



**Information
Technology &
Telecommunications**

Paul J. Cosgrave
Commissioner

August 10, 2009

VIA E-Mail and U.S. Mail

The Honorable Larry Strickling
Assistant Secretary of Commerce
Administrator
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Avenue, NW
Washington, DC 20230

Dear Assistant Secretary Strickling:

The City of New York ("City") commends the efforts of the National Telecommunications and Information Administration ("NTIA") in developing the July 1, 2009 Notice of Funding Availability ("NOFA") for the Broadband Technology Opportunities Program ("BTOP"). The City indeed recognizes the complexity and balancing of interests required to implement this critical program.

At the same time, the City would like to share with you certain substantial concerns about the NOFA. In particular, we feel that the guidelines for the first of three rounds of broadband stimulus funding have been unduly skewed against urban areas. We are also disappointed by the absence of a funding category specifically targeted to public safety broadband projects, as appears to have been contemplated by Congress.

Of the \$1.4 billion in available funding in this round, the City, along with most other urban areas, will have tremendous difficulty competing for any more than a share of the \$200 million that has been designated for *Public Computer Center* projects (\$50 million) and *Sustainable Broadband Adoption* projects (\$150 million). Most urban areas have effectively been "frozen out" of the most highly-funded category, which supports *Broadband Infrastructure* projects (\$1.2 billion).

The NOFA makes the \$1.2 billion infrastructure category available to support projects in both "unserved" areas (e.g., where little or no broadband service is available) and "underserved" areas. To qualify for funding as underserved, most urban areas will be forced to demonstrate that the rate of broadband subscribership in one or more contiguous census blocks is 40% of households or less. (Urban areas are highly unlikely to be able to qualify under either of the other two criteria: (1) that no more than 50% of the households have *access* to broadband service; or (2) that no broadband provider advertises downstream speeds of at least 3 Mbps.)

Unfortunately, the required 40% threshold is exceedingly low as an indication of whether an area is underserved. A recent study by the Pew Internet & American Life Project found that broadband adoption stood at 63% of American adults as of April 2009; and at 53% among households with annual incomes of between \$20,000 and \$30,000. To the extent that BTOP's core objectives include increasing broadband adoption nationally and addressing the "digital divide" between relatively higher and lower income Americans, it is unclear why a 40% adoption rate would be selected as the eligibility "cutoff" point for infrastructure funding.

Even where the adoption rate is 40% or below, it will be virtually impossible for urban areas – where census blocks are geographically small and numerous – to obtain reliable broadband adoption data at the census block level during the five week application window period. In New York City alone, there are 36,880 census blocks.

Indeed, even last mile infrastructure projects that target community anchor institutions, such as schools or libraries, in underserved areas will not be eligible for the \$1.2 billion in infrastructure funding. That is, even if such an institution is located in a census block with a broadband adoption rate of 40% or less, the funding must be used on an infrastructure project that provides services to no fewer than all “end users” in the area. This requirement precludes implementation of more targeted last mile infrastructure projects that might, for example, enhance broadband connectivity, user capacity and throughput speeds needed to upgrade heavily-used community institutions. The requirement further forces areas that wish to undertake community center initiatives to seek funding from one of the other two much smaller program buckets.

Finally, as enacted by Congress, the BTOP has several explicitly stated “purposes,” including “improv[ing] access to, and use of broadband service by public safety agencies.” There is no suggestion in the legislation that public safety broadband funding was intended to be made incidental to BTOP’s other core objectives. However, rather than identifying a dedicated funding source for public safety broadband, the NOFA envisions such programs as a sort of adjunct to broadband infrastructure projects that serve the general public. Thus, for example, infrastructure projects that also provide broadband public safety are to receive favorable consideration in the evaluation process. While the logic of “bundling” such initiatives is compelling in some cases, it should not be the exclusive means of accessing public safety broadband funding. The urgent public safety broadband needs of many applicants will not necessarily fall squarely within the “unserved” and “underserved” area definitions established in the NOFA.

In light of the concerns outlined above, we strongly urge the NTIA to modify the NOFA in such a way as to make potential funding opportunities more equitable throughout the country, and to ensure that future NOFAs reflect a more balanced approach. To create a greater balance, the NTIA should allocate substantially greater funding to the Public Computer Center and Sustainable Broadband Adoption categories. In addition, with respect to the Broadband Infrastructure category, the NTIA should modify the definition of “underserved” to significantly raise the 40% adoption threshold; provide applicants with the opportunity to themselves define (and require that they demonstrate in their applications) the geographic area(s) that meet the threshold; and permit more targeted use of infrastructure funding to include, for example, community anchor institutions that are located within underserved areas. Finally, the NTIA should establish a dedicated funding category for public safety projects.

As noted at the outset, the City is appreciative of the efforts made by the NTIA in implementing the BTOP under difficult circumstances. It is our hope, however, that the NTIA will consider the modifications outlined above to help ensure that broadband funds are distributed more equitably between rural and urban areas, between broadband deployment and adoption initiatives, and to enable public safety projects to directly qualify for funding in the manner envisioned by the ARRA.

Sincerely,



Paul J. Cosgrave

cc: Sen. Kirsten Gillibrand
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