

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

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**DEPARTMENT OF AGRICULTURE**  
**Rural Utilities Service**

American Recovery and Reinvestment Act of 2009 ) Docket No. 090309298-9299-01  
)

**COMMENTS OF THE**  
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## EXECUTIVE SUMMARY

The National Cable & Telecommunications Association (NCTA) appreciates the opportunity to submit these comments to the National Telecommunications and Information Administration (NTIA) and Rural Utilities Service (RUS) regarding the implementation of the American Recovery and Reinvestment Act.

The cable industry is at the forefront of a vibrant marketplace that has been responsible for the explosive growth in both broadband deployment and broadband use in the country. Cable operators invested more than \$14 billion last year and are expected to invest a similar amount in 2009. The cable industry currently offers wired broadband services to more than 92 percent of American households.

The \$7.2 billion provided for under the Recovery Act should be used to complement, not compete with, the vibrant broadband marketplace that exists in most areas of the countries. In particular, this new funding has the potential to expand broadband access to those areas that are still unserved and to spur adoption of broadband service among consumers. These two goals – bringing broadband service to areas where it is not available today and promoting the adoption of broadband service in areas where it is available – should be the primary, if not exclusive, focus of both NTIA and RUS. NCTA believes that adoption programs are so critical that NTIA should plan to allocate more than the \$250 million required for such programs under the Recovery Act.

In all aspects of these programs, NTIA and RUS should be mindful of the overarching goal of the broadband provisions of the Recovery Act – to stimulate broadband investment during a period of difficult economic conditions. The agencies can achieve this objective by adopting streamlined application procedures and prioritizing projects that can be implemented quickly. Specifically, to ensure that funding is going to projects that quickly and efficiently will bring broadband service to customers who do not have it today, NTIA and RUS should develop scoring criteria that emphasize three factors – the timeliness of construction, the sustainability of the project after the grant is completed and the experience of the applicant. For similar reasons, they should resist calls to apply the interconnection and nondiscrimination provisions of the Recovery Act in a manner that creates uncertainty and discourages new investment.

All entities, including private companies, should be permitted to apply for funds and awards should be made on a competitively and technologically neutral basis. Particularly with respect to infrastructure projects, existing providers of broadband service are best positioned to quickly and efficiently build out new facilities.

Both agencies should ensure that Recovery Act funding programs are open and transparent, with a mechanism for verification to ensure that applications for infrastructure deployment are appropriately targeted to unserved and underserved areas. NTIA and RUS should use common procedures and timelines whenever possible and they should coordinate with the FCC to develop a common set of definitions. They should develop a streamlined application process that includes objective scoring criteria, a significant (but not dispositive) role for state governments, and a reasonable opportunity for public comment.

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## A. INTRODUCTION

Before responding to the specific questions raised by NTIA and RUS, in this section we provide some background on the cable industry's efforts in the broadband arena and our views on the policy issues involved in implementation of the broadband provisions of the Recovery Act.

The cable industry is at the forefront of a vibrant marketplace that has been responsible for the explosive growth in both broadband deployment and broadband use in the country. In sharp contrast to the situation only a decade ago, today more than 92 percent of American households have access to wired broadband services,<sup>1</sup> and the cable industry alone has spent tens of billions of dollars upgrading and expanding its networks to provide this broadband access.<sup>2</sup> Even in challenging times for the nation's economy, the cable industry continues to make very significant capital investments in order to increase broadband deployment and improve current generation broadband service – improving upstream and downstream speeds, as well as improving reliability and ease of use.

As the largest provider of retail broadband service in the U.S., the cable industry has a significant interest in the success of grant programs designed to promote broadband use. All broadband customers and providers benefit indirectly from an effective grant program, since the more households and businesses that connect to broadband, the more valuable it is to all broadband consumers.

Cable's interests – and sound public policy – are implicated by the nature of the grant programs in a more profound way as well. The \$7.2 billion program has the potential to do a tremendous amount of good, and we support the federal government's efforts to use these funds to expand broadband access and spur adoption. It is also true, however, that these funds must be viewed in the context of a vastly larger capital requirement if we are to achieve full broadband construction and maintenance for the country. The cable industry alone spent twice that \$7.2 billion amount in just the past year to upgrade its facilities. Most of the investment necessary to provide and then to maintain broadband service has and will come from the private sector. As a result, a critical consideration in devising a sound program is that the program not harm the investment fabric of the broadband industry. A successful program must supplement, and not distort, the growing private, competitive market for broadband services. Stated simply, the grant program must not only weigh the needs for stimulus over the next 24 months, it must also seriously consider the effect that grants will have on the future of broadband services in this nation.

We therefore propose that the Commerce and Agriculture Department programs be designed to implement the following priorities in awarding competitive grants, in descending order:

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<sup>1</sup> SNL Kagan data (2008).

<sup>2</sup> NCTA figures based upon SNL Kagan estimates, *available at* <http://www.ncta.com/Stats/InfrastructureExpense.aspx>. Between 1996 and 2008 cable operators have invested more than \$145 billion in capital to enhance their hybrid fiber-coaxial networks and other infrastructure, including approximately \$14.6 billion in 2008. A similar level of capital expenditures is estimated for 2009.

1. Extending broadband facilities to *unserved areas*.
2. Supporting programs that enable *underserved populations* to acquire and to make effective use of broadband service where it is already available.
3. If funds remain, extending broadband facilities to *underserved areas* defined in terms of below-standard speed and other qualitative measures relative to today's current generation broadband services.

Unserved Areas. Extending the physical availability of broadband where it currently does not exist should be the government's highest priority in terms of distributing broadband grants for infrastructure construction. While the number of consumers with access to broadband has grown steadily over the past five years,<sup>3</sup> some geographic areas still lack the necessary infrastructure to offer broadband services. In particular, without government assistance, "[t]he economic costs and technological limitations blocking the expansion of broadband leave many rural communities underserved" and often unserved.<sup>4</sup> Thus, to meet the stimulus plan's goal of extending broadband to unserved areas, agencies should distribute grants so that new infrastructure is constructed in areas where none exists.

Underserved Populations. Two key obstacles – lack of interest and lack of resources – greatly affect whether Americans subscribe to broadband. It should be no surprise that Congress has therefore directed that a significant amount of resources be directed to promoting broadband awareness and adoption by these underserved populations. Indeed, this is the principal area in which Congress has expressly mandated that funds be spent, underscoring its priority. The plain legislative intent is that the mandated amount is the bare minimum that should be directed to demand-side stimulus, with no indication that Congress intended to impose any upper limit on such expenditures.

To address these issues, grant funds should be directed to programs that educate targeted consumers on the benefits of broadband service. In addition, grants should be used to provide targeted subsidies to make broadband services more affordable, and to take other steps on a pilot project basis similar to those adopted in "Lifeline," "Link-Up" and related programs that have historically helped to subsidize voice services, in order to support the demand for broadband service. By way of example, programs that support an increase in computer ownership and training are very promising and should be supported extensively. The law calls for such grants,<sup>5</sup> and they have a double benefit: they ensure the prompt expenditure of grant dollars in ways that promote jobs. For both of these reasons, such grants will be one of the most effective and appropriate ways to stimulate broadband adoption and use.

