



MEMORANDUM

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With support by: Benjamin Lennett (OTI), James Losey (OTI), Dan Meredith (OTI), and Marc Schulhof (CTC).

Re: Summary, Concerns, and Strategic Guidance regarding Notice of Funds Availability for BTOP

Date: July 7, 2009

EXECUTIVE SUMMARY

This memorandum provides analysis, strategic guidance, and policy concerns and recommendations with regard to the Broadband Technology Opportunities Program (BTOP) of the American Recovery and Reinvestment Act of 2009 (ARRA).¹

This memorandum includes:

1. A summary of the latest developments in the BTOP and how they will impact many would-be applicants;
2. Strategic recommendations for activities to undertake to maximize the chances of being funded;
3. Precautionary and protective steps to take during the application preparation process;
4. Discussion of policy concerns about how the BTOP is being implemented and why it does not, in many ways, live up to the promise established by the ARRA; and,
5. Policy recommendations for incremental, strategic changes by NTIA that could improve the program as implemented.

An in-depth overview of minimum and recommended application requirements for the RUS Broadband Initiatives Program and NTIA's Broadband Technology Opportunities Program follows.

¹ ARRA includes two categories of broadband funding: (1) \$2.5 billion for the Broadband Initiatives Program (BIP); and (2) \$4.7 billion for BTOP. This memorandum focuses on BTOP. Attached to this memorandum is a summary of the July 1 Notice of Funds Availability (NOFA) for both BTOP and the BIP program, which is to be administered by the Rural Utilities Service (RUS) of the Department of Agriculture. That summary contains extensive logistical information that is not addressed herein, including filing deadlines and mechanisms, requirements, and scoring criteria.

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I. Background and summary of the opportunity

As expected, the National Telecommunications and Information Administration (NTIA) on July 1st released its Notice of Funds Availability (NOFA) for the first round of grants under BTOP.²

Unfortunately, the opportunities for funding under the NOFA are more limited than many had anticipated.

Up to \$1.2 billion is made available for broadband infrastructure projects but we (along with many public interest, municipal, and community associations) are concerned that the rules are weighted against participation of urban, metropolitan, and even some rural communities. The rules appear to de-emphasize networks centered around community anchor institutions; and provide definitions of “unserved” and “underserved” areas that seem to ignore the very real issues of low bandwidth and affordability.

The bottom line is that many worthy applicants that expected to qualify for infrastructure grants, based on the language of the ARRA, will not be eligible to apply in this first round. We do not believe that it was NTIA’s intent to so drastically limit in such drastic fashion access to the great majority of the BTOP funding. That, however, is the de facto outcome of the NOFA as currently written. BTOP has been effectively reinterpreted by NTIA as a rural-focused program, and further limited to only those rural areas where no basic DSL or cable modem service is advertised, contrary to the statutory language and legislative history.

We do not believe that NTIA intended to exclude significant numbers of community-based and public interest projects. However, this unfortunate outcome may be the result of NTIA’s attempt to prevent private sector applicants from focusing only on the most lucrative markets or customers. Because the FCC has never collected the data requested by NTIA at the level of granularity needed to determine whether areas are underserved, many applicants will find themselves in uncertain territory with regards to how best to fulfill the BTOP application requirements.

That said, there is reason for optimism:

1. NTIA has stated that it will release revised rules for the second and third rounds of BTOP funding, to be due in 2010. We do not know whether those will be incremental changes or more substantive revisions with respect to the infrastructure grants. However, we assume that NTIA will be the subject of intense scrutiny by members of Congress, many of whom will feel that the agency’s rules do not reflect the true intent of the ARRA; that scrutiny may translate into a revamped set of rules for the remaining rounds of funding. It is our hope that the second round of funding, tentatively scheduled to begin in Fall 2009, will enable a broader array of communities and community institutions to apply.

² NTIA envisions this as the first of three funding rounds and has committed approximately one-third (\$1.4-1.6 billion) of its funding to this round. Subsequent rounds will be developed in part based on the agency’s experience with this NOFA. While the general rules for subsequent NOFAs are expected to remain similar, some additional targeting is anticipated. Potential applicants are urged to begin planning now in anticipation of future funding availability.

2. The rules released for the first round of funding do offer limited opportunities for serving some areas where there is low-bandwidth service and very low penetration. Potential applicants whose projects will serve neighborhoods with extremely low broadband penetration (40 percent or less of households) may qualify with adequate documentation.
3. There is no comparable limitation on the types of communities and community anchor institutions that can apply for funding for the other two, non-infrastructure funding categories. This NOFA makes available up to \$50 million for public computer center projects and up to \$150 million for sustainable broadband adoption projects.
4. While urban, suburban, and marginally-served rural areas may find themselves ineligible or non-competitive, this funding round appears tailored to support projects in communities in the least served areas of rural America, this funding round appears tailored to support your projects. A strict reading of the NOFA appears to provide those applicants with a strong competitive advantage over other applicants.

II. Strategic thoughts on preparing a BTOP grant application

Despite the above limitations, here is also significant opportunity during this first round for those infrastructure applicants that do meet the NOFA's substantial funding rules for BTOP. If a potential applicant is able to make a case within the strict criteria laid out, there will likely be somewhat less competition for funding than if the rules were more broadly written. For such community-based applicants, we suggest that the following elements of emerging community BTOP projects be addressed to best fit the priorities and parameters of the NOFA:

- NTIA will undertake a two-step review process that will test every claim made in applications, necessitating rigorous planning and documentation.
- “Unserved” and “underserved” have effectively been made prerequisites for all infrastructure projects, even those focused on community anchor institutions or public safety, suggesting that you may need to (re)focus or limit your proposal to such areas.
- The service area for both last-mile and middle-mile projects must be defined carefully to ensure meeting two of the restrictive criteria for the definition of “underserved.”
- Applications should focus on end-user service provision rather than community anchor institutions, which are surprisingly de-prioritized by the NOFA as a basis for applications. It should be noted that even though serving anchor institutions cannot be the sole focus of an application, serving them can make applications more competitive.
- Applicants must certify willingness to accept new network non-discrimination and interconnection requirements.
- Single-use network are unlikely to be funded as the NOFA clearly prioritizes multi-use, multi-sectoral, non-discriminatory, open networks.

