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November 30, 2009

**VIA ELECTRONIC SUBMISSION**

Broadband Initiatives Program  
Rural Utilities Service  
U.S. Department of Agriculture  
1400 Independence Avenue, S.W.  
Stop 1599  
Washington, DC 20250

Broadband Technology Opportunities Program  
National Telecommunications and Information Administration  
U.S. Department of Commerce  
HCHB Room 4887  
1401 Constitution Avenue, NW  
Washington, DC 20230

**Re: Docket Number 0907141137-91375-05**  
**RIN: 0660-ZA28**

Dear Gentlemen:

On behalf of KeyOn Communications Holdings, Inc. ("KeyOn"), I respectfully submit these comments in response to the Rural Utilities Service (RUS), Department of Agriculture, and National Telecommunications and Information Administration (NTIA), Department of Commerce Joint Request for Information in the above referenced matter.

In an effort to structure our comments according to Federal Register, each comment will be preceded by a heading and/or subheading corresponding to the November 16, 2009 publication.

I. The Application and Review Process

A. *Streamlining the Applications*

3. Specification of Service Areas

We understand that in order to evaluate proposed funded service areas among applicants a common set of data, such as census blocks, needs to be used in order to determine non-overlapping or *de minimus* overlapping proposed funded service areas, among other things. However, we believe that applicants should be afforded more flexibility in

providing such data than in the round one process. Advances in mapping and related technology have created precise yet comprehensive mapping tools. To the extent an applicant can use more sophisticated or other tools than the suggested mapping program to deliver the necessary data, we believe it should be expressly permitted as an upload, again provided the required data (census blocks, etc.) are included.

#### 4. Relationship between BIP and BTOP

The breadth and scope of the applications were necessary in order to allow applicants to demonstrate the viability of their projects, as well as the experience and quality of their management teams. Whether it was describing the build-out timeline, explaining affordability, or critically substantiating a proposed funded service area as “unserved” or “underserved”, we do not think that any of the sections of the application, as an essay or attachment, were superfluous.

However, we do believe that certain adjustments can be made to make the application process more efficient. Applicants proposing to serve rural areas should be permitted to apply for either BTOP or BIP or both, based solely on their own assessment of how their applications meet the scoring criteria or purposes of the separate programs. Requiring rural applicants to apply first to RUS when their project may only be economically sustainable with a grant of greater than 50% (e.g., in a last-mile, non-remote proposed funded service area under the current framework), places unnecessary burdens on applicants and RUS staff and also delays NTIA decision-making. Additionally, this framework produced the presumably unintended consequence of several BIP/BTOP applicants submitting applications that were, by definition, ineligible for BIP based upon the fact that they requested greater than 50% in grant funding. Consequently, there were BIP/BTOP applications that were necessarily only eligible for BTOP, but were mandatorily submitted to BIP reviewers because of the rural requirement.

#### *C. Outreach and Support*

The RUS and NTIA have specifically asked for recommendations for outreach and support to help prospective applications. As a way of capturing more FAQ data and reducing the work burden on staff, our recommendation would be to include a more robust, searchable knowledge/data base on the stimulus program website located at [www.broadbandusa.gov](http://www.broadbandusa.gov). Having additional functionality should not only reduce the need for individual responses from the help desk, but also provide answers to multiple applicants with the same or similar questions.

## II. Policy Issues Addressed in the NOFA

#### *D. Program Definitions*

The definition of “underserved” is necessarily tied to the definition of “broadband.” Under the current framework, there were three ways to define an area as “underserved” one of which was that broadband penetration was less than or equal to 40%, with

“broadband” being defined as 768 downstream and 200 kbps upstream service. In light of the desire to deploy advanced broadband services to “unserved” and “underserved” markets, this threshold of “served” would deny funding to markets where these low speeds are available, thus denying the very benefits the programs were designed to facilitate to citizens without access to broadband capable of meeting current needs. In light of current available technologies and roadmaps, this definition should be revised to define “broadband” as at least 3Mbps downstream/512 upstream for purposes of identifying areas that are eligible for funding.

#### *E. Sale of Project Assets*

As noted in the November 16, 2009 Federal Register, the agencies should consider eliminating provisions that adversely impact the ability of applicants to obtain third-party financing. The current scoring systems advantage applicants that have secured outside financing and thus require less from the agency. In addition, third party financing serves as an independent endorsement of the project. Consequently, rules providing a disincentive for third-parties to assist in financing should be avoided.