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<sup>3</sup> John B. Horrigan, Home Broadband Adoption 2008 at 1 (Pew) (July 2008).

<sup>4</sup> Jon M. Peha, Bringing Broadband to Unserved Communities at 11, The Hamilton Project (The Brookings Institution) (July 2008).

<sup>5</sup> See The American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(b)(3), 123 Stat. 115, 512-13 (2009).

Underserved Areas. Finally, it is no doubt the case that some broadband customers are *underserved* – that is, they live in areas where there is at least one provider offering broadband, but not at robust speeds. In these areas, providers may offer broadband service at transmission speeds that exceed the FCC’s definition, but fall short of the speeds typically experienced by consumers with current generation broadband service. Promoting more robust broadband services in these underserved *areas* is the third element of a sound broadband grant program. The problems associated with underserved areas, however, are by their nature not as substantial as those faced by potential customers who lack broadband access altogether, or by populations who cannot afford or do not understand the benefits of broadband. Promoting additional services where broadband is already available may increase broadband penetration marginally, but the impact on penetration is likely to be significantly less than efforts to extend broadband access where none is available,<sup>6</sup> or to promote broadband use among populations with low broadband adoption rates.

At the same time, grants to address any perceived problems associated with underserved areas – where, by definition, providers have invested risk capital to deploy broadband – present the greatest danger of undermining the existing broadband investment environment. The cable, telephone, wireless, and satellite industries have and continue to pursue innovation that has brought access to the present point. Any subsidies to areas in which broadband service is presently available should be designed to avoid disincentives that would threaten diminution of the entire broadband ecosystem.

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<sup>6</sup> Projects to construct middle mile facilities may fall in this category where such deployment can be demonstrated to enable the expansion of local broadband networks into unserved areas.

## **B. QUESTIONS REGARDING NTIA PROGRAMS**

### **1. The Purposes of the Grant Program**

**Section 6001 of the Recovery Act establishes five purposes for the BTOP grant program.**

#### **a. Should a certain percentage of grant funds be apportioned to each category?**

Yes. It probably would be helpful to establish a fixed allocation of funding for each of the programs. NTIA should not, however, allocate all the money at the beginning. Rather, it should leave flexibility to adjust the allocation based on demand for the various programs. In addition, NTIA should plan to allocate more than the \$250 million required for innovative programs to encourage broadband adoption. These programs provide significant public benefits and additional funding beyond the required \$250 million would be money well spent. RUS should allocate funding for such programs as well. In addition, construction of “middle mile” facilities offers many benefits and both agencies should consider setting aside funding for such projects in each round of grants.

#### **b. Should applicants be encouraged to address more than one purpose?**

Not necessarily. Trying to achieve multiple purposes in a single project may not always be efficient and requiring, or even encouraging, infrastructure projects to include an adoption component or vice versa may have the effect of discouraging worthwhile projects. Funding should go to applicants with expertise in the tasks for which they seek funding and the ability to complete the proposed project in a timely manner. We address this in more detail in connection with selection criteria in Question 4 below.

#### **c. How should the BTOP leverage or respond to the other broadband-related portions of the Recovery Act, including the United States Department of Agriculture (USDA) grants and loans program as well as the portions of the Recovery Act that address smart grids, health information technology, education, and transportation infrastructure?**

NTIA should focus on its own objectives and coordination with RUS and FCC. Coordinating with additional Recovery Act programs (*e.g.*, smart grids) may add complexity and slow the distribution of funding. NTIA and RUS should, however, require applicants to state whether a project is dependent on receipt of additional funding from other Recovery Act programs because that may affect how quickly the project can commence. The Recovery Act prohibits the use of BTOP funds for projects that receive funding from RUS. In addition, NTIA and RUS should explicitly prohibit receipt of funding from multiple federal sources for the same costs, or require that any grant be offset by the amount of funding received from such other sources.

## 2. The Role of the States

**The Recovery Act states that NTIA may consult the States (including the District of Columbia, territories, and possessions) with respect to various aspects of the BTOP. The Recovery Act also requires that, to the extent practical, the BTOP award at least one grant to every State.**

### **a. How should the grant program consider State priorities in awarding grants?**

For infrastructure projects, NTIA should develop objective scoring criteria to rank projects. State recommendation of a project may be one factor that NTIA includes in the scoring criteria, as proposed in response to Question 4 below, but projects that would not otherwise score high enough to receive NTIA funding should not “jump the queue” simply because they are identified as a state priority.

### **b. What is the appropriate role for States in selecting projects for funding?**

NTIA should take advantage of the expertise that States possess by giving them the opportunity to comment on all applications, helping to verify the facts presented in applications (unless the State is competing for funding), and monitoring a grantee’s performance after the grant is awarded. To the extent states have a role in ranking projects, they should do so subject to clear criteria established by NTIA and RUS.

### **c. How should NTIA resolve differences among groups or constituencies within a State in establishing priorities for funding?**

This should not be a problem if NTIA establishes objective scoring criteria. Even if NTIA considers a state’s priorities, it should award funding based solely on how projects rank under that scoring system. States can make suggestions as to priorities under NTIA rules, but such rankings should be independently reviewable by NTIA. In this regard, it is worth noting that while the House-Senate conferees expected NTIA to seek advice and assistance from the states in reviewing grant applications, they specifically intended for “NTIA [to] retain[] the sole authority to approve the awards.”

### **d. How should NTIA ensure that projects proposed by States are well-executed and produce worthwhile and measurable results?**

Projects proposed by states should be subject to the same post-grant monitoring and performance standards as all other projects that receive funding from NTIA.

### 3. Eligible Grant Recipients

**The Recovery Act establishes entities that are eligible for a grant under the program. The Recovery Act requires NTIA to determine by rule whether it is in the public interest that entities other than those listed in Section 6001(e)(1)(A) and (B) should be eligible for grant awards. What standard should NTIA apply to determine whether it is in the public interest that entities other than those described in Section 6001(e)(1)(A) and (B) should be eligible for grant awards?**

NTIA should fund those projects that best meet the statutory goals of creating and preserving jobs and increasing the deployment and adoption of broadband, regardless of what type of entity proposes the project. With respect to construction of broadband facilities, there can be no doubt that it is in the public interest for cable operators and other existing facilities-based providers of broadband services to undertake such projects based on their long track record of building and operating such facilities and their history of working with state and local officials. Accordingly, NTIA should make clear in its initial Notice of Funds Availability that participation by any existing facilities-based provider of broadband service is in the public interest and that no additional showing or test is required.

#### 4. Establishing Selection Criteria for Grant Awards

**The Recovery Act establishes several considerations for awarding grants under the BTOP. In addition to these considerations, NTIA may consider other priorities in selecting competitive grants.**

- a. What factors should NTIA consider in establishing selection criteria for grant awards? How can NTIA determine that a Federal funding need exists and that private investment is not displaced? How should the long-term feasibility of the investment be judged?**

NTIA and RUS should develop a common set of scoring criteria to be used in selecting among infrastructure applications. The two agencies are subject to different statutory requirements, but those requirements are not inconsistent with each other and can be harmonized into a single set of criteria. The scoring criteria should be as objective as possible. The use of objective scoring criteria will enable the two agencies to process and rank the applications efficiently, whether that work is done by internal agency staff, state commission staff, or outside consultants.