Each of these six points is addressed in further detail below.³

³ We caution that this is not a comprehensive list of activities to be undertaken, but is rather a partial list of key considerations that arise from the NOFA. Further detail, in summary form, is attached and we recommend full analysis of the NOFA.

1. A two-step review process promises to be both rigorous and challenging.

There will be a two-step review process. Step one will make sure applicants pass the minimum eligibility threshold. Step two will identify the most qualified applicants for funding.

It is during step two that each state will have the opportunity to weigh in on the priority of short-listed projects from within their borders, and existing broadband providers will have the opportunity to contest projects by demonstrating the current advertised speeds or penetration rates in the proposed service areas exceed the definitions of unserved or underserved. This additional vetting by non-NTIA entities creates added risk for applicants.

As a result, rigorous engineering, market analysis, and business planning is essential. The NOFA makes it very clear that documented, methodical assessments are fundamental to a successful application:

1. Market assessments are needed not only to substantiate project service areas (as well as defining them), but also to support the metrics used to determine project milestones and successes.
2. For network engineering, all assumptions will need to be tested and claims from community representatives verified and certified by a professionally licensed engineer. Any network specifications that are not on solid footing could sink an otherwise stellar project.
3. Significant business planning will need to be documented and defended to demonstrate the sustainability of the proposed project.

The NOFA's subtext is that competitive applications will require a full qualitative and quantitative suite of assessments. We strongly recommend that community applicants immediately prioritize resources for this level of market, business, and technical analysis. While it may be unrealistic given the time constraints faced for applying in the first round to do these assessments across the board, this work will most likely be necessary for subsequent funding rounds. Therefore, getting a head-start would be a wise investment.

2. Both last-mile and middle-mile projects will be funded, so long as they serve areas defined as “unserved” and “underserved.”

The NOFA provides for funding of last-mile projects (to residences and community anchor institutions) and middle-mile projects (that deliver capacity for other entities to bridge the last mile). To our surprise, however, the NOFA effectively makes the first two purposes of BTOP (serving unserved and underserved residences) prerequisites for addressing the three other statutory purposes⁴ by requiring that both last-mile and middle-mile projects demonstrate that they will serve areas that meet the definition for unserved or underserved *residential* service.

⁴ ARRA sets out five purposes for the BTOP grants:

1. Provide access to broadband service to consumers residing in unserved areas.
2. Provide improved access to broadband service to consumers residing in underserved areas.
3. Provide broadband education, awareness, training, access, equipment, and support to:
 - a. Schools, libraries, medical and healthcare providers, community colleges and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband service by or through these organizations;

As a result, we recommend that you refocus your project plans, even those that are focused on community anchor institutions or public safety, on areas where you can document that the definition of unserved or underserved has been met (more on these definitions below).

3. Meeting the definition of “underserved” will be challenging and will require rigorous surveys and documentation.

The definitions for unserved and underserved are restrictive and require significant documentation and verification.

To qualify as **unserved**, at least 90 percent of households in the proposed funded service area must lack access to facilities-based, terrestrial broadband service.

To qualify as **underserved**, last-mile projects must meet at least one of the following criteria (though the NOFA notes a presumption that more than one should be met):

- No more than 50 percent of the households in the proposed funded service area have access to facilities-based, terrestrial broadband service at greater than the minimum broadband transmission speed of 768 kbps downstream and 200 kbps upstream.
- No fixed or mobile broadband service provider advertises transmission speeds of at least 3 Mbps downstream in the proposed funded service area.
- The rate of broadband subscribership for the proposed funded service area is 40 percent of households or less.

The definitions also have implications for middle-mile projects. To qualify as underserved, a middle-mile project must terminate one interconnection point in a proposed funded service area that qualifies as unserved or underserved for last-mile projects.

NTIA’s definitions therefore present a challenge to obtaining funding for many communities and community anchor institutions. To meet these definitions, we recommend, at a minimum, two key activities:

- You may need to (re)focus on specific areas or census blocks where the criteria for underserved are met, rather than on projects that seek to cover an entire city, county, or geographic region.
- You will need to demonstrate, with rigorous methodology and documentation, that proposed service areas meet the definition. This requirement points to the importance of

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- b. Organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by low-income, unemployed, aged, and otherwise vulnerable populations; and,
 - c. Job-creating strategic facilities located within a State-designated economic zone, Economic Development District designated by the Department of Commerce, Renewal Community or Empowerment Zone designated by the department of Housing and Urban Development, or Enterprise Community designated by the Department of Agriculture.
4. Improve access to, and use of, broadband service by public safety agencies.
 5. Stimulate the demand for broadband, economic growth, and job creation.

performing an in-depth market assessment with sound methodology, especially since incumbent carriers within a project area may be able to challenge a project's ability to meet the unserved or underserved criteria.

4. The NOFA focuses on end-user service provision and the residential market.

The NOFA appears to focus on those projects that either provide broadband service to end-users or, in the case of middle-mile projects, support end-user/last-mile networks. This is reflected in the eligibility requirements for underserved and the de-prioritizing of anchor institution networks.

The NOFA uses census blocks as the building block for proposed service areas (perhaps as a mechanism to ensure that underserved communities will be served and that redlining is precluded). It does allow you to select the area you plan to serve, but you must identify which census blocks are affected and document that they meet the definitions of unserved or underserved. Your last-mile projects must also propose to provide service to entire census blocks, except upon successful petition for a waiver.

Further, middle-mile projects will be judged on the number of end-points and points of interconnection the network will offer and the proposed connections to last-mile networks, community anchor institutions, or public safety entities, *as well as the projected number of new end users served by those proposed connections.*

We are frankly concerned that these requirements make middle-mile-only solutions less competitive, unless you can document that you have partners (or potential partners) who are committed to bridging the last mile in the proposed service area using your middle-mile solution.

5. New network non-discrimination and interconnection requirements must be addressed and certified.

The NOFA requires that applicants agree to new network non-discrimination and interconnection requirements, including:

- a) Not to favor any lawful Internet applications or content over others;
- b) Displaying and notifying customers of network management practices (such as those that allocate capacity; differentiate among applications, providers, or sources; limit usage; and manage or block access to illegal or harmful content);
- c) Connecting to the public Internet such that the project is not an entirely private closed network; and,
- d) Offering interconnection, where technically feasible, on reasonable rates and terms to be negotiated with requesting parties.

