

**Before the  
DEPARTMENT OF COMMERCE  
NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION  
and the  
DEPARTMENT OF AGRICULTURE  
RURAL UTILITIES SERVICE  
Washington, DC**

In the Matter of	)	
	)	
BROADBAND INITIATIVES PROGRAM	)	Docket No. 0907141137-91375-05
AND BROADBAND TECHNOLOGY	)	
OPPORTUNITIES PROGRAM	)	

**COMMENTS OF TRANSWORLD NETWORK CORPORATION**

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November 24, 2009

TransWorld Network, Corp. respectfully responds to the NTIA/RUS Joint Request For Information seeking comments that will help to improve the Broadband Initiatives Program (BIP) and the Broadband Technology Opportunities Program (BTOP) “by enhancing the applicant experience and making targeted revisions to the first Notice of Funds Availability (NOFA), if necessary.”<sup>1</sup>

TransWorld Network, Corp. (TWN) is a telecommunications company founded in 1988. We are headquartered in Tampa, Florida, own and operate a fixed wireless network covering approximately 32,000 square miles in New Mexico and Arizona, and are on track to double coverage to almost 70,000 square miles by year-end 2011. We provide five key services to our customers, including broadband access services. We operate exclusively in partnership with 115 (and growing) Rural Electric Power Cooperatives through long term operating agreements. As you may imagine, our company has had to successfully overcome numerous challenges which would otherwise have precluded our rural broadband deployment. In fact, we have made a number of acquisitions of smaller rural broadband companies who failed in their own attempts to serve rural customers in the desert southwest area of the country. In the process, we have gained significant, real-world insights that we feel may be useful to NTIA and RUS in defining the processes for the next and final BIP/BTOP application round. Further, we expect to file a grant application in the final funding round in order to forge an ambitious and much-needed expansion of our successful business model for broadband deployment into areas that we could not otherwise serve because of the geography and demography of these areas and the consequent limited access to the capital necessary to launch into such new rural areas.

We offer comments to select questions in areas of particular concern to TWN, looking toward the anticipated grant application process for the forthcoming BIP/BTOP funding round.

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<sup>1</sup> 74 Fed. Reg. 58940, released November 16, 2009.

## I. Relationship Between BIP and BTOP

Question I.A.4 (Relationship Between BIP and BTOP) is of specific interest to our company, because the interrelationship between the programs and its impact on the initial application process precluded our participation in the initial application round. First, that process required any applicant seeking to serve an area that is 75% (or more) rural in nature to submit the application to RUS for consideration under the BIP program. The July 1, 2009 NOFA's definitions of "remote" and "rural" areas proved to present a major encumbrance to prospective applicants, because the BIP program rules required that any application for grant funding (as distinguished from loan or combined grant/loan funding) was strictly limited to EXCLUSIVELY remote, unserved rural areas. Projects comprising non-remote rural and non-rural areas were only eligible for a loan or loan/grant combination award under the BIP program. Therefore, a project comprising at least 75% of rural areas was precluded from applying for grant-only funding unless it comprised an entirely "remote" area, under the NOFA's extremely restrictive definition of that term.<sup>2</sup>

This combination of restrictions that were imposed on applicants seeking to serve rural areas of the country belie pre-existing, supportive social structures and frameworks that have served the best interests of persons residing in those areas for many years. Specifically, rural power cooperatives have been crucial and indispensable in bringing electric power to areas of the country that could not afford to otherwise build that infrastructure so critical for economic development. The mechanics of the first-round BIP/BTOP application process, however, disregarded and indeed destroyed the nexus of those populations as it pertains to common interests in obtaining the critical infrastructure necessary for sustenance, let alone growth. Since a rural power cooperative typically spans areas that include remote, non-remote rural and non-rural components, the NOFA's combined restrictions had the practical and destructive effect of preventing any applicant from proposing to simply build a project serving populations within that power cooperative's operating territory with grant funding under a BIP award. The only avenue through which that applicant could participate in the BIP program would be under a loan

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<sup>2</sup> See NOFA, 74 Fed. Reg. 33104, at 33106, 33113-14 (July 9, 2009).

or loan/grant combination, either of which would often violate the very preexisting senior debt covenants that made the applicant's existing rural broadband service deployments possible. TWN found itself in exactly that predicament with respect to virtually all of the areas it considered for broadband deployment using the BIP/BTOP program opportunity. We ask NTIA and RUS to consider such projects as worthy of submission directly to NTIA for BTOP grant funding, and also for grant-only funding under the BIP, so that the structure of pre-existing support systems can be preserved and leveraged for the success of the project.

