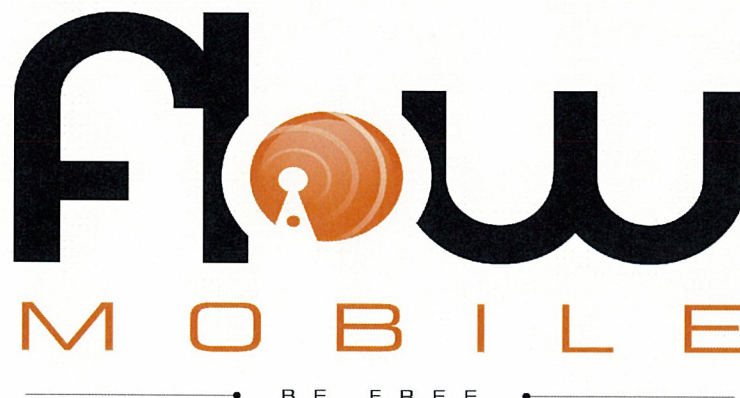


New EA

Doing Business As



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

***Comments Regarding*
Docket No. 090309298–9299–01
American Recovery and Reinvestment Act of 2009
Broadband Initiatives
April 8, 2009**

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Executive Summary

New EA is a Bismarck, N.D.-based company that was created to commercially deploy mobile broadband services to underserved areas of America. Using state-of-the art technology, the company will provide broadband mobile triple play solutions using unlicensed spectrum in rural areas and licensed spectrum in urban areas and freeways that connect the rural communities. New EA will offer its services to consumers, enterprises and government entities, including support for public safety, telemedicine and educational services.

The agency's new broadband program in the American Recovery and Reinvestment Act of 2009 (ARRA) provides a tremendous opportunity to bring advanced broadband services to rural America, while creating jobs and encouraging investment. In our comments below, we offer recommendations for ensuring that the funding can be expeditiously awarded and can provide a maximum of benefits to the communities being served by the applicants. Specifically, we believe:

- Eligibility should not be restricted and applicants should be considered on a competitive basis, based on objective scoring criteria in order to differentiate among competing applications. However, flexibility should be provided at the direction of States to address needs that States have identified as their priorities.
- Mobile and fixed wireline broadband services should be considered as distinct – not duplicative of each other – for the purposes of establishing whether an area is unserved or underserved as well as for the purposes of serving public safety, educational and health care entities. It is important that the program distinguish between the different speed characteristics for mobile and fixed broadband services, especially with respect to determining eligibility of applications.
- Definitions established for what constitutes broadband service and determining “unserved” and “underserved” areas should set a high bar, but maintain flexibility to address the unique conditions of various remote or hard to serve markets.
- A streamlined application pre-approval process using objective criteria should be developed to ensure quick review by agencies, while still allowing the agencies to obtain further information necessary to make a final decision.
- States should not be allowed to play gatekeeper for BTOP grants. However there is a role for the States to validate the priority of projects within their jurisdiction.
- Prior grant and loan awards from the RUS should not trump eligibility or any BTOP awards by NTIA.

I. Grant Program Purpose

Eligibility should not be restricted and applicants should be considered on a competitive basis, based on objective scoring criteria in order to differentiate among competing applications. However, flexibility should be provided at the direction of States to address needs that States have identified as their priorities. Applicants should be encouraged to address the broadest possible set of criteria as specified in the statute. This can be achieved by establishing objective scoring criteria for each subsection in order to differentiate among competing applications.

While the BTOP program provides a significant opportunity to advance broadband access and adoption for residential and business consumers, it also provides a unique opportunity to address the needs of key community services such as public safety. As the program rules are structured and the NTIA considers applications under BTOP, the agency should ensure that grant awards not only address residential consumer needs but also the unique needs of public safety and other key community service entities. Therefore, the program purposes identified in Section 6001(b)(3)(4)(5) should not be restricted by the definitions established by the agency for issuing grants under Section 6001(b)(1)(2).

