

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

[Docket No. 0907141137-0024-06]

RIN 0660-ZA28

**Broadband Technology Opportunities Program**

**AGENCY:** National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce.

**ACTION:** Notice of Funds Availability (NOFA) and solicitation of applications.

**SUMMARY:** NTIA announces general policy and application procedures for the Broadband Technology Opportunities Program (BTOP or Program) that the agency established pursuant to the American Recovery and Reinvestment Act of 2009 (Recovery Act). BTOP provides grants for deploying broadband infrastructure in unserved and underserved areas of the United States, enhancing broadband capacity at public computer centers, and promoting sustainable broadband adoption projects. In facilitating the expansion of broadband communications services and infrastructure, BTOP advances the objectives of the Recovery Act to spur job creation and stimulate long-term economic growth and opportunity.

**DATES:** All applications for funding BTOP projects must be submitted between February 16, 2010, at 8 a.m. Eastern Standard Time (EST) and March 15, 2010, at 5 p.m. Eastern Daylight Time (EDT).

**ADDRESSES:** The application packages for electronic submissions will be available at <http://www.broadbandusa.gov>. See

**SUPPLEMENTARY INFORMATION** for more details.

**FOR FURTHER INFORMATION CONTACT:** For general inquiries regarding BTOP or questions regarding this NOFA, contact Anthony Wilhelm, Director, BTOP, Office of Telecommunications and Information Applications, National Telecommunications and Information Administration, U.S. Department of Commerce (DOC), 1401 Constitution Avenue, NW., HCHB, Room 4887, Washington, DC 20230; Help Desk e-mail: [BroadbandUSA@usda.gov](mailto:BroadbandUSA@usda.gov), Help Desk telephone: 1-877-508-8364. Additional information regarding BTOP may be obtained at <http://www.ntia.doc.gov/broadbandgrants/>. For inquiries regarding BTOP compliance requirements, including applicable Federal rules and regulations

protecting against fraud, waste, and abuse, contact

[bttopcompliance@ntia.doc.gov](mailto:bttopcompliance@ntia.doc.gov). Additional information regarding compliance for BTOP may be obtained at <http://www.broadbandusa.gov/compliance.htm>.

**Authority:** This notice is issued pursuant to the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115 (2009).

**SUPPLEMENTARY INFORMATION:**

**Electronic submissions:** Electronic submissions of applications will allow for the expeditious review of an applicant's proposal consistent with the goals of the Recovery Act. As a result, all applicants are required to submit their applications electronically at <https://applyonline.broadbandusa.gov>. The electronic application system will provide a date-and-time-stamped confirmation number that will serve as proof of submission. Please note that applications will not be accepted via paper, facsimile machine transmission, electronic mail, or other media format. Applicants, however, may request a waiver of these filing instructions pursuant to Section X.N. of this NOFA.

**Catalog of Federal Domestic Assistance (CFDA) Number:** Broadband Technology Opportunities Program (BTOP)—11.557.

**Additional Items in Supplementary Information**

**I. Overview:** Describes the broadband initiatives in the Recovery Act, the first round of funding, and an overview of the next round of funding.

**II. Funding Opportunity Description:** Provides a more thorough description of BTOP and the funding priorities.

**III. Definitions:** Sets forth the key statutory terms and other terms used in BTOP.

**IV. Award Information:** Describes funding availability, grant terms, as applicable, and other award information.

**V. Eligibility Information and General Program Requirements:** Establishes eligibility criteria, eligible and ineligible costs, and general program requirements.

**VI. Application and Submission Information:** Provides information regarding how to apply, application materials, and the application process.

**VII. Application Review Information:** Establishes the evaluation criteria for application review.

**VIII. Anticipated Announcement and Award Dates:** Identifies the initial announcement date for certain awards and provides other information regarding BTOP.

**IX. Award Administration Information:** Provides award notice information, administrative and national policy requirements, terms and conditions, and other reporting requirements for award recipients.

**X. Other Information:** Sets forth guidance on funding, compliance with various laws,

confidentiality, discretionary awards, and authorized signatures.

**I. Overview****A. American Recovery and Reinvestment Act of 2009 (Recovery Act)**

On February 17, 2009, President Obama signed the Recovery Act into law.<sup>1</sup> The essential goal of the Recovery Act is to provide a "direct fiscal boost to help lift our Nation from the greatest economic crisis in our lifetimes and lay the foundation for future growth."<sup>2</sup> Accordingly, the Recovery Act identifies five overall purposes: To preserve and create jobs and promote economic recovery; to assist those most impacted by the current economic recession; to provide investments needed to increase economic efficiency by spurring technological advances in science and health; to invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits; and to stabilize State and local government budgets.<sup>3</sup> The Recovery Act further instructs the President and the heads of Federal departments and agencies to manage and expend Recovery Act funds to achieve these five purposes, "commencing expenditures and activities as quickly as possible consistent with prudent management."<sup>4</sup>

Consistent with the purposes described above, the Recovery Act provides the U.S. Department of Agriculture's Rural Utilities Service (RUS) and the National Telecommunications and Information Administration (NTIA) with \$7.2 billion to expand access to broadband services in the United States. In so doing, the Recovery Act recognizes the growing importance of access to broadband services to economic development and to the quality of life of all Americans.

The Recovery Act provides \$4.7 billion to NTIA to establish the Broadband Technology Opportunities Program (BTOP or Program) and directs that these funds be awarded by September 30, 2010. This amount represents a significant investment to advance President Obama's national broadband strategy. Of these funds, at least \$200 million will be made available for competitive grants for

<sup>1</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (Recovery Act).

<sup>2</sup> Statement on Signing the American Recovery and Reinvestment Act of 2009, Daily Comp. of Pres. Doc., 2009 DCPD No. 00088, at 1 (Feb. 17, 2009), <http://fdsys.gpo.gov/fdsys/pkg/DCPD-200900088/pdf/DCPD-200900088.pdf>.

<sup>3</sup> Recovery Act sec. 3(a), 123 Stat. at 115-16.

<sup>4</sup> See *id.* Sec. 3(b), 123 Stat. at 116.

expanding public computer center capacity; at least \$250 million will be made available for competitive grants for innovative programs to encourage sustainable adoption of broadband services; and up to \$350 million will be made available to fund the State Broadband Data and Development Grant Program (Broadband Mapping Program) authorized by the Broadband Data Improvement Act.<sup>5</sup> The Broadband Mapping Program is designed to support the development and maintenance of a nationwide broadband map for use by policymakers and consumers.<sup>6</sup>

### B. Round One

In response to the first Notice of Funds Availability (First NOFA), RUS and NTIA received almost 2,200 applications requesting nearly \$28 billion in funding for proposed broadband projects reaching all States, five territories, and the District of Columbia.<sup>7</sup> When including about \$10.5 billion in matching funds committed by the applicants, these applications represent more than \$38 billion in proposed broadband projects. RUS and NTIA received applications from a diverse range of parties, including: State, tribal, and local governments; nonprofits; industry; small businesses; community anchor institutions such as libraries, universities, community colleges, and hospitals; public safety organizations; and other entities in rural, suburban, and urban areas. Parties submitted more than 830 applications jointly to RUS's Broadband Initiatives Program (BIP) and NTIA's BTOP, requesting nearly \$12.8 billion in infrastructure funding. NTIA received an additional 260 infrastructure applications that sought only BTOP funding, requesting more than \$5.4 billion in grants for broadband infrastructure projects in unserved and underserved areas. Parties submitted more than 360 applications to NTIA requesting more than \$1.9 billion in grants from BTOP for public computer center projects. In addition, parties filed more than 320 applications with NTIA requesting nearly \$2.5 billion in grants from BTOP for projects that promote sustainable demand for broadband services.

On December 17, 2009, NTIA announced the first set of awards out of the \$1.6 billion that was allocated for

<sup>5</sup> Pub. L. 110–385, 122 Stat. 4096 (to be codified at 47 U.S.C. 1301 *et seq.*).

<sup>6</sup> See State Broadband Data and Development Grant Program, Notice of Funds Availability and Solicitation of Applications, 74 FR 32545 (July 8, 2009).

<sup>7</sup> Notice of Funds Availability and Solicitation of Applications, 74 FR 33104 (July 9, 2009).

the first round of funding. These awards, as well as additional awards announced by Secretary Locke on January 13, 2010, totaled approximately \$137 million for investments in ten broadband projects benefitting ten States.<sup>8</sup> Of these awards, \$119 million was dedicated for Middle Mile projects; \$15.9 million for Public Computer Center projects; and \$2.4 million for Sustainable Broadband Adoption projects. Additional awards will be announced on a rolling basis.

### C. Round Two

#### 1. Funding Process

The purpose of this NOFA is to describe the availability of BTOP funds for the second round of funding and set forth the application requirements for those entities wishing to participate in the Program. Applicants are permitted to apply to one or more of the project categories. Each application will be screened for initial eligibility. Those eligible applications that satisfy the statutory purposes and funding priorities will be prioritized and evaluated against objective evaluation criteria to determine whether an award may be merited. Applications that satisfy the BTOP priorities and score highly when evaluated against the objective evaluation criteria will advance to the due diligence stage of review, where NTIA may request additional information and adjustments to the proposal. From this pool of applications, NTIA will select awardees based on the selection factors. NTIA anticipates completing this round of funding as quickly as possible to maximize the stimulative effect of the Recovery Act. NTIA also is committed to transparency and fairness in the award process and will require rigorous reporting to ensure prudent stewardship of taxpayer funds.

#### 2. Request for Information (RFI)

To prepare for this round of funding, on November 10, 2009, RUS and NTIA released a second joint request for information seeking public comment on ways to enhance the applicant experience through targeted revisions to the First NOFA.<sup>9</sup> RUS and NTIA

<sup>8</sup> White House Press Release, Vice President Biden Kicks Off \$7.2 Billion Recovery Act Broadband Program (December 17, 2009), available at <http://www.whitehouse.gov/the-press-office/vice-president-biden-kicks-72-billion-recovery-act-broadband-program>. Department of Commerce Press Release, Commerce Secretary Gary Locke Announces \$7.5 Million Investment to Increase Broadband Access in Los Angeles (January 13, 2010), available at [http://www.commerce.gov/newsroom/pressreleases\\_factsheets/prod01\\_008797](http://www.commerce.gov/newsroom/pressreleases_factsheets/prod01_008797).