The 10-year prohibition on the sale of the funded assets also seems to cause a “chilling effect” in terms of capital raising by applicants and may have caused many potential broadband providers to avoid BIP/BTOP entirely. We recommend that the agencies allow for such transfers, subject to agency approval upon demonstration that the acquiring company will adhere to the terms and conditions of the grants/loans and that there will be no unjust enrichment on the part of the grantee/loanee.

Additionally, the RUS requirement that a borrower provide RUS with a first security interest in all of its assets, including those not funded by the agency, also seems to have impacted participation in BIP/BTOP. Existing lenders to broadband providers were often unwilling to accept a second position to RUS, precluding participation of companies well-situated to meet the agencies’ broadband goals.

#### *F. Cost Effectiveness*

In BTOP, one of the Project Benefits considered by NTIA is “cost effectiveness” when scoring an application. In determining the best use of federal funds consistent with the goals of the Recovery Act, this metric is necessary in evaluating meritorious applications and an extremely important variable in the deployment of broadband infrastructure. Unfortunately, cost effectiveness, or said differently, capital efficiency (i.e., the cost of providing broadband per home/business) does not come into play in the BIP scoring system. Thus, it is possible that BIP funds could go to fund a few expensive projects serving a relatively small number of subscribers, rather than to spread the money more wisely by considering capital efficiency or “bang for the buck.” This objective measure, already adjudged to be valuable for BTOP purposes, is even more relevant in rural, less densely populated areas, where making a sustainable business case can be equally if not more challenging. We hope that this factor is considered as a scoring metric in the subsequent NOFA.

### G. Other

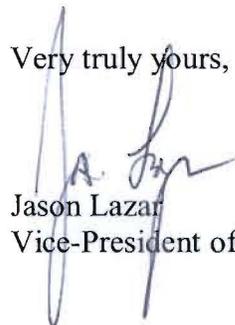
Under the current framework, both the BIP and BTOP programs placed an understandable premium on projects that were “shovel-ready.” Inherent in any stimulus plan is the applicant’s ability to complete its project, deliver the promised services and create jobs and economic opportunities to the communities it serves. This desire was manifested by the scoring criteria requiring that “[a]ll licenses, franchises and regulatory approvals required to operate the system and provide the proposed services” be in place prior to an award. However, when evaluating an applicant’s project and its requirement that it be substantially completed within two years (and totally completed within three), the more relevant inquiry should be how quickly can the project be completed, service be delivered and jobs created, **regardless of whether all approvals are held prior to the start.** Many regulatory approvals are achieved as a matter of course, and requiring them before an applicant even knows whether its project will be funded imposes an undue burden on applicants, and, as a practical matter, does nothing to ensure rapid delivery of services.

The “*de minimus*” exception to the RUS’ “one to a market” funding rule should be applied in a way that does not penalize those who honored RUS’s desire for applicants to submit one application for multiple proposed service areas. The first NoFA provides that where two applications propose overlapping proposed funded service areas (PFSAs), the lower scoring of the two will be rejected in its entirety unless the RUS determines that the extent of the overlap is “*de minimus*.” While it is logical that a geographic area should not be funded more than once, this provision should be applied in a common sense way so that meritorious applications comprised of multiple PFSAs are not dismissed in their entirety just because another applicant has submitted a higher-scored application for one of the PFSAs. A way to address the issue is to determine whether the overlap is “*de minimus*” relative to the application as whole, not just within the context of the proposed funded service area, which as a practical matter, could be a fairly small part of the application in terms of population or geography.

A consultative approach, similar to what RUS has done under previous programs would be consistent with the overall goals of delivering broadband to “unserved” and “underserved” areas and stimulating the economy.

Finally, given the above-discussed framework of “one to a market,” potential applicants for the second round need access as early as possible to the information necessary to determine whether a given area has been funded in round one. By taking the online mapping information down as soon as an application passes the 30 day public notice filing period, the agencies have deprived the public of information as to what areas were the subject of first round applications. Not only should the agencies restore public access to that information, but they should alert the public as quickly as possible after applications are granted or denied so potential applicants can adjust plans for the second round in a timely manner.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jason Lazar", is written over the typed name and title.

Jason Lazar  
Vice-President of Corporate Development and General Counsel