Attempting to require or encourage BTOP applicants to coordinate their applications with other programs could lead to confusion for the applicant and creates a very cumbersome review process for the agency. We believe that the agency should focus on creating a streamlined application process and efficient review criteria so that grants can be awarded in the fastest possible manner. NTIA cannot control the grant or loan processing of other agencies and we fear that any attempt to do so will result in unnecessary delays.

The agency should not attempt to distract the BTOP process by coordinating grant or loan awards with other agencies. The agency's coordination activity with other agencies should be restricted to prevention of "double dipping" And avoiding unintentional blocking of funding options.

II. The Role of the States

The agency can foster coordination with State priorities by giving considerable weight to applications filed in conjunction with States, endorsed by States, or if the applicant can demonstrate that its proposed service addresses previously identified priorities of a State. In addition, considerable weight should be given to a State in determining projects that address the purposes listed in Section 6001(b) of the ARRA. However, the agency should take great care not to allow States to delay the grant processing or surrender its discretion entirely to the States. Had Congress intended for States to dominate the consideration of BTOP grants, it would have specified such in the statute.

Rather, Congress deliberately chose to say that NTIA "may" consult with the states. We suggest that this language encourages State coordination, but does not require it.

NTIA should ensure that States are not allowed to play gatekeeper for BTOP grants. The needs and priorities of the States should receive some deference, but applicants should not be required to gain prior approval from a State to be eligible. States should play the role of validator with respect to priority projects within their jurisdiction. For example, NTIA should take into consideration what a State designates as its unmet needs, provided those needs are consistent with the statutory criteria. Thus, NTIA's definitions of "unserved" and "underserved" should provide enough flexibility for a State to identify a unique circumstance for what it considers unserved or underserved and thus favorably consider applications that meet those needs identified by a State.

Further, States should retain broad flexibility in determining which public safety, educational or health care applications it considers important and, therefore, should be considered a priority application by the agency. For example, deference should be given to States in identifying priorities for educational awareness and training;¹ public safety projects;² and projects that stimulate demand and economic growth.³

In addition, NTIA should not seek to resolve differences between competing interests. Rather, the agency should focus on creating objective scoring criteria that will differentiate applications to the degree that they can successfully serve the highest possible number of the criteria specified in the statute. With all other things being equal, applications that are submitted either jointly with a State or with the State's endorsement should score higher than applications without such coordination.

The grant agency should judge project viability and effectiveness under the same criteria used to judge all other applications. Ensuring proper execution and effectiveness of grant applications requires clear criteria for which applicants must make the case that they can achieve. The process should also ensure that post-award follow up includes manageable reporting on progress towards the goals pledged in the application. Post-award reporting requirements must be manageable for both the applicant and the agency. In evaluating a State proposal, the NTIA needs to give special attention to the ability to not just obligate funds, but to complete projects promptly.

III. Eligible Grant Recipients

Eligibility should not be restricted and applicants should be considered on a competitive basis, based on objective scoring criteria in order to differentiate among competing applications. However, flexibility should be provided at the direction of States to address needs that States have identified as their priorities. In its legislative language

¹ Section 6001(b)(3)

² Section 6001(b)(4)

³ Section 6001 (b)(5)

and history, it is clear that Congress intends that a large number of entities should be eligible for BTOP funding. The private sector is the engine of economic growth and job creation. As a result, making BTOP funds available to private sector entities will facilitate the primary goal of the ARRA, which is to retain and create jobs. The statute does not suggest that the agency prioritize among applications from the eligible entities specified in Section 6001(e). Therefore, NTIA should not discriminate among eligible entities.

Applications from any eligible entity should be considered on its merits, whether it achieves the goals established in the statute and adheres to the criteria in the statute. Special consideration should not be given solely on the nature of the applicant, provided the applicant is eligible under the terms specified in the statute. Further, prior RUS grant and loan award decisions should not trump applications and awards for BTOP grants.

IV. Establishing Selection Criteria

NTIA should limit its scoring criteria to the criteria established in the statute. The agency should consider the criteria specified in Section 6001(b)(3), (4), and (5) and Section 6001(h)(2) as criteria that can distinguish applications. Projects proposed that will serve these criteria should receive favorable points for including such service in the application.