<sup>9</sup> Joint Request for Information (RFI), 74 FR 58940 (Nov. 16, 2009).

received approximately 225 comments from institutions and individuals on a wide range of topics, and these comments have played an important role in developing this NOFA. For further discussion and explanation of NTIA's reliance on the public comments in the policy decisions involved in BTOP, see the attached Policy Justification found in the Appendix at the end of this NOFA.

#### 3. Project Categories

For this round of funding, NTIA will award grants in three categories of eligible projects: Comprehensive Community Infrastructure (CCI), Public Computer Centers (PCC), and Sustainable Broadband Adoption (SBA).<sup>10</sup> The CCI category will focus on Middle Mile broadband infrastructure projects that offer new or substantially upgraded connections to community anchor institutions, especially community colleges. The PCC category will help expand public access to broadband service and enhance broadband capacity at entities that permit the public to use these computing centers, such as community colleges and public libraries.<sup>11</sup> The SBA category will fund innovative projects that promote broadband demand, including projects focused on providing broadband education, awareness, training, access, equipment, or support, particularly among vulnerable population groups that traditionally have underutilized broadband technology.<sup>12</sup>

NTIA plans to award all remaining BTOP grants funded by the Recovery Act in this round of funding. Approximately \$2.6 billion of program-level funding has been allocated to this NOFA by NTIA. NTIA intends to award approximately \$2.35 billion for CCI projects, at least \$150 million for PCC projects, and at least \$100 million for SBA projects.

#### 4. Changes From the First NOFA

Based on the comments received in response to the second RFI and the experience gained from administering the first round of funding, NTIA is making a number of changes to the Program. The goals of these changes are to increase efficiency, sharpen the Program's funding focus, and improve the applicant experience.

In the first round, RUS and NTIA issued a joint BIP/BTOP NOFA to

<sup>10</sup> See Recovery Act Div. A, Tit. II, 123 Stat. at 128.

<sup>11</sup> *Id.* Div. A, Tit. II & sec. 6001(b)(3), 123 Stat. at 128, 512–13.

<sup>12</sup> *Id.* Div. A, Tit. II & sec. 6001(b)(5), 123 Stat. at 128, 513.

promote coordination between these programs. The agencies gave applicants the option to file a single application for infrastructure projects for both programs. For the second round of funding, RUS and NTIA have decided to issue separate NOFAs for BIP and BTOP to better promote each agency's distinct objectives. The joint application process was burdensome for some applicants. Therefore, RUS and NTIA have eliminated the option of allowing applicants to file a single, joint BIP/BTOP application in the second funding round in favor of separate applications.

NTIA has sought to bring further leverage to Federal funds by giving additional consideration to projects that propose to contribute a non-Federal cost share/match that equals or exceeds 30 percent of the total eligible costs of the project.

In addition, NTIA is adopting a "comprehensive communities" approach to award BTOP grants for infrastructure projects that emphasize Middle Mile broadband capabilities and new or substantially upgraded connections to community anchor institutions to maximize the benefits of BTOP funds. In adopting this approach, NTIA has restructured the Broadband Infrastructure category of the First NOFA into the CCI category for this second round of funding.

Further, NTIA has implemented other targeted changes to several Program provisions. In particular, NTIA has reduced the number of BTOP's eligibility factors to just three criteria—eligible entities, fully completed application, and matching—which will be used to determine whether an application is eligible for consideration. NTIA has further streamlined the eligibility review by removing the budget reasonableness and technical feasibility factors from the eligibility requirements, because these categories are more effectively evaluated during the expert review and due diligence phases of application consideration. NTIA also has changed the number of expert reviewers from at least three to at least two in order to make the expert review process as efficient as possible, without impacting the rigor of review. NTIA will review CCI applications according to the priorities established in Section II.B. Additionally, NTIA has clarified the process for requesting waivers from several key statutory and programmatic obligations, including the matching fund requirement, Last Mile coverage obligation, and restriction on the sale or lease of project assets.

With respect to the application, NTIA will now collect the information most essential to project review in the

application itself, with the option to collect additional data during the due diligence review, as needed. In addition, NTIA has made numerous adjustments to the online application system to streamline the intake of information and reduce applicant burden. In particular, NTIA has reduced the overall number of attachments to the applications. It also has separated the BTOP infrastructure application from the BIP infrastructure application and separated the PCC application from the SBA application. Moreover, it has eliminated the proposed funded service area mapping tool and modified the service area delineations from Census blocks to Census tracts and block groups. NTIA also has made it easier for applicants filing applications in multiple project categories to link these applications, in furtherance of NTIA's focus on comprehensive communities.

## II. Funding Opportunity Description

### A. Statutory Purposes

Section 6001 of the Recovery Act establishes a national broadband service development and expansion program to promote five core purposes:

- a. To provide access to broadband service to consumers residing in unserved areas of the country;
- b. To provide improved access to broadband service to consumers residing in underserved areas of the country;
- c. To provide broadband education, awareness, training, access, equipment, and support to: (i) Schools, libraries, medical and healthcare providers, community colleges and other institutions of higher learning, and other community support organizations; (ii) organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband services by vulnerable populations (e.g., low-income, unemployed, aged); or (iii) job-creating strategic facilities located in State- or Federally-designated economic development zones;
- d. To improve access to, and use of, broadband service by public safety agencies; and
- e. To stimulate the demand for broadband, economic growth, and job creation.<sup>13</sup>

### B. BTOP Priorities

All projects funded under BTOP must advance one or more of the five statutory purposes outlined above. The Program is designed to extend broadband access to unserved areas,

improve access to underserved areas, and expand broadband access to a wide range of institutions and individuals, including vulnerable populations. It will seek to serve the highest priority needs for Federal investment—particularly projects that offer the potential for economic growth and job creation. The Program will support viable, sustainable, and scalable projects.

### 1. Comprehensive Community Infrastructure Projects

#### a. Background

In the first funding round, NTIA solicited Broadband Infrastructure applications in two categories, Last Mile and Middle Mile. Last Mile projects were defined as any infrastructure project the predominant purpose of which is to provide broadband service to end users or end-user devices. Middle Mile projects were defined as any broadband infrastructure project that does not predominantly provide broadband service to end users or to end-user devices and that may include interoffice transport, backhaul, Internet connectivity, or special access. Middle Mile projects funded to date in Round One also included expanding and enhancing broadband services for community anchor institutions such as schools, libraries, colleges and universities, medical and healthcare providers, public safety entities, and other community support organizations.

Recognizing the significant importance of Middle Mile infrastructure to improving broadband capabilities for consumers residing in unserved and underserved areas of the nation, NTIA has awarded a significant portion of funds in the first round of funding to Middle Mile projects, particularly those that connect a significant number of community anchor institutions. Such projects provide substantial benefits, including enhancing broadband service for community anchor institutions, facilitating the development of Last Mile broadband services in unserved and underserved areas, and promoting economic growth.

#### b. CCI Funding Priorities

In this round of funding, NTIA seeks to focus on Middle Mile projects by adopting a "comprehensive communities" approach to awarding BTOP infrastructure grants. Under this approach, priority will be given to CCI projects that include a Middle Mile component and satisfy certain

<sup>13</sup> See *id.* Sec. 6001(b), 123 Stat. at 512–13.

additional considerations.<sup>14</sup> This prioritization will be used for the sequencing of applications for the objective merit review performed by expert reviewers.<sup>15</sup> In particular, the highest priority for merit review will be given to CCI applications that satisfy all of the criteria below. Note that the application evaluation process will continue to consider additional factors, including, for example, the degree to which the projects will benefit consumers residing in unserved or underserved areas, the participation of an Indian Tribe or socially and economically disadvantaged small business concern as defined under Section 8(a) of the Small Business Act (as modified by NTIA's adoption of an alternative small business concern size standard for use in BTOP),<sup>16</sup> and the ability of a project to leverage funding from another Recovery Act program or other State or Federal development program.<sup>17</sup> In order of importance, the CCI priority criteria are set forth as follows:

(1) Projects that will deploy Middle Mile broadband infrastructure with a commitment to offer new or substantially upgraded service to community anchor institutions. Those projects proposing to serve a significant number of community anchor institutions that have expressed a demand or indicated a need for access or improved access to broadband service will receive higher priority;

(2) Projects that will deploy Middle Mile broadband infrastructure and incorporate a public-private partnership among government, non-profit and for-profit entities, and other key community stakeholders, particularly those that have expressed a demand or indicated a need for access or improved access to broadband service;

(3) Projects that will deploy Middle Mile broadband infrastructure with the intent to bolster growth in economically distressed areas;

(4) Projects that will deploy Middle Mile broadband infrastructure with a commitment to serve community

colleges that have expressed a demand or indicated a need for access or improved access to broadband service;

(5) Projects that will deploy Middle Mile broadband infrastructure with a commitment to serve public safety entities that have expressed a demand or indicated a need for access or improved access to broadband service;

(6) Projects that will deploy Middle Mile broadband infrastructure that includes (i) a Last Mile infrastructure component in unserved or underserved areas; or (ii) commitments or non-binding letters of intent from one or more Last Mile broadband service providers.<sup>18</sup> For Last Mile infrastructure components in rural areas, however, the additional costs of the Last Mile component used to offer service to residential consumers and non-community anchor institutions may not exceed more than 20 percent of the total eligible costs of the project; and

(7) Projects that will deploy Middle Mile broadband infrastructure and propose to contribute a non-Federal cost match that equals or exceeds 30 percent of the total eligible costs of the project.

To the extent that a CCI applicant with a Middle Mile component does not address all of the criteria set forth above (*i.e.*, criteria (1)–(7)), NTIA will prioritize those applications remaining for merit review in the order that they satisfy the most highly-ranked criteria (*i.e.*, applications satisfying criteria (1)–(6) will be sequenced for merit review, then applications satisfying (1)–(5), then (1)–(4), then (1)–(3), then (1)–(2) respectively, and, finally, applications that satisfy only the first criterion). All other CCI applicants with a Middle Mile component, that is, those that do not satisfy the first criterion identified above, will be next in priority for merit review.

