

**DEPARTMENT OF AGRICULTURE
Rural Utilities Service**

**DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration**

In the Matter of)
)
Broadband Initiatives Program and)
Broadband Technology Opportunities)
Program)

Docket No. 0907141137-91375-05

COMMENTS OF KODIAK-KENAI CABLE COMPANY, LLC

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Executive Summary

Kodiak-Kenai Cable Company, LLC (“KKCC”) agrees that RUS and NTIA should focus their second round BIP and BTOP funding on middle mile projects that will deliver backbone infrastructure to unserved and underserved areas of the country. In addition, middle mile projects proposing to serve the areas of highest unemployment should be given particularly favorable consideration, given the underlying objective of the Recovery Act to save and create jobs. Middle mile applicants should be encouraged, if not required, to operate systems funded with Recovery Act broadband support on a carrier-neutral basis, thereby helping promote the natural growth of competitive last mile service markets for the benefit of residential and enterprise end users alike.

The funding agencies should revisit the definition of “broadband” promulgated in the first funding round and focus in the second and final round on a functional definition of broadband as enabling, at a minimum, the delivery of interactive, real-time and full-motion, high definition video content, both in a downstream and upstream mode to the end user. This definition must be equally applicable in a multi-user environment in order to be meaningful, and should not be varied in accordance with the nature of the project or the technology employed.

The funding agencies should reconsider their reliance on the mapping software employed in the first funding round which, at least in the case of Alaska, has resulted in distortions of proposed service areas and undercounting of population, households and community anchor institutions. RUS and NTIA should also consider sharing in the funding of high-cost infrastructure projects covering large geographic areas, which KKCC believes is consistent with the legislative mandate provided that each agency funds deployment in a separate geographic part of the project.

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Kodiak-Kenai Cable Company, LLC (“KKCC”), by its undersigned counsel, hereby submits comments in response to the latest joint Request for Information (“RFI”) of the Rural Utilities Service (“RUS”) and the National Telecommunications and Information Administration (“NTIA”) relating to implementation of the RUS Broadband Initiatives Program (“BIP”) and the NTIA Broadband Technology Opportunities Program (“BTOP”). The two broadband funding programs were established pursuant to the American Recovery and Reinvestment Act of 2009, 123 Stat. 115, Pub. L. No. 111-5 (“Recovery Act”). KKCC submitted comments on April 13, 2009 in response to the agencies’ first joint RFI, and is an applicant for funding of a middle mile infrastructure project in the first competitive round of applications under both BIP and BTOP. The agencies seek comment in this latest RFI to help inform their development of a Notice of Funding Availability (“NoFA”) for their second and last planned round of BIP/BTOP competitive applications. KKCC’s comments which follow are informed by the company’s experience in participating in the first funding round, still in process.

I. The Application and Review Process

A. *Streamlining the Application.* There is no question that the application process in the first funding round was challenging, and took an exceedingly long time to complete. KKCC

engaged a team of specialists in a number of disciplines to prepare its application in order to compile the most compelling presentation of the public interest in its project and to attain the highest score possible for evaluation purposes. Given the level of public funding at stake, KKCC understands that the funding agencies' mandate to identify the most worthy projects for support cannot be sacrificed in the interest of streamlining the application process. The description of partnerships and other working relationships that applicant projects support and how they leverage other Recovery Act and governmental programs cannot be demonstrated without significant dedication of time, effort and the preparation of substantiating documentation.

Because the attachments and uploads associated with specific questions were in virtually all cases limited in terms of characters or pages, KKCC found that a large portion of its application was submitted in the form of the three allotted supplemental informations, with the concomitant requirement for careful cross-referencing to application questions supported by the supplemental information. KKCC, therefore, believes that the fair and proper evaluation of applications for infrastructure funding must include proper consideration of such supplemental information.

KKCC believes RUS and NTIA could ameliorate applicants' preparatory efforts by ensuring that the hard copy form of the application tracks faithfully the on-line form, which was not the case in the first funding round. RUS and NTIA could further streamline the application process by improving the ability of applicants to review their work-in-progress applications through the application portal in the second funding round. KKCC encountered substantial difficulty in creating through the "view PDF" online function a reviewable draft of its application that could, in turn, be distributed to members of the team for review. In fact, at no time during

the preparation process was the KKCC team able to review its draft application complete with its supplemental information filings. By improving the ability of applicants to review their applications online prior to submittal would facilitate a more efficient process of preparing applications of the highest quality.