To facilitate the process of establishing scoring criteria, NTIA and RUS should model their programs on existing broadband grant programs. In particular, the rules applicable to the California Advanced Service Fund (CASF), administered by the California Public Utilities Commission, provide a useful model for NTIA and RUS to follow.

NTIA and RUS should follow the CASF model in terms of having an initial round of applications devoted solely to bringing service to unserved areas. A focus on unserved areas is the best way to ensure that federal funding is necessary and not displacing private investment. This approach satisfies the requirement that RUS give priority to proposals that provide service to the highest proportion of rural residents that do not have access to broadband service.

In terms of specific factors to be considered, NTIA and RUS should use a modified version of the CASF criteria in choosing infrastructure projects. Specifically, the two agencies should consider the factors identified below, some of which are included in the CASF rules.

1. Timeliness of Construction – This factor attempts to measure how quickly a project can get started and how quickly consumers will see the benefits of the construction. Projects that begin construction and bring service to consumers sooner would score higher than those that begin construction and bring service to consumers later. Adjustments to this scoring may be warranted to reflect differences in regional construction schedules, *e.g.*, an applicant for a project in Alaska should not be penalized because construction may not be feasible during winter months.

Considering the timeliness of construction as a factor in ranking applications advances the overarching purpose of the broadband provisions of the Recovery Act – stimulating broadband investment during a period of significant economic challenges.

This goal is reflected in the requirement that RUS give priority to proposals that can commence promptly upon approval and in the provision requiring NTIA projects to be substantially completed within two years. Accordingly, this factor should be given significant weight in assessing the relative merits of competing applications.

2. Sustainability – While stimulating investment quickly is a primary goal of the Recovery Act, Congress made clear that these investments were important because of the long-term benefits that result from increased deployment and adoption of broadband. NTIA and RUS can help achieve these long-term goals by giving significant weight to the sustainability of a project in their scoring criteria.

This factor attempts to measure the likelihood that a project will be sustainable after completion of the grant period, as evidenced by the applicant's commitment to the project. Specifically, an applicant that is willing to commit to provide service in the funded area for a period of 5 years after the last grant payment should score higher than an applicant that is not willing to make such a commitment. An applicant's willingness to contractually bind itself for a period of 5 years is a strong indication that the project is sustainable.

The agencies should consider additional evidence of the continuing financial viability of the project. For example, an applicant's commitment not to seek support from the FCC's high-cost fund for the area of the proposed project during that 5-year period would earn higher scoring than a proposed project that did not make such a commitment.

3. Experience – This factor attempts to measure the likelihood that a project will be accomplished as proposed in the application, as evidenced by the experience of the applicant. Projects from companies with more experience in the broadband business would score higher than those from entities with less experience.

A preference for experienced applicants is fully consistent with the provisions of the statute. Giving preference to experienced applicants is also a sound way to implement the requirement that RUS give priority to former borrowers. This should apply only to borrowers in good standing. To the extent a previous borrower has not completed past projects in a timely manner, a deduction from the scoring of its application is warranted.

4. Funds Per Previously Unserved Household – This factor attempts to measure the per-household cost of bringing broadband networks to new potential customers who previously had no access to broadband, *i.e.*, unserved customers. Projects that cost less per potential customer would score higher than those that cost more.

Adjustments to the scoring may be warranted to ensure that this factor does not work to the disadvantage of communities with geographic or topographic challenges.

The use of this factor in ranking applications helps get the maximum benefit out of government funding in terms of bringing broadband facilities to households with no broadband access today. Congress made clear that both agencies should seek to promote deployment in areas with no broadband service and including this factor will achieve that objective.

5. Broadband Speed – This factor attempts to ensure that areas that receive funding no longer would be considered unserved or underserved. Projects that exceed a threshold based on current generation speeds (3 Mbps downstream and 768 kbps upstream, as explained in Question 13 above) would score higher than those that do not meet the threshold. The threshold approach favored by NCTA is preferable to establishing a sliding scale, which might have the effect of encouraging “gold plating” of networks. If NTIA does adopt a sliding scale, rather than a threshold, it should use the square root formula used by the CASF. This approach recognizes that beyond a certain point there is decreasing consumer value to additional increments of speed and it is consistent with the requirement that NTIA consider whether a project will, *to the extent practicable*, provide the greatest broadband speed possible.
6. Affordability – NTIA and RUS should consider the extent to which service made possible by federal funding will be available at reasonable prices. Applicants that commit to offer service at prices that are comparable to what is available in neighboring communities for similar services should score higher than applicants that do not make such a commitment. This approach is consistent with the requirement that NTIA consider whether a project will increase the affordability of, and subscribership to, broadband service.
7. Jobs – This factor attempts to measure the number of jobs that will be created or saved relative to the amount of funding requested. As between projects of similar size, projects for which the applicant commits to save or create more jobs should score higher than projects that save or create fewer jobs.
8. Financing – This factor attempts to measure the likelihood that financing will be available for completion of the project. Projects in which the applicant seeks 80% of the funding or less would score higher than those in which the applicant seeks federal funding for more than 80% of the project’s cost, *i.e.*, projects that require a waiver of the 80% standard contained in the Recovery Act. RUS should apply a similar factor. Requiring entities receiving funds to post their own financial stake in the effort will provide assurance that the entity itself is invested in the success of the project and is serious about its completion. Consideration of this factor also satisfies the requirement that RUS give priority to proposals that will be fully funded.
9. State Endorsement – This factor attempts to measure whether a project has the support of relevant state officials. Projects that have the support of the state government would score higher than projects that lack state support. As explained in response to Question 2 above, within the objective scoring process established by NTIA and RUS, states should be given a significant, but not dispositive, role in reviewing applications. Such an approach is a sound way to implement the consultative role the states are permitted to play in the NTIA program.
10. Service to Public Interest Buildings – NTIA and RUS should consider whether a project includes the construction of facilities to schools, libraries, hospitals, and other buildings that serve a public interest. Projects that include such facilities should score higher than projects that serve only business or residential customers.

These factors are focused on construction of “last mile” facilities. Projects that propose the construction of “middle mile” facilities would require some different factors and should be considered as a separate category from “last mile” projects. For example, funds per unserved household is a good measure of the effectiveness of a last mile project, but it is not clear that it would work as a measure of the effectiveness of a middle mile project. Similarly, middle mile projects may facilitate increased speeds for end users, but the applicants may not have control over whether those increased speeds are actually made available to end users. Other factors, however, such as timeliness of construction, sustainability, and experience, are equally relevant to all infrastructure projects.

Similarly, many of these factors would need to be modified for use in assessing the relative merits of “demand side” projects designed to stimulate broadband adoption. We address these programs in Questions 6 and 7 below.

**b. What should the weighting of these criteria be in determining consideration for grant and loan awards?**

NCTA believes that some factors are more important than others. Specifically, the first three factors identified above – timeliness of construction, sustainability and experience – should be given the most weight. By giving greatest weight to these three factors, NTIA and RUS can be assured that funding is going to projects that quickly and efficiently will bring broadband service to customers who do not have it today. Such an approach is well-suited to achieving the overarching goals of the broadband provisions of the Recovery Act. While the other factors, such as broadband speed or state endorsement, are also significant, they do not go to the core statutory goals of the Recovery Act.

