, One Economy, which has provided families in Portland, Oregon with computers, modems and free Cricket wireless broadband service for two years. Cricket and One Economy proposed a substantially similar program in a number of other markets in their joint BTOP funding application submitted in connection with NTIA's NOFA in the first funding round.[3] Cricket draws upon these experiences in identifying ways that NTIA can maximize the impact of grant awards on consumers who do not have broadband access due to a lack of affordable options.

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[3] *See* Department of Agriculture, Rural Utilities Service, Broadband Initiatives Program, Department of Commerce, National Telecommunications and Information Administration, Broadband Technology Opportunities Program, Notice of Funds Availability (NOFA) and Solicitation of Applications, 74 Fed. Reg. 33104 (Jul. 9, 2009) ("NOFA").

II. "UNDERSERVED" SHOULD INCLUDE ELIGIBILITY FOR AREAS WHERE HOUSEHOLDS CANNOT AFFORD BROADBAND SERVICE

As defined in the NOFA, a service area is qualified to be "underserved" if at least one of the following factors is met: (i) no more than 50 percent of the households in the proposed funded service area have access to facilities-based, terrestrial broadband service at greater than the minimum eligible broadband transmission speed; (ii) no fixed or mobile broadband service provider advertises broadband transmission speeds of at least three megabits per second ("mbps") downstream; or (iii) the rate of broadband subscribership for the proposed funded service area is 40 percent of households or less.[4]

As a practical matter, none of the qualification criteria in this definition addresses areas in which the problem is not network coverage, but affordability of services. Theoretically, areas where broadband subscribership is 40 percent or less would capture this demographic group. However, reliable data on broadband subscribership is not readily available, and such data is often not being collected in state mapping efforts. Thus, the overwhelming emphasis in the NOFA definition is on geographic areas without adequate broadband network coverage due to lower housing densities and high costs of deploying infrastructure suitable for higher-speed services. While Cricket agrees that bringing broadband facilities to these areas is important, NTIA should not preclude funding for the construction and deployment of infrastructure in areas where the existing network is inadequate to serve everyone in the community.

Recovery Act funding may provide the only opportunity to bring broadband access to urban consumers who are poverty stricken and to whom most broadband providers could not make a business case for profitably building facilities and providing service. Indeed, NTIA acknowledges in the RFI that overly restrictive definitions of the terms "unserved" and

"underserved" kept projects that would have served urban areas from being eligible for support. That problem should be remedied: the qualifications for underserved areas should be more inclusive and specify eligibility for areas where a certain portion of the population cannot afford broadband services meeting the speed thresholds in the NOFA.

Affordability should be an integral part of the eligibility criteria for funding, not merely a factor in evaluating and ranking proposals, as it was in the NOFA. Affordability of broadband services presents a significant barrier to universal availability of broadband services. In a recent presentation by the FCC's Broadband Task Force regarding the status of the National Broadband Plan, the percentage of consumers that have not adopted broadband due to the price of service is greater than the percentage that have not adopted broadband due to the unavailability of facilities and services.[5] In other words, *price* is as great a barrier to broadband access as *availability*.

Cricket proposes that the definition of "underserved" include a fourth eligibility factor that captures areas in which many households are unable to afford the cost of broadband access. Applicants should be allowed to demonstrate the lack of affordable broadband alternatives using the best available data and other reasoned approaches. Applicants should be required to provide substantiated data and reasoned explanations regarding poverty levels or household income thresholds at which consumers are deemed to be unable to afford broadband access. For instance, information on household income is readily available in Census Bureau data and can serve as an objective basis for determining the percentage of underprivileged or

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[4] NOFA, 74 Fed. Reg. at 33,109.

[5] *A National Broadband Plan for Our Future*, GN Docket No. 09-51, September Commission Meeting Presentation of Broadband Task Force, at 84 (Sept. 29, 2009) ("Broadband Task Form Presentation") (citing consumers' reasons for not adopting broadband, based on a Pew Internet & American Life

vulnerable households that may be underserved due to a lack of affordable access to broadband. Revised in this manner, the definition would more directly address the availability of affordable broadband services and meet the goals cited by Congress of making broadband available to vulnerable populations.

III. FUNDING FOR SUSTAINABLE ADOPTION PROJECTS SHOULD BE EXPENDED IN THE SECOND FUNDING ROUND

Cricket commends NTIA on its implementation of the sustainable adoption program in the NOFA and encourages NTIA to allocate additional funding for sustainable adoption projects in the second funding round. Cricket understands that Recovery Act funding is limited – given the monumental task of bringing broadband access to all Americans – and supports NTIA's efforts to balance the goals of building broadband infrastructure and ensuring that consumers have the means to use the Internet. However, projects that provide low-income, minority and other vulnerable populations with the tools and knowledge required to reap the benefits of broadband access are a necessary complement to projects that bring the broadband infrastructure and facilities to these underserved communities. As illustrated by Cricket's proposed sustainable adoption project with One Economy and others like it, the sustainable adoption program offers innumerable benefits to millions of Americans that do not have adequate access to broadband services today. Therefore, to the extent possible, NTIA should expand access to funding for sustainable adoption projects.

Project report, 17 percent cited that broadband services were unavailable, while 19 percent indicated that the broadband services available in their area were too expensive).