We recommend that you review these requirements to be sure that you can and will meet them if you plan to apply for funding. These conditions *will apply for the life of the facilities* built with BTOP funding but not to any pre-existing network facilities.

6. Single-use networks likely need not apply

The NOFA clearly prioritizes multi-use, multi-sectoral, non-discriminatory, open networks. We expect that single-use networks and those that fail to openly interconnect with existing systems will be greatly disadvantaged because these projects (such as, for example, proposed public safety-only networks) will score low on the nondiscrimination and interconnection requirements.

Furthermore, the NOFA's scoring criteria award additional points to proposed networks that link to unaffiliated organizations in the service area (including public, non-profit, and private organizations, and particularly community anchor institutions and public safety organizations). Once again, this represents a disadvantage for single-purpose networks.

The NOFA also places an onus on middle-mile networks to ensure that substantial end-mile solutions are supported; thus, stand-alone middle-mile applicants (for example, proposing to interconnect schools to libraries) that do not integrate general end-user service provision will be disadvantaged.

As a result, we strongly advise against single-use networks and recommend that potential applicants work with local stakeholders to create a larger list of partners and benefactors; creating a greater number of network links in this way will ensure that substantial numbers of end users are supported by the proposal.

III. Protecting yourself in the application planning process

The grant application process and timeline are now settled, at least for the first round of funding. Quick action is warranted. Let us also reiterate a couple of precautionary recommendations: First, we continue to recommend that you seek preliminary legal guidance as to any structural barriers that may exist in your community or state. Municipalities in particular may face significant barriers or bars to apply for infrastructure program funds or build networks. Even if such a barrier exists, there are ways to structure your project to ensure that it runs minimal risk in this respect, and we recommend that preliminary analysis be undertaken now, so that your grant application can attest to the feasibility of your project. Legal review is also required by the NOFA, which notes that responsive applications must include a legal opinion as to the applicant's ability to apply for funding.

Second, we continue to recommend that you contact your state leaders to explain the value of your project. Under the NOFA, states will play a role in recommending the priority order for projects that make NTIA's 1st round list of fundable projects. We recommend that you attempt to secure the support of your state by educating the relevant decision-makers in your state as to the value of your project. Ask that your group be the channel for stimulus grant applications—and ask for as much assistance as those decision-makers can provide you for the application. To the same end, we recommend that you educate your congressional delegation and solicit any help they can offer, especially letters of support.

Finally, keep in mind that any BTOP application faces considerable competition and long odds due to the large number of expected applications that will be submitted. All applicants face the risk that the time and resources they spend creating their applications will not yield any funding.

We strongly recommend managing expectations among key stakeholders, elected officials, community organizers, and other decision-makers in your community to prevent unexpected disappointment.

IV. Key policy concerns with BTOP

Though we are strong supporters of the BTOP as established by ARRA, we have many areas of concern with the way it has been interpreted by the NOFA. We raise these concerns in the hope that they will be clarified immediately and addressed, if not by the August 14, 2009 deadline, then in time for applicants to take them into account during future funding rounds.

The following are the areas in which we are most troubled—especially since we believe they run contrary to the intent of Congress, have the effect of limiting BTOP to a small subset of American communities, limit public participation, and render ineligible most projects that would connect anchor institutions such as schools, libraries, first responders, and health care facilities:

- The definition of “underserved” has the effect of precluding any residential infrastructure program in an area where a minimal level of broadband, even first-generation DSL, is generally available. This preclusion occurs regardless of whether advertised speeds are actually delivered; whether service is affordable; whether systems are capable of serving all interested consumers (in many communities where DSL is advertised, residents and small businesses are refused service because circuits are tapped out); and whether the speed of service meets the needs of the consumer (for example, DSL and even cable modem service are woefully insufficient for home-based business and teleworking).
- Although the ARRA assigns five co-equal purposes to the BTOP program, the NOFA prioritizes the first two purposes (serving “unserved” and “underserved” areas), creating prerequisites for projects that address the other three purposes (community anchor institutions/vulnerable populations; public safety; and job creation/economic development). One result is that community anchor institutions and middle mile projects in areas that do not meet the definition of “underserved” are ineligible for infrastructure grants. Communities cannot apply for funds to build capacity to schools, libraries, first responders, and health care facilities—all of which require 100 *Megabit* or *Gigabit+* connection speeds—because they are located in neighborhoods where residents can purchase consumer services of several hundred *kilobits* per second.
- By using the language of “advertised” speeds to determine whether an area is “underserved,” the NOFA enables carriers to preclude participation through advertised (and frequently exaggerated) maximum speeds rather than guaranteed minimum speeds. This problem is compounded by the de facto veto the NOFA affords carriers to show that an area is not “underserved” by quoting aggregate speeds—not what they actually deliver. This outcome is patently unfair—carriers, who have an incentive to obfuscate service shortcomings, may advertise speeds of up to 3 Mbps while refusing to guarantee those speeds (for example, cable modem systems are engineered as shared networks so speeds can drop dramatically as providers use larger and larger contention ratios). An application for funding for an alternative network that will deliver guaranteed speeds would be precluded by overstatements contained in carriers’ advertising.

- Multiple elements of the NOFA have the effect of making municipal and community participation extremely difficult if not impossible. This runs contrary to the explicit language of the Recovery Act, which includes among “eligible entities” both local governments and non-profits. For example:
 - A. By defining service to community anchor institutions as “last-mile” and requiring that last mile-networks serve entire census blocks, the NOFA tilts toward carrier models for residential service rather than community models that may focus on community anchor institutions such as schools and libraries. For nearly two decades localities have successfully operated Institutional networks, and these community anchor institutions have delivered Internet services to countless Americans. The NOFA makes residential service a requirement of funding for community anchor institutions (though the statutory language does not), eliminating countless potential public projects that would (1) serve community anchor institutions and (2) provide capacity to the private sector to bridge the last mile—even if public projects do not themselves serve all residents in a given area.
 - B. The NOFA requires a showing of “unserved” or “underserved” by census block—data that only the carriers can access without extraordinary efforts and cost. Many American cities, such as San Francisco, Miami, and Philadelphia, have engaged in extensive surveys of their community over the past few years, using multiple methodologies, including privately-conducted written and phone surveys of statistically-significant samplings of the communities and City-conducted community-wide surveys. But in order to gather data by census block, applicants would have to survey the community at a far more granular level with a concomitant cost that is simply not feasible. As a result, communities face an enormous hurdle in demonstrating that neighborhoods are “underserved.” Despite the fact that these communities have already done extensive surveying of the on-the-ground realities—this simply is not enough to meet the NOFA’s requirements. In contrast, incumbent carriers have much of this data already and they know where service is offered and what rates of penetration have been achieved. The end result is that the telecommunications incumbents have far lower burdens to meet under the NOFA than do public entities or community anchor institutions.

