

**Before the
DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration
and
DEPARTMENT OF AGRICULTURE
Rural Utilities Service**

In Re)
)
American Recovery and)
Reinvestment Act of 2009)
)
Broadband Initiatives Program and)
Broadband Technology Opportunities)
Program Joint Request for Information)
)

Docket No.
0907141137-91375-05

**COMMENTS OF
PENASCO VALLEY TELEPHONE COOPERATIVE, INC.**

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Table of Contents

I.A. Streamlining the Applications	2
I.A.1. New Entities	4
I.A.2. Consortia and Public-Private Partnerships	4
I.A.3. Specification of Service Areas	5
I.A.4. The Relationship between BIP and BTOP	5
I.B. Transparency and Confidentiality.....	6
I.C. Outreach and Support	7
II.A.1 Middle Mile “Comprehensive Community” Projects	7
II.A.2. Economic Development	8
II.A.3 Targeted Populations.....	9
II.A.4 Other Changes	9
II.B. Program Definitions	10
II.E. Sale of Projected Assets.....	11
II.G. Other.....	11
III. Conclusion	13

Executive Summary

Penasco Valley Telephone Cooperative, Inc. and its subsidiary PVT Networks, Inc. (collectively “PVT”) submits its comments on ways the Agencies can streamline and further improve the application and review process for broadband stimulus applications for the second round of funding. The most important aspect any overhaul of the application process should be an emphasis on reducing the upfront costs of applying and increasing feedback from the agencies to applicants on the likelihood of receiving funding. During the first round, many potential applicants no doubt declined to apply because of the expenses associated with gathering the type and quantity of data the Agencies required. The Agencies must also increase the flexibility of the application software itself, to better accommodate the wide array of creative solutions that applicants may submit.

Further, PVT provides its comments on many of the issues the Agencies seek comment on, and respectfully suggests the following:

- Maintain the requirement that new entities provide financial data, even if it is data for member entities, as well as increasing the number of types of entities that can apply, such as partnerships and limited partnerships.
- Require consortiums and public-private partnerships to provide information for each member entity.
- Move from requiring census block level data to census tract level data in the applications.
- Modify the requirement that applications which propose to serve areas which are 75% rural to allow for submission to NTIA only given certain obligations.
- Permit the disclosure of Executive Summaries as long as the requirements for such documents are sufficiently relaxed so that applicants can maintain confidentiality for financial and competitive information.
- Continue and expand upon the workshop program that led up to the first round of funding.

- Give preference to middle mile applications that agree to provide rural last-mile service providers with much needed transport and backhaul services.
- Maintain the current three application types and continue to provide additional points to applicants filing multiple types of projects.
- Provide preference to rural carriers, who generally already provide service to many of the Agencies' targeted populations.
- Clarify the difference between last mile and middle mile projects.
- Relax the sale of project assets restriction to permit sale to affiliates, or to non-affiliates who make a showing that they are equally as capable of meeting the applicant's obligations.
- Use more recent census data in order to reduce the amount of conflict that carriers see when they compare the data they collect to the data provided by the application's mapping tool.
- Ensure that each item the Agencies request has a clear minimum requirement, so that applicants can find some assurance that their application is complete before submitting.
- Relax the audit requirements to reduce the burden on applicants for accepting stimulus funding.

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**COMMENTS OF
PENASCO VALLEY TELEPHONE COOPERATIVE, INC.**

The following comments are submitted on behalf of Penasco Valley Telephone Cooperative, Inc. and its subsidiary PVT Networks, Inc. (collectively “PVT”), by their attorneys, in order to address the questions raised in the joint request for information (Joint Request) released by the National Telecommunications and Information Administration (NTIA) and the Rural Utilities Service (RUS)(hereinafter referred to jointly as “the Agencies”). The Joint Request was released in connection with the second round of the Broadband Initiatives Program (BIP) and the Broadband Technology Opportunities Program (BTOP) under the American Recovery and Reinvestment Act of 2009 (ARRA). PVT respectfully requests that NTIA and RUS take these comments into consideration in order to make participation in the next funding round simpler and more effective for small and rural applicants. PVT has identified below the specific questions of the Agencies to which they are responding, as labeled in the Joint Request.

