



**Rural Utilities Service &  
National Telecommunications & Information  
Administration**

**Broadband Initiatives Program &  
Broadband Technology Opportunities Program**

**Joint Request for Information (RFI)  
Docket No. 0907141137-91375-05**

**November 30, 2009**



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Via Electronic Mail: [broadbandrfi@ntia.doc.gov](mailto:broadbandrfi@ntia.doc.gov)

Broadband Initiatives Program  
Rural Utilities Service  
U.S. Department of Agriculture  
Washington, DC 20250

Broadband Technology Opportunities Program  
National Telecommunications and Information Administration  
U.S. Department of Commerce  
Washington, DC 20230

**RE:** Rural Utilities Service (RUS) and National Telecommunications and Information Administration (NTIA): Broadband Initiatives Program and Broadband Technology Opportunities Program, Joint Request for Information

**Docket No.** 0907141137-91375-05

Dear Assistant Administrator Villano and Deputy Associate Administrator Wilhelm:

**New EA dba Flow Mobile** provides, in the following pages, its response to the RFI issued on November 16, 2009.<sup>1</sup> Flow Mobile is an innovative and exciting mobile broadband services company focused on serving 12 rural states with the most advanced mobile broadband service available. Through our low-cost solutions, Flow Mobile can solve the rural riddle of providing affordable mobile broadband services. The vision of Flow Mobile is that rural communities can and should be first to deploy and use innovative state-of-the-art telecommunications services, eliminating the digital divide that has plagued rural America over the past couple of decades.

Flow Mobile's approach combines its rural roots and commitment to America's heartland with the technological and entrepreneurial savvy of Silicon Valley and experienced veterans in the telecommunications field, utilizing innovative low-cost,

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<sup>1</sup> [http://www.broadbandusa.gov/files/BTOPBIP\\_RFI\\_091116.pdf](http://www.broadbandusa.gov/files/BTOPBIP_RFI_091116.pdf)

4G-like mobile broadband communications. A low-cost, ubiquitous IP open access network is one of the most effective means to enhance a whole range of public and social services; stimulate businesses, create jobs; and open the door to new opportunities and reinvestment in rural communities.

Flow Mobile's broadband solution provides affordable access to both fixed and mobile services over the same network. Small rural communities are often among the last to have access to state-of-the-art broadband technologies that deliver video and data applications to public safety; offer distance learning; equip ambulances with live data and video services; and enhance business efficiency through a community-wide, open access broadband network that is available at a fixed affordable price at home or work or on the go throughout the community.

Thank you in advance for considering our response.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sree Tangella".

Sree Tangella  
CEO

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## **EXECUTIVE SUMMARY**

There are a number of areas where the second round of American Recovery and Reinvestment Act (ARRA) broadband financing programs can be improved to better achieve the goals specified in the statute.

First, applicants should have the flexibility to devise innovative, low-cost solutions that will improve broadband service. The agencies should avoid attempting to impose too much design on the applicants' proposed projects. Rather, the agencies should structure the application rules in a manner that allows the applicants to design innovative solutions that meet the ARRA purposes.

Second, the agencies should avoid a "lowest common denominator" effect and use the authority provided by Congress under the ARRA to promote new investment of innovative broadband service. The agencies should maximize eligibility and minimize incumbent carrier blockage of new technologies.

Third, the agencies should re-vamp some of the key definitions for the second round of funding to promote better levels of broadband service and diversity of technologies. This can be done by:

- Increasing the definition of broadband with respect to how areas are determined eligible and the level of service the ARRA programs will support.
- Recognize the distinction between mobile and fixed broadband services and not consider these duplicative of each other.
- Create a new category of eligibility for specialized networks designed to meet the unique needs of community anchor institutions.

Finally, the agencies should continue their commitment to maintain a transparent process by providing clarity on the kinds of information and criteria used to consider such information in the process of challenging applications during the Public Notice Filing period.

## **RFI RESPONSES**

### **I. THE APPLICATION AND REVIEW PROCESS:**

#### **A. Streamlining the Applications.**

The agencies should take steps to minimize the level of detailed information required in the initial application submission. This will reduce the burden on the applicant. Information such as specific build-out schedules, pro-forma financial statements, licenses and certifications, and regulatory approvals can be obtained in later stages of the application process once the applicant has passed the initial stage.

Agencies should consider modifying the two-step review process by streamlining the amount of information required for Step 1. Several components required in Step 1 make more sense in Step 2.

