

DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration

DEPARTMENT OF AGRICULTURE
Rural Utilities Service

Joint request for information:
Broadband Initiatives Program
and Broadband Technology
Opportunities Program

Docket Number: 0907141137-91375-05

Comments of the Institute for Local Self-Reliance

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Introduction

The Institute for Local Self-Reliance (ILSR) is a thirty-five year old non-profit organization based in Minneapolis, MN, and Washington, D.C., that proposes a set of new rules that builds community by supporting humanly scaled politics and economics. The rules call for:

- Decisions made by those who will feel the impact of those decisions.
- Communities accepting responsibility for the welfare of their members and for the next generation.
- Households and communities possessing or owning sufficient productive capacity to generate real wealth.

Since 2005, ILSR has worked with communities to promote policies encouraging broadband networks that put community needs before profits. Our position is that telecommunications networks are essential infrastructure and communities are best served when essential infrastructure is accountable to the public. We encourage local ownership of the network infrastructure, particularly via municipal, cooperative, or nonprofit entities.

As both the National Telecommunications and Information Administration (NTIA) and Rural Utilities Service (RUS) seek to learn from the first funding rounds for the Broadband Technology Opportunities Program (BTOP) and Broadband Initiatives Program (BIP), ILSR offers the following comments in response to the Joint Request for Information published in the Federal Register on November 16, 2009.

Transparency and Confidentiality

“Should the public be given greater access to application data submitted to BIP and BTOP”

ILSR believes the public should have much greater access to application data. NTIA and RUS should presume all data public in these programs unless a substantial case may be made for keeping it secret.

We commend NTIA and RUS for making public information easily searchable in round one but encourage more data to be available in round two. Additionally, we encourage these agencies to make data available in more formats, particularly via CSV files or other formats that allow the public to organize the data in ways it sees fit.

We would like to note that while private companies may be more accustomed to acting without public scrutiny, public entities such as states, counties, and municipalities are already required to act openly. To the extent that RUS and NTIA encourage entities to

apply that, by default, must act transparently, it can avoid problems from applicants demanding their application be kept secret.

ILSR is particularly concerned that some states were able to hide their recommendations to NTIA in round one. State recommendations should be available publicly in keeping with the transparent intent of this process. As some states are more active than others in cultivating applications, the public should know how states ranked applications to avoid any appearance of impropriety.

Middle Mile “Comprehensive Community” Projects

“Should RUS and/or NTIA focus on or limit round 2 funding on projects that will deliver middle mile infrastructure facilities into a group of communities and connect key anchor institutions within those communities?”

Round two funding should be balanced such that last-mile projects and middle mile anchor institution networks are both encouraged. However, as the last-mile networks are generally more expensive, ILSR does not recommend reserving equal amounts of funding for each.

NTIA and RUS should seek to fund a variety of projects from which the federal government can learn lessons for future approaches. BTOP and BIP are ill equipped to fully solve America’s broadband deficiency. As the federal government is likely to continue investing in this essential infrastructure, BTOP and BIP should not focus solely on one approach but rather seek out the best infrastructure projects in both middle mile and last-mile access that serve the public interest. These projects will offer future lessons on how to create and bolster broadband networks.

“Should we target projects that create ‘comprehensive communities’ by installing high capacity middle mile facilities between anchor institutions that bring essential health, medical, and educational services to citizens that they may not have today.”

Connecting anchor institutions should be a strong priority when evaluating middle mile projects. Though middle mile projects are essential for expanding broadband in the long term, the American Recovery and Reinvestment Act seeks to spur short-term benefits in these trying economic times. As such, connecting anchor institutions will offer more immediate benefits to communities than middle mile projects that do not directly connect key anchor institutions.

“How should RUS and NTIA encourage appropriate levels of non-Federal (State, local, and private) matching funds to be contributed so that the potential impact of Federal funds is maximized?”

Everything else being equal, higher priority should be placed on those projects making a larger match. However, as some communities are facing more difficult situations, consideration must be taken to ensure a community only able to make the minimum match is not declined solely for that reason. Wealthier and/or higher density communities should be expected to contribute a higher match commensurate with their demographics. These networks are the essential infrastructure of the future and communities must be willing to invest in themselves to access grants and/or long term financing on favorable terms from the federal government. Fast broadband networks will lower costs and result in tremendous savings as well as increased opportunities in many communities – benefits that will long outlast the temporary economic problems of the day.

Other Changes – Policy Issues

“Are there any other mechanisms the agencies should be exploring to ensure remaining funds have the broadest benefit?”

In the first round, NTIA declared all private companies to be in the public interest in order to greatly expand those capable of applying and generally increase the number of applicants, consistent with the intent of the House version of BTOP before the bill was revised in conference committee. However, it is clear that the number of applications received far exceeded the expectations and even capability of NTIA to process within the scheduled period of time.