I.A. Streamlining the Applications

In order to reduce the burden on applicants while still obtaining the requisite information to fulfill the statutory requirements of the ARRA, the Agencies should modify the application process to reduce the up-front cost of applying. An applicant attempting to assemble all of the information that is necessary to submit an application meeting the minimum requirements faces enormous costs and time demands without any indication that the Agencies will even tentatively consider awarding the necessary funds. A prime example is the requirement to obtain and develop antenna sites and back-haul facilities for a broadband wireless system covering a significant geographic area, including all state, local and Federal approvals and clearances. While PVT understands that the Agencies require such information to ensure the best possible spending of taxpayer dollars, an initial outlay of this size as a threshold for consideration of a project's merits dissuades the submission of many new, and innovative broadband proposals. If an applicant has engaged in all of the activities required for Phase I and Phase II of the application process as currently written, it has already engaged in capital acquisition and spending to the point that the project is no longer a new proposal contingent on government funding; instead, the applicant is placed in a position where it must move forward with the project to avoid stranded resources. The Agencies should clarify that "shovel ready" means that the project is ready to proceed upon a grant of funding, rather than requiring a large outlay of capital and effort for a project that has not yet been funded.

In order to balance these concerns, the Agencies should either remove expensive requirements such as these entirely, or make such costly components a part of the information provided during the later phases of review (where an applicant has at least some indication that its application is being reviewed on the merits and can therefore justify the expenditures), with a

reasonable schedule for full implementation. Since the third round of funding has been eliminated, there should be sufficient time for the Agencies to conduct a preliminary review period and to provide more feedback on applications as the process moves on, so that the most expensive requirements for applying are not part of the initial filing.

A separate but related issue is the rigid format of the application itself; PVT proposes that the Agencies adopt a more flexible format to accommodate a wide variety of solutions. During the Agencies' initial discussions of the BIP and BTOP application process and the public workshops, representatives of the programs highlighted the importance of casting a wide net in order to attract many different types of potential solutions. The ARRA took a technology-neutral stance, requiring the Assistant Secretary to promote the section in a technologically neutral manner.¹ Yet, the final form of the application was web-based, providing explicitly defined fields for limited text entry and attachment upload. As a result, many applicants were not adequately able to supplement their applications with the information necessary for the Agencies to properly consider the merits of their projects; for example, certain aspects of applications for Public Safety projects primarily proposing to serve first responders could not be adequately described and supported using the online application. PVT recognizes the importance of limiting the size of an application so that the Agencies may efficiently and effectively review all of the submissions. However, it is problematic for a rigid application format like the one used in the first round of funding to accommodate a wide variety of proposals. Therefore, PVT encourages the Agencies to provide at least some limited fields for the provision of information that is relevant to the application, but does not strictly fit in the defined portions of the application software.

¹ American Recovery and Reinvestment Act of 2009, (Section 6001(e)(1)(C))

I.A.1. New Entities

The requirement that entities provide historical financial statements should not be eliminated for recently created entities. Historical financial data provides the Agencies some idea of a company's viability. Eliminating this requirement introduces unnecessary risk to taxpayer dollars and undermines the objectives of the ARRA in providing stable, sustainable, long-term solutions. Further, it would encourage applicants to start new businesses in order to avoid the requirement. Instead, the Agencies should require historical financial data for the principals of a new company if the company has no such data of its own.

It is important that the Agencies allow applicants flexibility in creating entities in order to manage and build out the projects for which they apply. Therefore, PVT also proposes the Agencies permit a broader range of entity types to apply for broadband stimulus funds, such as partnerships and limited partnerships. Such entities are essentially identical under the law to limited liability companies, and can comply with the requirement to provide financial history by furnishing data about the member entities.

I.A.2. Consortiums and Public-Private Partnerships

PVT agrees that critical information should be requested from all members of groups such as consortiums and public-private partnerships, again to minimize risk to taxpayer dollars. The Agencies should collect information from each member relevant to the assertions made by the lead applicant regarding the role of each of the individual members of the consortium or public-private partnership will play. To the extent that an applicant wishes to partner with public safety or other governmental entities, obviously it may not be possible to provide financial information for such public institutions.