#### c. “Comprehensive Communities” Policy Rationale

The “comprehensive communities” approach, with its focus on the deployment of Middle Mile broadband facilities and the provision of new or substantially upgraded connections to community anchor institutions as its centerpiece, will provide a number of benefits to the public and taxpayers. “Comprehensive communities” projects can leverage resources and better ensure sustainable community growth and prosperity. These projects also can create consumer demand and lay the foundation for the ultimate provision of

reasonably priced end-user broadband services in unserved and underserved communities. Open and nondiscriminatory CCI projects funded by BTOP will enable other service providers to serve the community.<sup>19</sup> Once Middle Mile facilities are built, the costs of providing services to a broad array of end users are reduced. Much like the interstate highways that link together the nation's roads and streets, Middle Mile broadband facilities play a critical role in the healthy functioning of the nation's broadband infrastructure and are a necessary foundation for the ultimate provision of affordable end-user broadband services in unserved and underserved communities.

Expanding Middle Mile broadband service not only enhances the availability and affordability of end-user broadband connectivity for consumers and businesses, it also increases the effectiveness of community anchor institutions in fulfilling their missions. Schools, libraries, colleges and universities, medical and healthcare providers, public safety entities, and other community support organizations increasingly rely on high-speed Internet connectivity to serve their constituencies and their communities. Expanding broadband capabilities for community anchor institutions will result in substantial benefits for the entire community, delivering improved education, healthcare, and economic development.

CCI projects are also job-intensive and pave the way for a ripple effect of economic development throughout the communities they touch. Focusing the awards in this funding round on CCI projects that provide high-speed Middle Mile networks to connect community anchor institutions, including community colleges, or benefit consumers residing in unserved or underserved areas will maximize the benefits of Recovery Act dollars and lay a foundation for economic development for years to come.<sup>20</sup>

#### d. Relationship to BIP

Although BIP and BTOP no longer will offer a joint application, RUS and NTIA continue to collaborate to maximize the impact of available Federal funding, to best leverage the experience and expertise of each agency, and to avoid geographic overlap

<sup>14</sup> Consistent with the terms of the Recovery Act, in this funding round NTIA will not fund Middle Mile projects in areas that RUS has already funded with Middle Mile awards made through BIP.

<sup>15</sup> See Department of Commerce (DOC) Grants and Cooperative Agreements Interim Manual (Grants Manual), ch. 8, secs. B.1.c. and B.3 (June 21, 2007) (available at [http://oam.ocs.doc.gov/GMD\\_updated-doc.html](http://oam.ocs.doc.gov/GMD_updated-doc.html)).

<sup>16</sup> 15 U.S.C. 637(a)(4). NTIA sought the Small Business Administration's approval to adopt a \$40 million alternative small business size standard for BTOP. The Small Business Administration issued a letter approving the use of this alternative size standard of \$40 million to define a small business concern for purposes of BTOP.

<sup>17</sup> See *infra* Section VII.A.1.

<sup>18</sup> Consistent with the terms of the Recovery Act, in this funding round NTIA will not fund Last Mile projects in areas that RUS has already funded with Last Mile awards made through BIP.

<sup>19</sup> See Recovery Act sec. 6001(j), 123 Stat. at 515.

<sup>20</sup> See National Economic Council, Recovery Act Investments in Broadband: Leveraging Federal Dollars to Create Jobs and Connect America (Dec. 2009), available at <http://www.whitehouse.gov/sites/default/files/20091217-recovery-act-investments-broadband.pdf>.

in projects funded by the two agencies (as required by the Recovery Act).<sup>21</sup> To accomplish these objectives, NTIA strongly recommends that CCI applicants that are currently RUS loan or grant recipients as well as any CCI applicant whose project will include a Last Mile service area that is at least 75 percent rural apply to BIP for funding. Applications from such applicants will not be viewed favorably by NTIA and will not be a funding priority.

#### e. Exclusive Last Mile Projects

As explained above, priority will be given to CCI projects that include a Middle Mile component. While a CCI project may exclusively contain a Last Mile component, it will only be considered for merit review and funding after all projects with a Middle Mile component have been considered.

#### 2. Public Computer Centers (PCC)

In this funding round, consistent with the Recovery Act, NTIA will fund PCC projects. These projects provide broadband access to the general public or a specific vulnerable population and must either create or expand a public computer center or improve broadband service or connections at a public computer center, including those at community colleges, that meets a specific public need for broadband service. PCC projects are a logical complement to CCI projects, because they are uniquely positioned to serve many members of a community with computer equipment, computer training, job training, and access to job and educational resources that might not otherwise be available.

#### 3. Sustainable Broadband Adoption (SBA)

Consistent with the Recovery Act and the promotion of BTOP's five core objectives, NTIA also will fund SBA projects. The SBA program is designed to fund innovative projects that promote broadband demand, especially among vulnerable population groups where broadband technology traditionally has been underutilized. Broadband technology has reshaped the way our nation functions, and NTIA recognizes that broadband adoption projects strive to ensure that as much of the population as possible has opportunities, abilities, and resources to thrive in today's society. With projects focusing on broadband awareness, access, training, and education, barriers to broadband adoption can be overcome, fostering educational and business opportunities and a more competitive country as a

whole. NTIA, therefore, seeks SBA projects that, after establishing a subscribership baseline in a given community, demonstrate a clear ability to measure and sustain the expected increase in broadband adoption without ongoing Federal grant assistance, so that the nation will continue to see the benefits of these projects well after the period of performance for the grant award has ended.

#### C. Application Review and the Selection Process

##### 1. Initial Review

NTIA will conduct an initial review of applications to determine whether they meet the eligibility requirements set forth in Section V.A. through V.C. of this NOFA. These requirements are mandatory, and applicants that fail to meet them will not have their applications considered further.

##### 2. Scoring Applications

Subsequent to this initial eligibility review, applications will be separated into the three project categories. For PCC and SBA projects, applications will receive an Evaluation Criteria Review score by at least two objective expert reviewers who may be Federal employees or non-Federal persons. For CCI projects, program staff will prioritize the applications for the Evaluation Criteria Review based on the BTOP priorities set forth in Section II.B., and then the applications will be evaluated in priority order by at least two objective expert reviewers who may be Federal employees or non-Federal persons. No consensus advice will be provided by the non-Federal expert reviewers.

Reviewers will be selected based on their expertise in: (i) Analyzing a business or organizational model pursuant to BTOP purposes; (ii) designing, funding, constructing, or operating broadband networks or public computer centers; (iii) broadband-related outreach, training, or education; (iv) innovative programs to increase the demand for broadband services; or (v) other broadband-related functions or activities. Reviewers will evaluate applications against the evaluation criteria provided in this NOFA and independently score each application. Reviewer scores will be averaged and NTIA will establish thresholds that will be used to determine which applications are considered "highly qualified." Highly qualified applications may be considered further for an award by NTIA Program staff and given a "due diligence" review. For CCI projects, priority in due diligence processing will

be given to applications that best conform to BTOP priorities as expressed in Section II.B.1.b of this NOFA.

##### 3. State and Tribal Consultation

The Recovery Act authorizes NTIA to consult with States, territories, possessions, and the District of Columbia ("States") regarding the identification of unserved and underserved areas within their borders and the allocation of grant funds to projects in or affecting their State.<sup>22</sup> After the application deadline, NTIA will invite each State, via its Governor, to provide input on those geographic areas within the State for which NTIA should give priority in selecting projects for funding. States may, if they wish, comment on specific BTOP applications that propose to serve areas within their jurisdiction, regardless of the size or geographic scope of the project and, at their discretion, provide an explanation for why certain applications meet the greatest needs of the State. NTIA also will extend the invitation to tribal entities to comment upon applications that propose to serve tribal communities in an effort to fund projects that best meet the needs of their tribal lands.

NTIA will share data that are available on the publicly searchable application database with each relevant State and tribe. States and tribes that wish to review additional information regarding applications proposing to serve areas within their jurisdiction may request such information from applicants directly. States and tribes will not be required to rank or comment on BTOP applications in order for applications affecting their areas to receive funding. The input of States and tribes is consultative in nature and, while extremely valuable, constitutes only one among several factors the Selecting Official, the Assistant Secretary, weighs when evaluating applications. States or tribes will not have the ability to veto any particular project. States and tribes will have no less than 20 calendar days from the date of notification to submit their comments to NTIA. NTIA will make the comments of the States and tribes publicly available at <http://www.broadbandusa.gov>. Accordingly, States and tribes should not include in their comments to NTIA any information that is deemed confidential and proprietary.

##### 4. Due Diligence Review

During due diligence review, applicants may be asked to submit additional information, as appropriate,

<sup>21</sup> Recovery Act Tit. I, 123 Stat. at 118.

<sup>22</sup> Recovery Act sec. 6001(c), 123 Stat. at 513.

to clarify or to further substantiate the representations made in their applications. The supplemental information, along with all information submitted with the application, will be reviewed and analyzed by NTIA Program staff to confirm eligibility and evaluate the applications with respect to general Program requirements, the appropriate Federal share of the project, evaluation criteria, and selection factors. Applicants whose supporting documents are not timely filed or who do not adequately substantiate the representations in their applications may be rejected. NTIA may, at its discretion, request supplemental documentation before deciding to reject such applications and re-evaluate the application package based on all of the information presented.

At any time during the application review process, NTIA reserves the right to discuss with the applicant specific modifications to the application to resolve any differences that may exist between the applicant's original request and NTIA's determination of eligible costs and funding priorities, including, for example, the right to adjust the Federal share of the project. Note that it is NTIA's intent to fund only the portion of the project that satisfies Program purposes and is justified based on an analysis of anticipated costs and revenues. Specifically, pursuant to the Recovery Act requirement that applicants demonstrate that a project would not have been implemented during the grant period without Federal assistance, NTIA may seek to adjust the amount of funds made available for the Federal share of the project to a level warranted based on this "but for" test.<sup>23</sup> Not all applicants contacted necessarily will receive a BTOP award. Upon completion of due diligence, NTIA Program staff will summarize their analysis for each application reviewed.

