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

Re: **Docket #: 0907141137-91375-05**
Joint Request for Information

To Whom It May Concern:

On November 16, 2009, the National Telecommunications and Information Administration (NTIA) and the US Department of Agriculture (USDA), Rural Utilities Service (RUS) of the USDA issued a joint Request for Information (RFI) seeking public comment on certain issues relating to the implementation of the Broadband Initiatives Program (BIP) and the Broadband Technologies Opportunity Program (BTOP). The Office of the NYS Chief Information Officer/Office for Technology (CIO/OFT) is pleased to provide comments, which are set forth in accordance with the notice.

Table of Contents:

Executive Summary	**Pg. 3**
I. Application Process	**Pg. 4**
A. Streamlining Applications	**Pg. 4**
1. New Entities	**Pg. 5**
2. Consortiums and Public-Private Partnerships	**Pg. 5**
3. Specific Service Areas	**Pg. 5**
4. Relationship between BTOP and BIP	**Pg. 6**
B. Transparency and Confidentiality	**Pg. 7**
C. Outreach and Support	**Pg. 7**
D. NTIA Expert Review Process	**Pg. 8**
II. Policy Issues Addressed in the NOFA	**Pg. 9**
A. Funding Priorities and Objectives	**Pg. 9**
1. Middle Mile "Comprehensive Community Projects	**Pg. 9**
2. Economic Development	**Pg. 10**
3. Target Populations	**Pg. 10**
4. Other Changes	**Pg. 11**
B. Program Definitions	**Pg. 12**
C. Public Notice of Service Areas	**Pg. 13**
D. Interconnection and Nondiscrimination Requirements	**Pg. 14**
E. Sale of Project Assets	**Pg. 14**
F. Cost Effectiveness	**Pg. 14**
G. Other	**Pg. 15**

Executive Summary:

As more specifically set forth below, New York State, with respect to the first NOFA for the BTOP and BIP, felt that the application process was complex, and would have benefitted from better direct support from the NTIA and RUS. In addition, New York State suggests that the NTIA/RUS consider allowing applicants to submit data on a census block group level, as opposed to a census block level, to delineate the proposed funded service area.

As was contemplated in the original NOFA, states should review only those applications that make it to the "Due Diligence" phase of the application review process. States should not be asked to review and prioritize applications that are ineligible to receive an award. Also, states would benefit from more guidance from NTIA and RUS on how to conduct the review.

New York State continues to be concerned about the advancement of the ARRA's statutory goal of improving access to and use of broadband service by public safety agencies. New York does not believe that the first NOFA encouraged dedicated public safety networks, wired or wireless. Broadband wireless networks are becoming increasingly vital to public safety's day to day operations.

New York State supports round 2 funding for projects which will deliver middle mile infrastructure facilities into a group of communities and connect key anchor institutions within those communities. With finite resources available, the NTIA and RUS should prioritize the available funding to improve infrastructure and connectivity to anchor institutions (education, libraries, health and public safety). The next NOFA should take into consideration, and reflect, the importance of projects that will deliver middle mile infrastructure facilities into a geographic area containing multiple communities and connect key anchor institutions within, and among, those communities. The NOFA should target projects which create "comprehensive communities" by installing middle mile facilities between anchor institutions that bring essential health, medical, educational and public safety services to citizens.

The next round of BIP/BTOP grants should continue to set aside a portion of funding for community anchor institutions, such as libraries and community colleges, to upgrade their broadband connections, capacity and content so they can better serve targeted populations or targeted areas in need of assistance. These targeted populations or areas should be defined by their levels of unemployment or poverty levels. Such a focus on community anchor institutions is justified when considering the significant impact that community anchor institutions such as schools and libraries have on economic development and job creation and retention.

Using the definition of unserved and under-served provided in the first NOFA would severely limit funding for projects within or in close geographic proximity to urban areas. It may be more beneficial to look at the socioeconomic status of a defined service area. If the overall purpose of the funding continues to be job creation, determinations for funding could be made by utilizing the median income levels, number of people within a defined service area at or near the poverty level and possibly the long-term unemployment level within the service area. In looking at factors such as this, justification could be made that urban areas within a given geographic area are under-served due to socioeconomic status of its residents. In addition, it may be beneficial to consider the affordability of broadband, as well as the type of services available, in an area when determining whether an area is underserved.

