

**Before the  
Rural Utilities Service (RUS), Department of Agriculture and the National  
Telecommunications and Information Administration, Department of Commerce  
Washington, DC**

**In the Matter of** )  
 )  
**Joint National Telecommunications and** )  
**Information Administration-Rural Utilities** ) **Docket No: 0907141137-91375-05**  
**Service Request for Information** )  
 )

To: The Agencies

**COMMENTS OF NATIVE BROADBAND SATELLITE, LLC**

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Managing Member of Native Broadband Satellite

November 30, 2009

## SUMMARY

Native Broadband Satellite, LLC (“Native Broadband”) is a tribally owned socially and economically disadvantaged business (“SDB”) that applied in the first round of BIP and BTOP for funding of a middle mile project seeking to provide service to unserved and underserved areas of Alaska and Hawaii. Native Broadband has identified several core issues, including the following:

NTIA / RUS Should Award 25 Points to BIP and BTOP Applicants That Are SDBs, Including Tribes. This will allow the agencies to: (a) address inequities in the application process favoring incumbent telecom providers, (b) ensure a meaningful degree of award success for SDB applicants, (c) address unique SDB hurdles, such as the fact that tribes will bring broadband service to tribal members residing in some of the most remote and challenging terrain in the United States, and (d) address the ambiguous and insufficient credit currently awarded SDBs in the application process as currently structured. (RFI section II-A-2)

Yes, the BIP and BTOP Programs Should Be Revised to Prioritize Tribal Entities and Ensure That They Have Sufficient Resources to Provide These Historically Unserved and Underserved Areas with Access to Broadband Service. Tribal applicants are best situated to understand the unique challenges of making broadband service available to tribal members and to commit to implementing long term, effective solutions. Furthermore the need for broadband is greatest on tribal lands where current penetration is estimated to be as low as 5%. Tribes should therefore be accorded additional agency priority and attention to best serve the intractable telecom needs of members of the 564 federally recognized Indian tribes. (RFI section II-A-3)

Yes, the Agencies' Goal Should Be to Fund Middle Mile Projects That Provide Coverage of the Greatest Population and Geography in a Given Region....So That the Agencies Can Be Assured that the Benefits of Broadband Are Reaching the Greatest Number of People. The agencies should indeed prioritize middle mile projects generally, and within middle mile projects prioritize those offering the greatest coverage at the lowest price in a given geography. Middle mile projects are ideally situated to most efficiently bring broadband to the greatest number of people. (RFI section II-A)

No, Priority Should Not Be Given to Those Middle Mile Projects with Commitments from Last Mile Service Providers. In many regions middle mile providers are competing with last mile service providers for broadband stimulus funding. The last mile service providers therefore have little incentive to partner with a middle mile provider when it would serve only to undermine the last mile service provider's own application. To require middle mile providers to partner with last mile service providers is therefore simply not feasible for many middle mile providers and will serve only to unfairly penalize their applications. (RFI section II-A)

Yes, The Agencies Should Take Steps to Support Applications for Satellite Systems That Are Primarily Intended to Provide Access in Remote Areas. In remote areas, and those with challenging geographies, satellite delivers a technologically and economically superior solution to the terrestrial alternatives and should therefore be prioritized by the agencies. Further, regional satellite solutions tailored to Alaska and Hawaii must be considered to complement the "national" satellite solutions that are proposed for other states but that exclude Alaska and Hawaii. (RFI section II-A-4)

Yes, the Agencies Should Provide Applicants with An Option to Apply Directly to BTOP or for Agency Review by Both Agencies in Parallel. This will improve the efficiency of the review process. (RFI section I-A-4)

RUS Should Increase BIP Maximum Grant Levels to 80%, in Line with BTOP. This will provide for more fair consideration of tribes and their unique needs. (RFI section I-A-4)

Yes, the Agencies Should Adopt a More Flexible Approach to Awardees with Respect to Mergers and Other Liquidity Events. This will encourage the flow of more private capital into projects, allowing the government to further leverage its own limited capital. (RFI section II-E)