It will be difficult for the NTIA to determine where need exists and is not replacing private investment. No real objective information exists for the agency to judge against applications. With respect to BTOP grants for unserved areas, applicants should be required to show that their proposal requires federal grant assistance to make the deployment possible. This suggests that NTIA only consider applications for unserved areas that are deploying new infrastructure or facilitating new broadband service that is not otherwise available.

Applications for underserved areas are required to be considered under the statute and, in these cases the burden should be on the applicant to show that private investment could not result in affordable service with respect to the new service that is being proposed in the application.

Regarding ensuring long-term feasibility, the agency should require applicants to demonstrate prior to the conclusion of the grant agreement how the proposed project, if awarded, is part of a sustainable business plan. The agency should avoid overly burdensome capital or equity requirements that the Rural Utilities Service (RUS) has historically imposed on its broadband loan program. In other words, applicants should not be forced to lock up capital in advance of being awarded a grant under BTOP or as a condition of drawing down on a BTOP grant award.

Factors such as determining a "need for federal funding," "replacement of private investment" and "long-term sustainability" should be given a simple "yes" or "no" test. It will become too burdensome on the agency to establish reasonable criteria to make judgments that one applicant meets these criteria better or worse than another applicant. The fact that an area lacks service or lacks a reasonable level of service itself tends to demonstrate that absent a federal incentive investment would not be made.

Applications proposing service to unserved areas should be considered by the agency first, while applications for underserved areas should be considered in a later grant round. A grant round or grant rounds focused on "unserved" populations should not wait for a final resolution of what is determined to be "underserved."

NTIA should not be prevented from awarding a BTOP grant in the same area or an area that may have some overlap with a previous USDA grant or loan, as long as the BTOP application is for new broadband service that is not being provided or will be provided under a USDA program. However, with respect to grants and loans awarded by the USDA under the American Recovery and Reinvestment Act (ARRA), the two agencies should coordinate and make certain that an RUS grant or loan does not block a worthy BTOP grant award. For example, it may be logical and desirable for an area to have a BTOP grant to a mobile wireless provider and an RUS grant to fund a wireline broadband provider.

If both projects create jobs and both projects create needed infrastructure, the rules or implementation of the statute should not prevent both technologies from qualifying for funding. If an entity seeks a USDA ARRA broadband loan a BTOP or USDA grant should not be a barrier to loan eligibility. The USDA, of course, would still need to consider that ability of the borrower to repay the loan.

Given the level of interest in the ARRA broadband grant and loan programs, and the urgent need to create jobs, NTIA and the RUS should look to every opportunity to simplify the application and evaluation process. Priority should not be given to proposals that leverage other Recovery Act projects.

Involving other ARRA programs in the already complex broadband programs only further complicates the application and evaluation process. Any addition of complexity could seriously impair the each agency's ability to issue grant awards in a timely manner. NTIA should not attempt to condition or score a BTOP application based on decisions of other agencies. The only exception to this is the statutory requirement that NTIA and the RUS coordinate and prevent any double dipping. Further, NTIA is required under Section 6001(h)(2)(D) to prevent unjust enrichment.

Suggesting that NTIA should provide favorable treatment towards an applicant that may receive or have received other federal grants seems to run afoul of this requirement. The unjust enrichment provision should translate into scoring criteria favorable to a project that is not eligible, does not draw from or does not fully support the proposed project. Finally, such criteria seem to create unfairness in the BTOP process, providing

favorability for applicants who managed to win other federal grants or loans. The leveraging NTIA should consider is how many non-federal sources are triggered because of the BTOP grant. This allows the BTOP to provide additional economic stimulus, similar to how the former Technology Opportunities Program (TOP) did in the 1990s.

In circumstances when the agency is considering competing applications – and only in such circumstances – the agency should provide greater weight to applications that address multiple purposes specified in the statute. The agency should not prioritize applications based on scale - i.e., the largest application should not take precedence over smaller applications. Further, the agency should establish a cap for the total amount of grant funds that any one entity can receive under BTOP grants. This will ensure diversity among applicants and prevent one or two large entities from dominating the BTOP grant awards.

Applicants should be required to make a showing that their BTOP application is part of a sustainable business plan. The business plan should be judged by realistic standards of take rates and churn appropriate for the given market.