**c. How should the BTOP prioritize proposals that serve underserved or unserved areas? Should the BTOP consider USDA broadband grant awards and loans in establishing these priorities?**

For grants or loans made for the purpose of building new infrastructure, both programs should focus on bringing broadband networks to unserved areas, and if funds remain, to underserved areas. In each round of funding awards, projects for unserved areas should take precedence over all other projects. In choosing among projects that propose bringing service to unserved areas, NTIA and RUS should focus on the cost per unserved household, prioritizing those investments in unserved areas that bring service to the most households without service in such areas at the least cost. Mobile wireless and wireline projects should be considered separately. Adjustments to the scoring may be warranted to ensure that this factor does not work to the disadvantage of communities with geographic or topographic challenges.

**d. Should priority be given to proposals that leverage other Recovery Act projects?**

Not necessarily. To the extent a project is contingent on receiving funding from multiple federal sources, the risk of non-completion may be greater. Trying to leverage multiple

programs also may add complexity and make it more difficult to achieve the two primary goals of creating and preserving jobs and increasing the deployment and adoption of broadband. That said, NTIA and RUS should publicize other Recovery Act projects that may assist grant recipients, *e.g.*, it may be efficient for broadband construction to coincide with highway construction made possible by Recovery Act funding. States may play a role in this coordination as well.

- e. Should priority be given to proposals that address several purposes, serve several of the populations identified in the Recovery Act, or provide service to different types of areas?**

Not necessarily. Trying to achieve multiple purposes in a single project may not always be efficient. Funding should go to applicants with expertise in the tasks for which they seek funding and the ability to complete the proposed project in a timely manner. Applicants should not be required to include an adoption component with infrastructure projects or vice versa, nor should the scoring criteria grant a preference for projects that include multiple components. Granting such a preference would discourage or penalize worthy projects in areas that would benefit from more limited projects. For example, the fact that a geographic area is unserved does not automatically mean that potential customers are unaware of the virtues of broadband service or unlikely to purchase the service when it becomes available.

- f. What factors should be given priority in determining whether proposals will encourage sustainable adoption of broadband service?**

As described above, the best way to ensure that a project will be sustainable is to favor those applicants that commit to continuing the project for a period of 5 years after the project is completed. Another relevant factor in determining whether a project will encourage sustainable adoption is the amount of funding that the applicant is willing to commit to the project. Applicants that are unwilling to put up 20 percent of the cost of the project may not have a sufficient incentive to see the project through to completion. Conversely, applicants that put up at least 20 percent of the cost of the project are less likely to abandon the project at the end of the grant period. The applicant's experience in providing the services or functions for which it seeks funding also may be a factor in determining the sustainability of the project.

- g. Should the fact that different technologies can provide different service characteristics, such as speed and use of dedicated or shared links, be considered given the statute's direction that, to the extent practicable, the purposes of the statute should be promoted in a technologically neutral fashion?**

The principle of technological neutrality means that NTIA should not preclude any technology from seeking funds, nor should it automatically favor one type of provider over another based solely on technology. Attempting to choose characteristics of certain types of broadband offerings may lead to wrong choices and may lead to decisions that violate the statute's preference for technologically neutral rules. NTIA should, however,

consider the capabilities of an applicant's technology and its suitability to the task at hand (including the cost) in choosing among competing applications. In this regard, it is worth noting that the House-Senate conferees instructed NTIA to seek to fund, *to the extent practicable*, projects that provide the highest possible, next-generation broadband speeds to consumers. A technologically neutral system for scoring competing grants is the best way to compare applicants.

**h. What role, if any, should retail price play in the grant program?**

Subsidizing the construction of broadband facilities is not a worthwhile use of government resources if the recipient of the funding will not be able to offer service over those facilities at reasonable prices. Applicants should be expected to offer broadband service to areas served by BTOP-funded facilities at the same retail price as areas they serve using unsubsidized infrastructure.

## 5. Grant Mechanics

**The Recovery Act requires all agencies to distribute funds efficiently and fund projects that would not receive investment otherwise.**

### **a. What mechanisms for distributing stimulus funds should be used by NTIA and USDA in addition to traditional grant and loan programs?**

NTIA and RUS should develop a common application process. To increase transparency and accountability, that process should apply the following requirements to all projects:

- Applicants should provide a detailed explanation of the project for which they are seeking funding, including the following information:
  - an explanation of how the project serves the purposes of the Recovery Act, including the intended beneficiaries of the project and the number of jobs that will be saved or created;
  - a list of all entities that will be involved in implementing the project and their relevant experience in performing the tasks for which funding is requested;
  - the geographic scope of the project;
  - the sustainability of the project at the conclusion of the grant.
- Applicants should certify that the project would not have been implemented but for the requested funding, *e.g.*, the applicant has not yet made investments or entered into contracts related to the project and the project is not being undertaken to fulfill an existing legal or regulatory obligation.
- Applicants should certify that the federal share of the project cost will not exceed 80 percent. To avoid unjust enrichment, applicants must disclose all other sources of government funding that would be used to support construction or operation of the facilities, including funding from federal and state universal service mechanisms.

In addition, NTIA and RUS should establish the following application requirements for projects that involve infrastructure construction:

- For any proposed construction project, applicants should provide detailed information demonstrating that the project will bring broadband to an unserved or underserved area (with sufficient transparency to permit both agency and independent verification), as defined above, including the following:
  - a description of the applicant's proposed project area, a project area map, and a list of all census tracts to be served
  - information on the number of potential households and businesses in each census tract in the proposed project area

- a geographical representation and numerical estimate of the unserved households within in each census tract in the project area that the applicant believes will be served upon completion of the project;
  - number and identity of existing providers of broadband service in each census tract in the project area;
  - details regarding planned network construction, including types of equipment that will be deployed and anticipated upstream and downstream transmission speeds; and
  - the total cost of the project and the average cost for each unserved household.
- All of the information identified above should be verified by an officer of the applicant. For each construction project, NTIA and RUS should require that key information regarding the project, including evidence regarding the geographical availability of broadband in a project area, be posted on the agency's website and that the public be given at least 14 days to provide additional information regarding broadband availability in such area. NTIA and RUS would take such additional information into account in determining whether to grant the application and should independently verify applicant's claims that an area is unserved or underserved.

**b. How would these mechanisms address shortcomings, if any, in traditional grant or loan mechanisms in the context of the Recovery Act?**

These mechanisms would address concerns regarding the lack of speed and transparency in existing procedures. The use of a common application and common procedures would facilitate the process from the perspective of both the applicants and the reviewing agencies. Establishing a web site that posts pertinent information about every application, and providing the public a reasonable opportunity to comment on those applications, will help avoid waste, fraud and abuse by identifying projects that are not worthy of receiving government funding.

**6. Grants for Expanding Public Computer Center Capacity**

**The Recovery Act directs that not less than \$200,000,000 of the BTOP shall be awarded for grants that expand public computer center capacity, including at community colleges and public libraries.**

**a. What selection criteria should be applied to ensure the success of this aspect of the program?**

The selection criteria for public computer center capacity should be designed to reward projects that will quickly, efficiently and reliably promote the use of broadband services. A number of factors identified in Question 4 above also should be used in assessing projects under this program. In particular, the sustainability of the project and the experience of the applicants both are highly relevant.