Attachments/certifications should be modified and clearly explained. There should be one set of attachments, not separate attachments. These forms should not require signatures but some other means of certification. The amount of time that is required to fill in the information, sign it, and produce an Adobe file is more than excessive. The certification forms could be created into the on-line system similar to what is done on [www.grants.gov](http://www.grants.gov)

A single application is acceptable, but applicants should be allowed to file directly to the agency of choice and not required to file first to the RUS for applications serving rural areas. The BIP and BTOP programs have significant differences and some rural applications that desire BTOP consideration should not be required to file first to the BIP program. Allow the applicant to choose the most appropriate venue for them.

#### **1. New Entities.**

The agencies should take great care not to discriminate against new businesses and impose a burden of documentation and financial statements that makes it too difficult for a new business to apply or discriminates against a new business in the evaluation criteria. Historical financial information should be limited to the specific history of the applying entity.

#### **2. Consortiums and Public-Private Partnerships.**

The agency should ensure that there is full transparency about all members of a consortium and require sufficient information to know how consortiums are funded and supported as well as if the entities have any pre-application agreements with vendors or

carriers. This effort would assist the efforts of the RUS and NTIA to sufficiently evaluate the application.

### **3. Specification of Service Areas.**

The mechanics to submit data on a census block level in order to delineate the proposed funded service areas was burdensome. The mapping process needs to be restructured to provide flexibility. Providers do not typically retain data by census block, and this section needs to have some flexibility built into it as wireless applications do not have the same defined boundaries as landline applications. More flexibility should be afforded to applicants to submit data in the form that suits the nature of their proposed service and technology.

### **4. Relationship between BIP and BTOP.**

Rural infrastructure applications should not be required to be submitted to the RUS. Applicants should be permitted to submit applications to the agency and program that the applicant believes is most appropriate, and the agencies should permit rural applications to be submitted directly to NTIA without requiring submission to RUS if the applicant would prefer the BTOP program.

The decision to give a loan to an application as opposed to a grant should be left up to the applicant, and the agencies should not impose eligibility or evaluation criteria that would second guess the applicant's decision. While the agencies should always allow for some discussion and negotiation with the applicant and work with applicants to find the best means to achieve the program goals, the applicant should have the opportunity to make the ultimate decision as to whether a loan would be acceptable.

### **B. Transparency and Confidentiality.**

The BIP and BTOP programs created unprecedented levels of transparency. No further action to increase transparency with respect to the information submitted by applicants is necessary. The public should not be given greater access to data the applicant submits to BIP and BTOP.

Applicants should be able to identify which information they consider confidential or proprietary, and the agencies should protect this information. If the application procedures make it known in advance that the executive summary will be made public, applicants will know not to include any confidential or proprietary information.

### **C. Outreach and Support.**

The methods utilized in the first round for support and outreach was not as effective as they should have been. Workshops generated confusion about the rules. Too often, agency staff would say things inconsistent with the published NOFA or create new rules that required follow up. While the workshops had some value, on balance, they created confusion. Up-to-date and accurate information on the website is most important. Utilizing one site is also important. If there is a need for more than one site, then consistency is critical. When the application process is discussed in public, the information that is gleaned at the workshops, etc., should be available in its entirety.

To assist the applicants differently in the next round of funding, the agencies should consider the following:

- Provide live phone/email/chat assistance with quicker response times;
- Staff the 24-hour help desk must be staffed with trained employees who are able to answer specific questions (receiving an email two weeks later is not effective);
- Ensure that documents and guidance on [BroadbandUSA.gov](http://BroadbandUSA.gov) are updated in real-time to meet the Recovery Act goals of openness and transparency; and
- Allow agency staff to meet and talk directly with applicants. It was disturbing to see the agencies close their doors to dialogue with the public and this policy should be changed in the second round.

### **D. NTIA Expert Review Process.**

Reliance upon unpaid “experts” raises many significant issues that have not adequately been addressed in the first round. First, the agency never laid out transparent criteria to determine what constituted expertise in this field. More troubling is what process the agency took to identify and prevent conflicts of interest by the reviewers. Reliance upon contractors to carry out the agency’s responsibilities needs to be done with great care and transparency.

## **II. POLICY ISSUES ADDRESSED IN THE NOFA**

### **A. Funding Priorities and Objectives.**

#### **1. Middle Mile “Comprehensive Community” Projects.**

While the agencies, especially the BTOP program, should focus on connections necessary to address the unique needs of community anchor institutions, the “middle mile” category as defined in the first round, did not appropriately address this need. The

second round should create a unique category of eligibility and evaluation for specialized networks that are designed to address the unique needs of community anchor institutions. For example, public safety entities have broadband needs that are very different from the definition of broadband as used in the first round of funding for the BIP and BTOP. Public safety needs access to last mile mobile broadband service and in the first round, many areas were determined to be ineligible if there was sufficient access to the broadband service as defined, yet that level of service was not sufficient to address the unique needs of public safety. Applicants seeking to serve community anchor institutions should have their eligibility determined irrespective of the criteria for other last mile applications. The “middle mile” definition used in the first round was not sufficient to allow for the diverse needs of community anchor institutions. In many cases, community anchor institutions have unique last mile needs that should not be disqualified because of the limiting nature of the broadband definition used in the first round.

