

USTELECOM

THE BROADBAND ASSOCIATION

WALTER B. MCCORMICK, JR.
President and Chief Executive Officer

July 20, 2009

The Honorable Gary Locke
Secretary of Commerce
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Dear Secretary Locke:

USTelecom is in full support of your recent remarks in Cleveland, Ohio, where you emphasized the need to use the funds from the American Recovery and Reinvestment Act (ARRA) to develop broadband projects across the country that showcase what is possible and accelerate investments that are sorely needed. However, after a thorough review of your recently issued Notice of Funding Availability (NoFA), USTelecom has concluded that the NoFA in its current form raises substantial hurdles to successful implementation of the program and its critical goals of creating jobs and economic growth in America. Further concerns arise from the Department's indication that a substantial portion of the available ARRA funding under the Department's Broadband Technologies Opportunities Program (BTOP) may be distributed under this initial NoFA, changes to the rules should be made immediately and not await further funding rounds. Implementing the two key suggestions made below would substantially improve the attractiveness of participation and simplify the process, improving program efficiency and speed the delivery of jobs, growth and increased broadband access. We are also writing Secretary Vilsack with these concerns as well as others specific to the BIP.

1. Delete from the NoFA the unnecessarily restrictive provisions on the sale or lease of award-funded facilities.

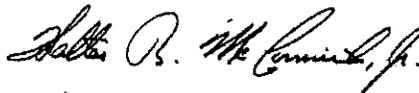
- While we understand the concern about speculators benefitting from government funding, barring the sale of ARRA funded facilities for ten years not only discourages legitimate rural providers from applying for needed funding, it unnecessarily limits the discretion of the Department itself to approve beneficial transactions.
- The Department is tying its own hands from considering transactions that create economies of scale or other efficiencies that facilitate the extension and improvement of broadband services to rural Americans.
- While a restriction on the sale or lease of ARRA financed facilities is appropriate to avoid unjust enrichment, such a restriction should be structured so that it can be overcome by a reasonable showing that the transaction does not yield such a result, is consistent with program goals and is therefore in the public interest.

2. The NoFA should be revised to include compliance with the FCC's Broadband Policy Statement as fully meeting the ARRA mandate for priority treatment.

- The statute requires NTIA to include contractual conditions for infrastructure grants that include non-discrimination and network interconnection obligations that at a minimum adhere to the Commission's Broadband Policy Statement. Unfortunately the NoFA creates broad, new and open-ended nondiscrimination and interconnection requirements far exceeding the Broadband Policy Statement.
- The broadband industry has more than three years of experience under the FCC's Broadband Policy Statement, which we believe appropriately satisfies the statutory priority. That Policy Statement has demonstrated its successful balancing of interests among all stakeholders..
- The uncertainty created by these broad new regulations may discourage qualified applicants from using this program to extend and improve broadband service to rural Americans.
- Further policy development in the area of interconnection and nondiscrimination should be the purview of the Federal Communications Commission, the expert agency in these matters, and should be subject to vigorous discussion through a transparent and interactive public proceeding.

USTelecom believes revision of the NoFA to reflect the key suggestions above would substantially improve the prospects of meeting the Obama Administration's laudable goal for broadband expansion in America. Our industry looks forward to working with you to make broadband a reality for all rural Americans.

Sincerely,



Walter McCormick, Jr.

cc: Laurence Strickling, Assistant Administrator
Mark Seiffert
Tom Power