Via Electronic E-mail to 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 on Section 6001 of the American Recovery and Reinvestment Act of 2009: Docket No. 0907141137-91375-05 – NTIA and RUS Joint Request for Information - Dated November 16, 2009

Dear RUS and NTIA:

Vantage Point Solutions (VPS) and their clients, listed in Attachment A, hereby submit comments on Section 6001 of the American Recovery and Reinvestment Act of 2009 (ARRA) regarding several of the specific agency questions for both NTIA and RUS. We thank both the NTIA and RUS for providing the opportunity to submit these comments in an effort to assist in the revision of the guidelines and rules for the second NOFA.

Both, the NTIA and RUS have been given a great honor by being designated as the authorities to oversee the distribution of $7.2 Billion in Stimulus Funds under the ARRA. This authority brings the difficult role of determining the most effective and efficient way of awarding and distributing the funds allocated by them. In the process of streamlining the rules and guidelines to be used in the application process, both are seeking public comments on several aspects of the Round Two Notice of Funds Availability (NOFA). We appreciate the time constraints that NTIA and RUS will be undertaking when reviewing all the public comments and then determining changes to be made to the Round Two NOFA.

We respectfully submit these comments in which we address the items NTIA and RUS outlined in its Joint Request for Information published in the Federal Register, Docket No. 0907141137-91375-05, on November 16, 2009.

Respectfully submitted,

Vantage Point Solutions and Clients
Larry Thompson, CEO

VANTAGE POINT SOLUTIONS AND CLIENTS
COMMENTS TO NTIA AND RUS
EXECUTIVE SUMMARY

Vantage Point Solutions (VPS) and their clients hereby submit their comments on the American Recovery and Reinvestment Act of 2009 (ARRA) regarding several of the specific agency questions within the NTIA and RUS Joint Request for Information.

We encourage NTIA and RUS to award funding in the most effective and efficient way consistent with the main goals of the ARRA so that funding is truly targeted to the most needy rural areas and does not duplicate broadband services that we are already providing. The key element in providing broadband access is getting the last mile infrastructure in place, often in sparsely populated rural areas, that will allow broadband service providers to offer service to the greatest population over the greatest serving area at the greatest speed and at the lowest efficient long term price. Once the infrastructure is built in any given service area, broadband access will be extended to residents, businesses and community anchor institutions. Further, service providers will then be able to educate all users on the importance and uses of broadband. By educating users and promoting the benefits of broadband, providers will be encouraging the future use and demand growth of broadband. We provide the following highlights of VPS and their clients' comments herein:

- The agencies must continue to use a single application for applicants who chose to apply to both BIP and BTOP to fund infrastructure projects in order to maintain necessary coordination and avoid any prohibited double dipping of awarding funds. RUS has the best expertise to review and fund rural applications, or protests of other applications, and this role should remain like it was in Round One
- We strongly recommend that NTIA and RUS use Census Tract information rather than Census Block to establish 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. Vantage Point Solutions (VPS) and their clients do not keep any customer records regarding broadband services by census blocks. With the FCC revisions to Form 477 filing rules early this year, the FCC has required Form 477 to be completed by Census Tract by all broadband providers. Therefore, all providers have made changes to their billing and customer support systems to track broadband data and report it by Census Tract. Using Census Tracts to establish proposed service areas would reduce applicant data gathering burdens and provide a clearer view of served, unserved and underserved areas on a nationwide level. Census Tract information is more readily available for all applicants than Census Block data since they gather the data to prepare Form 477, is less burdensome for applicants and would greatly streamline the process for applicants and reviewers. Last, census blocks in sparsely populated rural areas, the main focus of the funding, are often so small that they do not even contain any households and therefore are not relevant. Census Tracts do, and are more relevant and appropriate to build such rural service areas.
- 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 served by rule and off limits to any new applicant for a proposed ARRA service area(s), thus creating the most efficient use of all Federal funds. It makes no economic sense to the taxpayers or current providers with RUS loans to provide redundant dollars to fund competition by ARRA funding. Such a practice is a waste of taxpayer dollars and may even be counterproductive. Such competition in a sparsely populated market may prevent either provider from gaining the necessary customer base to be successful long term.