I. The Application and Review Process

A. Streamlining Applications

In what ways should RUS and NTIA streamline the applications to reduce the burden on applicants, while still obtaining the requisite information to fulfill the statutory requirements set forth in the Recovery Act?

The application process was complex, disjointed and labor intensive. To streamline the application process, develop guidelines that permit the full completion of a document offline. The application can then be submitted online, but it is highly recommend that NTIA consider a less cumbersome online system. The revised guidelines should instruct the applicant to build the document section by section with a consistent flow that establishes a comprehensive case for a project – from a clear definition of the problem, a strong case for the need and a convincing solution.

Should the agencies modify the two-step review process, and if so, how?

Yes, the agencies should modify the two-step process. In the first instance, NTIA/RUS should ask the applicants to provide greater detail. In essence, put a greater burden on the applicant to prove "need" and "fit" within their state or region. In addition, NTIA/RUS should only ask for certain proofs, such as costly engineering certifications and environmental reviews, if an applicant is tentatively approved for an award.

As was contemplated in the original NOFA, states should review only those applications that make it to the "Due Diligence" phase of the application review process. States should not be asked to review and prioritize applications that are ineligible to receive an award. Also, states would benefit from more guidance from NTIA and RUS on how to conduct the review.

Should certain attachments be eliminated, and if so, which ones?

Yes, many of the attachments should be eliminated from inclusion in the initial application. Instead, target forms and additional information should be requested from applicants who are eligible, and likely, to receive an award.

In addition, not all of the forms are relevant for all applicants. For example, if an entity is not permitted to lobby, a form to that effect should be provided rather than have the entity certify compliance with federal lobbying laws.

Should the agencies re-examine the use of a single application for applicants applying to both BIP and BTOP to fund infrastructure projects?

No, one single application for applicants applying for both BIP and BTOP funding on infrastructure projects should continue to be used. Similarly, one contact person and phone number should be named for questions on the entire application.

How should NTIA link broadband infrastructure, public computer center and sustainable adoption projects through the application process?

NTIA should link the three types of projects to BTOP's five statutory purposes throughout the application process. These core purposes not only include providing access to

broadband in unserved and underserved areas, but also include improving access to and use of broadband service by public safety agencies, providing broadband access, education awareness, training, equipment and support to community anchor institutions, and stimulating the demand for broadband, economic growth and job creation. All of the core purposes should be afforded the same weight and be viewed as equally significant when reviewing applications for infrastructure, public computer center and sustainable adoption projects.

1. New Entities

What type of information should RUS and NTIA request from new businesses, particularly those that have been newly created for the purpose of applying for grants under the BIP and BTOP programs?

Obviously, new entities should not be required to submit historical financial statements, as recently-created entities will be unable to provide such information. New entities should be required to provide other documentation such as experience, resumes and credit histories of the applicant owners and major project personnel, letters of support, partnership agreements and project management plans which demonstrate requisite expertise, as well as governmental and financial commitments.

2. Consortiums and Public-Private Partnerships

Similarly, how should the application be revised to reflect the participation of consortiums or public-private partnerships in the application process?

Consortiums and partnerships should be participants in planning for and carrying out the project. These criteria should be given greater attention and weight in the application. Additional points should be awarded for proven contractual relationships which exist between the parties prior to an award of funding. The size of a partnership should not be viewed as important as the expertise of the partners and the overall strength of the partnership.

Should certain critical information be requested from all members of such groups, in addition to the designated lead applicant, to sufficiently evaluate the application?

While there can only be one applicant, NTIA/RUS can require detailed information on the partners, such as specific "quantitative" commitments, roles in the project, budget and timelines, staffing and performance indicators.

3. Specification of Service Areas

The broadband infrastructure application required applicants to submit data on a census block level in order to delineate the proposed funded service areas. Some applicants found this requirement burdensome. What level of data collection and documentation should be required of applicants to establish the boundaries of the proposed funded service areas?

The application did not allow enough space to capture the relevant census blocks in a proposed service area. For example, several projects submitted by CIO/OFT had broad

service areas, many at a municipal or county level, and in such cases, words such as "covers all census blocks in X county" were used in our application.

Instead of census blocks, which were either too numerous to list or were lacking available information, NTIA/RUS should consider using census block group levels. This, supplemented by household income levels, might be a better predictor of unserved and underserved areas needing broadband. Also, the requirement to draw the maps of the service area was not only time consuming, the application did not work well or was unavailable much of the time. Instead, applicants should be able to submit their own maps as attachments.