Technological neutrality requires not only that the agency avoid establishing definitions for eligibility, minimum broadband speeds, unserved and underserved that would favor a particular technology (among technologies that meet the same basic performance requirements established by the agency for the BTOP program). It also requires that the agency remain mindful that different technologies may provide very distinct broadband service and therefore should not be considered duplicative. For example, the presence of a mobile broadband service meeting the minimum broadband performance required under the BTOP program should not preclude consideration of a BTOP grant application for fixed broadband service in a particular area and vice versa.

Mobile broadband and fixed broadband services are very distinct services and will address different needs in a given community. Technological neutrality requires the NTIA and the RUS to consider this different technology as not duplicative when considering applications.

All applications for grants should propose affordable service. The agency should not impose a hard and fast rule, but take into consideration various factors affecting the market for which the project is proposed. No one factor should establish the agency's definition of affordability. The agency should take into consideration the full complement of factors - including but not limited to - the price of services in areas where there is a vibrant competitive market.

V. Grant Mechanics

Both agencies (NTIA and USDA) should use a competitive grant process for distribution. Stimulus funds should not be awarded through block grants to States or other political

subdivisions. All eligible entities should be allowed to compete for the grants and loans from both agencies.

NTIA and USDA should adopt a streamlined application process using objective criteria that permits quick review by the agencies and allows for early decision making on the application.

If an application advances to the stage of contract negotiation, the application should only then be required to provide full documentation to the agency regarding engineering, business plans, build-out schedule, proof of legal existence and other documents and attestations typically included in a federal grant application.

A highly focused, streamlined application should include a description of the project, the technology used and the territory of the project, and should be scored only against the criteria outlined in the ARRA. Scoring should be done on a national basis. High scoring applications should not be mutually exclusive. It should be possible, for example for a mobile wireless and a fixed wireline provider to both win grant awards in the same area.

Processing time for applications has been the most significant shortcoming of traditional grant and loan application consideration. For example, since the program was established, the process to consider an RUS broadband loan has been riddled with delays and inconsistencies. Addressing these problems and establishing a streamlined application process and shorter decision-making period for the RUS ought to be the USDA's top priorities for distributing ARRA funds.

A streamlined, pre-approval process would allow both agencies to make fast determinations of the most feasible applications, while still allowing the agencies to obtain the full complement of information necessary to make a final determination on the application.

VI. Broadband Mapping

The broadband map should provide NTIA – and consequently other federal agencies, States, and other entities – with an objective source of information as to where broadband service coverage gaps exist throughout the country. The map also should include a detailed assessment of radio spectrum use for fixed and mobile broadband in licensed spectrum bands. The spectrum assessment should be capable of showing wireless coverage gaps where service is not yet built out in various licensed spectrum bands. The map should provide sufficiently accurate data that the RUS can rely on it for the purpose of establishing broadband loan eligibility under the 2008 Farm Bill.

The broadband map should make distinctions between the availability of landline and wireless, in particular, mobile broadband wireless services. The mapping should assess both broadband availability and broadband adoption. To the extent feasible, the assessment should distinguish between residential and commercial/business availability

and adoption. Also, the broadband map should include some detail on the availability of all broadband services for public safety agencies and first responders, whether it is provided by commercial providers or covered by communications systems operated by State or local entities. Other important institutions that serve a community's educational and health care needs should be included in the assessment, as well.

Census block information should be the level at which geographic and other granularity broadband service information is provided.

In addition, NTIA should assess licensed spectrum use for licensed bands for mobile and fixed broadband service. This assessment should be comprehensive and provide enough detail to accurately identify coverage gaps in licensed spectrum. Assessment of mobile and fixed broadband service in licensed spectrum bands and unlicensed providers should be the base of the information states collect as conditions of receiving statewide inventory grants.

The NTIA should also assess the availability and adoption of broadband services – both fixed landline and mobile wireless broadband – for public safety, health care, and educational entities in each state. The availability and adoption for these entities in the State should be required for every grant awarded for broadband mapping. In addition, each application should be able to provide the most comprehensive assessment of wireless broadband services in licensed spectrum bands and identify the coverage gaps.