B. *Specification of Service Areas.* While the description of proposed service areas at the census block level took substantial forethought, KKCC found that this approach, once understood, was not overly burdensome. On the other hand, the funding agencies' insistence that applicants utilize the Broadband USA mapping tool did prove onerous and, in the case of Alaska, produced inaccurate reports of covered population, households and community anchor institutions served. Use of the software was particularly challenging in Alaska because of the absence of county lines and road systems in that state. Whereas KKCC was able to draw its own maps of its proposed service areas, and presented them through a supplemental information filing, it found that it was unable to replicate this effort accurately relying on the agencies' mapping tool. KKCC, therefore, recommends that the agencies reconsider reliance on this tool in the next funding round, at least with respect to Alaska.

KKCC also recommends that the application form employed in the next funding round clarify how middle mile applicants are to identify their proposed funded service areas. Because middle mile projects typically support multiple landing points or interconnection points with last mile systems, they can have multiple proposed service areas. The application form used in the first funding round was not clear or consistent that multiple proposed funded service areas were permissible. This oversight should be rectified in the upcoming NoFA.

C. *Relationship Between BIP and BTOP.* KKCC concurs with the suggestion that, if an applicant's business model requires 100% grant funding, then it should be permitted to submit

directly to NTIA for funding under BTOP, even if its project will serve an area that qualifies as at least 75% rural in nature. Rural projects have the opportunity to compete for a larger pool of support under BIP because of the RUS' ability to offer a combination of loans (based on a multiplier of Recovery Act appropriated funds) as well as grants. However, if a rural applicant is prepared to risk competing against non-rural applicants for the smaller funding pool available under BTOP, particularly if such applicants have concluded that their business plans cannot support a debt component, they should be given that choice. This will spare applicants the burden of preparing an application that, if accepted, will not meet their needs, and spare the RUS from expending its scarce resources reviewing applications that are filed merely to comply with the procedural requirement.

For similar reasons, KKCC concurs with the funding agencies' decision that applications for rural projects submitted for consideration under both BIP and BTOP should be considered first by RUS and only secondarily, if necessary, by NTIA. However, it is important to remember that the Recovery Act does not *prohibit* projects that are funded in part by RUS from also being funded in part by NTIA. The language of the statute states only that "no *area* of a project funded with amounts made available under [BIP] may receive funding to provide broadband service" under BTOP.¹ As a result, RUS and NTIA should retain the discretion, permissible under the enabling legislation, jointly to fund meritorious broadband infrastructure projects, provided that they agree through their joint review to fund different geographic areas of the same project. Thus, should RUS conclude that a rural infrastructure project warrants funding but that it lacks sufficient combined loan and grant resources to fund the project in its entirety, it should be able to request NTIA to consider offering funding for a geographic area of the project that RUS will

¹ Recovery Act, Div. A, Title I, 123 Stat. at 118-19 (emphasis added).

not be funding. If NTIA also finds the project meritorious, it could then agree to fund the geographic area not funded by RUS. Using this collaborative process, meritorious rural projects would not be rejected simply because neither agency alone has sufficient funds to support the entire geographic area of the project.

Finally, KKCC approved of RUS's use of a strict and prescribed point structure for evaluating applications. This allowed applicants to fashion their proposals around a defined set of scoring criteria. NTIA should adopt the same approach, at least for BTOP infrastructure projects, so that applicants can properly prepare their submissions and to insure that NTIA reviewers can more accurately score submissions. This would require NTIA to create a detailed scoring chart for the 100 point scale under which applicants will operate versus the broader and more subjective categories of scoring used in the first funding round.

D. *Outreach and Support.* KKCC believes that another way in which the BIP/BTOP application process can be improved for the benefit of applicants is through an enhanced jointly operated help desk to assist applicants with questions during the application process. In the course of preparing its joint application in the first funding round, KKCC turned several times to the RUS help desk. While it received answers to most of its requests, KKCC found that the response times varied, sometimes taking several days of precious time. It appeared to KKCC that the RUS help desk was significantly understaffed, and KKCC was unable to identify a similar help desk for the BTOP program. Since the funding agencies have now completed an extensive series of outreach seminars and national workshops to explain the objectives of and opportunities provided by BIP and BTOP, KKCC submits that the agencies, in the second funding round, should concentrate greater resources in jointly staffing a help desk with greater visibility through the BroadbandUSA.gov Website. Such a help desk, sufficiently staffed and

with extended work hours, particularly during the last two weeks of the application process, would be very much appreciated by applicants as they navigate a challenging process.

II. Policy Issues Addressed in the NoFA

A. *Funding Priorities and Objectives.* KKCC agrees that RUS and NTIA should focus their second round BIP and BTOP funding on middle mile projects that will deliver backbone infrastructure to what today remains the unserved and underserved portions of our country. Without the existence of a broadband “highway,” last mile providers cannot serve as off-ramps to bring broadband services to end users. Moreover, as KKCC has determined through its years of operating a submarine cable backbone network servicing a region of south central Alaska, and its efforts to extend that backbone system to the western and northern reaches of the state, the cost of connecting widely dispersed communities makes it impossible to develop a commercial business case for the deployment of such systems. As a result, public funding becomes the option of last resort for the development of broadband “highways” to at last overcome the digital divide that stubbornly persists in vast areas of the country, such as western Alaska.