ILSR believes NTIA and RUS should learn from the first round and concentrate on encouraging higher value applications in the second round by setting more stringent requirements. Raising the bar may decrease the number of applications, but will serve the public interest by ensuring public money is used more effectively.

NTIA and RUS should start by reevaluating applicant eligibility. If one examines the history of the Senate BTOP deliberations, it is clear that the Senate strongly preferred broadband stimulus money to be targeted toward public entities. This was the eligibility language of BTOP from the Senate prior to conference committee:

- To be eligible for a grant under the program an applicant shall—
 - (A) be a State or political subdivision thereof, a nonprofit foundation, corporation, institution or association, Indian tribe, Native Hawaiian organization, or other non-governmental entity in partnership with a State or political subdivision thereof, Indian tribe, or Native Hawaiian organization if the Assistant Secretary determines the partnership consistent with the purposes this section;

BTOP, as passed in the Recovery Act, was the result of a compromise between the all-inclusive House intentions and Senate’s approach of encouraging publicly owned networks. Its eligibility language explicitly preferred publicly owned networks, only allowing privately owned networks under the following condition of Section 6001(e)(1) of the ARRA:

any other entity, including a broadband service or infrastructure provider, that the Assistant Secretary finds by rule to be in the public interest. In establishing such rule, the Assistant Secretary shall to the extent practicable promote the purposes of this section in a technologically neutral manner.

NTIA and RUS should change their rules for round two in order to better encourage public-sector applicants. Though NTIA intended to expand the number of applicants in the first round by creating a level playing field for all applicants, its actions perversely discouraged some public sector applicants from applying. This is because the resources available to a private company in search of federal money are generally greater than the resources available to counties and municipalities – especially those in rural and economically depressed areas. Local governments are unlikely to have the needed expertise on hand for an application and are less likely to make that effort if they believe applications from private companies will be stronger due to the asymmetries between applicant resources.

Additionally, though all federal funds expended under these broadband programs require oversight, the burden of oversight is greater with private companies who are not structured to deal with public oversight. Public entities have less incentive to waste or misuse funds because they operate openly and will not directly benefit from gaming the system in the same way that private companies can enrich themselves in similar circumstances.

Program Definitions

“Should the agencies incorporate actual speeds into the definition of broadband and forego using advertised speeds?”

The agencies should incorporate actual speeds into the broadband definition. Though advertised speeds are an easier metric to compare, they are ultimately not useful because they vary so greatly from block to block, community to community, company to company, and technology to technology.

In the absence of meaningful data on actual speeds, applicants should be allowed to demonstrate an underserved status if they can collect ample evidence of actual, delivered speeds below the specified threshold of the broadband definition. If service providers wish to challenge the application on the basis that they are delivering actual speeds in excess of the broadband definition, they should be required to make that data public. This transparency will allow those deciding on grants to make an informed decision based on the public evidence of whether the targeted community is underserved.

“Should factors other than distance be considered, such as income levels, geographic barriers, and population densities?”

The factors listed should be considered in the definition of remote area. Regions with mountains are much more costly to serve and effectively multiply their remoteness from nearby urban areas despite a proximity based on how the crow flies. Distance from urban areas is helpful in most circumstances, but not all. Thus, while distance may be prevailing consideration, it should not be the single consideration.

Public Notice of Service Areas

“What type of information should be collected from the entity questioning the service area and what should be publicly disclosed?”

Information that is already public (pricing, advertised speeds) should be publicly disclosed as part of the challenge. Actual delivered speeds should be disclosed as well as the carrier is the only entity with access to that information and may be tempted to exaggerate network capabilities to discourage competition. The only practical remedy for this situation is sunlight because those evaluating the application have no time for in-depth investigational work. After the challenge is published, the applicant should have 5 business days, minimum, to offer evidence responding to the rates and speeds published by the challenger.

Other

“What other substantive changes to the NOFA should RUS and NTIA consider that would encourage applicant participation, enhance the programs, and satisfy the goals of the Recovery Act?”

As noted above, RUS and NTIA would best serve the public interest by returning to the ARRA language that encourages broadband stimulus projects from public sector applicants. Allowing all entities to apply equally privileges the private sector applicants, as they are better positioned to prepare applications for stimulus funds than local governments and non-profit organizations.

The lesson from the first round is that rural America shows a great desire for broadband improvements. NTIA and RUS have far more applications than expected, suggesting the agencies can tighten the requirements to better serve the public interest without fearing they will have too few applications.

Encouraging public sector applicants solves many current difficulties with the program. Public entities are used to operating in the open and therefore are less difficult to oversee. They have fewer concerns about keeping their data secret. Public sector entities are less likely to object to open access requirements because they are not focused on lost revenues from foregoing monopoly rents. For these reasons, NTIA and RUS should reconsider eligibility requirements to determine what it is the public interest for round two.