

Before the
DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration
DEPARTMENT OF AGRICULTURE
Rural Utilities Service
Washington, DC

In the matter of)
)
American Recovery and Reinvestment) Docket No. 0907141137–91375–05
Act of 2009 Broadband Initiatives)
_____)

COMMENTS OF CALIFORNIA BROADBAND COOPERATIVE

California Broadband Cooperative, Inc. (CBC) offers these comments in response to the Joint Request for Information (RFI) published November 16, 2009, inviting interested parties to submit comments on certain designated topics that will assist the National Telecommunications and Information Administration (NTIA) and Rural Utilities Service (RUS) in assessing and revising, if necessary, the first Notice of Funds Availability (NOFA)—as well as in generally improving the application process relating to the NTIA’s Broadband Technology Opportunities Program (BTOP) and the RUS’ Broadband Initiatives Program (BIP) established pursuant to the American Recovery and Reinvestment Act (Recovery Act).¹

¹ See, Section 6001 of the American Recovery and Reinvestment Act of 2009 (Recovery Act), Pub. L. 111-5, 123 Stat. 115 (February 17, 2009), which requires NTIA, in consultation with the Federal Communications Commission, to establish the Broadband Technology and Opportunities Program. The Recovery Act further establishes authority for RUS to make grants and loans for the deployment and construction of broadband systems.

INTRODUCTION

CBC’s proposed Digital 395 Project anticipates the construction of a 448-mile optical fiber middle-mile backbone network along US 395 between the cities of Barstow, California and Carson City, and Carson City, Nevada—providing broadband services to Mono, Inyo, and eastern Kern Counties. This transport and backhaul network, upon completion, would provide a full range of carrier-grade wholesale services to support the delivery of high-speed broadband services at affordable rates to an underserved population of over 64,000 residents, including 168 community anchor institutions, more than 2,500 businesses, and two military bases. The community anchor institutions, moreover, include 74 educational, 12 health care, 11 libraries, and 26 public safety entities. The proposed funded service area contains 16 Census Designated Places (CDP), 21 communities located in “other” census areas, as well as five Indian reservations.

In addition to providing both interoffice transport and a combination of advanced Ethernet technology and high-speed access for the area’s last-mile households and businesses, the network’s Ethernet-based transport layer will be offered to all requesting providers on a wholesale, open-access basis, including, among others, Internet service providers, video providers, wireless carriers, and Verizon.

RESPONSE TO THE REQUEST FOR INFORMATION

I. Streamlining Applications

CBC offers the following suggestions with respect to refining the application format in the next funding round:

- Consider more flexible financing options between BIP and BTOP. The BIP program allowed for loan/grant combinations (for those with qualifying rural and remote projects) up to a 50/50 ratio, whereas the BTOP program did not offer any loan option. Greater economy and efficiency in leveraging the available remaining funds might be achieved by allowing applicants more flexibility to propose—and make a business case for—the best individual fit of loan/grant ratios, without regard to a pre-set minimum or maximum.
- Maintain the first NOFA’s requirements with respect to network design and demographic information. Completing the network layouts and demographic requirements for the proposed funded service area required applicants to do a reasonable amount of planning and analysis, which, if performed diligently, should lead to better network designs and business plans.
- Reduce potential redundancies in the application. Question 18, “Middle Mile Benefits,” offered applicants an opportunity to comprehensively address the demographics of the proposed funded service area, competitors, proposed service offerings and subscriber estimates; however, all of these matters were covered by other questions and attachments. In practice, Question 18, particularly in concert with Question 10, “Description of BTOP Project Purpose,” and Question 11, “BTOP Enhanced Services for Health Care Delivery, Education, and Children,” resulted in something like yet another executive summary.
- Consider an enhanced level of rigor with respect to technical, regulatory and business modeling. While some pertinent data, such as working capital requirements, is called for in Step Two of the application process, the pro-forma financial projections format seemed almost too cursory. Private sector applicants, in particular, should have

independently gone through a rigorous business case exercise, even before applying to BIP or BTOP, and it would not be unreasonable to expect the BIP and BTOP application process to require production of similar information.

II. Funding Priorities and Objectives

a. Middle Mile “Comprehensive Community” Projects.

The NTIA and RUS are right to focus on middle-mile infrastructure as a funding priority, but their timing in doing so may not be optimal. To be sure, in the absence of access to robust middle-mile infrastructure, a community with state-of-the-art last-mile facilities is no better off than a community with antiquated last-mile facilities. That said, the NTIA and RUS should remain mindful that some applicants may have built strategic plans around applying for middle-mile assistance first, to be followed by a last-mile application in later funding rounds. To the extent the NTIA and RUS now desire to prioritize middle-mile projects, any such prioritization should be done while the first round remains open, and, without prejudice to last-mile projects in the next and final funding round.

b. Public Notice of Service Areas.

As a lesson learned from the first round, the application process should provide greater transparency to applicants facing challenges lodged against the unserved and underserved status of their proposed funded service area—as well as allow applicants a reasonable opportunity to rebut the challenge. Unfortunately, without such transparency, competing service providers may be incented to offer vague and unspecific allegations as a means to throw doubt on otherwise worthy applications. The goal of any reply opportunity would not be to prolong the application review process, but, rather, to make the review process more streamlined by directing additional

data to the reviewers. In this way, the reviewers have a more complete picture to evaluate, without having to do significant legwork obtaining data already available from the applicant's project planning.

c. Sale of Project Assets.

Entities seeking additional funding sources for their projects would be better-served by a more flexible approach to the sale or lease of project facilities. Assuming an overarching goal of ensuring that grant-funded projects improve broadband access for the long term, the government should have the flexibility to allow a lender providing needed funds to the grantee to take a co-lien position, or, to allow the grantee to make strategic corporate transactions that improve the likelihood of the long-range operational success of the grant-funded facilities. And, in a worst-case, distress situation, the public interest be best-served by allowing a third-party to step in and keep the project assets operational (and within the accountability of the government). CBC recommends that the NTIA and RUS consider a more flexible position on the sale or lease of project assets, and provide more guidance in the NOFA as to the terms and conditions of the government's continuing interest in the project facilities, so as not to hinder applicants' additional funding efforts.

CONCLUSION

CBC appreciates the NTIA and RUS' willingness to consider feedback and recommendations resulting from the applicants' experience with the first round. CBC thanks the NTIA and RUS for the opportunity to provide the foregoing comments, and hopes these comments help to facilitate improvements in both the second funding round and the overall success of the BTOP and BIP programs.

Respectfully submitted,

/s/ J. Jeffrey Mayhook _____

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November 30, 2009