The NTIA should establish the criteria for assessing broadband availability and use based on the policy goals of the Administration. Previous FCC assessments on broadband have been very inadequate and need substantial overhaul. As the principal advisor to the President on telecommunications and information matters and as the expert agency in the Executive Branch on broadband policy, NTIA should establish the criteria for a broadband assessment. The FCC has unique expertise as a regulator and should be consulted by NTIA in establishing the criteria.

VII. Timely Completion of Proposals

Each agency should first establish a streamlined application process that permits the minimal information necessary for the agencies to make quick decisions, then later require the applicant to provide more comprehensive information. If an applicant can not meet the documentation requirement by the deadline, the project would not be approved and the funds would return to the grant pool. This would be 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.

The NTIA and RUS scoring criteria should be limited to what is specified in the statute and the agency should not seek to impose additional criteria.

The RUS should immediately reform the rules and criteria in the broadband loan program to ensure faster review of application and lessen the burden on applicants.

Both agencies should consider applications covering more than one community. One serious limitation of the RUS Community Connect programs, for example, is that the agency only considers a separate application for each community. This should be changed and both agencies should accept applications that cover multiple communities. Applications that include multiple communities should also not be eliminated due to an eligibility issue related to a particular community. Ineligible communities should simply be removed from the application prior to scoring.

Previous RUS loan and grant awards should not trump either agency's ability to make loans or grants under the ARRA. To the extent possible under some of the limits in the statute, new grant or awards by RUS should not conclusively block worthy infrastructure investments by the NTIA. Coordination is important to avoid such blocking action. Furthermore, the implementation of the phrase "no area of a project funded with amounts made available under this paragraph (the RUS section of ARRA) may receive funding to provide broadband service under the (BTOP)" should be read very narrowly to apply to the area of the funded project, and not the geographic area served by the project.

Congress intended to prevent one applicant from getting two awards. They did not intend to take whole geographic territories off the board for other high scoring and worthy infrastructure projects. Consider, for example, an RUS stimulus loan being made to improve residential broadband service should not block an NTIA grant to close mobile wireless gaps in an overlapping geography or prevent the NTIA from making a public safety infrastructure grant to address separate broadband communications needs in that same community. Of, course, RUS and NTIA award winners should not be funded twice for the same project, asset or project element.

Fixed broadband services and mobile broadband services should not be considered duplicative and the presence of one should not exclude consideration of applications for the other service. Modern Americans use and need both types of services.

Applications should be presented to the agencies in the context of an overall business plan for the applicant that shows build out within the required time frames. The agencies should establish manageable post-award reporting requirements that demonstrate that applicant is deploying the service as promised. In addition, any partnerships claimed in the application should be supported with necessary documentation and made available to the agencies upon request.

VIII. Reporting and De-Obligation

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.

In issuing a BTOP grant, NTIA should specify what purchases are allowed with the grant funds. Applicants should be required to maintain records to demonstrate, upon demand from NTIA, that funds have been used appropriately. Grant recipients should be required to certify that they have used grant funds only for eligible purposes and be able to provide documentation should the agency desire to see such documentation. Funds should be released as the project proceeds. In following these recommendations, wasteful and/or fraudulent spending will be deterred.

The “insufficient level” of performance standard should simply be that the grant recipient has not fulfilled the build out promised in the application. The agency should consider all situations on a case-by-case basis and take into consideration factors that would be out of the control of the grant recipient - such as weather, vendor delays, local or State tower citing requirements or rights of way restrictions that were not anticipated in the grant application.

NTIA should distinguish between mistakes and deliberate attempts to defy the rules of the program. When unauthorized or ineligible spending is determined by NTIA, the agency should determine the seriousness of the violation. In cases where the errors were not serious, grant recipients should be required to rectify the problem and demonstrate compliance within a reasonable period of time. In the case of serious errors, the agency should de-obligate any remaining funds under the grant and immediately consider new applications for grants to serve the area that was covered by the violating grant recipient.

IX. Coordination with USDA's Broadband Grant Program

Both the NTIA and USDA should require applicants to demonstrate how their proposal will be efficient and effectively carry out its stated purposes. Both agencies should work together to develop common terms and forms, but the programs should not be blended together. Each has distinct purposes and each complements an existing array of programs.