**b. What additional institutions other than community colleges and public libraries should be considered as eligible recipients under this program?**

NTIA should consider granting funds to institutions that serve purposes similar to community colleges and public libraries, including public K-12 schools and community organizations, such as Boys and Girls Clubs. NTIA also should consider providing funding to schools and libraries through the FCC's existing E-Rate program, a program the FCC is considering as part of its developing national broadband strategy.

**7. Grants for Innovative Programs to Encourage Sustainable Adoption of Broadband Service**

**The Recovery Act directs that not less than \$250,000,000 of the BTOP shall be awarded for grants for innovative programs to encourage sustainable adoption of broadband services.**

**a. What selection criteria should be applied to ensure the success of this program?**

The selection criteria for programs to encourage adoption of broadband services should be designed to reward projects that can be implemented quickly, efficiently and reliably. A number of factors identified in Question 4 above also should be used in assessing projects under this program. In particular, the sustainability of the project and the experience of the applicants both are highly relevant. Among other options, NTIA should consider providing funding to expand existing FCC programs (Lifeline/LinkUp, E-Rate, Rural Health Care) that could be used to promote the adoption of broadband services. It also should consider providing funding for the creation of educational or informational broadband content that will encourage the use and adoption of broadband services.

**b. What measures should be used to determine whether such innovative programs have succeeded in creating sustainable adoption of broadband services?**

NCTA has no comment on this question at the present time.

## 8. Broadband Mapping

**The Recovery Act directs NTIA to establish a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State.**

**a. What uses should such a map be capable of serving?**

The primary purpose of the nationwide inventory map is to identify unserved and underserved areas, which will better enable federal and state government agencies to direct resources to the areas most in need. Specifically, government agencies will be able to take served census tracts “off the table” with respect to infrastructure dollars, enabling them to focus resources on areas most in need of support.

**b. What specific information should the broadband map contain, and should the map provide different types of information to different users (e.g., consumers versus governmental entities)?**

The map should be focused on identifying where service is available and where it is not at the various speed tiers used in existing FCC reports. It should be created primarily for use by government agencies. The marketplace will ensure that consumers are able to identify broadband providers operating in a particular area.

**c. At what level of geographic or other granularity should the broadband map provide information on broadband service?**

NTIA initially should work with the FCC to prepare a map using the census tract data collected through the semi-annual Form 477 filing. NTIA should then update those maps with more detailed information collected by the states. In doing so, NTIA and the states should consider the relative costs and benefits of collecting various types of data on a more granular basis. There are significant costs associated with the government requiring companies to report data that they do not keep in the ordinary course of business.

**d. What other factors should NTIA take into consideration in fulfilling the requirements of the Broadband Data Improvement Act, Pub. L. No. 110-385 (2008)?**

As with other grant programs addressed in these comments, NTIA’s objective with respect to mapping grants should be to give funding to entities that can quickly, efficiently and reliably achieve the goals of the statute. In particular, NTIA should consider the experience of the mapping entity, the schedule for completing the work, and the steps that will be taken to protect proprietary data.

- e. **Are there State or other mapping programs that provide models for the statewide inventory grants?**

Grants for mapping should go to public/private partnerships with the demonstrated ability to produce high quality maps and to create the type of collaborative organizational structures at the state and local level that are necessary for such efforts to be successful.

- f. **Specifically what information should states collect as conditions of receiving statewide inventory grants?**

States should collect data that would enable them to better identify unserved and underserved areas, *e.g.*, by identifying unserved portions of census tracts that have limited service. These efforts should complement, not duplicate, the FCC's data collection efforts.

- g. **What technical specifications should be required of state grantees to ensure that statewide inventory maps can be efficiently rolled up into a searchable national broadband database to be made available on NTIA's website no later than February 2011?**

NTIA should adopt a minimum set of requirements so that common data points can be integrated effectively.

- h. **Should other conditions attach to statewide inventory grants?**

In addition to the technical considerations addressed in the previous question, grants should be conditioned on the recipient taking appropriate steps to protect the confidentiality of proprietary data submitted by broadband providers.

- i. **What information, other than statewide inventory information, should populate the comprehensive nationwide map?**

NTIA should, over time, add additional census data that might make the data useful in designing programs to stimulate broadband adoption.

- j. **The Recovery Act and the Broadband Data Improvement Act (BDIA) imposes duties on both NTIA and FCC concerning the collection of broadband data. Given the statutory requirements of the Recovery Act and the BDIA, how should NTIA and FCC best work together to meet these requirements?**

NTIA should coordinate closely with the FCC to make the best use of the data collected by the FCC on the Form 477 and to ensure that the FCC's national broadband strategy reflects the best mapping information available to NTIA.

## 9. Financial Contributions by Grant Applicants

**The Recovery Act requires that the Federal share of funding for any proposal may not exceed 80 percent of the total grant. The Recovery Act also requires that applicants demonstrate that their proposals would not have been implemented during the grant period without Federal assistance. The Recovery Act allows for an increase in the Federal share beyond 80 percent if the applicant petitions NTIA and demonstrates financial need.**

- a. What factors should an applicant show to establish the “financial need” necessary to receive more than 80 percent of a project’s cost in grant funds?**

Requiring an applicant to fund 20 percent of any infrastructure project is an important factor in ensuring that projects are reasonable in size and scale and that there is no wasteful “gold plating” of facilities. Accordingly, NTIA should adopt a stringent waiver standard. In addition, the 20 percent contributed by the applicant should be in the form of cash or other tangible assets. NTIA should not allow entities to avoid this requirement through in-kind contributions of right-of-way or other intangible assets.

A slightly different approach to in-kind contributions may be warranted for projects designed to promote adoption of broadband services. In that context, in-kind contributions, such as discounted retail rates, may be critical to the success of the program.

- b. What factors should the NTIA apply in deciding that a particular proposal should receive less than an 80 percent Federal share?**

NCTA has no comment on this question at the present time.

- c. What showing should be necessary to demonstrate that the proposal would not have been implemented without Federal assistance?**

The question of whether any given project would be implemented absent a grant is a difficult one. Capital expenditure budgets and construction plans for most companies are in a state of flux due to the same economic problems that led Congress to adopt the Recovery Act. NTIA should require no more than a certification that a particular project would not be implemented in the current timeframe without Federal assistance. A more stringent requirement would simply slow the process of awarding grants. NTIA should not, however, award grants to any project that is the subject of a prior legal or regulatory obligation, *e.g.*, a condition of a merger approval issued by the FCC or a state commission.

## 10. Timely Completion of Proposals

The Recovery Act states that NTIA shall establish the BTOP as expeditiously as practicable, ensure that all awards are made before the end of fiscal year 2010, and seek assurances from grantees that projects supported by the programs will be substantially completed within two (2) years following an award. The Recovery Act also requires that grant recipients report quarterly on the recipient's use of grant funds and the grant recipient's progress in fulfilling the objectives of the grant proposal. The Recovery Act permits NTIA to de-obligate awards to grant recipients that demonstrate an insufficient level of performance, or wasteful or fraudulent spending (as defined by NTIA in advance), and award these funds to new or existing applicants.