Yes, the Agencies Should Take into Account Cost Effectiveness – Across Technologies and Including Consideration of Unique Geographic Circumstances. This will ensure that the best solutions are adopted across all technologies, and it will also ensure that expensive geographies are fairly treated. (RFI section II-F)

## **I. The Application and Review Process**

### ***A. Streamlining the application process***

Yes, the Agencies Should Provide Applicants with An Option to Apply Directly to BTOP or for Agency Review in Parallel. In order to improve the efficiency of the review and award process, Native Broadband believes that applicants with proposed service areas that are more than 75% rural should be permitted to apply directly to BTOP (and be deemed to have applied for BIP funding for statutory purposes), or alternatively for RUS and NTIA to review applicants simultaneously. This is particularly useful in situations where applicants are, from the onset, clearly not viable BIP applicants but, under existing BIP / BTOP rules, must nevertheless undertake a BIP review, and rejection, before proceeding to a BTOP review. For example, BIP middle mile projects in rural areas are subject to maximum grants of 50%. An applicant with an extremely rural, remote project requiring more than 50% funding must by definition therefore be rejected by BIP. Requiring such an applicant to first apply to BIP therefore serves only to unnecessarily tax agency resources and delay the ultimate review by BTOP. Permitting initial review by BTOP, or a simultaneous review by both BIP and BTOP, will solve this problem.

RUS Should Increase BIP Maximum Grant Levels to 80%, in Line with BTOP. BIP funding is heavily weighted to loans rather than grants, a structural approach that serves to disadvantage tribes. Specifically, tribes inhabit lands that are among the most remote, and the most costly to serve, anywhere in the United States. As such, tribal projects will require grants, not loans, to be economically viable. In addition, tribes may encounter difficulty in securing loans given restrictions and difficulties with using their lands as collateral. For these reasons Native Broadband urges RUS to increase that potential level of grants for rural / remote middle projects to include grants of up to 80% of the project total, consistent with BTOP guidelines.

## **II. Policy Issues Addressed in the NOFA**

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

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

Yes, The Agencies’ Goal Should Be to Fund Middle Mile Projects That Provide New Coverage of the Greatest Population and Geography in a Given Region....So That the Agencies Can Be Assured that the Benefits of Broadband Are Reaching the Greatest Number of People. The agencies should indeed prioritize middle mile projects generally, and within middle mile projects prioritize those offering the greatest coverage at the lowest price in a given geography. Middle mile projects are ideally situated to

most efficiently bring broadband to the greatest number of people. Specifically, middle mile addresses the dominant bottleneck for rural communities in accessing broadband as detailed in NECA studies.<sup>1</sup> By investing in middle mile projects, NTIA and RUS can very efficiently leverage the existing investments of rural telecom providers in connectivity, allowing such carriers to solve their own backbone bottleneck and provide services to customers over existing networks and to-be-extended networks. Finally, within middle mile projects, priority consideration should indeed be given to those projects offering the broadest, most efficient coverage in a given region.

No, Priority Should Not Be Given to Those Middle Mile Projects with Commitments from Last Mile Service Providers. In many regions middle mile providers are competing with last mile service providers for broadband stimulus funding. The last mile service providers therefore have little incentive to partner with a middle mile provider when it would serve only to undermine the last mile service provider's own application. To require middle mile providers to partner with last mile service providers is therefore simply not feasible for many middle mile providers and will serve only to unfairly penalize their applications.

## **2. Economic Development**

Award 25 Points to BIP and BTOP Applicants That Are SDBs, Including Tribes. NTIA and RUS should award SDB applicants, including those that are tribes, with an extra 25 points in the application process. In the Stimulus Act Congress directed that the agencies accord attention specifically to those applicants "that are socially and economically disadvantaged small business concern as defined under section 8(a) of the Small Business Act (15 U.S.C. 637)". This definition of "SDBs" also includes tribes. In providing additional scoring points to SDBs, the agencies address four problems.