In the event that proposals encompass both rural and non-rural areas, both agencies should adopt the long-standing principal utilized by the RUS, which funds project costs that are “necessary and incidental” to the costs of the network required to serve the intended area.

Applicants should be free to define their own service area, whether geographic areas or areas of interest and encouraged to aggregate unserved end users. Applicants should be free to apply to both programs, but both programs should coordinate prior to

concluding grant contracts and obligating funds to ensure that no “double dipping” occurs.

Most importantly, both agencies should work together in program design and implementation to ensure that one agency does not block the ability of the other agency to make a worthy award. Previous RUS grant and loan awards should not restrict eligibility for any application under ARRA funded grants or loans, including BTOP and ARRA funded grants and loans programs under the RUS.

X. Definitions

NTIA should establish a “high bar” for what constitutes broadband service for the purpose of BTOP grants. NTIA should adopt a more progressive definition than that which has been used by the FCC in the past – which is inadequate for contemporary broadband service.

An “unserved” area should be defined as providing data rates of a minimum of 3 Mbps downstream to the end user for mobile wireless and a higher minimum data rate for wireline broadband service. The definitions of “unserved” and “underserved” with respect to residential consumer access should not exclude eligibility for BTOP applications seeking to serve public safety and other key community service entities.

The NTIA should establish a minimum threshold transmission speed of 3 Mbps downstream as what constitutes “unserved” and “underserved” with respect to mobile broadband service and a higher threshold for fixed broadband service. Thus, areas that do not have mobile broadband service at the speeds specified above would be considered “unserved” for the purposes of determining grant eligibility, regardless of the availability of fixed broadband service. NTIA should define underserved as any area that does not have service available to a substantial majority of consumers at the minimum broadband speeds established for eligibility under this program for mobile broadband and fixed broadband service.

The NTIA should maintain some flexibility in these definitions and take into consideration unique circumstances of the area in which service is being proposed. Grant applicants should make their case why NTIA should consider exceptions to this general rule and NTIA should consider reasonable requests for flexibility on a case-by-case basis.

The NTIA should not take into consideration retail pricing in establishing the definitions of unserved and underserved, except in extreme examples. For instance, an area where residential or business customers can access broadband service, but only at extraordinary prices, should not be considered available broadband.

The NTIA should consider mobile and fixed broadband services as distinct –not duplicative of each other – for the purposes of establishing whether an area is unserved

or underserved as well as for the purposes of serving public safety, educational and health care entities that are identified in Section 6001(3). It is important that the BTOP program distinguish between the different speed characteristics for mobile and fixed broadband services, especially with respect to determining eligibility of applications.

Minimum data rates should be measured as the speed to the end user that the applicant will provide. The applicant should make reasonable estimates on the capability of the network it will deploy with BTOP grant funds to provide the threshold service to the end users in the service territory they propose.

As take rates may affect broadband speeds available to the end user, the applicant should demonstrate in the application that its deployment plan will make the necessary adjustments to maintain the minimum speed pledged in the application. Shared facilities should be allowed, but no special consideration should be provided. With respect to network congestion, applications should account for how to address reasonably anticipated network congestions that are unique to the project that is proposed in the applicant.

Advertised speeds or maximum speeds should not be considered in the definition of the threshold. Therefore, the threshold speeds should be asymmetrical.

The NTIA should not impose any new requirements beyond existing statutory obligations. The FCC's non-discrimination and network interconnection obligations are sufficient and the BTOP program should not attempt to create a separate, new set of regulatory obligations on service providers. Any non-discrimination or interconnection requirements should be enforced by the FCC under its existing rules and NTIA should have no consideration of such requirements as part of BTOP grants.

Obligations should not extend beyond the life of the grant.

XI. Other Issues

NTIA should establish the rules of the program in a manner that encourages, to the greatest extent possible, new infrastructure deployment and promotion of innovative new technologies. In the early grant funding rounds, NTIA should limit grants to only those projects that will deploy new infrastructure.