- a. **What is the most efficient, effective, and fair way to carry out the requirement that the BTOP be established expeditiously and that awards be made before the end of fiscal year 2010?**

NTIA is on the right track in terms of achieving this goal. Streamlined procedures with objective scoring criteria are the key to getting funding to worthy projects in a timely manner, while post-grant reporting obligations that are clear, but not overly burdensome, will ensure that funding is used effectively to meet the goals of the Recovery Act.

- b. **What elements should be included in the application to ensure the projects can be completed within two (2) years (e.g., timelines, milestones, letters of agreement with partners)?**

NTIA should require timelines and supporting evidence to demonstrate that those timelines are achievable. Allowing interested third parties, including states, to review and comment on applications will provide an important check on unrealistic projections. After a grant is awarded, NTIA should require online, public reporting of progress against the commitments contained in the application. RUS should follow the same approach.

## 11. Reporting and Deobligation

**The Recovery Act also requires that grant recipients report quarterly on the recipient's use of grant funds and progress in fulfilling the objectives of the grant proposal. The Recovery Act permits NTIA to de-obligate funds for grant awards that demonstrate an insufficient level of performance, or wasteful or fraudulent spending (as defined by NTIA in advance), and award these funds to new or existing applicants.**

- a. How should NTIA define wasteful or fraudulent spending for purposes of the grant program?**

NCTA has no comment on this question at the present time.

- b. How should NTIA determine that performance is at an “insufficient level?”**

NCTA has no comment on this question at the present time.

- c. If such spending is detected, what actions should NTIA take to ensure effective use of investments made and remaining funding?**

NCTA has no comment on this question at the present time.

## 12. Coordination with USDA's Broadband Grant Program

**The Recovery Act directs USDA's Rural Development Office to distribute \$2.5 billion dollars in loans, loan guarantees, and grants for broadband deployment. The stated focus of the USDA's program is economic development in rural areas. NTIA has broad authority in its grant program to award grants throughout the United States. Although the two programs have different statutory structures, the programs have many similar purposes, namely the promotion of economic development based on deployment of broadband service and technologies.**

- a. What specific programmatic elements should both agencies adopt to ensure that grant funds are utilized in the most effective and efficient manner?**

Coordination among agencies will be critical to the success of the funding programs established pursuant to the Recovery Act. NTIA and RUS should use common application forms and procedures and common post-grant reporting and monitoring tools. As described in Question 5 above, both agencies should require significant detail to be included in grant applications and that information should be posted on the agencies web sites and subject to public scrutiny.

In addition, the two agencies should establish a process that identifies competing applications and ensures inter-agency coordination in selecting among such applications. In particular, without careful coordination, there is a risk that the priority for RUS borrowers, combined with the prohibition on the two agencies funding the same projects, could operate to inadvertently shut out all other types of companies from seeking funding from either agency. That result would not serve the public interest and can be avoided by a coordination process that strives to ensure that funding goes to the best projects in a given area regardless of the identity of the applicant. Accordingly, NTIA and RUS should apply the scoring criteria proposed in Question 4 above and funding should be awarded to the highest scoring applications in a particular geographic area. As noted in Question 13 below, mobile wireless and wireline services should be considered separately for purposes of identifying unserved areas and therefore it is possible that two projects in a given area may receive funding.

- b. In cases where proposals encompass both rural and non-rural areas, what programmatic elements should the agencies establish to ensure that worthy projects are funded by one or both programs in the most cost effective manner without unjustly enriching the applicant(s)?**

RUS must operate within the statutory constraints established by Congress. If a project is not sufficiently rural to qualify for RUS funding, it should be divided into two parts or it should be submitted solely to NTIA.

### 13. Definitions

**The Conference Report on the Recovery Act states that NTIA should consult with the FCC on defining the terms “unserved area,” “underserved area,” and “broadband.” The Recovery Act also requires that NTIA shall, in coordination with the FCC, publish nondiscrimination and network interconnection obligations that shall be contractual conditions of grant awards, including, at a minimum, adherence to the principles contained in the FCC’s broadband policy statement (FCC 05-15, adopted August 5, 2005).**

**a. For purposes of the BTOP, how should NTIA, in consultation with the FCC, define the terms “unserved area” and “underserved area?”**

An “unserved area” should be defined as an area where no provider offers Internet access service at transmission speeds of more than 768 kbps in at least one direction. Satellite broadband service, which already is available throughout most of the country, should not be considered in applying this definition. In choosing among projects in unserved areas, those areas where no provider offers Internet access service at transmission speeds of more than 200 kbps in at least one direction should receive funding first.

An “underserved area” should be defined as an area where no households have access to at least one provider of Internet access with current generation broadband transmission speeds, *e.g.*, maximum transmission speeds of at least 3 Mbps downstream and 768 kbps upstream. Satellite broadband service, which already is available throughout most of the country, should not be considered in applying this definition. NCTA believes that, before funding construction in underserved areas, NTIA and RUS should provide funding for programs that assist underserved populations (low-income, seniors) to acquire and make use of broadband service.

These definitions are premised on the assumption that an applicant will have the flexibility to define the specific area covered by the grant request. To the extent the agencies rely on pre-defined areas, such as census tracts, an area should be considered unserved or underserved if less than 25% of households have access to service at the threshold speed, although funding should be directed only to serving those households that do not have the requisite service, *i.e.*, funding should not be used to overbuild served areas.

**b. How should the BTOP define “broadband service?”**

The existing FCC definition of the term “broadband” should be used – “advanced communications systems capable of providing high-speed transmission of services such as data, voice, and video over the Internet and other networks. Transmission is provided by a wide range of technologies, including digital subscriber line and fiber optic cable, coaxial cable, wireless technology, and satellite.”<sup>7</sup>

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<sup>7</sup> See [www.fcc.gov/broadband](http://www.fcc.gov/broadband).

Any speed thresholds the Commission recommends should reflect the purpose for which the threshold will apply:

- For purposes of identifying unserved areas, “broadband” should be defined as a connection to the Internet with a transmission speed of at least 768 kilobits per second in at least one direction.
- For purposes of identifying underserved areas and specifying the types of investments that qualify for a grant, the term “broadband” should be defined as transmission facilities and switching and routing equipment (including equipment installed on subscribers’ premises to access or utilize service) purchased and installed by a provider primarily to provide broadband service with transmission speeds that meet or exceed the speeds typically experienced by consumers using current generation broadband service, *e.g.*, maximum transmission speeds of at least 3 megabits per second downstream and 768 kilobits per second upstream.

**(1) Should the BTOP establish threshold transmission speeds for purposes of analyzing whether an area is “unserved” or “underserved” and prioritizing grant awards? Should thresholds be rigid or flexible?**

Yes, threshold transmission speeds, as proposed above, should be used for determining whether an area is unserved or underserved. These definitions should be fixed, not flexible. Speed should be one factor used in prioritizing applications, but as discussed in response to Question 4 above, other factors are more important, including the timeliness of construction, the experience of the applicant, and the sustainability of the project.