The agencies should not prioritize those middle mile projects in which there are commitments from last mile service providers to use the middle mile network to serve end users in the community. Reviewers should judge the applications on their merits.

Favorable evaluation should be afforded to all applications that propose to serve the greatest population and greatest geographic footprint. A focus on only one of these criteria could bias the scoring either towards urban or rural applications, depending on the circumstance.

The comprehensive community concept (this is the first time this term “comprehensive community concept” is used – what does it apply to?) should also apply to last mile applications and should include public safety needs.

Public-private partnerships are very important aspects for comprehensive community projects. Another important attribute is the uniqueness of the problem and the proposed solution.

Community anchor institutions should have a unique category for eligibility that is not linked to the broadband definition used in the first funding round of BIP and BTOP to determine eligibility. Rather, the second round should recognize the unique broadband needs of community anchor institutions – e.g., public safety needs access to mobile broadband service everywhere, regardless of the status of fixed landline broadband service – and eligibility for such services should be determined irrespective of broadband service for residential or business purposes. Further, community anchor institutions should be able to apply for middle mile and last mile solutions and eligibility should be liberalized accordingly for these applications.

The criteria outlined in the first round by RUS and NTAI to encourage appropriate levels of non-Federal (State, local, and private) matching funds to be contributed was appropriate, and no further changes are necessary.

The rules should allow applicants to overlap with existing service providers, maximizing eligibility and considering new level of services or innovativeness of the project favorably in the evaluation phase. It is more important for the agencies to compare the level of service, emphasize consideration of the level or type of service, and be less concerned about geographic overlap with existing providers. For example, applications proposing to provide mobile broadband service in an area that overlaps with a fixed broadband service from an existing provider should be considered eligible and should receive favorable consideration because of the unique nature of the proposed service. Geographic overlap with an existing service provider should not disqualify consideration of a new and improved level of service.

## **2. Economic Development.**

The RUS and/or NITA should not allocate a portion of the remaining funds available under the BIP and BTOP programs to promote a regional economic development approach to broadband deployment.

The RUS and NTIA should not seek applications for projects that would systematically link broadband deployment to a variety of complementary economic actions, such as workforce training or entrepreneurial development, through targeted regional economic development strategic plans. However, such applications should be welcome and those that can demonstrate economic development benefits should be favorably considered.

Emphasizing unemployment as a measurement of economic need would impose an unfair standard. In some areas of the country, outmigration is a greater consequence of economic hardship than unemployment. If the agencies are going to provide favorable consideration for areas experiencing economic hardship, outmigration and unemployment should be considered.

## **3. Targeted Populations.**

A portion of specific funds should not be allocated to specific population groups. Rather, it should be allocated for projects meeting unique broadband needs of the entities specifically mentioned in the statute – such as public safety projects – as opposed to reserving funds for population groups that were not specified in the statute.

No single entity, such as public housing authorities, should be “targeted” for funding. Rather, the BIP and BTOP programs should be structured to maximize eligibility for entities with specific broadband needs.

NTIA should take a similar approach to that followed under the Technology Opportunity Program (TOP), where the agency allowed the applicants to develop the innovative solutions as opposed to the agency trying to design the innovation.

NTIA should not shift BTOP funds into public computer centers any more than is required by the Recovery Act. NTIA should focus on infrastructure projects because these will have the greatest long-term impact.

NTIA and the RUS should re-structure the eligibility criteria for BTOP and BIP that would allow libraries and other community anchor institutions, including public safety projects, to qualify irrespective of whether the area in which the anchor institution is located qualifies as an “unserved” or “underserved” area. NTIA and RUS can ensure that there is no overlap with the e-Rate by limiting BTOP and BIP support to infrastructure-related costs that are presently ineligible under the e-Rate or other universal service support.

#### **4. Other Changes.**

The agencies should first establish a unique eligibility criteria that target specific purposes that are mentioned in the statute, such as public safety applications. Broadband infrastructure projects that address the unique needs of public safety should be considered eligible irrespective of the how “unserved” and “underserved” areas were determined in the first round. These applications should be evaluated based on criteria that consider maximizing geographic coverage, low-cost per end user, and innovativeness of the approach.