#### 5. The Selection Process

The Director of BTOP (BTOP Director) will prepare and present a package or packages of recommended grant awards to the Associate Administrator for the Office of Telecommunications and Information Applications (OTIA Associate Administrator), or his/her designee, for review and approval. The BTOP Director's recommendations and the OTIA Associate Administrator's review and approval will consider the following selection factors:

- a. The Evaluation Criteria Review score of the objective expert reviewers;
- b. The analysis of NTIA Program staff;

c. Satisfaction of the statutory purposes and BTOP priorities set forth in Section II;

d. The extent to which the non-Federal cost match equals or exceeds 30 percent of the total eligible costs of the project;

e. The geographic distribution of the proposed grant awards (e.g., ensuring that, to the extent practical, NTIA awards not less than one grant in each State as set forth in the Recovery Act);

f. The range of technologies and uses of the technologies employed by the proposed grant awards;

g. Avoidance of redundancy, duplication, and conflicts with the initiatives of other Federal agencies, including Department of Agriculture loan and grant programs for broadband services, applicable universal service programs authorized by the Federal Communications Commission, and, to the extent practical, avoidance of unjust enrichment;<sup>24</sup>

h. The availability of funds;

i. If applicable, the comments of States, including, but not limited to, such comments as described in their application for the Broadband Mapping Program or as subsequently provided to NTIA either on their own or along with the submission of State-level broadband maps;<sup>25</sup> and

j. If applicable, the comments of tribal entities.

Upon approval of the OTIA Associate Administrator or designee, the BTOP Director's recommendations then will be presented to the Selecting Official. The Assistant Secretary selects the applications for grant awards, taking into consideration the BTOP Director's and the OTIA Associate Administrator's, or his or her designee's, recommendations and the degree to which the application package, taken as a whole, satisfies the selection factors described above and the Program's statutory purposes and priorities as set forth in Sections II of this NOFA. Awards will be made on a rolling basis subject to the availability of funds. Unsuccessful applicants will be notified in writing.

### III. Definitions

The terms and conditions provided in this NOFA are applicable to and for purposes of this NOFA only.

*Applicant* means an entity requesting approval of an award under this NOFA.

*Assistant Secretary* means the Assistant Secretary for Communications and Information, National Telecommunications and Information Administration, Department of Commerce, or the Assistant Secretary's designee.

*Award* means a grant made under this NOFA by NTIA.

*Awardee* means a grantee.

*Broadband* means providing two-way data transmission with advertised speeds of at least 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to end users, or providing sufficient capacity in a Middle Mile project to support the provision of broadband service to end users.

*BTOP* means the Broadband Technology Opportunities Program, administered by NTIA, under the Recovery Act.

*Build-out* means the construction or improvement of facilities and equipment as specified in the application.

*Community anchor institutions* means schools, libraries, medical and healthcare providers, public safety entities, community colleges and other institutions of higher education, and other community support organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by vulnerable populations, including low-income, the unemployed, and the aged.

*Comprehensive Community Infrastructure (CCI) project* means an infrastructure project that focuses primarily on providing new or substantially upgraded connections to community anchor institutions.

*Economically distressed area* means an area that has: (i) A per capita income of 80 percent or less of the national average; and (ii) an unemployment rate that is, for the most recent 24-month period for which data are available, at least one percent greater than the national average unemployment rate.<sup>26</sup>

*Forecast period* means the time period used by NTIA to determine if an application is financially feasible. Financial feasibility of an application is based on eight-year projections.

*GAAP* means generally accepted accounting principles.

*Grant agreement* means the agreement between NTIA and the grantee for grants awarded under this NOFA, including

<sup>24</sup> Recovery Act sec. 6001(h)(2)(D), 123 Stat. at 515.

<sup>25</sup> Consistent with the Recovery Act, the Broadband Mapping Program provides participating States the opportunity to identify unserved and underserved areas in their State.

<sup>26</sup> This definition is derived from regulations adopted by the Economic Development Administration, U.S. Department of Commerce, regarding the Public Works and Economic Development Act of 1965, as amended. See 13 CFR 301.3.

<sup>23</sup> See Recovery Act sec. 6001(e)(3), 123 Stat. at 514.

any amendments thereto, setting forth the binding terms and conditions relating to Federal funding under BTOP. Sample grant agreements are available for review at <http://www.broadbandusa.gov> or <http://www.ntia.doc.gov>.

*Grant funds* means Federal funds provided pursuant to a grant made under this NOFA.

*Grantee* means the prime recipient of a grant under this NOFA.

*Last Mile* means those components of a CCI project that provide broadband service to end-user devices through an intermediate point of aggregation. That is, in most cases, the Last Mile connection goes from the end-user device through an intermediate point of aggregation (*i.e.*, a remote terminal, fiber node, wireless tower, or other equivalent access point) to a primary IP routing entity in a centralized facility (*i.e.*, in the central office, the cable headend, the wireless switching station, or other equivalent centralized facility). The Last Mile also includes equivalent services that, solely because of close proximity between the customer and centralized facility, are routed directly to the centralized facility. The Last Mile will terminate at, and include, the initial customer-facing router or aggregation switch in the centralized facility (*e.g.*, a DSLAM, CMTS, RNC, or equivalent) that is utilized to deliver Last Mile broadband service.

*Last Mile service area* means the service area of a Last Mile component of a CCI project, composed of one or more contiguous Census block groups<sup>27</sup> or tracts,<sup>28</sup> where the applicant is requesting BTOP funds to provide

broadband service to end-user devices through an intermediate point of aggregation and terminating at the initial customer-facing router or aggregation switch in the centralized facility used to deliver the Last Mile broadband service.

*Middle Mile* means those components of a CCI project that provide broadband service from one or more centralized facilities, (*i.e.*, the central office, the cable headend, the wireless switching station, or other equivalent centralized facility) to an Internet point of presence. The Middle Mile includes, among other things, the centralized facilities and all of the equipment in those facilities, except for any equipment that would qualify as part of a Last Mile component as defined in this NOFA.

*Middle Mile service area* means the project service area, composed of one or more contiguous Census block groups or tracts, where the applicant is requesting BTOP funds to provide broadband service from one or more centralized facilities, (*i.e.*, the central office, the cable headend, the wireless switching station, or other equivalent centralized facility) to an Internet point of presence.

*Pre-application expense* means any reasonable expense incurred after the release of this NOFA up to the issuance of the grant award from NTIA to prepare an application. These expenses include engineering costs, accountant or other consultant fees, and costs related to developing the proposal. Lobbying costs and contingency fees are not included as pre-application expenses.

*Proposed funded service area* means the total service area of a CCI project where broadband service will be provided.

*Public computer center* means a place, including but not limited to community colleges, libraries, schools, youth centers, employment service centers, Native American chapter houses, community centers, senior centers, assistive technology centers for people with disabilities, community health centers, and Neighborhood Network Centers in public housing developments, that provide broadband access to the general public or a specific vulnerable population, such as low-income, unemployed, aged, children, minorities, and people with disabilities.

*Recipient* means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through a grant) other than an individual. This includes a State that receives Recovery Act funds.

*Recovery Act* means the American Recovery and Reinvestment Act of 2009, Pub. L. 111–5, 123 Stat. 115 (2009).

*Rural area* means any area, as confirmed by the latest decennial Census of the U.S. Census Bureau, that is not located within: (i) A city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or (ii) an urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants. For purposes of the definition of rural area, an urbanized area means a densely populated territory as defined in the latest decennial Census of the U.S. Census Bureau.

*Socially and Economically Disadvantaged Small Business Concern* means a firm, together with its controlling interests and affiliates, with average gross revenue not exceeding \$40 million for the preceding three years, and that meets the definition of a socially and economically disadvantaged small business concern under the Small Business Act.<sup>29</sup>

*State* means, for purposes of BTOP, a State or political subdivision thereof, the District of Columbia, or a territory or possession of the United States.

*Sub-recipient* means an entity that expends Recovery Act funds received through a subaward from a recipient to carry out a Federal program but does not include an individual who is a beneficiary of such a program.<sup>30</sup>

*Tribe* means an Indian tribe that has the meaning given that term in Section 4(e) of the Indian Self-Determination and Education Assistance Act.<sup>31</sup>

*Underserved area* means a Last Mile or Middle Mile service area, where at least one of the following factors is met: (i) No more than 50 percent of the households in the Last Mile or Middle Mile service area have access to facilities-based, terrestrial broadband service at greater than the minimum broadband transmission speed (set forth in the definition of broadband above); (ii) no fixed or mobile terrestrial broadband service provider advertises to residential end users broadband transmission speeds of at least three megabits per second (“Mbps”) downstream in the Last Mile or Middle Mile service area; or (iii) the rate of terrestrial broadband subscribership for the Last Mile or Middle Mile service area is 40 percent of households or less.

<sup>27</sup> A Census block group is a cluster of Census blocks having the same first digit of their four-digit identifying numbers within a Census tract. A Census block group is the next level above Census block in the geographic hierarchy.

<sup>28</sup> Census tracts are small, relatively permanent statistical subdivisions of a county. Census tracts are delineated for most metropolitan areas (MAs) and other densely populated counties by local Census statistical areas committees following Census Bureau guidelines (more than 3,000 Census tracts have been established in 221 counties outside MAs). Census tracts usually have between 2,500 and 8,000 persons and, when first delineated, are designed to be homogeneous with respect to population characteristics, economic status, and living conditions. Census tracts do not cross county boundaries. The spatial size of Census tracts varies widely depending on the density of settlement. Census tract boundaries are delineated with the intention of being maintained over a long time so that statistical comparisons can be made from Census to Census. However, physical changes in street patterns caused by highway construction, new development, or other reasons may require occasional revisions; Census tracts occasionally are split due to large population growth, or combined as a result of substantial population decline. See the Census Bureau’s Web site at <http://www.census.gov> for more detailed information on its data gathering methodology.

<sup>29</sup> 15 U.S.C. 637(a)(4) (as modified by the Small Business Administration’s approval of NTIA’s request to adopt an alternative small business concern size standard for use in BTOP).

<sup>30</sup> Implementing Guidance for Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009 (OMB M–09–21 June 22, 2009), available at [http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-21.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf).