V. Key Policy Recommendations for BTOP

If NTIA did not intend to prohibit broadband infrastructure funding opportunities to the vast majority of American communities and community anchor institutions, we believe that a few modest changes to the NOFA would enable participation by many communities on behalf of their most vulnerable populations. By supporting community-based organizations, libraries, schools, first responders, and health care providers, these changes would facilitate local job creation and maximize the utility of BTOP funding:

- Amend the definition of “underserved” to clarify that only one, rather than two, of the definitional options be met, thus enabling urban and metropolitan areas, and even small towns in rural areas to apply even if there are other forms of low-speed broadband, such as early-generation DSL, in the community.
- Clarify that “advertised speeds” means “guaranteed speeds” to individual premises, simultaneously and during peak network congestion times, for purposes of both the definition of “underserved” and the latter stages of the review process in which carriers may demonstrate their speeds in the areas proposed for service.
- Since the Recovery Act does not prioritize any one purpose over any other, eliminate the requirement that projects to community anchor institutions have to be in “unserved” or “underserved” areas. Treat all five intervention areas as equitably important and avoid dependencies that would make any of them (in this case, service to unserved or underserved) dependencies for any others (for example, anchor institutions and vulnerable populations, public safety, and job creation and economic development). In a related fashion, eliminate the requirement that “last-mile” networks to community anchor institutions also have to serve an entire census block.
- Waive or amend the requirement for census block data such that communities can demonstrate that they meet the definition for “underserved” in other ways, such as statistically-significant data, that are more feasible, less burdensome, and just as rigorous. Alternatively, the FCC should require that all providers make these data publicly available.
- Allow funding for middle-mile projects that are in unserved or underserved areas or that promote the other statutory purposes of BTOP, namely, provide improved broadband availability for community anchor institutions and vulnerable populations, public safety entities, and/or stimulate job creation and economic development.

MINIMUM AND RECCOMENDED APPLICATION REQUIREMENTS

Minimum and Recommended Application Requirements RUS's Broadband Initiatives Program & NTIA's Broadband Technology Opportunities Program

This document has been prepared by New America Foundation's Open Technology Initiative to provide applicants to the National Telecommunications and Information Administration's (NTIA) Broadband Technology Opportunities Program (BTOP) and the Rural Utilities Service's (RUS) Broadband Initiatives Program (BIP) with a greater understanding of the requirements for their application. In addition to the minimum eligibility requirements and required documents described in the July 1, 2009 Notice of Funding Availability for Broadband Initiatives program and Broadband Technology Opportunities Program (NOFA), this report contains sections laying out recommendations for how to build a highly competitive application. All information is primary-sourced for those wishing to conduct further research on their own. The complete NOFA is available as a downloadable PDF from the <http://www.broadbandusa.gov> website.

NOTE: The report does not address BTOP requirements for broadband adoption or public computing center projects. A separate document on those guidelines is forthcoming.

Further questions can be addressed to the Open Technology Initiative team via phone (202-986-2700) or e-mail:

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IMPORTANT HIGHLIGHTS AND RECOMMENDATIONS

Eligibility and Requirements

- **Unserved Area:** an area, composed of one or more contiguous census blocks where at least 90 percent of households in the proposed funded service area lack access to facilities based, terrestrial broadband service.
- **Underserved Area: Last Mile Projects**—an area composed of one or more contiguous census blocks where at least one of the following is met: 1) no more than 50 percent of households in the proposed funded service area have access to facilities based, terrestrial broadband service at greater than the minimum broadband speed; 2) no fixed or mobile broadband service provider advertises broadband speeds of at least 3 Mbps downstream in the proposed funded service area; or 3) the rate of broadband subscribership for the proposed service area is 40 percent of households or less.
- All applications to fund broadband infrastructure in proposed funded service areas which are at least 75 percent rural *are required* to be submitted to RUS for consideration under BIP.
- The applicant must propose to offer “**broadband**” service as defined in the NOFA—i.e., two-way data transmission with advertised speeds of at least 768 kbps downstream and at least 200 kbps upstream to end users.
- Projects seeking over \$1 million in funding *must be certified by a professional engineer*.
- The applicant must demonstrate the ability of the project to be sustained beyond the funding period.
- The applicant must commit to the program’s Nondiscrimination and Interconnection Obligations and these *will apply for the life* of the awardee’s facilities used in the project.
- Applicants for Last Mile infrastructure projects *must provide service to the entire territory of each census block* included in the funded service area unless the applicant can provide a reasoned explanation as to why providing coverage for an entire census block is infeasible.

Application Process

- *Step One Evaluation:* Applications will be evaluated by at least three expert reviewers against evaluation criteria. Scores will be averaged and applications considered to be the most highly qualified will advance for further consideration.
- *Step Two – Due Diligence:* For applications that advance to this “due diligence” phase, NTIA will request applicants to submit additional information as necessary to substantiate representations made in their application.

Priorities and Point System

- Both BIP and BTOP program have specific priorities and point systems that will be utilized to judge the merits of a proposal. Each application will be scored using the point structure and will be judged on its individual merits and not against other applications. Applicants should consider priorities and the point system in the process of developing the project and application.
- States will be provided an opportunity to make recommendations concerning the allocation of funds for qualifying projects in or affecting the individual states during step two of the BTOP application process.