Our full comments are listed below. We appreciate the opportunity to submit these comments in preparation of the rules.

I. The Application and Review Process

A. Streamlining the Application

Due to the fact that applicants may apply to both BIP and BTOP, the agencies must continue the use of a single application for applicants who chose to apply to both BIP and BTOP to fund infrastructure projects in order to maintain necessary coordination and avoid any prohibited double dipping in award funding.

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 will not have the experience or often the same community commitment as established providers. Many Round One applications came from applicants looking for cheap federal money that had little experience. The agencies should establish further rules to weed out such opportunists that lack the experience or commitment to efficiently use the ARRA funding.

Existing rural telecommunications providers have a long track record, proven experience, established skills in providing broadband services to rural areas and a commitment to the communities they serve and reinvest back into. The start up entities that applied in Round One often had no or little experience, were not qualified and not equipped to implement quality broadband services. Further, many of them had no connection or commitment to the communities they proposed to serve. Many of them did not even have a presence in the state where they have proposed their service area.

By eliminating the start up entrepreneurs, investment firms, speculators and others who either lack a rural focus or have no service history, you will be ensuring that those who will be benefitting from the broadband funds will have a commitment to the rural communities, that they will get the job done timely and efficiently and that quality broadband services will be provided long term. Community focused rural providers prove daily their commitment to the communities they serve by reinvesting back in the communities.

The agencies should not eliminate the requirement to provide historical financial statements from recently-created entities. In order for NTIA and RUS to have the assurance that a project is sustainable and financially feasible, it is essential that start-up firms provide the most recent financial statements available, in addition to other data proving their financial, managerial and technical ability to provide broadband. Start-up entities have traditionally faced a thorough review within the

RUS traditional or Broadband Loan Programs. It is important that start-up entities applying for NTIA or RUS Broadband Stimulus funding undergo arduous review in order to prove the feasibility and long term sustainability of their project. Without such a review poorly conceived projects may pass review, resulting in a high default rate, waste of ARRA funds and poor or no service to consumers.

2. Specification of Service Areas

In discussing the level of data collection and documentation that should be required of applicants to establish the boundaries of the proposed funded service areas, we strongly recommend that NTIA and RUS use Census Tract information rather than Census Block. 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.

Vantage Point Solutions (VPS) and their clients do not keep any customer records regarding broadband services by census blocks. With the FCC revisions to Form 477 filing rules early this year, the FCC has required Form 477 to be completed by Census Tract by all broadband providers. Therefore, all providers have made changes to their billing and customer support systems to gather, track and report broadband data by Census Tract. Vantage Point Solutions (VPS) and their clients have Census Tract data readily available with these recent FCC requirements.

Requiring proposed service areas to be built by Census Tracts gives a clearer view of served, unserved and underserved areas on a nationwide level. Census Tract information is more readily available for more applicants than Census Block data, is less burdensome for the applicant to gather and list, and would greatly streamline the process. Last, many census blocks in sparsely populated rural areas, the main focus of the ARRA funding, are often so small that they do not even contain any households and provide no relevant information. Census Tracts do, are more relevant in sparsely populated rural areas and are therefore more appropriate to build rural service areas.

3. Relationship between BIP and BTOP

In response to whether rural infrastructure applications should continue to be required to be submitted to RUS or should the agencies permit rural applications to be submitted directly to NTIA, without having to be submitted to RUS as well, we strongly believe that this process should remain the same as was set forth in the original NOFA. The agencies must continue to use a single application for applicants who chose to apply to both BIP and BTOP to fund infrastructure projects in order to maintain necessary coordination and avoid any prohibited double dipping of awarding funds. RUS has the best expertise to review and fund rural applications, or review protests of applications, and this dual

role should remain like it was in Round One.