<sup>31</sup> 25 U.S.C. 450b(e).

An underserved area may include individual Census block groups or tracts that on their own would not be considered underserved. The availability of or subscribership rates for satellite broadband service is not considered for the purpose of determining whether an area is underserved.

*Unserved area* means a Last Mile or Middle Mile service area where at least 90 percent of the households lack access to facilities-based, terrestrial broadband service, either fixed or mobile, at the minimum broadband transmission speed (set forth in the definition of broadband above). An unserved area may include individual Census block groups or tracts that on their own would not be considered unserved. A household has access to broadband service if the household readily can subscribe to that service upon request. The availability of or subscribership rates for satellite broadband service is not considered for the purpose of determining whether an area is unserved.

#### IV. Award Information

##### A. General

Approximately \$2.6 billion in budget authority has been set aside for funding opportunities under this NOFA. Publication of this NOFA does not obligate NTIA to award any specific project or obligate all of the available funds. Based on Round 1 experience, NTIA expects this grant round to be very competitive. During Round 1, RUS and NTIA received approximately 2,200 applications collectively requesting nearly \$28 billion in Federal funds.

##### B. Funding Limits

Approximately \$2.6 billion is available to be awarded under this NOFA, which NTIA anticipates will be allocated in the following categories:

- Approximately \$2.35 billion will be made available for CCI projects;
- At least \$150 million will be made available for PCC projects; and
- At least \$100 million will be made available for SBA projects.

##### C. Repooling

Subject to the statutory thresholds set forth in the Recovery Act, NTIA retains the discretion to divert funds from one category of projects to another.

##### D. Unused Funds

Funds remaining from the initial round of funding due to BTOP funding priorities or any other reason, and unused funds not awarded under the Broadband Mapping Program, may be used to augment the BTOP funding

categories established above.<sup>32</sup> NTIA reserves the right to reopen the application window or release subsequent NOFAs to ensure that all funds are awarded by September 30, 2010.

##### E. Award Amount

Given NTIA's Round 1 experience, NTIA expects to make awards within the following funding ranges. These ranges are not required minimums and maximums, but applicants requesting amounts for projects outside of these ranges must provide a reasoned explanation for the variance in their project size.

*CCI*: \$5 million–\$150 million

*PCC*: \$500,000–\$15 million

*SBA*: \$500,000–\$15 million

##### F. Award Period

All awards under BTOP must be made no later than September 30, 2010.<sup>33</sup> While the completion time will vary depending on the complexity of the project, grant recipients must substantially complete projects supported by this Program no later than two years, and projects must be fully completed no later than three years, following the date of issuance of the grant award.<sup>34</sup>

##### G. Type of Funding Instrument

The funding instrument will be a grant.

#### V. Eligibility Information for BTOP

Applicants must satisfy the eligibility requirements set forth below in Sections V.A. through V.C. to qualify for funding. Applicants failing to comply with these requirements will not be considered for an award.

##### A. Eligible Entities

###### 1. Applicant Organization

The following entities are eligible to apply for funding:

- States, local governments, or any agency, subdivision, instrumentality, or political subdivision thereof;
- The District of Columbia;
- A territory or possession of the United States;
- An Indian tribe (as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b));
- A native Hawaiian organization;
- A non-profit foundation, a non-profit corporation, a non-profit institution, or a non-profit association;
- Other non-profit entities;

- For-profit corporations;
- Limited liability companies; and
- Cooperative or mutual organizations.

##### 2. BTOP Public Interest Finding

Section 6001(e)(1)(C) of the Recovery Act authorizes the Assistant Secretary to find by rule that it is in the public interest for any entity not otherwise encompassed by Section 6001(e)(1) to be eligible for a BTOP grant to the extent that such finding will promote the purposes of BTOP in a technology neutral manner. Consistent with the rationale set forth in the First NOFA,<sup>35</sup> the Assistant Secretary found it to be in the public interest to permit for-profit corporations and non-profit entities (not otherwise encompassed by Section 6001(e)(1)(B)) that are willing to promote the goals of the Recovery Act and comply with the statutory requirements of BTOP to be eligible for a grant. By adopting this broad approach, the Assistant Secretary intended to invite a diverse group of applicants to participate in BTOP and to expand broadband capabilities in a technology neutral manner.<sup>36</sup> NTIA will continue to permit these same entities to apply for funding in this next round of awards.

##### B. Fully Completed Application

All applications will be evaluated initially to ensure that they are fully complete, certified, and contain all supporting documentation.

##### C. Cost Share/Matching

###### 1. Matching Requirement

In general, awardees under BTOP are required by statute to provide matching funds of at least 20 percent toward the total eligible costs of the project unless the Assistant Secretary grants a waiver. For costs to be eligible to meet matching requirements, they first must be allowable under the grant program. Eligible cost concepts are discussed in more detail in Section V.E. of this NOFA. Applicants must document in their application their capacity to provide matching funds. NTIA will provide up to 80 percent of the total eligible costs of the project, unless the applicant petitions the Assistant Secretary for a waiver of the matching requirement and that waiver is granted based on the applicant's demonstration of financial need, as discussed below.<sup>37</sup>

Generally, Federal funds may not be used as a cost match except as provided

<sup>32</sup> See *supra* note 6.

<sup>33</sup> Recovery Act sec. 6001(d)(2), 123 Stat. at 513.

<sup>34</sup> *Id.* Sec. 6001(d)(3), 123 Stat. at 513.

<sup>35</sup> See 74 FR at 33134 (July 9, 2009).

<sup>36</sup> Recovery Act sec. 6001(e)(1)(C), 123 Stat. at 513; 74 FR at 33110.

<sup>37</sup> See *id.* sec. 6001(f), 123 Stat. at 514.

by Federal statute.<sup>38</sup> In-kind contributions, including third party in-kind contributions, are non-cash donations to a project that may count toward satisfying the non-Federal matching requirement of a project's total budgeted costs. In-kind contributions must be allowable project expenses. Such contributions may be accepted as part of an applicant's matching costs when such contributions meet certain criteria.<sup>39</sup>

Applicants that propose to provide a cost match that is all cash will be given additional favorable consideration in the application review process. Additionally, applicants will be given favorable consideration in the selection process by proposing to contribute a non-Federal cost match that equals or exceeds 30 percent of the total eligible costs of the projects. CCI applicants are strongly encouraged to not request more Federal funding than they require to make the project financially feasible and sustainable.<sup>40</sup>

## 2. Petition for Waiver

In requesting a waiver of the matching requirement, an applicant should fully explain and document its inability to provide the required 20 percent matching share of the eligible costs of the proposed project. In demonstrating financial need, the applicant should submit: (1) Documents that include the applicant's assets, liabilities, operating expenses, and revenues from any existing operations; (2) denial of funding from a public or private lending institution; or (3) any other documents that demonstrate financial need. Mere statements of financial need without supporting documentation will not be viewed favorably. The petition for waiver and documentation must be set forth clearly in the application. The Assistant Secretary will evaluate the information provided in support of the petition and may increase the Federal share if financial need is demonstrated.

## D. General Program Requirements

### 1. Timely Completion

Applicants must demonstrate that the project can be substantially completed within two years of the start date of the grant award and fully completed no later than three years following the date of issuance of the grant award. A BTOP

project is considered "substantially complete" when a grantee has met 67 percent of the project milestones and received 67 percent of its award funds. In evaluating compliance with this factor, NTIA will consider the planned start date of the project; the reasonableness of the project timeline and associated milestones; whether the applicant will be able to secure all licenses, franchises, and regulatory approvals required to complete the project; whether the applicant will be able to meet all environmental requirements; and whether the required contractors and vendors necessary to implement the project are prepared to enter into contracts as soon as the funds are made available.

In view of the urgent need for additional economic stimulus, however, NTIA strongly encourages applicants to fully complete their projects within the two-year time period from the date of issuance of the award.

### 2. Demonstration That Project Could Not Be Implemented "But For" Federal Grant Assistance

Grant applicants must provide documentation that the project would not have been implemented during the grant period without Federal grant assistance.<sup>41</sup> This documentation may consist of, but is not limited to, such items as a denial of funding from a public or private lending institution, a current fiscal year budget that shows the lack of available revenue options for funding the project, or a business case that demonstrates that the project would not be economically feasible without grant financing.

### 3. Additional Requirements Applicable to Comprehensive Community Infrastructure Applicants

#### a. Broadband Service

All CCI applicants must propose to offer service meeting the definition of broadband as defined in Section III.

#### b. Nondiscrimination and Interconnection

All CCI applicants must commit to the following Nondiscrimination and Interconnection Obligations:<sup>42</sup>

- (i) Adhere to the principles contained in the FCC's Internet Policy Statement (FCC 05-151, adopted August 5, 2005) or any subsequent ruling or statement;
- (ii) not favor any lawful Internet applications and content over others;
- (iii) display any 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 illegal or harmful content); (iv) connect to the public Internet directly or indirectly, such that the project is not an entirely private closed network; and (v) offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, at 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. Applicants must disclose their proposed interconnection, nondiscrimination, and network management practices with the application.

All these requirements shall be subject to the needs of law enforcement and reasonable network management. Thus, awardees may employ generally accepted technical measures to provide acceptable service levels to all customers, such as caching (including content delivery networks) and application-neutral bandwidth allocation, as well as measures to address spam, denial of service attacks, illegal content, and other harmful activities. In evaluating the reasonableness of network management techniques, NTIA will be guided by any applicable rules or findings established by the FCC, whether by rulemaking or adjudication.

In addition to providing the required connection to the Internet, awardees may offer managed services, such as telemedicine, public safety communications, distance learning, and virtual private networks, that use private network connections for enhanced quality of service rather than traversing the public Internet.

An awardee may satisfy the requirement for interconnection by negotiating in good faith with all parties making bona fide requests. The awardee and requesting party may negotiate terms such as business arrangements, capacity limits, financial terms, and technical conditions for interconnection. If the awardee and requesting party cannot reach agreement, they may voluntarily seek an interpretation by the FCC of any FCC rules implicated in the dispute. If an agreement cannot be reached within 90 days, the party requesting interconnection may notify NTIA in

<sup>38</sup> See Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Nonprofit, and Commercial Organizations, 15 CFR 14.23(a)(5); see also Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 24 CFR 24.24(b)(1).