Public safety has unique broadband needs – such as needing access to mobile broadband service or higher speed connections to serve PSAPs for example. In addition, the agencies should make a distinction between mobile and fixed broadband service and not consider mobile broadband service duplicative of fixed broadband service.

Other mechanisms the agencies should explore to ensure remaining funds have the broadest benefit include:

- Recognize the mobile broadband service is not duplicative of fixed broadband service and the presence of fixed broadband service should not disqualify a mobile broadband application;
- Raise the definition of broadband service to determine eligibility as well establish a separate definition for mobile broadband service and fixed broadband service; and
- Give favorable consideration to innovative approaches and public-private partnerships.

The agency may best leverage existing broadband infrastructure to reach current unserved and underserved areas by maximizing the opportunities for last mile mobile

broadband applications. These will increase middle mile demand and foster greater middle mile investment.

It will be difficult for the agencies to second guess business models, therefore finding practical means to ensure that subsidies are appropriately tailored to each business case may be difficult to accomplish.

## **B. Program Definitions.**

The agencies need to alter/revise the definitions of “broadband,” “unserved,” and “underserved.” The following steps should include:

- Establish separate definitions of broadband for mobile and fixed services with respect to how eligibility is determined, i.e., the presence of one above the minimum definition of broadband should not disqualify an application to provide the other.
- Create eligibility for projects serving community anchor institutions, such as public safety, for specialized networks that would have eligibility and evaluation criteria independent of the broadband definition of a particular area.
- Raise the broadband data rate definition with respect to what can constitute “unserved” to at least 1.5 Mbps download speeds. The “underserved” definition should be any area without service available at 3 Mbps download speeds (advertised speeds should not be accepted as a means to disqualify an area from eligibility).

The agencies should eliminate the distinction between “rural remote” and “rural non-remote.”

Affordability should be a factor in the evaluation of an application. Applications that demonstrate low-cost, innovative solutions should be favorably considered, with significant weight provided by the scoring criteria.

A good source of data is statistically valid resident surveys conducted by a third party without a vested interest in the survey result. However, such surveys might be limited to an assessment of whether residents subscribe to DSL or cable modem service without having the power to determine if, for example, the line quality of a given DSL system is so poor as to render the actual end user data rate below the agencies’ defined cut-off for broadband. Clearly, the gold standard is data that includes objective and verifiable third-party measurements of actual data throughput experienced by the end user.

The definition of broadband used in the first round was flawed in many respects.

First, the speed thresholds were inadequate to support many advanced broadband applications, especially the needs of large institutional users. Speeds of 768 kbps/200 kbps are too low for the purposes of determining eligibility for funding. This definition should be increased to at least 1.5 Mbps download speeds.

Second, the definition should make a distinction between mobile and fixed broadband services, and these should not be considered duplicative of each other with respect to determining eligibility. For example, the presence of a qualifying fixed broadband service should not disqualify a mobile broadband application in the same area.

Third, community anchor institutions, such as public safety, libraries, schools, hospitals, etc., have very different broadband needs than that which can satisfy residential or small business services. For purposes of eligibility and evaluation, applications proposing to address the unique needs of community anchor institutions should be eligible irrespective of the eligibility determination of unserved and underserved areas as used in the first round of funding.

Finally, the agencies should not accept advertised speeds as a means to qualify an area for eligibility. Advertised speeds never match with actual speed provided. These speeds generally are qualified with “up to 3 Mbps” which is a very simple way of saying 3 Mbps may or may not be provided. NTIA and RUS should only accept verification of actual levels of service, not advertised speeds in determining whether an area is eligible for financing under BTOP and BIP.

The agencies should incorporate actual speeds into the definition of broadband and forego using advertised speeds. The agencies should only consider actual speeds in the definition of broadband – both respect to the determination of existing service and whether or not the area can qualify for funding and with respect to the service that will be offered by the applicant. A good way to measure available speeds is to identify the total backhaul capacity leased by the provider. If a party objects to an application, the agency should require the incumbent to provide the proof that they are providing enough capacity to serve the area at 3 Mbps on average. For instance, in a town where the incumbent has 100 customers, a total backhaul capacity is 3 Mbps, and claims they provide 3 Mbps service, this claim should be rejected. There are guidelines available on developing an average speed model that will allow for operators to distribute their backhaul effectively.

Also, one criterion that helps in determining the nature of service in an area is the number of providers covering the area. If there are more than three providers in the area, and their backhaul aggregates are good (what do you mean by “good?”), then the area can be classified as served. Thus, a combination of measured speed based on the total backhaul leased by the service provider and the number of providers serving the area can provide an accurate estimate on the actual level of broadband service in a given area.