I.A.3. Specification of Service Areas

NTIA and RUS should allow applicants to provide service area specifications and related data at the Census Tract, rather than Census Block, level. Many applicants found that the Census Block level was simply too onerous to work with, both in terms of drawing proposed funded service areas and collecting and providing the data associated therewith. As the Agencies are aware, the Federal Communications Commission has recently required that all providers of broadband service to complete Form 477 for the purpose of collecting and aggregating much of the same data that the Agencies request in the BTOP and BIP applications. As a result, most (if not all) broadband providers track data at the Census Tract level. PVT submits that Census Tracts, rather than Blocks, provide the most useful information for the cost, particularly in rural areas which have sparse populations. However, due to the larger size of the Census Tracts as compared to Blocks, the Agencies should be more flexible in granting waivers for applicants that do not propose to serve a given tract in its entirety.

I.A.4. The Relationship between BIP and BTOP

PVT proposes that the Agencies remove the requirement that applications meeting the 75% rural requirement be submitted to RUS and permit such applications to be submitted directly to NTIA. Instead, where an application meets the 75% rural criterion, the Agencies should still allow applicants the *option* to submit their applications to NTIA directly, or instead to RUS first, with the application going to NTIA only if RUS decides not to fund the proposal. Applicants who choose to allow RUS the first choice would be awarded extra points on the RUS score sheet. This would increase flexibility for applicants while still providing an incentive to submit rural applications to RUS. There are many situations in which, depending on many

factors, a loan is more beneficial than a grant, and *vice versa*. Providing applicants with the ability to choose permits greater control over their projects to make the most economic and likely successful business. In order to aid the Agencies in avoiding the potential for abuse, an application being submitted directly to NTIA should affirmatively certify that the applicant forgoes consideration under RUS' BIP entirely.

I.B. Transparency and Confidentiality

PVT supports the Agencies' tentative conclusion that the application's executive summary should be made publicly available for the second round of funding. However, the Agencies should modify the information required in the executive summary to allow applicants to maintain confidentiality of certain information. Specifically, PVT urges the Agencies to reduce the specificity with which applicants must describe (1) proposed services and applications for the project; (2) approach to addressing the non-discrimination and interconnection obligations; (3) network type and technology standard; (4) overall infrastructure cost of the broadband system; and (5) overall expected subscriber projections. More importantly, financial and other proprietary information not routinely made available to the public should be kept confidential. PVT recognizes that many of the executive summaries which were released for the first round of funding were redacted to the point of uselessness, but the Agencies must be careful to strike a balance between providing the public with useful information about proposed projects and allowing applicants to maintain competitive and financial information in confidence. The Agencies can elicit the above "sensitive" information in other parts of the application, so that they may fully evaluate the merits of each proposal. However, such information should not have to be included in the portion of the application that will be made public.

I.C. Outreach and Support

The workshops offered by the Agencies were valuable sources of information and PVT would like to see a second round if possible, especially if the Agencies will be making extensive changes to the NOFA. The question-and-answer session following each of the panels at the first round of workshops was especially useful in preparing to apply, and the Agencies should provide the second NOFA to the public in advance to allow the best use to be made of these periods.

The Agencies should also consider a different method of making the Frequently Asked Questions (FAQ) documents available to the public. Re-releasing updated versions of the document makes it harder for the public to tell which information has been updated, which information has been added, and which information is unchanged from version to version. Separate documents, or a searchable web-based database would be useful to ensure all applicants receive updated information as soon as it becomes available. PVT also proposes that FAQ items be released on a rolling basis rather than in large groupings, as FAQ responses can dramatically change an applicant's approach and therefore necessitate extensive revision; the sooner such information is available, the better.

