



November 30, 2009

VIA E-MAIL

Broadband Initiatives Program

Rural Utilities Service
US Department of Agriculture
1400 Independence Avenue, S.W. Stop 1599
Washington, DC 20250

Broadband Technology

Opportunities Program,

National Telecommunications &
Information Administration,
U.S. Department of Commerce, HCHB Room 4887
1401 Constitution Avenue, N.W.
Washington DC, 20230

Re: American Recovery & Reinvestment Act of 2009
BIP& BTOP, Docket No. 0907141137-91375-05

Dear Sir or Madam:

AFS shares and supports the goals of the American Recovery & Reinvestment Act of 2009 ("Act"), specifically the provision of broadband service to un-served areas, the improvement of access to broadband in underserved areas and the creation of jobs now. In response to the NOFA issued on July 9, 2009, AFS submitted five BTOP Middle Mile applications for stimulus funds for projects located in: (i) Kansas City, MO & KS, (ii) Gwinnett County, GA, (iii) Cobb County & City of Marietta, GA, (iv) Boise, ID and (v) Nashville, TN. We offer the following comments on select questions raised in the Joint Request for Information as published in the Federal Register on November 16, 2009.

I. The Application Review Process

B. Transparency & Confidentiality

- The public should not be given greater access to application data submitted to BIP & BTOP. Many applicants expended a considerable amount of human resources and considerable sums of money to develop a methodology to determine if an area at the census block level was un-served or underserved and in determining the pricing structure of a competitor in a given area. Companies seeking stimulus funding were willing to make these investments because as originally established this information would be kept confidential and an applicant and the government could derive benefits from this research over a longer period to justify the investment. Now if this information is made public, others will receive a windfall benefit by learning such methodologies without having invested the capital, human or monetary. The value of an applicant's investment will be diminished and this will create a disincentive for applicants to engage in similar government initiated analysis in the future. Historical financial information about an applicant must be kept confidential and not released to the public. Some applicants such as

AFS are privately held and their financial information is not publicly available. As the Executive Summary is likely to contain information regarding an applicant's matching funds and any working capital needs that it will be funding, together with the value of any in-kind contributions, it will be releasing sensitive financial/business information that will give competitors insights into the financial condition of an applicant, its project costing, and pricing methodologies and market penetration rates. Such information can be used by a competitor to the applicant's detriment. The Executive Summary and anywhere else in the application that contains such information should remain confidential.

D. NTIA Expert Review Process

- The NTIA should not use unpaid "experts" as reviewers due to a high likelihood of conflict of interest. Federal staff or contractor's staff with a background in telecommunications should be utilized to review the applications. In addition, to avoid conflicts of interest, any state which is an applicant or a participant in another applicant's project should not then be permitted to provide feedback to the NTIA ranking projects proposed within such state's boundaries.

II. Policy Issues Addressed in the NOFA

A. Funding Priorities and Objectives

1. Middle Mile "Comprehensive Community" Projects.

- In order to realize the maximum benefit in fulfilling the BTOP statutory purposes from the dispersal of BTOP grant funds, AFS strongly endorses and advocates that the NTIA focus round two funding on projects that will deliver middle mile infrastructure facilities into a group of communities and connect key anchor institutions within those communities. The best way to stimulate the growth and use of last mile broadband services by un-served/underserved populations is to first create the middle mile connectivity on which the last mile connectivity is dependent, whether wireline or wireless. To focus funds on last mile connectivity when the middle mile connectivity has not first been created will only serve to create a stranded investment that will be an isolated island of connectivity that fails to harness the benefits of connecting key community anchor institutions and the economic growth synergies that can be created by such anchor institution connectivity. In evaluating middle mile projects it is critical that the appropriate weight be given to the type of connectivity that is facilitated. Added weight and priority should be given to projects that connect anchor institutions such as educational institutions, libraries, public safety and health care related facilities because of the additional growth and economic benefits that these institutions provide to the surrounding community. Such institutions act as a "force multiplier" by exponentially increasing the effectiveness of each dollar invested.
- Recommended Evaluation Criteria for Middle Mile "Comprehensive Community" Projects:
 - a. Projects that fulfill multiple BTOP statutory purposes should be given more weight than projects that merely satisfy one or two BTOP statutory purposes.
 - b. The track record that an applicant has with operating its network on an open access, non-discriminatory basis is extremely important and should be weighted accordingly.
 - c. Projects that provide for the installation of high capacity middle mile facilities between anchor institutions that bring essential health, medical, educational and public safety/first responder agencies to underserved areas should be given greater weight.
 - d. Projects which through creative in kind contributions have the effect of stimulating investment in last mile broadband access should be preferred.
 - e. The type and quality of the Anchor Institutions targeted for connection and not just the number of institutions targeted for connection should be evaluated and a priority should be given to "force multiplier" institutions.