NTIA/RUS should not only ask for information that is readily available, and should require applicants to have the information requested validated by a third party. In addition, the NOFA included a definition of underserved which required a less than 40% adoption rate. Many applications appeared to be using this threshold to overbuild and offer duplicative services in areas that may already be served. When an applicant seeks to overbuild, the proposed project ought to seek to reduce the cost per home by a substantial percentage or offer services to increase adoption rate.

4. **Relationship between BIP and BTOP**

The Recovery Act prohibits a project from receiving funding from NTIA in areas where RUS has funded a project. Section VI.C.1.a.i of the NOFA required that infrastructure applications consisting of proposed funded service areas which are at least 75% rural be submitted to and considered under BIP, with the option of additional consideration under BTOP. According to the NOFA, NTIA will not fund such an application unless RUS has declined to fund it. RUS and NTIA are presently reviewing joint applications consistent with the process set forth in the NOFA.

Should these kinds of rural infrastructure applications continue to be required to be submitted to RUS or should the agencies permit rural applications to be submitted directly to NTIA, without having to be submitted to RUS as well, and if so, how should NTIA/RUS proceed in a manner that rewards the leveraging of resources and the most efficient use of Federal funds?

The agencies should permit rural applications to be submitted directly to NTIA, without having to submit the same to RUS as well. The application should solicit responses to detailed questions aimed at determining which program (BTOP or BIP) would be the most appropriate funding vehicle for the proposed project should it be determined that the project is eligible and worthy of an award. This will allow NTIA/RUS to proceed in a manner that rewards the leveraging of resources and the most efficient use of Federal funds. Valuable projects should not be precluded from funding because of hyper-technical challenges in the submission process. In addition, NTIA/RUS should provide greater guidance to assist applicants in determining which program is most suitable for funding the applicant's proposed project.

Are there situations where it is better to give a loan to an applicant as opposed to a grant?

There are very few situations where a loan is preferable to a grant, particularly in situations where "government investments" are required to stimulate development for the public good, such as public safety.

Are there applicants for which a loan would not be acceptable, and if so, how should the programs consider them?

Yes, there are applicants for which a loan may not be acceptable. For example, a state or state entity may not have money set aside in its budget for a broadband project and, therefore, has no means by which to repay a loan. A grant would be necessary in this instance. The NTIA/RUS programs should consider applications which seek only grant funds and should not reduce points due to the fact that a grant, as opposed to a loan, is needed. Additionally, in rural areas where it may be difficult to "break even" on infrastructure investments, complete subsidization may be needed to incentivize development.

B. Transparency and Confidentiality

Consistent with the Administration's policy and the Recovery Act's objective to ensure greater transparency in government operations, RUS and NTIA are considering whether they should permit greater access, consistent with applicable Federal laws and regulations, to certain applicant information to other applicants, policymakers, and the public, including state and tribal governments.

Should the public be given greater access to application data submitted to BIP and BTOP?

Yes. The entire process, including all application data submitted to BIP and BTOP, with the exception of confidential or proprietary information, should be accessible, transparent and open to the public.

Which data should be made publicly available and which data should be considered confidential or proprietary? For example, RUS and NTIA tentatively conclude that the application's executive summary should be made publicly available for the second round of funding.

The executive summaries should be available for the public to view. Confidential, trademark or proprietary information should not be available to the public, including, but but not limited to, information regarding the financial condition, marketing plans, manufacturing processes, business plans, production costs, sales volumes, prices, customer lists, secret formulas or other trade secrets which are not published or divulged and the disclosure of which – in relation to the BIP and BTOP applicants -- would cause substantial injury to the competitive position of the applicant.

C. Outreach and Support

For the initial round of funding, RUS and NTIA provided multiple means of applicant support and outreach, including hosting national workshops and minority outreach seminars, publicly releasing an application guidance manual, posting responses to Frequently Asked Questions on www.broadbandusa.gov, and establishing a Help Desk that fielded thousands of telephone and e-mail inquiries.

What method of support and outreach was most effective?

NTIA/RUS did a good job of outreach in the form of workshops and webinars. Webinars, in particular, were helpful and kept travel and training costs to a minimum. That being said, direct support with respect to the application was lacking. Sometimes an answer

would be needed with respect to a particular question and days would go by before receiving a return phone call. Oftentimes the individual returning the call was unable to provide an answer to the question which had been posed. In addition, at times an email would be sent to respond to a question posed by the applicant via voice mail and it was difficult to identify the question to which the e-mail was responding.