IV. NTIA SHOULD NOT ALTER THE DEFINITION OF "BROADBAND"

Cricket encourages NTIA to maintain the threshold speeds in the current definition of broadband services eligible for funding under BTOP. The NOFA defines broadband as two-way data transmission with advertised speeds of at least 768 kilobits per second ("kbps") downstream and at least 200 kbps upstream to end users.[6] Increasing the threshold speeds, as some stakeholders have suggested, would unnecessarily limit proposals that would bring crucial benefits to consumers and smaller businesses. The RFI cites the promotion of advanced broadband applications that meet the "needs of large institutional users" as one reason for increasing the speed threshold.[7] However, establishing a framework that favors projects serving institutional users would preclude funding for large segments of the U.S. population that do not have access to broadband suitable for even basic and common Internet capabilities and usage.

Moreover, adopting a higher standard for broadband services eligible for funding would severely constrain the participation of wireless service providers and would prematurely foreclose innovative solutions that mobile and other non-wireline grant applications could bring to unserved and underserved consumers. Wireless broadband providers are well-suited to deploy affordable services in an efficient manner to households that are not currently passed by wireline facilities. Downstream speeds of 768 mbps are sufficient to provide robust access to critical Internet applications that will bring benefits to low-income, minority and elderly consumers, as well as other populations with low adoption rates. The Broadband Task Force Presentation identifies several key applications, both real-time and non-real-time, that demand download speeds that are consistent with the current definition. Basic downloads for email applications,

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[6] NOFA, 74 Fed. Reg. at 33,108.

web-browsing, job search, government website access, and even certain streamed audio and video applications, require speeds in the range of 0.1-0.6 mbps.[8] Thus, for most consumers and businesses, the broadband services as defined in the NOFA will provide robust Internet access to meet their business and personal needs.

NTIA should refrain from adopting a more restrictive standard in the second funding round. Maintaining eligibility for a wider range of speeds allows award recipients greater flexibility to offer affordable pricing plans and to customize services that appeal to new broadband adopters. Although the speeds available today from wireless broadband services do not match those of wireline services, last-mile deployment of wireless services may be cost-effective in areas that are too expensive to reach by constructing terrestrial wireline facilities or in smaller urban "pockets" where poverty levels are high. As advanced technologies are introduced in the near future, wireless broadband service will be capable of increasingly faster speeds. However, disqualifying proposals in the second BTOP funding round based on a higher transmission speed threshold would impede the goals of BTOP to deploy expeditiously services and facilities to consumers who cannot access broadband today.

V. GRANT RECIPIENTS SHOULD HAVE THE FLEXIBILITY TO SELL OR LEASE PROJECT ASSETS WITH AGENCY APPROVAL

The RFI acknowledges the suggestion of certain stakeholders that the prohibition in the NOFA on the sale or lease of award-funded assets is overly restrictive and is a barrier to participation in BTOP.[9] Cricket agrees that this restriction likely had a chilling effect on potential applicants. Therefore, Cricket urges NTIA to afford grant recipients greater flexibility

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[7] RFI, 74 Fed. Reg. at 58,943.

[8] Broadband Task Force Presentation at 121, 157.

to seek a waiver or other approval for sales and leases of project assets. Currently, the sale or lease of award-funded broadband facilities is permissible only if the proposed sale or lease is disclosed and approved in the original application, or if the agencies waive the restriction for any sale or lease occurring after the tenth year from the date of the funding award.[10] However, applicants are unlikely to know of all potential sale or lease opportunities that may arise within 10 years after funding.

Because a waiver can only be requested after 10 years, *any* sales or leases─ even those transactions that would be beneficial to the public and that would further the purposes of the Recovery Act ─are restricted outright. As evidenced by the recent recession, the economic and business climate can change dramatically during a 10-year period. The sale/lease restriction commits a grant recipient to maintain the assets with no flexibility for transactions that may be necessary to maximize or increase the public benefits of the funded project or, in the case of unexpected business developments, to facilitate the continued operation of the award recipient's primary business. Cricket encourages NTIA to adopt a more flexible approach to grants awarded in the second round. NTIA should adopt a clear mechanism to seek approval or a waiver during the 10-year period to lease, sell or otherwise dispose of the assets. Such a mechanism provides added flexibility for grant recipients, but still provides NTIA the ability to ensure that the grant recipient is not unjustly enriched from the sale of award-funded assets for a profit, consistent with the oversight and enforcement directives in the Recovery Act.

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[9] RFI, 74 Fed. Reg. at 58,944.

[10] NOFA, 74 Fed. Reg. at 33,123.

VI. CONCLUSION

For the foregoing reasons, Cricket urges NTIA to specify eligibility criteria that promote funding for services to underserved populations that cannot afford broadband service. Cricket also encourages NTIA to allocate additional funding to the sustainable adoption program to complement infrastructure projects in underserved areas reaching low-income, minority and other vulnerable communities. Further, NTIA should refrain from adopting arbitrarily higher speed thresholds for eligible broadband services. Finally, NTIA should afford grant recipients flexibility to seek waivers or other necessary approvals to enter into transactions for the sale or lease of funded assets at any time after the funding award. Adopting Cricket's proposals in these comments will help to ensure that NTIA receives proposals from highly qualified applicants offering innovative broadband solutions that will, as a whole, meet the needs of all U.S. consumers, consistent with the goals of the Recovery Act.

Respectfully submitted,

- /s/ -

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