- f. Greater weight should be given to projects that were designed with direct community input. Such projects focus on meeting a community's identified priority needs, will be more cost effective and more sustainable.
- g. A higher priority should be given to projects that effectively leverage existing network facilities, particularly if such leveraging is at no cost to the project.
- h. Whether the project enhances the delivery of broadband services to vulnerable populations, including those disadvantaged by income, ethnicity, and age-both elderly and children is a relevant evaluation criterion.
- i. In evaluating the eligibility of projects for stimulus funds, no "closed" network operator should be permitted to use stimulus funds to build over an existing carrier's open access network.

B. Program Definitions

- **Broadband:** Initially "Broadband" should be defined as not less than 100 megabits, actual speed (not advertised) and within 10 years it should be defined as not less than one gigabit actual speed (not advertised), regardless of delivery method. Actual speeds should be reported quarterly based upon data taken directly from the provider's network monitoring/network operations systems.

C. Public Notice of Service Areas

- The BTOP program was created in recognition of the fact that the United States has a very low broadband adoption rate when compared to other developed countries. Explicit goals of the BTOP program are to extend middle mile broadband service to underserved areas, providing broadband connectivity to community anchor institutions and critical community organizations and to create jobs now. Under the Round One NOFA the concept that an existing service provider can based upon a claim of network footprint overlap make vague, broad, over generalized allegations such as the existing provider's network is "capable of delivering all or some significant portion of the connectivity that the applicant proposes" and thereby defeat an applicant's project is ludicrous and antithetical to the stated purpose of the BTOP program. First, when deploying broadband to underserved areas some overlap with existing facilities is inevitable and necessary in order to extend the geographic reach of the facilities. Second, the fact that a network is theoretically "capable of delivering all or some significant portion of the connectivity that the applicant proposes" is vastly different from whether it actually is doing so in a meaningful way so as to constitute a viable service offering in the real world. Third, the fact that the applicant has no opportunity to review the existing service providers allegations, the underlying data that supports the allegations, if any, and have an opportunity to respond to the allegations flies in the face of any sense of fairness, transparency or due process. Any existing service provider who challenges an applicant's project should be required to prove by clear and convincing evidence the following: (i) reported quarterly on a census block level the actual number of business and residential Broadband (as defined in B above) subscribers that is has, excluding any that are on a month-to-month basis, as well as the percentage of the population of the given census block that such subscriber base constitutes, (ii) reported quarterly on a census block level, data that demonstrates that the existing provider's actual committed information rate and network latency for Broadband (as defined in B above) subscribers as compared to its advertised committed information rate and network latency service level agreements ("SLA's"), (iii) reported quarterly churn as compared to the prior 12 month period. The foregoing information should be made available to the NTIA and the applicant which the existing provider is challenging under a non-disclosure agreement. The information should not be made generally available to the public. The applicant will have a period of thirty (30) days after receipt of the information to file a response to the existing provider's

challenge. Based upon the data provided by the challenger and the response of the applicant the NTIA would decide within thirty (30) days of receipt of the applicant's response whether the applicant's proposed service area is underserved or un-served. If more than 50% of the businesses or households within a Census block have no Broadband coverage (as defined in B above), it is underserved.