What should be done differently in the next round of funding to best assist applicants?

In addition to selecting a more user-friendly and intuitive automated system, in the next round, NTIA/RUS needs to improve direct application assistance. There should be only one point of contact, but many customer service representatives who are fully briefed and knowledgeable about the grant submission requirements. Email and voice messages should be kept to a minimum on a time-sensitive application. The agencies should also provide regularly scheduled, interactive webinars or conference calls to discuss frequently asked questions.

Also, NTIA/RUS should share information with respect to "best practices" and the most effective funded programs to-date. This will give applicants something to strive for, as well as provide reviewers with a real world example that will help them to understand the intent of the ARRA and the NOFA to promote more reliable scoring.

D. NTIA Expert Review Process

During the first round of funding, NTIA utilized panels of at least three independent reviewers to evaluate BTOP applications. A number of stakeholders have questioned whether this is the most effective approach to evaluating BTOP applications.

Due to the types of responses required in the applications, a diverse group of reviewers is desirable – some from programmatic backgrounds and some from technical backgrounds. There should be several reviewers responsible for reviewing each application. CIO/OFT supports the use of independent peer reviewers. The review process should be transparent and should avoid the perception of favoritism.

To further the efficient and expeditious disbursement of BTOP funds, should NTIA continue to rely on unpaid experts as reviewers?

The use of unpaid reviewers does not seem to be highly efficient or expeditious as these are volunteers who are not devoting 100% of their time to the review of applications. Rather, these unpaid experts have full-time jobs which they are attending to. Instead, the agencies should pay a modest stipend to experts who can devote themselves fully for a limited period of time to the process. CIO/OFT supports the use of independent peer reviewers who have external accountability and no conflicts of interest.

Or, should we consider using solely Federal or contractor staff?

CIO/OFT strongly supports the use of independent peer reviewers who have external accountability and no conflicts of interest.

II. Policy Issues Addressed in the NOFA

A. Funding Priorities and Objectives

New York State continues to be concerned about the advancement of the ARRA's statutory goal of improving access to and use of broadband service by public safety agencies. New York does not believe that the first NOFA encouraged dedicated public safety networks, wired or wireless. Broadband wireless networks are becoming increasingly vital to public safety's day to day operations.

1. Middle Mile "Comprehensive Community Projects"

Should RUS and/or NTIA focus on or limit round 2 funding on projects that will deliver middle mile infrastructure facilities into a group of communities and connect key anchor institutions within those communities? Should we give priority to 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? Should the agencies' goal be to fund middle mile projects that provide new coverage of the greatest population and geography so that we can be assured that the benefits of broadband are reaching the greatest number of people? Should we target projects that create "comprehensive communities" by installing high capacity middle mile facilities between anchor institutions that bring essential health, medical, and educational services to citizens that they may not have today? Should certain institutions, such as educational facilities, be given greater weight to reflect their impact on economic development or a greater need or use for broadband services? If so, what specific information should RUS and NTIA request from these institutions?

To the extent that RUS and NTIA do focus the remaining funds on "comprehensive community" projects, what attributes should the agencies be looking for in such projects? For example, are they most sustainable to the extent that they are public-private partnerships through which the interests of the community are fully represented? Should we consider the number of existing community anchor institutions that intend to connect to the middle mile network as well as the number of unserved and underserved communities and vulnerable populations (i.e., elderly, low-income, minority) that it will cover? How should RUS and NTIA encourage appropriate levels of non-Federal (State, local, and private) matching funds to be contributed so that the potential impact of Federal funds is maximized? In addition, should we consider the extent of the geographic footprint as well as any overlap with existing service providers?

With finite resources available, the NTIA/RUS should prioritize the available funding to improve infrastructure and connectivity to anchor institutions (education, libraries, health and public safety). The next NOFA should take into consideration, and reflect, the importance of projects that will deliver middle mile infrastructure facilities into a geographic area containing multiple communities and connect key anchor institutions within, and among, those communities. The NOFA should target projects which create "comprehensive communities" by installing middle mile facilities between anchor institutions that bring essential health, medical, educational and public safety services to citizens. These anchor institutions should show their inability to obtain affordable connectivity absent federal funding.