The definitions of "unserved" and "underserved" should include consideration of demonstrated unmet needs by one of the constituencies related to Section 6001b(3), (4), and (5) priorities. For example, an unserved area should not only be a particular geographic area that does not have residential access to the minimal transmission speeds established by NTIA for the purposes of BTOP grants, but it should also include the unmet needs of the public safety community, libraries and others. Thus, an application seeking to provide desired new – not previously available – broadband service to public safety in an area, should be considered unserved or underserved,

regardless of the presence of broadband service availability for residential or business customers in that area. Similarly public safety project eligibility should be available under section b(4) independently of b(1) and b(2)

XII. RUS Program

The RUS has broad statutory authority to streamline the existing criteria for broadband loans and grants through ARRA funds. In particular, the ARRA provides RUS with sufficient authority to create separate ARRA broadband loan and grant programs, which are highly streamlined and which focus on the prime objective of quickly creating jobs and creating deploying infrastructure. RUS is not bound by the ARRA to its current programs. Congress was clear that ARRA criteria were notwithstanding Title VI of the Rural Electrification Act.

RUS must quickly and consciously break from its past and expedite loan and grant processing. The RUS should retain the flexibility to award the loans and grant independently, if the agency determines this is necessary. The agency should place a premium on making timely decisions to issue awards and overcome the long delays that have plagued the agency over the past several years.

Simultaneously with the efforts to implement the stimulus package, RUS should immediately make adjustments to existing rules and criteria to implement the changes of the 2008 Farm Bill in a manner which encourages investment and shores up weaknesses in the Community Connect program to ensure that broadband grants funds in the omnibus appropriations bill can be more quickly and rationally disbursed.

While the duties of the ARRA are substantial, they also should not delay the prompt implementation of the 2008 Farm Bill and should not create a credit crunch at the agency. The economic crisis should prompt the agency to focus all resources on creating jobs and facilitate investment through ARRA and other programs.

RUS applicants should be allowed to bundle service territories in loan and grant applications. Applicants should distinguish which areas are subject to the loan request and which are subject to a grant request. In bundling applications, RUS should not exclude an entire application because a discrete number of communities do not qualify for an award. Additionally, previous RUS loans and grants should not block eligibility for an ARRA applicant.

The ARRA does not require matching funds for RUS broadband loans or grants. Leveraging non-federal sources should be favorably considered by the RUS, but there should not be any firm requirements or preferences provided based on the amount being leveraged.

The agency should not establish a "population covered" test for prioritizing applications. In the case of competitive applications covering the same area, applications the agency

should remain free to award both applications if they would create job, needed investment and be a rational use of resources. The first round of grant funding should be focused on “unserved” areas and need not wait for a full resolution of what is an “underserved” area.

The ARRA gives the Secretary of Agriculture complete discretion to determine what is rural. The RUS should establish a higher population limit for what it considers "rural" for the purposes of ARRA funding for both loans and grants. We believe the RUS should allocate a portion of ARRA funds for broadband loans and re-define “rural” to allow financing for communities of 50,000 in population or less.

All grant rounds at RUS and NTIA should be open to all eligible applicants. Neither agency should run a competitive grant round that excludes eligible entities or only allows one class of eligible entity to submit an application. However, a grant round focusing on the unserved, open to all eligible applicants would be acceptable and fair.

The RUS and NTIA should use the same speed threshold for what constitutes unserved and underserved. And, the RUS, at a minimum, should not consider mobile broadband service and fixed land line broadband service duplicative for the purpose of ARRA funding.

The agencies should structure their eligibility requirements along with other programmatic elements to ensure that applicants desiring to seek funding from both agencies in the following manner:

- 1) The agencies should adopt common standards on the fundamental criteria such as what constitutes “unserved” and “underserved.”
- 2) There should be no restriction on applications seeking funding from both agencies. The first agency near to making an award should notify the other agency so as to prevent a double award to the same applicant and to prevent unintentional blocking of other high scoring project. It may be desirable and reasonable for the same area to receive one award for wireline service and one award for mobile wireless service, as both are separate services and both can create jobs and infrastructure. Awards should be sequenced between the agencies to prevent one agency from blocking a sound investment of the other. Such an approach also advances the RUS priority in the ARRA to provide end users a choice of providers.