<sup>39</sup> See 15 CFR 14.23(a), 24.24(a).

<sup>40</sup> See *supra* Section II.C.4.

<sup>41</sup> See *supra* note 23.

<sup>42</sup> Nothing herein shall be construed to affect the jurisdiction of the FCC with respect to such matters.

writing of the failure to reach satisfactory terms with the awardee. The 90-day limit is to encourage the parties to resolve differences through negotiation.

With respect to non-discrimination, those who believe an awardee has failed to meet the non-discrimination obligations should first seek action at the FCC of any FCC rules implicated in the dispute. If the FCC chooses to take no action, those seeking recourse may notify NTIA in writing about the alleged failure to adhere to commitments of the award.

These conditions apply to the awardee and will remain in effect for the life of the awardee's Federally funded facilities and equipment used in the project. These conditions will not apply to any existing network arrangements or to non-awardees using the network. Note, however, that the awardee may negotiate contractual covenants with other broadband service providers engaged to deploy or operate the network facilities and pass these conditions through to such providers. Awardees that fail to accept or comply with the terms listed above may be considered in default of their grant agreements. NTIA may exercise all available remedies in the event of a default, including suspension of award payments or termination of the award.<sup>43</sup>

#### c. Last Mile Coverage Obligation

##### i. Service Obligation

An applicant for a CCI project that includes a Last Mile component must identify the Last Mile service area(s) selected for the project. There is a presumption that the applicant will provide service to the entire Last Mile service area(s).

##### ii. Petition for Waiver

An applicant may petition for a waiver of the Last Mile Coverage Obligation if it provides a reasoned explanation as to why providing service or coverage for the entire Last Mile service area is extremely burdensome for the applicant. In considering whether providing service or coverage is extremely burdensome, the applicant must explain whether there are any legal, technical, or financial impediments to covering each Census block group or tract. Mere statements regarding the burden to serve an area without supporting documentation will not be viewed favorably. The petition for waiver and documentation must be set forth clearly in the application.

<sup>43</sup> Note that the changes made to this section from the First NOFA are meant to clarify, and not change, applicants' obligations.

Applicants may be permitted to serve less than an entire Census block group or tract under certain conditions. For example, an applicant might request to be relieved of this requirement if the Census block group or tract exceeds 100 square miles or more or is larger than the applicant's authorized operating territory (e.g., it splits a rural incumbent local exchange carrier's (ILEC's) study area or exceeds the boundaries of a wireless carrier's licensed territory). Where applicable, an applicant seeking a waiver also should include information regarding the characteristics of the Last Mile service area (e.g., data showing whether broadband services already are available in the proposed unserved territory by more than one service provider or information regarding terrain, acreage, population, etc.) and costs (e.g., pro forma financial projections or estimated applicant cost/burden to provide broadband service to the remainder of the area).

#### d. Announcement of Proposed Funded Service Areas

In the interests of promoting transparency and strengthening the selection process, NTIA will post an announcement identifying each CCI application it has received, along with a list of the Census block groups or tracts that each infrastructure applicant has proposed to serve through its project, at <http://www.broadbandusa.gov>. The posting of this announcement will provide existing broadband service providers with a 15-day window voluntarily to submit to NTIA information about the broadband services they currently offer in their respective service territories by Census block group or tract. If an existing broadband service provider submits a response outside of the 15-day period, NTIA may not consider this information in its evaluation of an applicant's Last Mile or Middle Mile service area(s).

NTIA will consider the comments of existing broadband service providers as a factor in its evaluation of the applicant's Last Mile or Middle Mile service area(s)<sup>44</sup> provided that they include the following information, some of which will be made public: (1) The name of the company providing information on its broadband service offerings; (2) a summary describing the information the provider has presented to NTIA; (3) the number of households and businesses that have access to broadband service in the provider's service territory by Census block group or tract; (4) the type of broadband services the provider offers in its service

<sup>44</sup> See *infra* Section VII.A.1.

territory by Census block group or tract and the technology used to provide those services, including, for wireless carriers, the spectrum that is used; (5) the prices at which the broadband services are offered; (6) the speed of the broadband services that are offered; (7) the number of subscribers that the provider currently has for each of the broadband services it offers in its service territory by Census block group or tract; and (8) optionally, a list of the provider's Points of Presence (POPs) in or near Census block groups or tracts listed by the announcement.

The information submitted by an existing broadband service provider relating to items (3) through (8) enumerated above will be treated as proprietary and confidential to the extent permitted under applicable law. The information described in items (1) and (2) above, which includes the identity of the company submitting information and a summary of its response, will be made publicly available. NTIA will post at <http://www.broadbandusa.gov> a list of the Census block groups or tracts in which existing broadband service providers have indicated that they provide broadband service. NTIA may consider any information submitted by existing broadband service providers as relevant to its prioritization and review of CCI applications and as part of its evaluation of the merits of a highly qualified CCI application. NTIA will contact the applicant as necessary for additional information to evaluate the unserved or underserved status of its Last Mile or Middle Mile service area(s), if applicable, and may take other data, such as existing State broadband maps and FCC Form 477 data, into account during this examination.

#### E. Funding Restrictions—Eligible and Ineligible Costs

##### 1. General

Grant funds that NTIA awards may not necessarily be used to pay for all of the costs that the grant recipient incurs in carrying out the project. Specifically, grant funds must be used only to pay for eligible costs. Eligible costs are consistent with the cost principles identified in the applicable OMB circulars<sup>45</sup> and in the grant program's

<sup>45</sup> For example, there is a set of Federal principles for determining eligible or allowable costs. Allowability of costs will be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or Federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State, Local and Indian

authorizing legislation. In addition, costs must be reasonable, allocable, necessary to the project, and conform to GAAP. For CCI projects, eligible costs are generally capital expenses, and not operating expenses. An applicant proposing to use any portion of the grant funds for any ineligible cost will be instructed to revise its proposed budget to remove such costs prior to the award of a grant.<sup>46</sup> A more detailed discussion of the eligible and ineligible costs that are applicable to each BTOP project category is set forth in the following sections.

In general, a project will incur both direct and indirect costs. Direct and indirect costs may be reimbursed from grant funds provided that they fall within the approved eligible cost categories discussed below.

#### a. Direct Costs of a BTOP Project

Direct costs are those that are directly related and traceable to the cost of the project being supported. Direct costs of a project may be charged to the award if they are allowable costs and are included within approved budget categories.

#### b. Indirect Costs of a BTOP Project

NTIA has the discretion to consider indirect costs as eligible expenses under BTOP. For CCI projects, reasonable indirect costs associated with the construction, deployment, or installation of facilities and equipment used to provide broadband service as described in Section V.E.2. will be considered eligible provided that they are included as a line item in the applicant's budget and the applicant has established, or commits to apply for, an approved indirect cost rate. For PCC and SBA projects, reasonable indirect costs associated with eligible project activities

Tribal Governments." The allowability of costs incurred by nonprofit organizations is determined in accordance with the provisions of OMB Circular A-122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those nonprofit organizations listed in Attachment C to Circular A-122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part. 31. See 15 CFR 14.27 and 24.22 (governing the Department of Commerce's implementation of OMB requirements).

<sup>46</sup> BTOP CCI applicants and PCC applicants will be directed to revise SF-424A (for non-construction projects) or SF-424C (for construction projects). SBA applicants will be directed to revise SF-424A (for non-construction projects).

as detailed in Sections V.E.3. and V.E.4. will be considered eligible costs provided they are included as a line item in the applicant's budget and the applicant has established, or commits to apply for, an approved indirect cost rate. The process for establishing an indirect cost rate with the DOC is described in a document entitled "General Indirect Cost Rate Program Guidelines for Grantee Organizations" and can be found on the Department of Commerce Web site.<sup>47</sup> Applicants that do not have an approved indirect cost rate will have 90 days from the award start date to apply to have a rate established.

#### 2. Eligible and Ineligible Costs for BTOP Comprehensive Community Infrastructure Projects

##### a. Eligible Costs for Comprehensive Community Infrastructure Projects

Grant funds may be used to pay for the following expenses:

- i. To fund the construction or improvement of all facilities required to provide broadband service;<sup>48</sup>
- ii. To fund the cost of long-term leases (for terms greater than one year) of facilities required to provide broadband service, including indefeasible right-of-use (IRU) agreements;
- iii. To fund reasonable pre-application expenses in an amount not to exceed five percent of the award. Pre-application expenses, which include expenses related to preparing an application, may be reimbursed if they are incurred after the publication date of this NOFA and prior to the date of issuance of the grant award from NTIA, except that lobbying costs and contingency fees are not reimbursable from BTOP funds;
- iv. To fund reasonable indirect costs consistent with the principles outlined in Section V.E.1. of this NOFA; and
- v. Undertaking such other projects and activities as the Assistant Secretary finds to be consistent with the purposes for which the Program is established.

##### b. Ineligible Costs for Comprehensive Community Infrastructure Projects

Grant funds may not be used for any of the following purposes:

- i. To fund operating expenses of the applicant;
- ii. To fund costs incurred prior to the date on which the application is

<sup>47</sup> See <http://oam.ocs.doc.gov/docs/DOC%20IDC%20Ext%20Policy.v6.doc>.

<sup>48</sup> These facilities and equipment may include, for example, but are not limited to, the costs associated with complying with all applicable legal requirements, such as the Communications Assistance for Law Enforcement Act (CALEA). See *infra* Section X.P.

submitted, with the exception of eligible pre-application expenses;

- iii. To fund an acquisition of an affiliate, including the acquisition of the stock of an affiliate;
- iv. To fund the purchase or lease of any vehicle other than those used primarily in construction or system improvements;
- v. To fund the merger or consolidation of entities; or
- vi. To fund costs incurred in acquiring spectrum as part of an FCC auction or in a secondary market acquisition.