RUS and NTIA should encourage appropriate levels of non-federal matching funds by awarding an applicant points for committing matching funds. However, it should be recognized that these types of projects represent a true public good and therefore should be considered for a waiver of any matching funds requirement if the applicant is unable to provide matching funds.

With respect to public safety, bringing middle mile infrastructure to public safety occupied facilities is important; however most public safety operations occur in the field. For most agencies, ubiquitous coverage is required throughout their jurisdiction – meaning the radio tower sites serving the last mile are as important as the middle mile. In the case of wireless networks, especially 4G technologies, having high bandwidth connectivity to the radio tower sites is essential - ideally this should be redundant connectivity from diverse technologies and carriers. By using technologies such as DWDM, this middle mile infrastructure can be securely shared with non-public safety uses.

Applicants should be willing to allow middle mile infrastructure to be used by others in the community. In order to accomplish this, restrictions on the use of federal money outside of the funded project should be reduced so that others in the community can benefit.

2. Economic Development

Should RUS and/or NTIA allocate a portion of the remaining funds available under the BIP and BTOP programs to promote a regional economic development approach to broadband deployment? Rather than look at broadband investments in both rural and urban communities as stand-alone actions, should RUS and NTIA 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? Should funds be targeted toward areas, either urban or rural, with innovative economic strategies, or those suffering exceptional economic hardship? Should states or regions with high unemployment rates be specifically targeted for funding?

Yes, NTIA/RUS should encourage plans to upgrade regional communications infrastructure for the purposes of economic development and revitalization. However, the agencies need to look at the quality of the project and what broadband will enable the community to do to address issues of digital literacy, unemployment, etc.

3. Targeted Populations

Should RUS and NTIA allocate a portion of the remaining funds to specific population groups? For example, should the agencies revise elements of the BIP and BTOP programs to ensure that tribal entities, or entities proposing to serve tribal lands, have sufficient resources to provide these historically unserved and underserved areas with access to broadband service? Similarly, should public housing authorities be specifically targeted for funding as entities serving low-income populations that have traditionally been unserved or underserved by broadband service? How can funds for Public Computer Centers and Sustainable Broadband Adoption projects be targeted to increase broadband access and use among vulnerable populations? Should NTIA shift more BTOP funds into public computer centers than is required by the Recovery Act? In what ways would this type of targeted

allocation of funding resources best be accomplished under the statutory requirements of each program? Should libraries be targeted as sites for public computer access, and if so, how would BTOP funding interact with e-Rate funding provided through the Schools and Libraries program?

The Second Round of BIP/BTOP grants should continue to set aside a portion of funding for community anchor institutions, like libraries and community colleges, to upgrade their broadband connections, capacity and content so they can better serve targeted populations or targeted areas in need of assistance. These targeted populations or areas should be defined by their levels of unemployment or poverty levels. Such a focus on community anchor institutions is justified when considering the significant impact that community anchor institutions such as schools and libraries have on economic development and job creation and retention. Money from BTOP should be used to supplement e-rate funding.

Since the purpose of the ARRA initiative is to promote economic recovery and ultimately job creation, stimulus funds should be directed to libraries that can use BIP/BTOP to improve the speed of their internet connections, the number of internet connections/public access computers available, increase the hours of operation and staffing for these public computing centers, offer digital literacy training and purchase online databases/content that can be used to assist the unemployed/underemployed find new jobs or start new careers. Libraries are demonstrably effective at meeting the broadband needs of otherwise unserved or underserved communities. There is an important synergy between libraries and schools serving as public computing centers and outreach to vulnerable and broadband "starved" communities.

According to a study funded by the Gates Foundation, 73% of libraries serve as a community's only option for free internet access, and that number rises to 82% in rural areas. This means that for those who don't have a computer or internet access at home -- and according to the U.S. Census Bureau 38% of Americans still do not have internet access at home, the library is their source for free internet access, and in many cases is their only source of internet access.

As of September 2009, 874,300 New Yorkers were unemployed. Of these 874,300 unemployed individuals, 38%, or 332,234, do not have internet access in their home and are depending on libraries for internet access. This is important because 75% of all job listings are online and at least 60% of companies only accept employment applications online.

Priority for funding should be given to states or regions with above average unemployment or poverty rates and to community anchor institutions, such as libraries and community colleges that can use BIP/BTOP to not only improve their broadband speeds and capacity, but can use these improvements to meet the needs of the unemployed or underemployed in their communities. However, consideration must continue to be given to the overall quality of the project and the anticipated effectiveness at meeting the overall goals set forth in the enabling statutes.