General Information

- RUS is establishing the Broadband Initiatives Program (BIP) which may extend loans, grants, and loan/grant combinations to facilitate broadband deployment in rural areas.
- NTIA is establishing the Broadband Technology Opportunities Program (BTOP) which makes available grants for deploying broadband infrastructure in unserved and underserved areas in the United States
- There will be a two-step review process. *Step One Evaluation* Applications will be evaluated by at least three expert reviewers against evaluation criteria. Scores will be averaged and applications considered to be the most highly qualified will advance for further consideration. *Step Two – Due Diligence* For applications that advance to this “due diligence” phase, NTIA will request applicants to submit additional information as necessary to substantiate representations made in their application. The nature and scope of additional information requested will depend on the BTOP funding category in which the application was made. NTIA will review and analyze supplemental information and assign a rating, based on a five-point scale, reflecting the consistency of the application with supporting documents.
- States will be provided an opportunity to make recommendations concerning the allocation of funds for qualifying projects in or affecting the individual states during step two of the BTOP application process. States participating in the related broadband mapping program will also have an opportunity during Step One to describe unserved and underserved areas of their states.
- Both agencies envision this as the first of three funding rounds. Subsequent rounds will be developed in part based on each agency’s experience with this NOFA. While the fundamental nature of subsequent NOFAs is expected to remain similar, some additional targeting is anticipated. Potential applicants are urged to begin planning now in anticipation of future funding availability. [NOFA ¶1914 – 1918]

Websites

- Broadband USA: <http://www.broadbandusa.gov>.
- Notice of Funding Availability (NOFA) for Broadband Initiatives Program and Broadband Technology Opportunities Program:
http://broadbandusa.sc.egov.usda.gov/files/BB%20NOFA%20FINAL%20with%20disclaimer_1.pdf.
- ARRA Statutory language: http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h1enr.pdf.
- Federal Register regarding the “Buy American” waiver:
<http://broadbandusa.sc.egov.usda.gov/files/BroadbandBuyAmericaNotice7-1-09.pdf>.
- Additional Information is available at the Broadband USA Information Library:
http://broadbandusa.sc.egov.usda.gov/info_lib.htm.

Timeline

<p>Application Available July 7, 2009*</p>	<p>Application Available *Date was listed on Broadband USA Website on July 1st. May be subject to change.</p>
<p>Accepting Applications July 14, 2009 – August 14, 2009</p>	<p>Applications will be accepted between July 14, 2009 at 8:00 a.m. Eastern Time (ET) until August 14, 2009 at 5:00 p.m. ET. [NOFA ¶35 – 36]</p>
<p>Application Due August 14, 2009 at 5:00 p.m. ET</p>	<p>Electronic applications must be submitted by 5:00 p.m. ET on August 14, 2009 and paper submissions must be postmarked no later than August 14, 2009, or hand-delivered no later than 5:00 p.m. ET on August 14, 2009. [NOFA ¶1278 – 1288]</p>
<p>Second Phase October 15, 2009</p>	<p>The second (due diligence) phase will be announced no earlier than September 14, 2009. The following information must then be submitted to the agencies online at http://www.broadbandusa.gov by October 15, 2009, or, alternatively, 30 days after the applicant has received a request from RUS or NTIA to provide such information, whichever is later. [NOFA 1047 – 1050]</p>
<p>Award Date November 7, 2009</p>	<p>RUS and NTIA intend to announce the awards starting on or about November 7, 2009. [NOFA ¶1612]</p>
<p>Award Documentation Distributed Within 30 and 60 days</p>	<ul style="list-style-type: none"> • RUS intends to make grant, loan, and loan/grant combination documents available to successful applicants within 30 days of the award announcement. RUS expects compliance with all documentation requirements from successful applicants. [NOFA ¶1614 – 1617] • NTIA intends to make award documents available to successful applicants within 30 days of the award announcement. [NOFA ¶1619 – 1621]
<p>Award Documentation Due Within 60 days</p>	<ul style="list-style-type: none"> • RUS intends to schedule the closings within 60 days of award announcement. [NOFA ¶1614 – 1617] • NTIA expects compliance with all documentation requirements from successful

	<p>applicants within 60 days of award announcement. [NOFA ¶¶1619 – 1621]</p> <ul style="list-style-type: none"> • Alternatively, 30 days after the applicant has received a request from RUS or NTIA to provide such information, whichever is later. [NOFA ¶¶1047 – 1050]
<p>Award Requirements Within 2 years of award date</p>	Project must be substantially complete
<p>Award Requirements Within 3 years of award date</p>	Project must be fully complete

Total Available Funds - \$4 billion

- A total of approximately \$4 billion of program level funding has been allocated under this NOFA by RUS and NTIA. [NOFA ¶¶176 – 177]

Available Funds for BTOP - Up to \$1.6 billion [NOFA ¶¶527 – 545]

- Up to \$1.4 billion is available to be awarded under this NOFA and will be allocated in the following categories:
 - a) Broadband Infrastructure projects will be awarded no greater than \$1.2 billion;
 - b) Public Computer Center projects will be awarded no greater than \$50 million; and
 - c) Sustainable Broadband Adoption projects will be awarded no more than \$150 million.

A \$200 million discretionary fund is available to augment any of the individual BTOP funding categories in this round or that can be used pursuant to subsequent NOFAs.

Available Funds for BIP – Up to \$2.4 billion [NOFA ¶¶494 – 525]

- Approximately, \$2.4 billion in program level funding has been set aside for funding opportunities under this NOFA and funding is available in the following categories:
 - a) Last Mile projects will be awarded \$1.2 billion.
 1. Up to \$400 million is available for grants for Remote Area projects.
 2. Up to \$800 million is available for loans or loan/grant combinations for Non-Remote projects.
 - b) Middle-mile projects will be awarded \$800 million in loans or loan/grant combinations.
- Up to \$325 million is available for a national reserve. These funds may be used to augment the BIP funding categories established above, or remain unused for subsequent NOFAs.