#### 3. Eligible and Ineligible Costs for Public Computer Center Projects

##### a. Eligible Costs for Public Computer Center Projects

Projects under this category are aimed at expanding broadband access and capacity at community anchor institutions, organizations serving vulnerable populations, or job-creating strategic facilities located in State- or Federally-designated economic development areas as well as stimulating broadband demand, economic growth, and job creation. Grantees may use BTOP funding to expand public computer center capacity by:

- i. Acquiring broadband-related equipment, instrumentation, networking capability, hardware and software, and digital network technology for broadband services, including the purchase of word processing software, computer peripherals, such as mice and printers, and computer maintenance services and virus-protection software;
- ii. Developing and providing training, education, support, and awareness programs or web-based resources, including reasonable compensation for qualified instructors, technicians, managers, and other employees essential for these types of programs;
- iii. Facilitating access to broadband services, including, but not limited to, making public computer centers accessible to the disabled;
- iv. Installing or upgrading broadband facilities on a one-time, capital improvement, basis in order to increase broadband capacity;
- v. Constructing, acquiring, or leasing a new facility, provided that the applicant explains why it is necessary to construct, acquire, or lease a new facility to facilitate public access to broadband services or expand computer center capacity;
- vi. Funding reasonable indirect costs consistent with the principles outlined in Section V.E.1. of this NOFA;
- vii. Undertaking such other projects and activities as the Assistant Secretary

finds to be consistent with the purposes for which the Program is established; and

viii. Paying for reasonable pre-application expenses in an amount not to exceed five percent of the award. Pre-application expenses, which include expenses related to preparing an application, may be reimbursed if they are incurred after the publication date of this NOFA and prior to the date of issuance of the grant award from NTIA, except that lobbying costs and contingency fees are not reimbursable from BTOP funds.

While some of the costs associated with the activities enumerated above may be properly classified as operating expenses, an applicant should describe in its application how it intends to cover the operating expenses of the project after the grant period expires.

**b. Ineligible Costs for Public Computer Center Projects**

BTOP grant funds may not be used to fund purchases that are not used predominantly for expanding public access to broadband service or enhancing broadband capacity at public computer center locations.

**4. Eligible and Ineligible Costs for Sustainable Broadband Adoption Projects**

**a. Eligible Costs for Sustainable Broadband Adoption Projects**

Projects under this category are aimed at providing broadband education, awareness, training, access, equipment, and support in order to stimulate sustainable adoption of broadband services by individuals, households, and community anchor institutions. In this context, sustainable means adoption (*i.e.*, subscription to broadband service) that the consumer or institution can and will continue to pay for after the award period. Grantees may use BTOP funding for innovative programs that encourage sustainable adoption of broadband services by:

- i. Acquiring broadband-related equipment, instrumentation, networking capability, hardware and software, and digital network technology for broadband services;
- ii. Developing and providing training, education, support, and awareness programs, as well as web-based content that is incidental to the program's purposes, and includes reasonable compensation for qualified instructors for these types of programs;
- iii. Conducting broadband-related public education, outreach, support, and awareness campaigns;

iv. Implementing programs to facilitate greater access to broadband service, devices, and equipment;

v. Funding reasonable indirect costs consistent with the principles outlined in Section V.E.1. of this NOFA;

vi. Undertaking such other projects and activities as the Assistant Secretary finds to be consistent with the purposes for which the Program is established; and

vii. Paying for reasonable pre-application expenses in an amount not to exceed five percent of the award. Pre-application expenses, which include expenses related to preparing an application, may be reimbursed if they are incurred after the publication date of this NOFA and prior to the date of issuance of the grant award from NTIA, except that lobbying costs and contingency fees are not reimbursable from BTOP funds.

While some of the costs associated with the activities enumerated above may be properly classified as operating expenses, an applicant should describe in its application how it intends to cover the operating expenses of the project after the grant period expires, if appropriate.

**b. Ineligible Costs for Sustainable Broadband Adoption Projects**

BTOP grant funds may not be used for expenses or purchases that are not used predominantly for the provision of broadband education, awareness, training, access, equipment, and support. Additionally, costs associated with constructing or leasing broadband facilities and infrastructure are not eligible.

**F. Use of Program Income**

Grantees are required to account for any Program income directly generated by projects financed in whole or in part with Federal funds. Given the Recovery Act's objectives to spur job creation and stimulate long-term economic growth and opportunity, projects funded by BTOP grants are expected to demonstrate convincingly the ability to be sustained beyond the funding period. While grant funds are intended to cover the capital costs of a project as part of the Recovery Act's effort to stimulate the economy, grant recipients for all grant programs are expected to present projects that will sustain long-term growth and viability.

Any Program income generated by a project funded by BTOP during the grant period shall be retained by the grant recipient and shall be used in one or more of the following ways: (1) Added to the funds committed to the project by NTIA and the recipient to

conduct additional activities that will further eligible project objectives, including (a) reinvestment in project facilities, (b) funding BTOP compliance costs, and (c) paying operating expenses of the project; or (2) used to finance the non-Federal share of the project.<sup>49</sup> Program income means gross income earned by the recipient that is either directly generated by a supported activity or earned as a result of the award during the funding period.<sup>50</sup> Grant recipients shall have no obligation to the Federal government regarding Program income earned after the end of the project period.<sup>51</sup> However, the Federal government retains an interest in property in the event that it is sold, consistent with the guidance outlined in Section IX.C. of this NOFA and in applicable DOC regulations.<sup>52</sup>

**VI. Application and Submission Information**

**A. Request for Application Package**

Complete application packages, including required Federal forms and instructions, will be available at <http://www.broadbandusa.gov>. Additional information for BTOP can be found in the *Application Guidelines* at <http://www.broadbandusa.gov>. This Web site will be updated regularly.

**B. Registration**

**1. Central Contractor Registration (CCR)**

All applicants are required to have a current registration in the CCR database prior to receiving an award. Online CCR registration is available at <http://www.ccr.gov/StartRegistration.aspx>. Applicants without a current CCR are encouraged to register as soon as possible after the release of this NOFA.<sup>53</sup>

<sup>49</sup> 15 CFR 14.24(b), 24.25(g).

<sup>50</sup> 15 CFR 14.2(aa), 24.25(b). Program income includes, among other things, income from fees for services performed, from the use or rental of real or personal property acquired with grant funds, and from the sale of commodities or items fabricated under a grant agreement. 15 CFR 14.2(aa), 24.25(a). In general, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award. 15 CFR 14.25(f), 24.25(c).

<sup>51</sup> 15 CFR 14.25(h), 24.25(h).

<sup>52</sup> See, e.g., 2 CFR 215.24; 15 CFR 14.24, 24.25.

<sup>53</sup> "To enable timeliness of awards, agencies should engage in aggressive outreach to potential applicants to begin application planning activities, including the process of Central Contractor Registration (CCR) and obtaining a Dun and Bradstreet Universal Numbering System (DUNS) number." Updating Implementing Guidance for the American Recovery and Reinvestment Act of 2009 (OMB M-09-15 April 3, 2009), available at [http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-15.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-15.pdf).

## 2. DUNS Number

All applicants should obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number as soon as possible after the release of this NOFA.<sup>54</sup> Applicants can receive a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1-866-705-5711 or via the Internet at <http://www.dunandbradstreet.com>.

### C. Choosing the Proper Agency and Category for an Application

#### 1. Broadband Infrastructure

##### a. Choosing BIP or BTOP

Applicants that are eligible for both BIP and BTOP have the option to apply to either agency for funding for a project. However, applicants should apply to only one agency for a given project. NTIA strongly recommends that applicants that are current RUS loan or grant recipients, as well as any applicant whose project is for a Last Mile area that is at least 75 percent rural, should apply to BIP for funding. This recommendation is necessary to improve the efficiency of both BIP and BTOP and to leverage the core expertise of the agencies. The agencies will coordinate to identify potential service area overlaps, and will resolve such conflicts in the manner that best satisfies the statutory objectives of both programs.

##### b. Transferability

Under this NOFA, the Assistant Secretary may refer to RUS any CCI application that NTIA has determined not to fund but that may be consistent with BIP requirements.

##### c. Comprehensive Community Infrastructure

Applications for CCI projects should provide a broadband infrastructure solution that addresses the major needs of communities the project intends to serve. Priority will be given to projects that include a Middle Mile component. The project should meet the significant needs of the community, which in the first instance should include providing broadband service to community anchor institutions, such as community colleges, schools, libraries, medical and healthcare providers, community support organizations, and public safety entities. CCI projects should be technically feasible, sustainable, and scalable, and address BTOP's priority needs, including offering substantial economic, educational, healthcare, and public safety benefits relative to the

costs of providing service. NTIA will give strong preference to CCI applications that satisfy each of the priorities set forth in Section II.B.

To the extent that a CCI project contains a Last Mile component in rural areas, the additional costs of offering service to residential consumers and non-community anchor institutions may not exceed more than 20 percent of the total eligible costs of the project. Additionally, the applicant must demonstrate the cost reasonableness and effectiveness of the Last Mile component of its project. Specifically, applicants must ensure that this aspect of the proposal yields total eligible project costs that are less than \$10,000 per household or per subscriber, unless the applicant can demonstrate why it should be permitted to exceed this ceiling. NTIA will look more favorably upon applications with lower costs per household or per subscriber.

#### 2. Public Computer Centers

Applications for PCC projects must expand public computer center capacity, including at community colleges and public libraries.<sup>55</sup> They must provide broadband access or improve broadband access to the general public or a specific vulnerable population, such as low-income, unemployed, aged, children, minorities, and people with disabilities. Projects must create or expand a public computer center meeting a specific public need for broadband service, including, but not limited to, education, employment, economic development, and enhanced service for healthcare delivery, children, and vulnerable populations. As described below, NTIA will consider information related to the demographics, size, and scope of the populations to be served, as well as the capacity of and the training provided by the proposed centers.

#### 3. Sustainable Broadband Adoption

Applications for SBA projects should demonstrate a sustainable increase in demand for and subscribership to broadband services. Projects should meet a specific public need for broadband service, including, but not limited to, education, employment, economic development, and enhanced service for healthcare delivery, children, and vulnerable populations. Projects should describe the barriers to adoption in a given area, especially among vulnerable populations, and propose an innovative and persuasive solution to achieve increased adoption. Applicants might show how variations on one or

more proven demand stimulation strategies—such as awareness-building, development of relevant content, and demand aggregation—would promote sustainable adoption. NTIA expects a high degree of verification that will demonstrate the effectiveness of various approaches to building sustainable broadband adoption, including market research and surveys.