4. Other Changes

To the extent that we do target the funds to a particular type of project or funding proposal, how, if at all, should we modify our evaluation criteria? How should we modify the application to accommodate these types of targeted funding proposals? For example, should any steps be undertaken to adjust applications for satellite systems that provide nationwide

service, but are primarily intended to provide access in remote areas and other places not served by landline or wireless systems? Are there any other mechanisms the agencies should be exploring to ensure remaining funds have the broadest benefit? How might the agencies best leverage existing broadband infrastructure to reach currently unserved and underserved areas? Are there practical means to ensure that subsidies are appropriately tailored to each business case? For example, should the agencies examine applicant cost and revenue estimates, and adjust the required match accordingly? Could elements of an auction-like approach be developed for a particular class of applications or region? If so, how would the agencies implement such an approach in a manner that is practical within program constraints and timeliness?

As emphasized above, New York continues to stress the importance of public safety last mile wireless broadband. We believe the first NOFA did not adequately address the public safety core purpose of the Recovery Act. The second NOFA should provide a dedicated category for public safety wireless broadband, consistent with the national direction for 700 MHz Long Term Evolution (LTE). New York believes the most cost effective way to develop and implement a wireless broadband solution is through a standardization process. Additionally, a requirement could be placed on any wireless grant recipient to provide space for a public safety co-location...allowing public safety the advantage of "vertical real estate" infrastructure being built under the RUS/BTOP programs.

B. Program Definitions

Section III of the NOFA describes several key definitions applicable to BIP and BTOP, such as "unserved area," "underserved area," and "broadband." In what ways should these definitions be revised? Should they be modified to include a specific factor relating to the affordability of broadband service or the socioeconomic makeup of a given defined service area, and, if so, how should such factors be measured? Should the agencies adopt more objective and readily verifiable measures, and if so, what would they be? How should satellite-based proposals be evaluated against these criteria?

Should the definition of broadband include a higher speed and should the speeds relate to the types of projects? Should the agencies incorporate actual speeds into the definition of broadband and forego using advertised speeds? If so, how should actual speeds be reliably and consistently measured?

Comment is requested on the definition of remote area, as well as whether this concept should be a factor in determining award decisions. Should factors other than distance be considered, such as income levels, geographic barriers, and population densities?

Using the definition of unserved and under-served provided in the first NOFA would severely limit funding for projects within or in close geographic proximity to urban areas. It may be more beneficial to look at the socioeconomic status of a defined service area. If the overall purpose of the funding continues to be job creation, determinations for funding could be made by utilizing the median income levels, number of people within a defined service area at or near the poverty level and possibly the long-term unemployment level within the service area. In looking at factors such as this, justification could be made that urban areas within a given geographic area are under-served due to socioeconomic status of its residents. In addition, it may be beneficial to consider the affordability of broadband, as well as the type of services available, in an area when determining whether an area is underserved.

"Underserved" communities should be defined broadly to address a variety of service level issues and needs as determined by the applicant. Such issues and needs include such examples as: inadequate speed for particular applications such telemedicine, academic research and development, supercomputing private development and commercialization, economic development initiatives, and expansion of e-government services; technology adoption and affordability; inadequate digital literacy skills and training; or workforce development training distanced learning programs.

Consideration should be given to modifying the definition of "remote area." The NOFA defined "remote area" as an unserved, rural area 50 miles from the limits of a non-rural area. There are many examples throughout New York State where one can be a short distance from the incorporated borders of a city and find oneself in a sparsely populated area without broadband wireless or wireline service. It would be better to consider both the geographic barriers and population density of a defined service area if this concept is to be used as a factor in award determination.

With respect to public safety, a broadband network must have stringent network reliability and availability requirements, which may be higher than requirements typically associated with commercial networks. These requirements will demand extensive redundancy of key network components to minimize potential downtime. Redundant routers, switches, and base station components, power, and connectivity are typical requirements needed for public safety networks. Additionally, public safety users do not differentiate between area classifications – coverage is required in all parts of their jurisdiction. Crimes, fires, rescues, chemical releases and other disasters do not discriminate between rural and urban areas.