D. Interconnection & Nondiscrimination Requirements

- AFS supports the interconnection and nondiscrimination requirements of the NOFA and believes that they should continue to apply to all infrastructure projects regardless of the nature of the entity, including RUS borrowers and grant recipients. Nondiscriminatory open access will generate short term and long term benefits including increasing competition, reducing prices for broadband access and accelerating broadband penetration generally but in particular in un-served and underserved areas.

E. Sale of Project Assets

- Section IX.C.2 of the NOFA should be revised to adopt a more flexible approach toward a bona fide awardee merger that occurs in the ordinary course of business, consistent with USDA and DCO regulations, while ensuring that an awardee is not receiving unjust enrichment arising out of a "flip" of award funded assets. If an applicant is a certificated carrier and in the ordinary course of its business, it experiences a merger and the acquiring company agrees to abide by all of the terms and conditions of the grant, such a transfer of grant funded assets should be permissible, with federal approval not to be unreasonably withheld, delayed or conditioned. Federal approval should be provided in writing within thirty (30) days of receipt of the acquiring company's written consent to abide by the grant terms.

Concluding Remarks

All five of AFS' round one BTOP applications were deliberately crafted to satisfy four BTOP statutory purposes of (i) extending middle mile broadband service to underserved areas, (ii) providing broadband connectivity to community anchor institutions and critical community organizations such as schools, libraries medical and health care related facilities and local and county government offices, (iii) stimulating investment in last mile broadband access and (iv) improve access to and use of broadband by public safety agencies, all as described above. AFS is and has been since its inception an open access provider. AFS is a non-discriminatory provider of wholesale transport services to any party interested in purchasing such capacity whether carrier, enterprise or institutional. In addition, AFS also makes available dark fiber strand leases on a non-discriminatory basis to any party. Depending on the particular application, AFS' projects offer to interconnect 35 to 250 community anchor institutions and critical community organizations with high capacity middle mile facilities. Further, all five of AFS' round one BTOP applications stimulate further investment in last mile broadband access by virtue of AFS' offer to make available to Fiber-to-the Home (FTTH) providers strands of dark fiber from our existing backbone infrastructure, at no cost to the funded project, and strands of dark fiber from the particular project for FTTH providers who will enhance competition consistent with the BTOP statutory purposes. This will make available, at virtually no cost, miles of backbone fiber to FTTH providers thus eliminating millions of dollars of costs typically encountered prior to building out to the first residence served. This will stimulate the demand for broadband and in turn spur economic growth and job creation. The increase in broadband supply will encourage and ultimately increase broadband competition, thus improving residential and commercial offers with regard to speed while reducing broadband prices. Lower price points and greater speeds will stimulate demand, adoption, and penetration of broadband in underserved areas.

AFS used a public/private partnership approach in designing its proposed network for each project area. Upon the initial announcement of stimulus funds being allocated for the proliferation of broadband services, AFS identified & met with key local leaders & Community Anchor Institutions such as governments, schools, libraries, medical & healthcare providers, public safety entities, colleges & other institutions of higher education, & other community organizations. From these initial meetings with Community Anchor Institutions,

AFS was provided with address information at the grass roots level of what locations in each project area the community felt were most important for the extension of broadband coverage. It was based upon this direct community provided feedback that AFS formulated the network system design for each project area. This direct input from the Community Anchor Institutions enabled AFS to design a network engineered to more efficiently connect the Community Anchor Institutions.

AFS already owns & operates a fiber optic network in each project area which provides connectivity to a minimum of dual homed Tier 1 peering for internet access, multiple data center locations, & key communication hotels & offices. The costs associated with the many access points on the AFS existing networks, including internet peering, are not included in the project costs thereby reducing the overall costs of the BTOP grant funding requests. The new network AFS proposes for each project area would not be an isolated island or a stranded investment, rather, the new networks have been designed to interconnect with our existing networks at multiple points. This will exponentially increase the broadband access of the underserved areas we propose to serve & allows a highly cost efficient leveraging of our existing networks at no additional cost. This leveraging of our existing networks will maximize the impact of each BTOP dollar invested in an AFS project.

Implementation of the points outlined above will enhance the possibility of the Act achieving its fullest potential. Thank you for your time and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Rusin', with a long horizontal flourish extending to the right.

David G. Rusin,
President & CEO