II.A.1 Middle Mile “Comprehensive Community” Projects

The Agencies should provide additional consideration for middle mile projects that obtain commitments from last mile service providers to use the middle mile services to serve end users in a given community. Many rural carriers, as discussed above, have already built out extensive networks to provide services to the hardest-to-serve areas across the nation. PVT submits that in many cases, upward of 80% of the costs of backhaul for their networks consists

of transport costs, which could be greatly alleviated by the introduction of middle mile projects that provide high-speed, high-capacity (such as fiber) connections to major metropolitan centers. Many areas which, under the Agencies' definitions of 'unserved' and 'underserved' are such not because infrastructure does not exist, but because backhaul and transport facilities are not able to support the provision of service at speeds which meet or exceed the definition of broadband. The Agencies should provide a preference for the creation of transport capacity that allows the networks that already exist to extend their areas of service and improve their offerings to meet the Agencies' standards.

II.A.2. Economic Development

NTIA and RUS should not allocate a portion of the remaining funds to promote a regional economic development approach to broadband deployment. Instead, the Agencies should continue to focus on broadband infrastructure projects in general, without narrowing the scope of eligible projects. As Chairman Strickling recognized in his testimony before the House of Representatives, "... greater broadband availability impacts much more than the commercial operations and profit margins of small businesses. Broadband, by providing greater access to information, health care, education, and job opportunities, has the power to transform communities across the country and sow the seeds for the next generation of American entrepreneurship and innovation."² Furthermore, the BTOP and BIP already provide for additional and preferential consideration for applicants who propose projects that include multiple facets, such as Computer Center and Sustainable Broadband Adoption elements. There is already an impetus for the submission of such all-encompassing projects. Recognizing the

² **Hearing on the Recovery Act and Broadband: Evaluation of Broadband Investments on Small Businesses and Job Creation:** Testimony of Lawrence E. Strickling, Assistant Secretary for Communications and Information, NTIA, before the Committee on Small Business, United States House of Representatives. §II.

value of broadband deployment in America, the Agencies should not reduce the amount of funding available for infrastructure projects by setting aside funds for regional economic development approaches.

II.A.3 Targeted Populations

The Agencies should not allocate a portion of the remaining funds to specific population groups because it is unclear whether the need in specific population groups is higher than for any other group. For example, the Agencies cite the oft-quoted idea that tribal lands are “historically unserved and underserved”³ However, as demonstrated by comments in the FCC’s Tribal Lands comment cycle, many tribal areas enjoy the same level of access, the same price, and the same quality of service as everyone else in the service area.⁴ There is no reason for the agencies to target specific population groups over any other rural group, especially given the general lack of data in this area, when most rural carriers provide service to a variety of population groups.

II.A.4 Other Changes

The agencies can best leverage existing broadband infrastructure and federal programs by providing rural carriers with a preference for ARRA grants and loans. Rural carriers, such as PVT, have built and operate high-quality, advanced communications networks, including broadband networks, in some of the most rural areas of the country. They have a demonstrated record of providing high-quality service to their subscribers for over 50 years. They also have a demonstrated record during that time of upgrading their facilities to implement new technologies and provide new services. As carriers of last resort, rural ILECs offer, and are required to offer, their services to all subscribers in their service area. Nearly all rural ILECs offer DSL service to

³ RFI at 6

⁴ See, e.g., Comments of the South Dakota Telecommunications Association in response to NBP Public Notice #5, Dockets 09-47, 09-51, 09-137, filed on November 9, 2009.

their subscribers, and many are also in the process of deploying fiber backbone, fiber to the curb or fiber to the home. PVT's existing networks allow for rapid expansion of the availability of broadband.

Furthermore, nearly all rural ILECs receive federal universal service support and many have received RUS loans, which have been critical to their ability to build and operate high-quality, advanced communications networks. Rural carriers like PVT already reach many of the vulnerable populations the Agencies express interest in targeting above, and can do so without eliminating or reducing the potential of other rural applicants to put funds to good use. Accordingly, by awarding ARRA grants or loans to rural ILECs, NTIA and RUS would be able to leverage these existing federal programs to increase the availability of broadband networks and services in rural areas.

II.B. Program Definitions

PVT urges the Agencies to provide further clarification and guidance relating to the distinction between Last Mile and Middle Mile projects. As the Agencies know, much of the FAQ documents produced during the first round of funding were dedicated to discussing how to determine whether various project types should be classified as middle mile or last mile. While a good start, the Agencies should take the opportunity to further clarify and delineate between the two types of projects, as well as providing guidance on how hybrid projects that share elements of both middle mile and last mile can most effectively classify the project.