C. Public Notice of Service Areas

Some stakeholders have suggested that this rule may reduce incentives for applicants to participate in the BIP and BTOP programs because of the risk that their applications may be disqualified from funding on the basis of information submitted by existing broadband service providers that they have no means to substantiate or rebut. How should the public notice process be refined to address this concern? What alternative verification methods could be established that would be fair to the applicant and the entity questioning the applicant's service area? Should the public notice process be superseded where data becomes available through the State Broadband Data and Development Grant Program that may be used to verify unserved and underserved areas? What type of information should be collected from the entity questioning the service area and what should be publicly disclosed?

If a broadband service provider wants to make an objection on the basis of an overbuild they should have to support their claim by providing enough information so that the applicant can substantiate or rebut the claim of overbuild. There should be a notice to the applicant and an opportunity for the applicant to be heard. The provider should not be able to hide behind claims of confidentiality and proprietary information to avoid providing the applicant with support for the provider's claim of overbuild.

D. Interconnection and Nondiscrimination Requirements

Although RUS and NTIA are not inclined to make significant changes to the interconnection and nondiscrimination requirements, are any minor adjustments to these requirements necessary? In particular, should they continue to be applied to all types of infrastructure projects regardless of the nature of the entity? Should the scope of the reasonable network management and managed services exceptions be modified, and if so, in what way? Is it necessary to clarify the term "interconnection" or the extent of the interconnection obligation?

Public safety projects should not be required to adhere to the interconnection and non-discrimination requirements of the first NOFA. Public safety, due to the nature of its operations, require highly secure and tamper resistant networks with the ability to block and shape traffic as public safety operational needs dictate. The requirement to publish network control practices is not compatible with the sensitive nature of public safety operations.

E. Sale of Project Assets

Section IX.C.2 of the NOFA generally prohibits the sale or lease of award-funded broadband facilities, unless the sale or lease meets certain conditions. Specifically, the agencies may approve a sale or lease if it is for adequate consideration, the purchaser agrees to fulfill the terms and conditions relating to the project, and either the applicant includes the proposed sale or lease in its application as part of its original request for grant funds or the agencies waive this provision for any sale or lease occurring after the tenth year from the date the grant, loan, or loan/grant award is issued. Some stakeholders have suggested that this rule is overly restrictive and is a barrier to participation in BIP and BTOP. Should this section be revised to adopt a more flexible approach toward awardee mergers, consistent with USDA and DOC regulations, while still ensuring that awardees are not receiving unjust enrichment from the sale of award-funded assets for profit?

From a public safety and government standpoint, New York believes the option to transfer or assume ownership by the government or other qualified entity should be available to insure continuity in critical services due to a default or abandonment by the servicing company. Public safety cannot afford to have a sudden interruption in service due to default of the providing service. Additionally, transfer to (i.e. from a non-profit) or between (i.e. state to local) governments should be unrestricted.

F. Cost Effectiveness

How should NTIA and RUS assess the cost effectiveness or cost reasonableness of a particular project? What evidence should we require from applicants to ensure that unnecessary costs have not been added to the project?

The BTOP and RUS legislation and Round 1 NOFA set forth broad, aspirational goals. But effectiveness in reaching these broad goals is difficult to evaluate and difficult to measure. NTIA/RUS should set forth clearly identified measurable outcomes in the Round 2 NOFA for each grant category, or should at least require the applicant to set their own outcomes. Once the outcomes are identified, a cost effectiveness analysis can be applied as a ratio of investment to

outcome. This will assure accountability in grant performance, and assist in evaluating the best investments.

G. Other

What other substantive changes to the NOFA should RUS and NTIA consider that would encourage applicant participation, enhance the programs, and satisfy the goals of the Recovery Act?

As stated above, New York believes the first NOFA did not adequately address the public safety goals required of the Recovery Act. Emphasis should be placed on wireless broadband for public safety users that meets the needs, both in coverage and reliability, of the user community.

Future funding rounds should be designed to encourage and reward collaboration among community anchor institutions. Collaborative and cooperative proposals at the community level should be encouraged and state-wide initiatives which bring a wide range of institutions, organizations and constituencies together should receive funding priority.

My team is available to provide additional information regarding our broadband initiatives in New York State. I appreciate the opportunity to submit our comments on this important matter and look forward to future discussions.

Sincerely,

Melodie Mayberry-Stewart

Dr. Melodie Mayberry-Stewart
NYS Chief Information Officer
Director of the Office for Technology