The Administration recognized the importance of devoting public funds to extend high-capacity pipes closer to end users in rural, remote and underserved areas as a spur to competition to serve consumers and businesses alike in Congressional testimony shortly following passage of the Recovery Act by Mark Seifert, the Senior Advisor to the Assistant Secretary for NTIA.² After reviewing the hundreds of applications for infrastructure support received in the first BIP/BTOP funding round, the new Administrator of NTIA, Larry Strickling, recently testified

² Prefiled testimony of Mark G. Seifert, Hearing on “Oversight of the American Recovery and Reinvestment Act of 2009: Broadband,” House Subcommittee on Communications, Technology and the Internet, April 2, 2009, at 2.

that his agency is considering in the next NoFA a middle mile “paradigm” connecting community anchor institutions as a solution for applying Recovery Act funds for the greatest benefit of dollars spent. Support for such backbone networks, he suggested, will serve to direct BIP/BTOP funding effectively for a number of objectives: job creation, accessing unserved areas, reaching the greatest number of end users, and establishing a base for sustainable growth of broadband use.³ KKCC submits that the deployment of such backbone networks is the only way to fulfill the promise of the 1996 Telecommunications Act to bring access to advanced telecommunications services to all regions of America, and to ensure that consumers in rural, insular and high cost areas of the country have access to such services “reasonably comparable” to those provided in urban areas.⁴ This, then, should be a primary goal of RUS and NTIA in the second and final BIP/BTOP funding round.

Moreover, KKCC urges the funding agencies to require that recipients of such middle mile infrastructure support operate their backbone networks on a carrier’s carrier basis, serving as wholesale “highways” of broadband capacity to multiple retail providers. In this manner, residents and enterprises in unserved and underserved areas will, for the first time, enjoy the price and service benefits of competitive broadband access. If the agencies do not impose such a requirement, they should at least favor applications that pledge to provide service on a carrier-neutral basis.

KKCC further concurs with the suggestion of RUS and NTIA in their latest RFI that priority should be accorded to those middle mile projects that are able to generate the highest

³ Testimony of Lawrence Strickling, Administrator, NTIA, “Oversight Hearing on the Broadband Stimulus Programs in the American Recovery and Reinvestment Act,” Senate Commerce Committee, October 27, 2009.

⁴ 47 U.S.C. §§ 254(b)(2),(3).

level of interest – in terms of binding commitments or at least documented expressions of intent or interest – among community anchor institutions to use new broadband facilities deployed into their communities. In this regard, the concept of community anchor institution should be interpreted to include federal and state agencies (other than public safety agencies), as well as schools, colleges, libraries and health care facilities. As part of the agencies' review, if a project substantially advances a compelling interest of a federal agency, such as national defense, homeland security, climate change research, or federal tribal policy, to name a few, that project should be given priority in order to fulfill as many public missions as possible, so long as the project also supports unserved or underserved areas, vulnerable populations, and other policies central to the legislative mandate.

In applying this criterion, it is important to remember that middle mile providers typically do not contract with, or provide service directly to community anchor institutions or other end users, but will instead view last mile providers as its target customers. Nevertheless, expressions of interest by community anchor institutions in a particular middle mile project are a strong indicator that last mile providers will find a viable retail market once the middle mile system is deployed. For this reason, again, middle mile applicants offering to operate on a carrier-neutral, non-discriminatory basis should be favored, as their business model will give greatest encouragement to the development of a competitive last mile industry.

Finally, KKCC agrees that RUS and NTIA should prioritize the deployment of middle mile broadband systems in regions with the highest unemployment rates. Now, almost 10 months following passage of the Recovery Act, the taxpayer demand for evidence of job creation from use of the legislation's funds is growing. Although the section of the law authorizing

BTOP lists “economic growth and job creation” as its fifth and final objective,⁵ the funding agencies in the joint RFI give prominent attention to the fact that these objectives are actually first and foremost among the goals of the Recovery Act as a whole. The funding agencies should therefore in the final funding round make middle mile systems accessing areas of high unemployment their highest priority. And, in doing so, the focus should be on the employment levels in communities that will be served, rather than on state-wide unemployment figures. For example, in the western region of Alaska that KKCC seeks to serve, the jobless rate ranges up to 70%, far above the state-wide average. It is these, hard-to-access unserved areas that should be targeted in the next BIP/BTOP funding round.