BTOP and BIP Eligibility and Application Requirements

- All applicants requesting more than \$1 million in assistance (in the form of grants, loans, or a combination of grants and loans) *must file their application electronically*. [NOFA ¶1197 - 1198]
- All applications to fund broadband infrastructure in proposed funded service areas which are at least 75 percent rural *are required* to be submitted to RUS for consideration under BIP. If the applicant also chooses to be considered under BTOP, NTIA will review these applications using its own objective evaluation criteria and in accordance with BTOP procedures outlined in this NOFA. [NOFA ¶862 – 869]
- All applications to fund broadband infrastructure projects in proposed funded service areas that are less than 75 percent rural *must be submitted to NTIA* for consideration under BTOP. [NOFA ¶875 – 876]
- Project must be substantially completed (67% of funding spent; and for BTOP, also accomplished 67% of project milestones) within 2 years of award date and fully completed within 3 years. [NOFA ¶597 – 603]
- Projects funded by BIP and BTOP grants are expected to convincingly demonstrate the ability to be sustained beyond the funding period. [NOFA ¶824 – 840]
- *If grant project seeks more than \$1 million in BTOP funding, a Professional Engineer must certify* that: a) the system will deliver the stated performance; and, b) the projected budget is a fair representation of the total infrastructure costs. [NOFA ¶609 – 613]
- RUS and NTIA conclude that an appropriate definition of “*unserved area*” is a proposed funded service area (i.e., one or more contiguous census blocks, as discussed below) where at least 90 percent of households lack access to facilities-based, terrestrial broadband *service*, either fixed or mobile, at the minimum broadband transmission speed of 768 kbps downstream and 200 kbps upstream. [NOFA ¶2308 – 2312]
- Projects may qualify as underserved for Last Mile projects if at least one of the following factors is met, though the presumption will be that more than one factor is present: i) no more than 50 percent of the households in the proposed funded service area have access to facilities-based, terrestrial broadband service at greater than the minimum broadband transmission speed of 768 kbps downstream and 200 kbps upstream; ii) no fixed or mobile broadband service provider advertises broadband transmission speeds of at least three megabits per second (“mbps”) downstream in the proposed funded service area; or iii) the rate of broadband subscribership for the proposed funded service area is 40 percent of households or less. [NOFA ¶2359 – 2374]
- Advertised broadband speeds of proposals must be in excess of 768 kbps downstream and 200 kbps upstream. [NOFA ¶384 – 387]
- An applicant must identify the census block(s) selected for the project and provide documentation supporting the applicant’s determination that the proposed funded service area is either unserved or underserved. [NOFA ¶2426 – 2440]
- There is a *presumption that the applicant will provide service to the entire territory of each census block* included in the proposed funded service area, unless the applicant files a waiver and provides a reasoned explanation as to why providing coverage for the entire census block is infeasible. [NOFA ¶2440 – 2447]
- Funded projects must “Buy American” or request a waiver. NTIA has granted a general waiver for broadband switching equipment, routing equipment, transport equipment,

access equipment, customer premises equipment, end-user devices, and billing/operating systems; this waiver does not apply to "fiber optic cables, coaxial cables, cell towers, and other facilities that are produced in the United States in sufficient quantities to be reasonably available as end products." [Federal Register Vol. 74, No. 125, Wednesday, July 1, 2009, Notices page 31410 – 31411]

- RUS and NTIA *require applicants to commit* to five non-discrimination and interconnection obligations. [NOFA ¶2467 – 2570]
 1. Adhere to the principles contained in the FCC’s Broadband Policy Statement. (FCC Docket 05-151 -- adopted August 5, 2005)
 2. Not favor any lawful Internet applications or content over others.
 3. Display network management policies in a prominent location on the service provider’s web page and provide notice to customers of changes to these policies (awardees must describe any business practices or technical mechanisms they employ, other than standard best efforts Internet delivery, to allocate capacity; differentiate among applications, providers, or sources; limit usage; and manage or block access to illegal or harmful content).
 4. Connect to the public Internet directly or indirectly, such that the project is not an entirely private closed network.
 5. Offer interconnection, where technically-feasible, on reasonable rates and terms to be negotiated with requesting parties. This includes both the ability to connect to the public Internet and physical interconnection for the exchange of traffic.

These conditions *will apply for the life* of the awardee’s facilities used in the project and not to any existing network arrangements. The conditions apply to any contractors or subcontractors of such awardees employed to deploy or operate the network facilities for the infrastructure project. [NOFA ¶2561 – 2570]

- *The grant recipient should use program income generated during the grant period to further eligible project objectives*, including reinvestment in project facilities. [NOFA lines ¶824 – 840]

Requirements Specific to BIP

- At least 75 percent of the proposed service area qualifies as both rural and as unserved or underserved. [NOFA ¶208, 675 – 682]
- Project is financially feasible and/or sustainable, fully funded, and ready to start. [NOFA ¶207 – 215, 689 – 693 and 695 – 704]
- Last mile applicants must provide broadband service primarily in target areas (remote or non-remote). Middle mile applicants must connect as least two points with out predominantly serving end users. [NOFA ¶878 – 897]

Requirements Specific to BTOP

- The project must advance at least one of the five statutory purposes regarding providing broadband access to consumers, the community, and stimulating demand for broadband. [NOFA ¶227 – 265]
- Last mile applicants must predominantly provide service to end users in unserved or underserved areas. Middle mile applicants must predominantly provide service to

unserved or underserved areas with a purpose other than providing service to end users. [NOFA §§899 – 914]

- A proposed funded service area may qualify as underserved for Middle Mile projects if one interconnection point terminates in a proposed funded service area that qualifies as unserved or underserved for Last Mile projects. [NOFA §§2364 – 2374]
- Applicant must demonstrate the project could not be implemented if not funded by the grant. [NOFA §§732 – 740]
- Applicants must provide matching funds, cash or in-kind, of at least 20 percent of total eligible project costs, or request a waiver for this matching requirement. [NOFA §§709 – 731]
- All BTOP Broadband Infrastructure awardees that offer Internet access service to the public for a fee *must agree to participate in the State Broadband Data and Development Grant Program* pursuant to the BDIA and section 6001(l) of the Recovery Act. [NOFA §§1755 – 1757]

Required Documents for First Step of the Review Process [NOFA §§936-1039]

1. General applicant and project information, and filed electronically unless the applicant meets the requirements to file a written application.
2. Verification the application meets eligibility factors.
3. An Executive Summary of the project, no more than 3 pages.
4. Description of the proposed funded service area including maps, data describing geography and demographics, and classification as served, underserved, unserved, non-rural, rural, and/or remote.
5. Description of proposed service offerings including speed, last mile price (if applicable), other services, middle mile price (if applicable), price per household, and existing providers and services advertised in area.
6. Description of network openness and commitment to non-discrimination and interconnection requirements.
7. Technical details of the network including technologies, system design, network diagram, last mile network technologies (if applicable) and certification by Professional Engineer (if the project seeks more than \$1 million in BTOP funding).
8. Timeline including key milestones of the project including build-out, acquisition of necessary licenses and regulatory approval and agreements (if applicable), and contractor and vendor contracts (if applicable).
9. Details on organization and members including resumes, details of experience, organizational chart and demonstration of organizational readiness.
10. Legal review of applicant's ability to apply for funding.
11. List of public, non-profit, and public sector, government, and key partnerships.
12. Itemized budget of infrastructure costs of the proposed project including justification for costs.
13. Sustainability financial analysis of the project including historical financial statements (if applicable) subscriber estimates, 5-year financial forecast, and commitment to other funding.