The application should also be updated in order to reflect the distinction as well. For example, much of the confusion between the project classifications was only compounded by the fact that applicants proposing middle mile solutions were still required to provide information on

the Critical Community Facilities passed, penetration rates, last mile product offerings, and pricing. This one-size-fits-all approach also added unnecessary cost and time for middle mile proponents. By more clearly and effectively distinguishing between the application questions relevant to last mile and middle mile projects, the Agencies can greatly reduce the burden on applicants in the second round.

II.E. Sale of Projected Assets

PVT agrees that this section should be revised to adopt a more flexible approach. While it is important to protect against unjust enrichment from the sale of award-funded assets, awardees need the ability to make the right business decisions in order to keep a project viable, which can sometimes require a sale or merger. To this end, the Agencies should permit the sale of project assets by awardees to entities that are able to provide substantially the same information and meet substantially the same standards as the original awardee. At the very least, an exception should be made for the sale of project assets to an affiliate of the original awardee. As long as the project's sustainability is ensured by the sale, some profit made by an awardee selling its operation should be acceptable.

II.G. Other

There are other issues PVT urges the Agencies to take this opportunity to address. One such issue that both applicants and application respondents grappled with arises from the inaccurate household and business statistics generated by the Mapping Tool's use of 2000 census data. For applicants, using census block data based on older data created discrepancies in describing the area an applicant was proposing to serve as compared to what the applicant was

actually intending to serve. This creates uncertainty as to what an applicant is actually committing to serve should it ultimately win and accept an award; uncertainty which is not addressed until long after pro-active steps can be taken by the applicant to ensure that it does not run afoul of any of the Agencies' rules. It also complicates things for both the applicants and the agencies themselves in determining whether an applicant's assertion that an area is 'unserved' or 'underserved' is accurate. Incumbent carriers attempting to respond to Public Notice Filings for particular applications encountered a similar issue: providing data to support an incumbent's response as to whether a proposed service area is actually 'unserved' or 'underserved' was needlessly complicated by the use of older data. Although respondents had somewhat less of an issue because they were afforded an unrestricted comment section to discuss such anomalies, as discussed above the original applicants did not.

Second, certain aspects of the application require clarification. For example, many applicants found it unclear as to what exactly they were expected to produce in terms of documents to support the financial viability of the project. While PVT understands the Agencies' rationale for taking a "best possible showing" approach to the requirements for various responses, PVT respectfully submits that the opposite effect occurs without a clear minimum requirement. Throughout the initial rounds of discussion about the broadband stimulus application process, the Agencies emphasized that incomplete applications would be disqualified immediately and without a review of the proposed project's merits. At the same time, the Agencies did not provide clear minimum requirements on some items, such as the type documents necessary to show commitment from financial backers. This puts applicants in the precarious position of filing an expensive application without confidence that the application would at least be reviewed. While applicants should still be invited to make the best possible

showing, the Agencies could increase participation by providing a clear and unambiguous explanation of the minimum requirement for each of the questions to provide applicants the ability to more accurately determine the chances of receiving an award.

Finally, PVT suggests that the agencies review the audit requirements associated with applying to the BTOP and BIP. While transparency is a paramount concern, many of the audit terms go beyond the monitoring and review of stimulus funding to encompass the entire operation regardless of whether it is related to the provision of broadband in accordance with the ARRA, BTOP, and BIP requirements. These invasive requirements can dissuade many worthy applicants from ever submitting an application because they create new burdens that are unrelated to the benefits received from participation in the stimulus program.

III. Conclusion

In conclusion, PVT urges the Agencies to consider the comments above in preparing the NOFA for the second round of broadband stimulus funding. Most importantly, the upfront cost of the applications must be reduced in order to permit meaningful participation in the stimulus process, and the application itself must be made more flexible to accommodate the unique and various solutions applicants submit for the deployment of broadband across the nation.

Respectfully submitted,

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