B. *Program Definitions.*

(1) Definition of “Broadband”. KKCC agrees that the definition of broadband adopted in the first NoFA does not support the important objectives for which BIP and BTOP were established. If the United States is serious about improving its standing internationally in terms of average broadband speeds available to the public, we can no longer be satisfied with broadband delivery at speeds as low as 768 Kbps downstream and 200 Kbps upstream, particularly when these speeds need not actually be achieved, but merely advertised.

In order to ensure that Recovery Act funds are used effectively to spur the deployment and use of robust broadband facilities, KKCC has consistently advocated for the adoption of a functional definition of broadband: capacity enabling, at a minimum, the delivery of interactive, real-time and full-motion, high definition video content, both in a downstream and upstream

⁵ Recovery Act, § 6001(b)(5).

mode to and from the end user.⁶ To be meaningful, this definition must be equally applicable in a multi-simultaneous user environment. Moreover, the definition should not be varied in accordance with the nature of the project or the technology employed. Were the funding agencies, for example, to adopt a different, more relaxed standard for satellite systems than applicable to fiber-optic terrestrial or submarine systems, they would violate their own tenet of technological neutrality among competitive applicants for Recovery Act support. This last funding round is also the funding agencies' last opportunity to adopt a more meaningful definition of broadband for purposes of the Recovery Act. With substantially more than half of the broadband funds appropriated under the Recovery Act yet be expended, KKCC urges that it is not too late to do so.

(2) Definition of "Remote". In a state of the geographic magnitude of Alaska, the definition of "remote" adopted in the first NoFA works well. What is unclear to KKCC, however, is why only *last mile* applicants that propose to serve "remote" communities qualified for 100% full grant funding from RUS in the first funding round. It would appear equally logical for *middle mile* systems that are designed to serve entirely rural and entirely remote regions (except for, possibly, their point of interconnection with the existing broadband backbone) would also qualify for 100% grant funding. At a minimum, middle mile applicants that propose to serve entirely or primarily "remote" service areas in the last funding round should be scored more favorably than those that propose to serve primarily non-"remote" areas.

C. *Public Notice of Service Area*. KKCC agrees that the current system of allowing incumbent broadband service providers to challenge applicants' assertions that their proposed

⁶ See Comments of Kodiak-Kenai Cable Company, LLC, NTIA/RUS Docket No. 090309298-9299-01, April 13, 2009, at 23-24; Comments of Kodiak-Kenai Cable Company, LLC, A National Broadband Plan for Our Future, FCC Docket 09-51, June 8, 2009, at 4-8.

funded service areas are unserved or underserved could be subject to abuse if there is not a reasonable opportunity for rebuttal provided for. In the next funding round, KKCC recommends that applicants be provided full visibility of challenges to their claimed funded service areas in real time, including the identity of all challenging parties and copies of their challenges. In addition, challenged applicants should be provided a reasonable opportunity to respond on the record. The process of challenging and responding could be maintained exempt from public disclosure, provided that the challenging and responding parties be provided with full access to one another's filings. Finally, consideration should also be given in the next funding round to permitting applicants with partially or fully overlapping service area proposals to comment on one another's service area claims. It may well be that the incumbent service provider has not submitted a BIP or BTOP application and has, therefore, not reviewed the available information on the Broadbandusa.gov Website. A competing applicant to serve the same area, however, will have focused on the service area in depth and may have informative comments for the agencies.

D. *Interconnection and Nondiscrimination Requirements.* KKCC notes that its proposal that middle mile applicants be required to commit to operate as carrier's carriers, on a carrier-neutral basis, is consistent with the funding agencies' commitment to impose interconnection and nondiscrimination requirements on recipients of Recovery Act broadband funding.

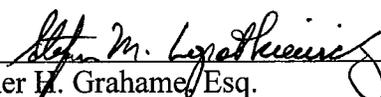
E. *Sale of Project Assets.* KKCC agrees that the restriction against sale of project assets in the initial NoFA is ambiguous and raises potentially troublesome concerns for middle mile applicants in particular. Operators of backbone, middle mile systems – particularly fiber-optic terrestrial or submarine systems – commonly sell indefeasible rights of use (“IRUs”) in

their networks to customers. Such transactions are viewed as favorable from a financing perspective, both to the operator and its customer. Presales of such capacity are sometimes used to help finance the construction of a fiber-optic network. KKCC recommends that RUS and NTIA clarify in their next NoFA that the sale of IRUs on commercially reasonable terms is not intended to fall within the scope of this proscription.

F. *Scoring Rural Infrastructure Applications.* Because a goal of both the BIP and BTOP is to bring broadband to unserved and underserved rural areas of the country, there appears to be an inconsistency in rewarding applicants seeking to serve large concentrations of population by scoring their applications higher. Consideration should be given in the final funding round to increasing the scores of applicants whose projects will bring broadband access to large territories of underserved and unserved communities.

Respectfully submitted,

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