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<sup>1</sup> A 2001 middle mile study by the National Exchange Carrier Association (NECA), which administers the FCC's "access charge" plan, found that across the United States, 55% of rural telephone company switches are more than 70 miles away from an Internet Backbone Provider (IBP) node, and 10% are more than 200 miles away. They concluded that "lack of market size and long distances to internet backbone nodes make high-speed internet services uneconomic in many rural areas" and "estimated [losses] actually increase with higher market penetration" (Middle Mile Cost Study, NECA). NECA offers up this further observation of DSL prospects in the Lower-48 and in Alaska: "this service loses money in most of these [rural] areas. If offered ubiquitously, the greatest losses would be in Alaska, where transport distances range above 1,100 miles." Simply put, without middle mile access, last mile projects cannot bring broadband to the end-user. The NTCA 2008 Annual Broadband / Internet Availability Survey reinforces these statistics stating that the typical NTCA rural telco survey respondent is on average 98 miles from their primary Internet connection.

First, the extra points compensate SDBs for the inherent inequities of the application process (where many commentators have noted numerous instances where incumbent telecom providers, for example, enjoy a substantial advantage over entities such as SDBs in the application process). Second, the added scoring will help to ensure that SDBs will in fact realize a meaningful degree of success in the application process, just as Congress envisioned. Third, SDBs by their very definition represent a class of applicant most in need of government support and encouragement, either because they lack the resources of larger, better capitalized applicants or, as with tribal applicants, because they have greater social responsibilities and obligations to their members, or both. In many instances SDBs also face challenges unique among all applicants (for example, tribal applicants are providing broadband to some of the hardest to serve, most disadvantaged areas of the United States). Fourth, the consideration currently accorded SDBs in the application is both ambiguous in its scoring and insufficient in magnitude, and the additional 25 points accorded SDBs provides SDBs with the level of support appropriate for this special, protected class of applicant.

### **3. Targeted Populations**

Yes, BIP and BTOP Programs Should Be Revised to Prioritize Tribal Entities and Ensure That They Have Sufficient Resources to Provide These Historically Unserved and Underserved Areas with Access to Broadband Service. Native Broadband urges the agencies to both prioritize and support tribal applicants as a unique class of applicant in this process. Today there are 4.1 million American Indians and Alaska Natives ("Indians" or "Native Americans") in the United States and 564 federally recognized American Indian Tribes and Alaska Native Villages ("Tribes" or "Tribal Nations").<sup>2</sup> Tribal areas, which include 89 million acres of land, are perhaps the most unserved and underserved areas of the United States. Broadband penetration may be as low as five percent<sup>3</sup> and therefore requires the greatest prioritization by RUS and NTIA. Across the immense stretches of rugged Alaskan geography and lower-48 tribal lands, cost-effective broadband service is all but impossible without a greater level of funding and focus by NTIA and RUS. As Native Public Media and the National Congress of American Indians point out:

No critical infrastructure has come to Tribal Lands without significant federal involvement, investment, and regulatory oversight. Terrain, poverty, distance and historic periods of failed federal policies towards Native peoples and their lands

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<sup>2</sup> Native Public Media and National Congress of American Indians – FCC Comments dated November 9, 2009 at 2

<sup>3</sup> Native Public Media and National Congress of American Indians – FCC Comments dated November 9, 2009 at 2

have created a modern atmosphere that requires special economic regulatory creativeness.<sup>4</sup>

Tribes also suffer from high levels of unemployment and poverty. In addition to lacking broadband service, they also fall significantly short of the rest of the nation in basic telephone service where just 67.9% of American Indian homes currently have telephone services compared to the national average rate of 98%<sup>5</sup>.

In identifying and implementing solutions across tribal lands and for the benefit of tribal peoples, tribal applicants are uniquely situated to provide the best solutions. Tribes know the lands and the needs of their members, they understand the magnitude of the problem and they are committed to implementing long term, lasting solutions tailored to their needs. Native Broadband therefore urges the agencies to accord heightened priority to tribal applicants as the best means to address the unique challenges of tribes.