14. Description of proposed service area including maps and data unserved, underserved, and methodology for defining areas and populations.

Additional Requirements for BIP Applicants

- a) Self scoring sheet analyzing objective scoring criteria.
- b) The pricing package being offered to critical community facilities, if any.
- c) Evidence that the applicant is a socially and economically disadvantage small business concern.

Additional Requirements for BTOP Applicants

- e) A description of how the applicant will advance the objectives of the Recovery Act and the objectives of BTOP.
- f) A demonstrated need for funding.
- g) A description of how the applicant will enhance services for health care delivery, education, and children with the greatest population of users in the area.
- h) Additional verification related to the non-discrimination and interconnection obligations
- i) Amount, percentage, and type of matching funds.
- j) Whether the applicant receives any federal support for non-recurring costs in the proposed funded service area.
- k) To the extent applicable, evidence of collaboration with any socially and economically disadvantaged small business concern.
- l) Disclosure of receipt or application for additional federal or state funding sources.

Required Documents for Second Step of the review process [NOFA §1051 – 1068]

1. A list of all outstanding and contingent obligations.
2. A detailed description of working capital requirements and the source of these funds.
3. A detailed description of the proposed technology that will be used to provide service at the proposed broadband speed. This description *must* clearly demonstrate that all households and businesses in the proposed funded service area will be offered service at the proposed broadband speed.
4. A detailed construction build-out schedule.
5. A completed Environmental Questionnaire, other documentation requests, and required environmental authorizations and permits.
6. A description of measurable service metrics and target service level objectives (SLOs). (e.g., the speed with which new service will be established, service availability, and response time for reports of system failure at a residence) that will be provided to the customer, and a description of the approach and methodology for monitoring ongoing service delivery and service quality for the services being employed. ***(Required for BIP only.)***

Recommendations for Creating a Highly Competitive Application

Both BIP and BTOP program have specific priorities and point systems that will be utilized to judge the merits of a proposal and ultimately which projects will be funded. Each application will be scored using the following point structure and will be judged on its individual merits and not against other applications. [NOFA ¶1298 – 1303] Thus, applicants should consider priorities and the point system in the process of developing the project and application. Further, states will be provided an opportunity to make recommendations concerning the allocation of funds for qualifying projects in or affecting the individual states during step two of the BTOP application process.

Priorities and Point System for BIP [NOFA ¶1343 – 1398]

- Priority will be given to projects that: [NOFA ¶211 – 215, 1310 – 1315]
 1. Give end users a choice of providers;
 2. Serve the highest proportion of rural residents that lack access to broadband service;
 3. Are projects of current or former RUS borrowers (Title II borrowers); and
 4. Are fully funded and ready to start once Recovery Act funding is received.
 5. Coordinate with other federal, state, and local programs, including Recovery Act programs, is highly encouraged as a way to more efficiently and effectively achieve program objectives.
- *RUS will not fund more than one project to serve any given geographic area; the application with the highest score will be funded.* [NOFA ¶684 – 687]

Project Purpose (up to 25 Points)

- **Proportion of Rural Residents Served in Unserved Areas (5 points).**
- **Rural Area Targeting (5 points).** Points will be awarded for exceeding the 75 percent rural area service requirement.
- **Remote Area Targeting (5 points).** Up to five points will be awarded for proposed funded service areas that are at least 50 miles from a non-rural area.
- **Title II Borrowers (5 points).** Five points will be awarded to applications which are submitted by entities which have borrowed under Title II of the RE Act.
- **Recovery Act and other governmental collaboration (5 points).** Points will be awarded for cooperation with other governmental development programs as well as coordination with Recovery Act construction projects.

Project Benefits (up to 25 Points)

- **Performance of the offered service: (10 points).**
 4. Wireline projects that are constructed to deliver a minimum of 20 megabit per second service to the household (upstream plus downstream), 10 points will be awarded.
 5. Wireless projects that are constructed to deliver a minimum of two megabits per second service to the end user (upstream plus downstream), 10 points will be awarded.

6. Middle-mile projects that are constructed to deliver 100 megabits per second service to all end points in their network, 10 points will be awarded.
- **Affordability of services offered (5 points).** RUS will evaluate the level of support that is provided and award up to five points for applications that demonstrate that the proposed rates for the broadband service are affordable for the targeted audience.
- **Choice of provider (5 points).** Five points will be awarded to applications that propose to construct infrastructure and implement a business plan which would allow more than one provider to serve end users in the proposed funded service area.
- **Critical community facilities (5 points).** For applications that are proposing to offer discounted rate packages at least 25 percent lower than the advertised rate packages to all critical community facilities in the proposed funded service area, five points will be awarded.

Project Viability (up to 25 points)

- **Applicant’s organizational capability (12 points).** Up to twelve points will be awarded based on the strength of the project’s management team.
- **Community support (2 points).** Up to two points will be awarded if letters of support are received from all communities in the proposed funded service area from the designated community leader.
- **Ability to promptly start project (10 points).**
- **Disadvantaged small businesses (1 point).** One point will be awarded to applicants that meet the definition of a socially and economically disadvantaged small business concern under section 8(a) of the SBA.

Project Budget and Sustainability (up to 25 Points)

- **Reasonableness of the budget (5 points).** Up to five points will be awarded based on the clarity and reasonableness of the proposed budget.
- **Leverage of outside resources (10 points).** Up to ten points will be awarded based on the amount of outside resources contributed to the total financing provided under BIP.
- **Extent of grant funding (10 points).** Up to ten points will be awarded based on the amount of grants funds requested in relation to the amount of loan funds requested (grant funds/loan funds).