**(2) Should the BTOP establish different threshold speeds for different technology platforms?**

For the purpose of identifying unserved areas, the Commission should consider wireline and mobile wireless services separately, although it may use the same 768 kbps threshold for both types of services.

**(3) What should any such threshold speed(s) be, and how should they be measured and evaluated (*e.g.*, advertised speed, average speed, typical speed, maximum speed)?**

NTIA should rely on advertised speed or maximum speed. In this regard, the FCC’s broadband reporting form refers to “the end user’s authorized maximum information transfer rate (‘speed’) on [a] connection.” Use of a different measure than the one currently used by the FCC could be quite burdensome for broadband providers.

**(4) Should the threshold speeds be symmetrical or asymmetrical?**

NTIA should not prioritize one type of service over the other. The speed thresholds proposed above reflect current generation service, which generally includes more limited upstream speeds. Any requirement or preference for symmetrical speeds might discourage applicants from seeking funding for worthy projects.

**(5) How should the BTOP consider the impacts of the use of shared facilities by service providers and of network congestion?**

The transmission speeds proposed by each applicant should be considered on a technology-neutral basis, without regard to whether the proposed infrastructure uses shared or dedicated facilities. The scoring criteria we have proposed above take account of each proposal's speeds on a technology-neutral basis.

**c. How should the BTOP define the nondiscrimination and network interconnection obligations that will be contractual conditions of grants awarded under Section 6001?**

**(1) In defining nondiscrimination obligations, what elements of network management techniques to be used by grantees, if any, should be described and permitted as a condition of any grant?**

“Nondiscrimination” should be defined as adherence to the principles contained in the FCC’s August 2005 Broadband Policy Statement. NTIA and RUS should not impose requirements on grant recipients that have not been fully considered and adopted by the FCC, not should they play the lead role in enforcing such requirements.

There is no reason for NTIA to consider network management techniques in awarding grants. The FCC’s principles, and its order interpreting those principles, make perfectly clear that reasonable network management is entirely permissible. There is no reason for NTIA or RUS to review a broadband provider’s network management techniques as part of the grant process.

**(2) Should the network interconnection obligation be based on existing statutory schemes? If not, what should the interconnection obligation be?**

“Network interconnection” should be defined as direct or indirect interconnection with other broadband networks under currently applicable regulations and practices, including the existing obligation of local exchange carriers to interconnect with wholesale carriers that serve VoIP providers. NTIA and RUS should not impose requirements that are more onerous, or less onerous, than those that otherwise would apply in the absence of a grant. Just as a carrier’s receipt of funding from the federal Universal Service program does not trigger any change

in interconnection obligations, receipt of a grant from NTIA or RUS also should not result in imposition of new requirements or elimination of existing obligations.

**(3) Should there be different nondiscrimination and network interconnection standards for different technology platforms?**

No, the nondiscrimination and interconnection standards should be the same for all technology platforms. With respect to interconnection, existing requirements, which vary based on the type of company (*e.g.*, incumbent LEC, competitive LEC, CMRS provider), should apply no differently than they would in the absence of a grant.

**(4) Should failure to abide by whatever obligations are established result in de-obligation of fund awards?**

The consequences for failure to abide by obligations should be set forth in the contract between the agency and the grant recipient. There should be a correlation between the severity of the breach and the severity of the penalty. Deobligation of funds is a relatively severe penalty that should be reserved for appropriate circumstances.

**(5) In the case of infrastructure paid for in whole or part by grant funds, should the obligations extend beyond the life of the grant and attach for the useable life of the infrastructure?**

Yes, but the FCC should have the ability to reassess whether and how those obligations are applied. In addition, those obligations should not apply to infrastructure that is not funded by Recovery Act grants.

**d. Are there other terms in this section of the Recovery Act, such as “community anchor institutions,” that NTIA should define to ensure the success of the grant program? If so, what are those terms and how should those terms be defined, given the stated purposes of the Recovery Act?**

NCTA has no comment on this question at the present time.

**e. What role, if any, should retail price play in these definitions?**

Retail price should not play a role in any of these definitions, but it should be one of the factors considered in scoring applications, as discussed above.

#### 14. Measuring the Success of the BTOP

**The Recovery Act permits NTIA to establish additional reporting and information requirements for any recipient of grant program funds.**

- a. What measurements can be used to determine whether an individual proposal has successfully complied with the statutory obligations and project timelines?**

Any performance standards should be based on the completion of objective tasks. Achievement of particular results may be beyond the control of the grant recipient, particularly with respect to projects designed to increase broadband adoption.

- b. Should applicants be required to report on a set of common data elements so that the relative success of individual proposals may be measured? If so, what should those elements be?**

Yes. For infrastructure projects, recipients should report, on a quarterly basis, the number of new homes passed, the number of new customers taking service, the number of community anchor institutions served, the anticipated completion date of any construction, the amount of the grant already spent, and the amount and timing of any future spending. Different measures will be needed for demand side projects.

**15. Additional Issues**

**Please provide comment on any other issues that NTIA should consider in creating BTOP within the confines of the statutory structure established by the Recovery Act.**

NTIA should plan to allocate more than the \$250 million required for innovative programs to encourage broadband adoption. These programs provide significant public benefits and additional funding beyond the required \$250 million would be money well spent.

NTIA should explicitly recognize that construction of “middle mile” facilities may reduce the cost of providing service in unserved, underserved, and served areas, which would have beneficial effects on broadband adoption. NTIA should consider allocating a significant amount of funding for middle mile projects in each round of grants.

To avoid unjust enrichment, NTIA should require applicants to certify that equipment will not be included in their regulated rate base to the extent the cost is subsidized through an NTIA grant. RUS should apply a similar requirement. Both agencies should coordinate with the FCC to ensure that appropriate safeguards are in place to protect ratepayers.

## C. QUESTIONS REGARDING RUS PROGRAMS

1. **What are the most effective ways RUS could offer broadband funds to ensure that rural residents that lack access to broadband will receive it?**

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For a number of years, RUS has struggled to find an effective way to use the Agency's current broadband loan program to provide broadband access to rural residents that lack such access. RUS believes that the authority to provide grants as well as loans will give it the tools necessary to achieve that goal. RUS is looking for suggestions as to the best ways to:

- a. **bundle loan and grant funding options to ensure such access is provided in the projects funded under the Recovery Act to areas that could not traditionally afford the investment;**

RUS should use grants for projects that will extend service to unserved areas. In other areas that lack sufficient access to broadband, *i.e.*, areas that are "underserved" as defined in NTIA Question 13 above, RUS should consider using loans or loan/grant combinations. Similarly, RUS should consider using loans or loan/grant combinations for projects that involve construction of middle mile facilities.

- b. **promote leveraging of Recovery Act funding with private investment that ensures project viability and future sustainability; and**

RUS should require that applicants provide at least 20% of the cost of the project, as required under the NTIA program. Requiring entities receiving funds to post their own financial stake in the effort will provide assurance that the entity itself is invested in the success of the project and is serious about its completion. Funding obtained through a different federal program, including the RUS broadband loan program, should not be used to satisfy this 20% requirement.