This distinction of “remote area” should be eliminated, allowing for only one “rural” category. Other factors such as population density should be considered.

### **C. Public Notice of Service Areas.**

The public notice process in the first round had several problems. The process should either be eliminated or if continued, the following issues should be addressed:

- Neither NTIA nor the RUS specified how it uses the comments of existing providers and what criteria it uses to evaluate the challenges against the applications. If the agencies are going to invite challenges from incumbent providers on applications for new service, the agencies should clarify how the information provided will be considered and what criteria the agencies will use in considering the challenges.
- The NOFA did not specify any opportunities for rebuttal by the applicant. If the agencies are going to continue this process, applicants should be afforded a rebuttal opportunity within a reasonable timeframe while still allowing the agencies to timely dispense the funds.
- The agencies should place a high standard of demonstration on existing carriers to challenge applications and the challenges must include information to support their claims. Advertised levels of service should not be accepted, and the agency should seek independently verifiable means to find information that would disqualify an application. The agencies should err on the side of supporting new levels of service not block new opportunities based solely on incumbent claims.
- Finally, all the information submitted in a challenge should be publicly available, and the applicant should have sufficient opportunity to rebut any information provided to the agency to challenge their application.

All challenges to an application should be transparent and publically available. The applicant should be allowed to rebut any challenges to their application. And, the agencies should not accept claims of service, such as advertised levels of service, as valid information to disqualify an application.

Once the agencies have sufficient broadband data for a given area and can determine, without a doubt, area eligibility, there would be no need for a challenge opportunity, provided the agencies have made that information publically available.

Challengers to applications should be required to provide hard evidence to support their claims of service. Advertisements are not sufficient. The challenger must demonstrate they provide service at the minimum speeds required, and must also provide maximum speeds along with costs for the service (non-reoccurring and reoccurring costs). The

challenger also needs to demonstrate the actual territory they claim is served. All information provided by a challenger to an application should be made public.

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

Section IX.C.2 of the NOFA is overly restrictive and is a barrier to participation in BIP and BTOP. The agencies should not place any restrictions on the sale or transfer of the assets funded under BIP or BTOP except that whoever acquires the assets must maintain the obligations of the funding. No additional restrictions should be placed on the transfer of assets.

### **F. Cost Effectiveness.**

The evaluation criteria NTIA and RUS should consider the cost effectiveness and/or cost reasonableness of a project, including the cost per customer passed by the proposed service and the cost effectiveness of covering large geographic areas. These factors should be a major consideration in the evaluation of an application. A project that allows for infrastructure at a lower cost should be given priority over the more expensive projects. The actual viability of the price should be determined by professional engineers.

The agencies should consider the appropriate criteria based on the area that is proposed for service. This criterion will be different as services areas across our nation are different. Applications proposing cost-effective technology solutions should be favorably considered, and the cost effectiveness should allow for geographic considerations as well.

Making the total cost of the project one of the criteria will ensure that the applicants will find the most cost effective way of providing services. This will ensure that unnecessary costs have not been added to the project. The concept of including unnecessary costs comes in when cost of project is not one of the criteria considered under the evaluation process.

### **G. Other.**

Other substantive changes RUS and NTIA should consider that would encourage applicant participation, enhance the programs, and satisfy the goals of the Recovery Act include the following:

- Eligibility should be maximized and the rules should be adjusted to allow more areas of the country to be eligible for funding and allow more categories of eligibility that address the unique needs of community anchor institutions.
- Agencies must eliminate the infection rule and not create a disincentive against consolidated applications covering a number of communities. The infection rule

harms applicants proposing multi-community service areas and should be revoked.

- Agencies should develop one standard rule on the requirements for Certification from an Engineer.
- Agencies should provide more guidance on the treatment of sensitive company data.
- Agency should not succumb to the protectionist practices of restricting lending or grants to new entrants into an area where the RUS is already lending or has issued a grant under non-ARRA programs. Innovation and new ways of providing service need a chance to enter and the ARRA programs should be agents for innovation. When the incumbents are provided with the protection of “no lending practice,” they have no need to expand, enhance, or innovate. This is a serious problem in rural areas, which by definition, are not the sweet spot for commercial businesses. Protectionism kills innovation. The ARRA provided NTIA and RUS with new responsibilities to promote broadband and previous lending and grant decisions should not impose a barrier to the new financing available under BTOP or BIP.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Sree Tangella", written in a cursive style.

Sree Tangella  
CEO  
Flow Mobile