Priorities and Point System for BTOP [NOFA ¶140 – 1593]

- The program will seek to serve the highest priority needs for federal investment, particularly projects that offer the potential for economic growth and job creation, and provide benefits to education, health care, and public safety. [NOFA ¶ 270]
- The program will support viable, sustainable, and scalable projects. [NOFA ¶273]
- Each application will be scored using the following point structure and not against other applications. [NOFA ¶1298 – 1303]
- *** During step two of the BTOP application process, the Governor’s office of each state will receive a list of the applications under consideration. States may provide a list and prioritization of recommended projects, along with an explanation of why the selected proposals meet the greatest needs of the state. [NOFA ¶315 – 325]

Project Purpose (30 points)

- **Fit with statutory purposes.** Reviewers will consider:
 5. Whether the applicant is addressing a compelling problem of the sort that the statute is intended to resolve.
 6. Whether the applicant has offered an effective solution to that problem, and whether the proposed solution is of broad significance and includes developments that can be replicated to improve future projects.
 7. Additional consideration will be given to projects located partially or wholly unserved or underserved areas of a state as described by the state submission in the State Broadband Data and Development Grant Program or as otherwise determined by NTIA.
 8. Additional consideration will also be given to applicants that address more than one statutory purpose and project category (e.g., Broadband Infrastructure, Public Computer Centers, or Sustainable Broadband Adoption) in a convincing manner.
- **Recovery Act and other governmental collaboration.** Applicants will be evaluated on their collaboration with Recovery Act or other state or federal development programs that leverage the impact of the proposed project.
- **Enhanced service for health care delivery, education, and children.** Reviewers will assess the depth and breadth of the project's ability to enhance broadband service for health care delivery, education, and children as contemplated by the Recovery Act.
- **Socially and economically disadvantaged small businesses.** Reviewers will grant consideration to applicants that certify they meet the statutory definition of a socially and economically disadvantaged small business concern, or that have established agreements in principle to contract with socially and economically disadvantaged businesses that meet that definition.

Project Benefits (25 points)

Last Mile Projects

- **Cost-effectiveness.** Applications will be scored on the project's cost-efficiency based on the ratio of the total cost of the project to households passed.
- **Performance of the offered service.** Applications will be scored for the extent to which the advertised speed for the network's highest offered speed tier exceeds the minimum speed requirement for broadband service. *Applicants may gain additional consideration if the applicant can demonstrate a clear and affordable upgrade path for the network.*
- **Affordability of services offered.** Projects will be evaluated on the pricing of the services offered compared to existing broadband services in the proposed funded service area.
- **Nondiscrimination, interconnection, and choice of provider.** Applications will be scored on the extent to which the applicant commits to exceeding the minimum requirements for interconnection and nondiscrimination established in the NOFA, with additional consideration for:

1. Displaying the network's nondiscrimination and interconnection policies in a prominent location on the service provider's web page, and providing notice to customers of changes to these policies.
2. Commitment to binding private arbitration of disputes concerning the awardees' interconnection obligations as explained in section the NOFA.
3. Commitment to offering wholesale access to the project facilities at reasonable rates and terms.
4. Whether the application proposes to construct infrastructure and implement a business plan which would allow more than one provider to serve end users in the proposed funded service area.

Middle Mile Projects

- **Impact on the area.** Reviewers will consider the number of end-points and points of interconnection the network will offer and the proposed connections to last mile networks, community anchor institutions, or public safety entities, as well as the projected number of new end users served by those proposed connections.
- **Level of need in the area.** Applications will be scored on:
 1. Level of need for a middle mile network in the area and whether there are middle mile providers already present in all or part of the area.
 2. The pricing and available capacity of those providers. Reviewers will also consider what proportion of the network's end-points, points of interconnection, and projected end users are located in unserved or underserved areas.
 3. Applicants' explanation of why their proposed project is well-suited to address the needs of the area.
- **Network capacity.** Applicants will be evaluated on:
 6. The capacity of the network. The network should provide capacity sufficient to serve the anticipated last mile networks, community anchor institutions, and public safety entities, and the number of end users served by them.
 7. Reviewers will give additional consideration to projects that will be scalable to meet the future needs of the area.
- **Affordability of services offered.** Projects will be evaluated on:
 1. The pricing of the services offered compared to existing broadband services in the proposed funded service area.
 2. If there are no existing broadband services in the proposed funded service area, projects will be evaluated on the ability of the applicant to convincingly demonstrate that their proposed pricing is appropriate for the service area.
- **Nondiscrimination, interconnection, and choice of provider.** (See above)

Project Viability (25 points)

- **The technical feasibility of the proposed project.** Applications will be scored on the comprehensiveness and appropriateness of the technical solution and the clarity, level of detail, and coherence of the system designs.
- **Applicant's organizational capability.** Reviewers will assess whether the applicant has the organizational capability necessary to undertake and complete the project.
- **The level of community involvement in the project.**

1. Linkages to unaffiliated organizations in the project area (from the public, non-profit, and private, particularly community institutions and public safety organizations, as an ongoing and integral part of the project planning and operation.
2. In order to receive the full score for this criterion, at least one partner should meet the definition of a socially and economically disadvantaged small business concern under section 8(a) of the SBA—these partners must be distinct from any contractor or related entity specified for the purposes of the socially disadvantaged small businesses criterion in Project Purpose.
 - **Ability to promptly start project.** Projects will be evaluated on whether they will be able to start promptly and be completed in an appropriate timeframe for the size and scope of the project.

Project Budget and Sustainability (20 points)

- **Reasonableness of the budget.** Reviewers will evaluate the reasonableness of the budget based on its clarity, level of detail, comprehensiveness, appropriateness to the proposed technical and programmatic solutions, the reasonableness of its costs, and whether the allocation of funds is sufficient to complete the tasks outlined in the project plan.
- **Sustainability of the project.** Applicants must convincingly demonstrate the ability of the project to be sustained beyond the funding period.
- **Leverage of outside resources.** The applicant must demonstrate the ability to provide, from non-federal sources, funds required to meet or exceed the 20 percent matching funds requirement unless a waiver of that requirement has been requested.