- c. **ensure that Recovery Funding is targeted to unserved areas that stand to benefit the most from this funding opportunity.**

RUS should conduct a first round of applications that is devoted exclusively to projects in unserved areas. Each round of applications thereafter should continue to provide first priority to projects that would result in service being provided to unserved areas. In addition, RUS should use the scoring criteria proposed in response to NTIA Question 4 above, which are designed to favor those projects that quickly and efficiently bring service to unserved areas.

**2. In what ways can RUS and NTIA best align their Recovery Act broadband activities to make the most efficient and effective use of the Recovery Act broadband funds?**

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**In the Recovery Act, Congress provided funding and authorities to both RUS and the NTIA to expand the development of broadband throughout the country. Taking into account the authorities and limitations provided in the Recovery Act, RUS is looking for suggestions as to how both agencies can conduct their Recovery Act broadband activities so as to foster effective broadband development. For instance:**

**a) RUS is charged with ensuring that 75 percent of the area is rural and without sufficient access needed for economic development. How should this definition be reconciled with the NTIA definitions of “unserved” and “underserved?”**

There should be consistency between the RUS and NTIA definitions. The phrase “without sufficient access” should be interpreted the same way as we propose that NTIA interpret the phrase “underserved” – an area that is 75% rural and where no households have access to at least one provider of Internet access with transmission speeds of at least 3 Mbps downstream and 768 kbps upstream. Satellite broadband service, which already is available throughout most of the country, should not be considered in applying this definition. For purposes of this program, RUS should define the term “rural” the same way that it is defined in the 2008 Farm Bill.

Among projects that qualify under this standard, RUS should follow the same priorities that we have identified in NTIA Question 13 above. First, RUS should provide funding for projects in areas where no household has access to Internet access with transmission speeds of at least 200 kbps in at least one direction. Second, RUS should provide funding for projects in areas where no household has access to Internet access with transmission speeds of at least 768 kbps in at least one direction. After projects in those areas are funded, any remaining funding for infrastructure projects should go to areas “without sufficient access” to broadband as described in the previous paragraph.

If RUS uses census tracts or some other pre-defined area, as opposed to areas defined by an applicant, the area should be considered “without sufficient access” to broadband if less than 25% of households have access to the threshold level of service, although funding should be directed only to serving those households that do not have the requisite service, *i.e.*, funding should not be used to overbuild served areas.

**b) How should the agencies structure their eligibility requirements and other programmatic elements to ensure that applicants that desire to seek funding from both agencies (i) do not receive duplicate resources and (ii) are not hampered in their ability to apply for funds from both agencies?**

NTIA and RUS should use common application forms and procedures and common post-grant reporting and monitoring tools. In addition, the two agencies should establish a process that identifies competing applications and ensures inter-agency coordination in

selecting among such applications. In particular, without careful coordination, there is a risk that the priority for RUS borrowers, combined with the prohibition on the two agencies funding the same projects, could operate to inadvertently shut out all other types of companies from seeking funding from either agency. That result would not serve the public interest and can be avoided by a coordination process that strives to ensure that funding goes to the best projects in a given area regardless of the identity of the applicant. Accordingly, NTIA and RUS should apply the scoring criteria proposed in Question 4 above and funding should be awarded to the highest scoring applications in a particular geographic area. As noted in Question 13 below, mobile wireless and wireline services should be considered separately for purposes of identifying unserved areas and therefore it is possible that two projects in a given area may receive funding.

**3. How should RUS evaluate whether a particular level of broadband access and service is needed to facilitate economic development?**

**Seventy-five percent of an area to be funded under the Recovery Act must be in an area that USDA determines lacks sufficient “high speed broadband service to facilitate rural economic development.” RUS is seeking suggestions as to the factors it should use to make such determinations.**

**a) How should RUS define “rural economic development?” What factors should be considered, in terms of job growth, sustainability, and other economic and socioeconomic benefits?**

The key factor that RUS should consider is whether homes and businesses in an area have access to broadband service sufficient to allow commercial enterprises and entrepreneurs to do business using voice, video and data services. Given the limited funding available, RUS should prioritize those areas where homes and businesses have no access to broadband at all, as described in response to RUS Question 2(a) above. Absent broadband, there is little opportunity to promote economic development in an area, *i.e.*, to attract new businesses, to retain those businesses that may already be located in the area, to allow individuals to conduct business out of their homes, either as entrepreneurs or as telecommuters working for distant businesses, or to create opportunities for distance learning or telehealth. Conversely, where homes and businesses already have access to broadband, subsidizing an additional broadband provider is unlikely to have the same type of impact on the local economy and may even undermine the goals of the Recovery Act by jeopardizing existing jobs created by unsubsidized competitors.

**b) What speeds are needed to facilitate “economic development?” What does "high speed broadband service" mean?**

There should be consistency between the RUS and NTIA definitions. RUS should interpret these phrases in a way that directs funding to areas that are “unserved” and “underserved” for purposes of the NTIA program, *i.e.*, areas that are 75% rural and where no households have access to at least one provider of Internet access with transmission speeds of at least 3 Mbps downstream and 768 kbps upstream. Given the limited funding available, RUS should prioritize those areas where homes and businesses have no access to broadband at all, as described in response to RUS Question 2(a) above.

If RUS uses census tracts or some other pre-defined area, as opposed to areas defined by an applicant, the area should be considered “without sufficient access” to broadband if less than 25% of households have access to the threshold level of service, although funding should be directed only to serving those households that do not have the requisite service, *i.e.*, funding should not be used to overbuild served areas. Bringing this level of service to rural areas that do not have it today will facilitate economic development.

- c) **What factors should be considered, when creating economic development incentives, in constructing facilities in areas outside the seventy-five percent area that is rural (i.e., within an area that is less than 25 percent rural)?**

RUS should prioritize areas “without sufficient access” to broadband even with respect to the non-rural portion of a project. Government funding of a new entrant in areas that already have sufficient access to broadband is not a good use of resources, whether the area in question is rural or non-rural.

4. **In further evaluating projects, RUS must consider the priorities listed below. What value should be assigned to those factors in selecting applications? What additional priorities should be considered by RUS?**
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**Priorities have been assigned to projects that will: 1) give end-users a choice of internet service providers, 2) serve the highest proportion of rural residents that lack access to broadband service, 3) be projects of current and former RUS borrowers, and 4) be fully funded and ready to start once they receive funding under the Recovery Act.**

RUS should use the same scoring criteria as NTIA. The priorities identified in the statute are reflected in the scoring criteria proposed in response to NTIA Question 4 above.

**5. What benchmarks should RUS use to determine the success of its Recovery Act broadband activities?**

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**The Recovery Act gives RUS new tools to expand the availability of broadband in rural America. RUS is seeking suggestions regarding how it can measure the effectiveness of its funding programs under the Recovery Act. Factors to consider include, but are not limited to:**

- a. Businesses and residences with “first-time” access**
- b. Critical facilities provided new and/or improved service:**
  - i. Educational institutions**
  - ii. Healthcare Providers**
  - iii. Public service/safety**
- c. Businesses created or saved**
- d. Job retention and/or creation**
- e. Decline in unemployment rates**
- f. State, local, community support**

NCTA has no comment on this question at the present time.

\* \* \*

Respectfully submitted,

**/s/ Neal M. Goldberg**

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