Further, the RUS Traditional Loan and Broadband Loan programs have been successful in delivering broadband to rural America for a long time. If a current RUS Borrower has an active traditional or broadband loan design for their service area, that area should be deemed off limits to applicants for their proposed service areas, thus creating the most efficient use of all Federal funds. For the purposes of being defined as an "active" loan, the criteria should be if the loan has been approved for 12 months or less, or if the applicant has drawn down funds on the loan within the last 12 months or less.

It makes no economic sense to the taxpayers or current providers with RUS loans to provide redundant dollars to fund competition by ARRA funding. Such a practice is a waste of taxpayer dollars and may even be counterproductive to all federal programs. Such competition in a sparsely populated market may prevent either provider from gaining the necessary customer base needed to be successful long term. Such rural markets are often too small for two providers to compete and survive.

B. Transparency and Confidentiality

In order for NTIA and RUS to ensure greater transparency by making items publicly available, such as the Executive Summary, it is essential to change the requirements on information required to be included within the summary. The Executive Summary should only contain non-confidential information including the amount of funds requested, a general description of the project, the proposed service areas and a general description of the technology standard that will be deployed. Such information is also essential to Vantage Point Solutions (VPS) and their clients to determine if they are already serving a proposed funded service area and if they should protest an application for not meeting NOFA requirements.

It is important that all applicants' historical financial information as well as their proposed business plan and detailed network diagrams be considered confidential or proprietary and not be made publicly available. RUS, with the Traditional Loan and Broadband Loan programs, has kept important applicant information confidential and should continue that precedent with the BIP and BTOP programs. In the Round 1 NOFA, Section J (Confidentiality of Applicant Information) states 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*.).

The agencies have been unclear at times during Round One and in FAQs what is and what is not protected. Vantage Point Solutions (VPS) and their clients encourage the agencies to clarify what is protected and what is not for Round Two. Vantage Point Solutions (VPS) and their clients recommends that the same confidentiality that is applied to documentation under the RUS Traditional and RUS Broadband loan programs be applied under the BIP and BTOP program. Some degree of openness of non confidential information is helpful to the public, but granting terrorists, computer hackers or competitors too much network or financial information may be extremely harmful to any application that may be funded. Therefore, it is imperative that financial information and network diagrams remain confidential for competitive and security reasons.

C. NTIA Expert Review Process

To further the efficient and expeditious disbursement of BTOP funds, NTIA and RUS should consider being more reliant on agency staff involvement. Within the original NOFA, it was stated that the review panel would be comprised of at least three peer/expert reviewers who have demonstrated subject-matter expertise. Using unpaid peer experts who lack the qualifications needed as reviewers of the applications is not the most effective and efficient way to review the applications. To the maximum extent possible both agencies should use experienced staff to review all applications.

NTIA and RUS should, during the initial receipt of applications, review and summarily reject all applications that are incomplete consistent with the NOFA before moving to the review and protest processes. There were numerous applications in Round One that when reviewed in the protest process were incomplete. Vantage Point Solutions (VPS) and their clients encourage the agencies to summarily reject incomplete or noncompliant applications. Following the NOFA rules and rejecting such applications will save the agencies precious time and Vantage Point Solutions (VPS) and their clients from having to review and protest any applications that made inaccurate statements about their service areas being unserved or underserved.

II. Policy Issues Addressed in the NOFA

A. Funding Priorities and Objectives

1. Middle Mile "Comprehensive Community" Projects

In many areas of many states, there are currently strong, solid fiber networks that adequately serve large regional areas if not the entire state. Companies have invested significant dollars to get these fiber networks established. For the Round Two NOFA, we would highly encourage RUS and NTIA to make Last mile facilities the priority for the remaining funds, in order to ensure that the benefits of broadband are reaching the greatest number of unserved and underserved areas. The last mile facilities will connect key anchor institutions to bring essential health, medical, and educational services to citizens that do not have broadband access today. Last mile facilities will also connect the vulnerable elderly and low-income populations that were defined as part of the core purposes outlined in the original NOFA.