## II. **“Challenge” Filings by Existing Providers**

We also offer comment on question II.C (Public Notice of Service Areas), which pertains to opposition filings by broadband service providers purporting to serve areas identified as unserved or underserved in a BIP/BTOP application. Although TWN has, itself, filed some oppositions with respect to certain applications, we are concerned that opposing parties are not held to any definable standards of coverage, service quality or even demonstrated sustained speeds when describing their “served” areas. Further, applicants are not given any opportunity for rebuttal, which could serve to expose critical flaws in the arguments of the opposing party that may not be evident to an agency reviewer far removed from the area in question. We ask NTIA and RUS to consider such oppositions only after an application has passed the Step 1 application qualification, and then only within a process that allows both parties to present arguments and replies for consideration by the evaluation panel. If oppositions were deferred for consideration until Step 2 “due diligence,” which seems more logical in any event, we believe there would be far fewer opposing submissions for the agencies to consider.

## III. **Sale or Lease of Project Assets**

Finally, we wish to offer comments on question II.E (Sale of Project Assets). While it is of course imperative that NTIA and RUS protect the awards given under the BIP/BTOP programs against erosion or loss due to unjust enrichment and other possible gamesmanship, the applicant must also be protected from excessively burdensome encumbrances that would not only reduce its enterprise value but may also negatively affect the applicant's access to capital for other valuable deployment projects. The required 10-year hiatus on the sale of project assets and, by extension, certain merger/acquisition activities, even when the acquiring party is willing to

accept the full responsibilities, requirements and covenants of a BIP/BTOP award, is overly burdensome and very possibly counter-productive in many cases. For example, this requirement could be in direct conflict with pre-existing corporate by-laws and therefore preclude BIP/BTOP participation by some of the country's most qualified service providers.

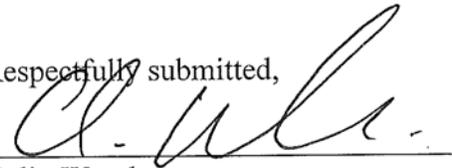
We ask NTIA and RUS to consider adopting a process wherein the agencies may approve a sale or lease of award-funded broadband facilities (or the awardees who own them) at any time after project completion, to the extent the acquiring entity is willing to accept the full responsibilities, requirements and covenants of a BIP/BTOP award. This change would allow NTIA and RUS to hold the applicant responsible for completion of the project and the operational focus required thereby, while allowing sufficient flexibility to take advantage of market forces that could improve the value of the NTIA/RUS investment. In such a process the agencies would, of course, still retain the right to disallow any transaction that would jeopardize the success of the project as defined in the grant application.

It is also worth noting that equipment used in the deployment of broadband infrastructure is rapidly evolving. An applicant may very well find it necessary to upgrade equipment originally funded by the BIP/BTOP programs after several years of operation. To the extent the applicant is prohibited from depreciating the project assets over the normal useful life of such equipment, and then using the salvage value of the original equipment as a "trade in" allowance for newer devices, the applicant and the project risks technological obsolescence. We therefore also ask the agencies to modify the policy regarding the sale or lease of project assets to accommodate the normal five-year replacement cycle of broadband equipment.

In conclusion, TWN is truly excited about the ways in which the BIP/BTOP programs could potentially accelerate and expand our plans to increase our broadband service area to serve households and businesses that currently are woefully unserved or underserved, and that could not be economically served but for these programs. If NTIA/RUS can address the above-described issues so that our participation in the application process is possible, we look forward

to submitting our grant application and, upon receipt of an award, using our proven, operational expertise to build tens of thousands of square miles of new broadband access capacity throughout the desert southwest.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "C. Wood", written over a horizontal line.

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