Rural economic development should be defined broadly and include factors such as job growth, benefits provided by the deployment new broadband service to key entities such as public safety, educational, and health care institutions and end users. Applications that demonstrate new services for first responders and public safety entities, distance learning or telemedicine, should receive favorable consideration. Modern business requires the ability to transfer large files among and between workers and branches.

In moving forward quickly on a competition focused on unserved, it is undeniable that the absence of any meaningful terrestrial broadband option is NOT conducive to rural development.

The RUS should utilize one broadband standard and it should be the standard established with the NTIA for the purposes of the BTOP program. We suggest 1 Mbps upstream and 3 Mbps downstream. This suggestion would facilitate “economic development.”

The RUS should favorably consider applications proposing innovative new services that provide broadband connectivity to:

- Unserved and underserved residential consumers;
- Unserved and underserved businesses
- New services for government entities such as public safety, educational, and health care entities.

Economic development incentives in constructing facilities in areas outside the seventy-five percent area that is rural should be considered.

Upon evaluating projects and considering priorities, we would recommend the following values:

Give end-users a choice of Internet service providers. Applications proposing service on either a wholesale basis or whose business plan allows for customer choice for Internet service should be given favorable consideration. Additionally, applications that add a choice of providers should be considered meeting this priority.

Residents that lack access to broadband service. Points could be awarded for scoring purposes based on the proportion of the application that is focused on residents and business that lack access to broadband service. Applicants should be encouraged to aggregate unserved areas into a single application.

Projects of current and former RUS borrowers. This priority should not be used to exclude worthwhile projects from consideration. The weight of such priority should be minimized by the RUS because it could seriously imperil both agencies’ ability to successfully distribute ARRA funds. In fact, the ARRA provides the RUS with complete authority to break away from its non-duplication rules. The RUS needs to use this opportunity to begin taking into consideration technological advances and not deny innovative technologies access to government funding because of legacy RUS loans or grants.

Fully funded and ready to start once they receive funding under the Recovery Act. Applicants should be required to state a start date for project applications. Detailed documentation and engineering plans can be submitted to the agency prior to conclusion of the contract negotiation. The RUS should not allow entities with large

cash reserves to have an advantage with respect to scoring of the application. Thus, the RUS should be flexible and allow applicants to demonstrate full funding through letters of commitment from investors and letters of credit that can be produced before the grant or loan is drawn upon.

Additional priorities to be considered by RUS. Section 6107 of P.L. 110-246 authorizes loans for facilities and equipment in rural areas for 9-1-1 access; integrated, interoperable emergency communications, including multi-use networks that provide commercial and transportation information services in addition to emergency communications services; homeland security communications; transportation safety communications; or location technologies used outside of an urbanized area.

The RUS should utilize some of the ARRA funds for this financing authority and should establish flexible rules for the program, encouraging creative and innovative solutions to address emergency communications needs in rural areas. Financing under this program should be available at the same time the agency makes funds under other programs funded by the ARRA. The RUS should use its broad grant authority under ARRA to fund broadband projects in this area.

XIII. New EA Board of Directors

Bill Owens, New EA Co-Founder/Chairman

- Chairman of the Board of Embarq, Polycom, Intelius
- Board Member of Wipro and Daimler Chrysler
- Former CEO of Nortel, SAIC, & Teledesic
- Former Vice-chairman of the Joint Chiefs of Staff

Naveen Jain, New EA Board Member

- Founder of Infospace and Intelius, a successful entrepreneur

Rich Karlgaard, New EA Board Member

- Publisher of Forbes Magazine
- Founder of garage.com

Gregory L. Rohde, New EA Board Member

- Founder of e-Copernicus & E9-1-1 Institute
- Former Administrator of the National Telecommunications and Information Administration (NTIA)

Sree Tangella, New EA, President & CEO

- Silicon Valley Entrepreneur, over 16 years of experience
- Co-founder of wireless system company Altai

Dr. Yick Chan, Flow Mobile, Chief Operating Officer

- Silicon Valley Entrepreneur, over 25 years of experience in startups and established companies
- Co-founder of Altai