2. Economic Development

The ARRA was enacted to create jobs, close the broadband gap, stimulate the economy, improve current and future broadband services and encourage the demand for broadband. Projects that will be able to meet these requirements and provide broadband access to those areas that meet the definitions for unserved or underserved should be allocated the greatest share of the funds. We encourage NTIA and RUS to award funding so that funding is truly targeted to the neediest rural areas and does not duplicate broadband services that Vantage Point Solutions' clients are already providing.

The key element in providing broadband access is getting the last mile infrastructure in place, often in sparsely populated rural areas, that will allow broadband service providers to offer service to the greatest population over the greatest serving area at the greatest speed and at the lowest efficient long term price. Once the infrastructure is built in any given service area, broadband access will be extended to residents, businesses and community anchor institutions.

Further, service providers will then be able to educate all users on the importance and uses of broadband. Educating users on broadband services and adoption will often be a part of the marketing effort of individual service providers. Community focused providers will ensure that their customers are educated on the uses and benefits of broadband access. Using the funds to construct broadband infrastructure should be the highest priority. Once the infrastructure is built, broadband access will be extended to all of the institutions listed in the bill, (schools, libraries, medical and healthcare providers, community colleges, etc.) in each community.

Nearly $28 billion in funding for proposed broadband projects was requested within Round One applications. With only a fraction of that money actually available for disbursement ($4 billion), rather than broaden the field in promoting a regional economic development approach, NTIA and RUS should stay focused and truly look at the areas that do not have broadband access today.

3. Targeted Populations

Again, the most important need for ARRA funding is to get infrastructure in place that will allow service providers to offer broadband to the greatest population over the greatest serving area. Targeting certain populations of users should be the focus of the Public Computer Center and Sustainable Broadband Adoption programs or should be a part of the marketing efforts of individual service providers. The Public Computer Center and Sustainable Broadband Adoption programs should be targeted toward groups underrepresented in broadband usage in order to ensure that such vulnerable populations

have sufficient resources and education to fully use broadband in any historically unserved or underserved areas.

B. Program Definitions

Satellite-based proposals, as stated within the unserved and underserved definitions, are not considered as competitors to existing broadband service providers because of service limitations, therefore in most cases they should also not be included as a solution to the lack of broadband services in the United States. Satellite-based proposals should be prohibited because of their service limitations or at the very least greatly limited to only unserved, remote, last mile projects that are not financially feasible by any other technology.

The definition of broadband, as set forth in the original NOFA, is such a threshold item for the BIP and BTOP programs that the original definition should remain constant between the two rounds. Any changes should come from the FCC in its National Broadband Plan that will be filed with Congress in February 2010.

The use of advertised speeds should not be changed to incorporate actual speeds into the definition of broadband due to the fact that actual speeds are not able to be reliably and consistently measured.

To be classified as a remote area, applicants need to show that the area they are proposing to serve is unserved and rural. Whether the area is 50 miles or 250 miles from the limits of a non-rural area does not change the fact that the area is still unserved and rural. Therefore, the arbitrary barrier of 50 miles should be dropped from the definition. Any rural unserved area should thus be eligible for 100% grant funding through BIP. This concept would in turn change the scoring thresholds outlined on the BIP Self-Scoring Sheet.

C. Public Notice of Applicant Proposed Service Areas (Protest Process)

The public notice process of applicant proposed service areas relied too heavily on the existing incumbent broadband service providers to validate the served status of the applicant's proposed service area. The burden of proving that an area is not served should be on the applicant to better document within the application. The applicant is responsible to prove that all the criteria for meeting the underserved or unserved definitions are met. If the documentation is not provided within the application, the application should be deemed incomplete and should be rejected. The Round One protest process created a tremendous burden and expense for the existing broadband service providers to protect their served areas. NTIA and RUS must review and reject any incomplete applications before the public notice process begins, thus streamlining the public notice response process and saving the agencies and current providers with served areas a lot of time and effort in reviewing incomplete applications.