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

##### Yes, The Agencies Should Take Steps to Support Applications for Satellite Systems That Are Primarily Intended to Provide Access in Remote Areas

NTIA / RUS should prioritize satellite broadband technology as the most technologically and economically viable means to provide access in remote areas. Fiber and microwave solutions can be 10x to 20x more expensive per home passed than satellite given the vast stretches of geography involved. Further, harsh climates, such as those in Alaska, render terrestrial solutions costly to maintain and unreliable. Further, terrestrial solutions take a long time to install and will never provide a ubiquitous, 100% solution. By contrast, satellite will immediately upon deployment provide a solution to 100% of those in remote areas who are unserved or underserved. Native Broadband's own application for funding provides a case study in point.<sup>6</sup>

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<sup>4</sup> Native Public Media and National Congress of American Indians – FCC Comments dated November 9, 2009 at 7

<sup>5</sup> The National Congress of American Indians Resolution #PSP-09-084c, October 2009

<sup>6</sup> For example, Native Broadband will provide service in the lowest density population areas of Alaska and Hawaii where no other technology can efficiently reach the unserved and underserved areas and population. In Alaska this means middle mile broadband coverage to over 200 Native Villages and their peoples spread across vast stretches of remote geography. Native Broadband will offer a robust, middle mile solution to the existing telecom providers in those regions who today cannot offer their customers a broadband service thanks to the middle

As the agencies prioritize satellite solutions they must be sure to incorporate regional solutions in their calculus. For example, certain “national” satellite solutions ignore the needs of both Alaska and Hawaii given the technological limitations imposed by the satellite’s configuration and / or orbital slot. The agencies should therefore ensure that Alaska and Hawaii are part of the “national” satellite solution. As an example, Native Broadband is the only satellite based applicant that addresses the intractable broadband challenges of these two states.

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

### Yes, the Agencies Should Adopt a More Flexible Approach to Awardees with Respect to Mergers and Other Liquidity Events

The agencies wisely consider whether Awardees should be accorded more flexibility on mergers, and Native Broadband agrees that substantial additional flexibility is not only warranted but also essential to program success. A successful BIP / BTOP program is one which attracts a substantial degree of third party capital to leverage the government’s own award capital, in turn maximizing broadband coverage achieved via this program. However, private capital requires an investment path that in a reasonable time frame permits a path to liquidity. Native Broadband believes that a three to five year time frame is representative of the liquidity window for venture capital and other forms of private capital. Therefore, the agencies are well-advised to provide additional flexibility for awardee merger, IPO and other similar activity within this time frame, permitting investors to realize liquidity consistent with their fund charters. In turn, this will open up a much broader base of capital willing to participate in this program, providing further leverage to the agencies’ limited and very dear capital resources.

## **F. Cost Effectiveness**

### Yes, the Agencies Should Take into Account Cost Effectiveness – Across Technologies and Including Considerations of Unique Geographic Circumstances

First, the agencies should seek to award monies to those technologies that most efficiently deliver solutions, whether the technology be wireless, fiber, satellite or other. To effect this comparison the agencies should take into account the cost of competing projects on a per home covered basis. This is a metric that is straightforward to

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mile bottleneck. In areas where there is no last mile provider, Native Broadband will provide affordable last mile service by providing terminals directly to end-users.

calculate across technologies and provides a key means to evaluate the relative efficiency of competing technologies.

Second, the agencies must take into account the higher costs of serving certain geographies versus others. Specifically, projects that cover extremely low density areas (for example, 5 homes per square mile or less) should be accorded extra points in the application scoring process and cost per home analysis. Likewise, projects that operate in extreme environments (such as Alaska) should also be accorded additional scoring points. The goal of the extra points is to reward projects in more costly areas and, as a result, put them on more even footing with projects located in easier-to-serve areas that may, as a result, look more efficient by comparison. This normalization is necessary to ensure that worthy, but less-efficient looking projects, are not inadvertently dismissed for inefficiency.

Respectfully submitted,

**NATIVE BROADBAND SATELLITE, LLC**

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