With the March 2009 revisions to FCC Form 477, the FCC is now requiring Form 477 data to be filed by Census Tract by all current broadband providers, under

penalty of perjury, to list providers, technologies utilized, subscriber counts and established speeds. Rather than wait on incomplete mapping data from the states, NTIA and RUS should use the FCC's growing 477 database, which should greatly assist the agencies, to determine if a proposed service area is served, unserved or underserved. The FCC 477 database provides consistent and reliable data on a Census Tract level that NTIA and RUS could use nationwide to determine if any area is unserved, underserved, or served. Such information should also be used in the protest process to substantiate applicant and incumbent claims regarding the served status of any area.

D. Interconnection and Nondiscrimination Requirements

The interconnection and nondiscrimination requirements should continue to be applied to all types of infrastructure projects regardless of the nature of the entity. The Round 1 NOFA states "All Broadband Infrastructure (both BIP and BTOP) applicants, must commit to the following Nondiscrimination and Interconnection Obligations: i. Adhere to the principles contained in the FCC's Internet Policy Statement (FCC 05–151, adopted August 5, 2005); ii. not favor any lawful Internet applications and content over others; iii. display any network management policies in a prominent location on the service provider's web page and provide notice to customers of changes to these policies (awardees must describe any business practices or technical mechanisms they employ, other than standard best efforts Internet delivery, to allocate capacity; differentiate among applications, providers, or sources; limit usage; and manage illegal or harmful content); iv. connect to the public Internet directly or indirectly, such that the project is not an entirely private closed network; and v. offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, on reasonable rates and terms to be negotiated with requesting parties. This includes both the ability to connect to the public Internet and physical interconnection for the exchange of traffic. Applicants must disclose their proposed interconnection, nondiscrimination, and network management practices with the application." We believe these requirements should remain constant for the second funding round.

E. Sale of Project Assets

This section should not be revised to adopt a more flexible approach toward awardee mergers, consistent with USDA and DOC regulations.

F. Other

Regarding the Due Diligence BER requirements, thirty (30) days is not a sufficient amount of time to contact and obtain approval for OSP construction from the various local, state, and federal agencies. These responses often take anywhere from 30 – 90 days to obtain. For SHPO to respond to the required questions, a site survey often needs to be performed by a licensed archeologist. As mentioned previously, it is difficult for this work to be performed within the thirty day period and forwarded on to SHPO for their response. Additionally, depending upon the size of the project, the site survey can be a significant expense. Following the intent of the ARRA program, many of these projects could not be completed without funding through ARRA. As such, applicants

invited to participate in the Due Diligence Phase, which are not awarded funding, will have incurred a sizable expense for a project that cannot be pursued any further. SHPO responses should not be a requirement of the application but rather a requirement prior to the release of funds.

Attachment A

3 Rivers Telephone Cooperative
Steve Krogue
Fairfield, MT

Alliance Communications Coop.
Don Snyders
Garretson, SD

BEK Communications
Derrick Bulawa
Steele, ND

Bloomingdale Telephone Co.
Mark Bahnson
Bloomingdale, MI

Chequamegon Communications Cooperative, Inc.
Dave Carter
Cable, WI

Communications 1 Network
Randy Yeakel
Kanawha, IA

Dakota Central Telecom
Keith Larson
Carrington, ND

Hot Springs Telephone Co.
Laurence Walchuk
Hot Springs, MT

Lehigh Valley Cooperative Telephone Assn.
Jim Suchan
Lehigh, IA

Mark Twain Rural Telephone Co.
Bill Rohde
Hurdland, MO

MTC Technologies
William Malcom
Mediapolis, IA

Northeast Missouri Rural Telephone Co.
Gary Godfrey

Green City, MO

OmniTel Communications
Ronald Laudner
Nora Springs, IA

Panora Communications Cooperative
Andrew Randol
Panora, IA

Red River Telephone
Jeff Olson
Abercrombie, ND

South Slope Cooperative Telephone Company
J.R. Brumley
North Liberty, IA

Washington County Rural Telephone Cooperative, Inc.
Charles Coon
Pekin, IN