### D. Contents of the Application

#### 1. Comprehensive Community Infrastructure Applications

A complete CCI application will include the elements listed below. As required by the Recovery Act, NTIA is required to make certain information about applications available in a publicly accessible database.<sup>56</sup> Thus, NTIA will publicly display application elements containing such information on the applicant database at <http://www.broadbandusa.gov>. See Section X.J. for a discussion of NTIA's treatment of confidential materials.

The following application elements will be publicly displayed on the applicant database:

- a. The identity of the applicant and general applicant and project information;
- b. An executive summary of the project;
- c. Information regarding the proposed funded service area; and
- d. The Federal grant request and cost match.

The following elements will not be included in the publicly accessible applicant database:

- a. A description of the applicant's nondiscrimination, interconnection, and network management plans;
- b. Details on local community involvement and partnerships with government, community, and community anchor institutions, and involvement of socially and economically disadvantaged small business concerns (SDB) as defined in Section III of this NOFA;
- c. A description of how the applicant will advance the objectives of the Recovery Act, as well as the specific objectives of BTOP;
- d. A description of the proposed service offerings, including the pricing of the services and information on available services in the area;

<sup>56</sup> Specifically, NTIA is required to create an application database that includes at least a list of each entity that has applied for a BTOP grant, a description of each application, and the status of each application. Recovery Act sec. 6001(i)(5), 123 Stat. at 515. After award, NTIA is required to make certain additional information available about the grants (e.g., the name of each entity receiving funds, the purpose for which the entity is receiving funds, and the quarterly reports). *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Recovery Act Tit. I, 123 Stat. at 128.

e. Technical details of the proposed project;

f. A timeline for the implementation of the project, including key milestones for implementation of the project, preparations, and risk factors;

g. Information regarding the organization's capacity and readiness;

h. Details on the project budget and funding, including the level of need for Federal funding, details on other Federal funding received by the applicant, and information regarding matching funds;

i. Pro forma financial analysis related to the sustainability of the project across an eight-year forecast period;

j. Completion of the Environmental Questionnaire; and

k. The following supplemental attachments as applicable:

- Historical financial statements and Certified Public Accountant (CPA) audits if applicable;
- Proposed service offerings;
- Competitor data;
- Network diagram and system design;
- Maps of the proposed service areas;
- Build out timeline;
- Management team resumes and organization chart;
- List of community anchor institutions;
- Governance and key partnerships;
- Pro forma financial projections and subscriber estimates; and
- Authorized Organization Representation and Compliance and Assurance Certification.

## 2. Public Computer Centers Applications

A complete PCC application will include the elements listed below. As noted above, NTIA is required by the Recovery Act to make certain information about applications available in a publicly accessible database. Thus, NTIA will publicly display application elements containing such information on the applicant database at <http://www.broadbandusa.gov>. See Section X.J. for a discussion of NTIA's treatment of confidential materials.

The following application elements will be publicly displayed on the applicant database:

- The identity of the applicant and general applicant and project information;
- An executive summary of the project; and
- The Federal grant request and cost match.

The following elements will not be included in the publicly accessible applicant database:

- A description of how the applicant will advance the objectives of the

Recovery Act, as well as the specific objectives of BTOP;

- A summary of the viability of the project;
- Proposed budget and sustainability information;
- Completion of an environmental checklist or the Environmental Questionnaire; and
- The following supplemental attachments:
  - Governance and key partnerships;
  - Historical financial statements, as applicable;
  - Public center detail;
  - Management team resumes and organization chart;
  - SF-424 budget;
  - Detailed budget; and
  - Authorized Organization Representative and Compliance and Assurance Certification.

## 3. Sustainable Broadband Adoption Applications

A complete SBA application will include the elements listed below. As noted above, NTIA is required by the Recovery Act to make certain information about applications available in a publicly accessible database. Thus, NTIA will publicly display application elements containing such information on the applicant database at <http://www.broadbandusa.gov>. See Section X.J. for a discussion of NTIA's treatment of confidential materials.

The following elements will be publicly displayed on the applicant database:

- The identity of the applicant and general applicant and project information;
- An executive summary of the project; and
- The Federal grant request and cost match.

The following elements will not be included in the publicly accessible applicant database:

- A description of how the applicant will advance the objectives of the Recovery Act, as well as the specific objectives of BTOP;
- A summary of the viability of the project;
- Proposed budget and sustainability information;
- Completion of an environmental checklist and applicable certifications; and
- The following supplemental attachments:
  - Governance and key partnerships;
  - Historical financial statements, as applicable;
  - Management team resumes and organization chart;
  - SF-424 budget;

- Detailed budget; and
- Authorized Organization Representative and Compliance and Assurance Certification.

## 4. Supplementary Information Requests for Due Diligence

As discussed in Section II.C. above, those applications that are considered to be most highly qualified (*i.e.*, receiving the highest scores) will advance to due diligence and will be processed with priority given to projects that best conform with the statutory purposes and program priorities described in Section II. In due diligence, applicants may be asked to submit additional information, as appropriate, to clarify or to further substantiate the representations made in their application and allow Federal staff to evaluate fully the proposed project with respect to the eligibility factors, general Program requirements, evaluation criteria, and selection factors specified in this NOFA. Due diligence applies to all three categories of projects.

### E. Filing Instructions

Electronic submissions of applications will allow for the expeditious review of an applicant's proposal consistent with the goals of the Recovery Act. As a result, all applicants are required to submit their applications electronically at <https://applyonline.broadbandusa.gov>. The electronic application system will provide a date-and-time-stamped confirmation number that will serve as proof of submission. Please note that applications will not be accepted via paper, facsimile machine transmission, electronic mail, or other media format. Applicants, however, may request a waiver of these filing instructions pursuant to Section X.N. of this NOFA.

### F. Submission Dates and Times

All applications for funding BTOP projects must be submitted between February 16, 2010, at 8 a.m. Eastern Standard Time (EST) and March 15, 2010, at 5 p.m. Eastern Daylight Time (EDT).

### G. Authorization

As required by Section IX.C.5.a. of this NOFA, all applicants will be required to submit a certification by an Authorized Organization Representative at the time the application is submitted for filing.

### H. Material Representations

The application, including all certifications and assurances, and all forms submitted as part of the application will be treated as a material

representation of fact upon which NTIA will rely in awarding grants.

### I. Material Revisions

An applicant shall not be permitted to make any material revision to its application after the submission deadline. NTIA may request or accept clarifications, revisions or submissions for completeness that are non-material.

## VII. Application Review Information

### A. Evaluation Criteria

The evaluation criteria used by expert reviewers to review and analyze BTOP applications are grouped into four categories: (1) Project Purpose; (2) Project Benefits; (3) Project Viability; and (4) Project Budget and Sustainability. Each application will be evaluated against the following objective criteria, and not against other applications.

#### 1. Comprehensive Community Infrastructure

##### a. Project Purpose (20 Points)

###### i. *Fit with Statutory Purposes.*

Applications will be evaluated with respect to each of BTOP's statutory purposes.<sup>57</sup> Reviewers will consider, relative to each purpose, whether the applicant is addressing a compelling problem of the sort that the statute is intended to resolve, 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. Additional consideration also will be given to applicants that address more than one statutory purpose and project category (e.g., CCI, PCC, or SBA) in a convincing manner. Reviewers also will consider the ability of the project to enhance broadband service for healthcare delivery, education, and children as contemplated by the Recovery Act.<sup>58</sup>

###### ii. *Fit with BTOP Priorities.*

Applications will be evaluated with respect to each of the BTOP Priorities and factors set forth in Section II.B. Reviewers will consider the priorities assigned for CCI projects, and additional

consideration will be given for projects that satisfy more priorities. Additional consideration will be given to applicants satisfying the factors used to assess whether the application meets Program objectives.

iii. *Potential for Job Creation.* The application will be scored on the project's potential to create jobs, particularly jobs created directly by the project. Reviewers will assess the methodology used to calculate job estimates, the number and quality of the jobs created, and how the project balances job creation with cost efficiency.

iv. *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. Examples include the Department of Energy's Smart Grid Investment Program, the Department of Health and Human Services' Beacon Community Cooperative Agreement Program, the Department of Housing and Urban Development's Public Housing Capital Fund, the Department of Transportation's Capital Assistance for High Speed Rail Corridors and Intercity Passenger Service program, and other investments where collaboration would lead to greater project efficiencies. In each case, the applicant must convincingly demonstrate that these leveraging efforts are substantive and meaningful.

v. *Indian Tribes and Socially and Economically Disadvantaged Small Businesses.* Reviewers will grant consideration to applicants that are Indian tribes or that certify that they meet the statutory definition of a socially and economically disadvantaged small business concern (as modified by the Small Business Administration's approval of NTIA's request to adopt an alternative small business concern size standard for use in BTOP), or that have established agreements to partner or contract with Indian tribes or socially and economically disadvantaged businesses.<sup>59</sup>

##### b. Project Benefits (20 Points)

i. *Level of Need in the Proposed Funded Service Area.* Applications will be scored on the level of need for the proposed network in the proposed funded service area. Reviewers will consider whether there are service

providers already present in all or part of the area, as well as the pricing, coverage, and available capacity of those providers. Reviewers also will consider what proportion of the projected end users are located in unserved or underserved areas and may take into account any comments submitted by existing broadband service providers in response to the announcement described in Section V.D.3.d. of this NOFA in making this evaluation. Reviewers may consider other details that are pertinent to determining the degree of need for the project in the area(s) (e.g., unemployment rates or median income levels). In addition, reviewers also will consider applicants' explanation of why their proposed project is well-suited to address the needs of the proposed funded service area(s).

ii. *Impact on the Proposed Funded Service Area(s).* Applications will be scored on how great an impact they would have on the proposed funded service area(s). Reviewers will consider the extent to which the proposed project will comprehensively meet, whether directly or indirectly, the key broadband needs of the communities within the proposed funded service area, particularly the need for Middle Mile capacity. This should include consideration of services for the community anchor institutions in the area(s), and access, transport, and wholesale services for other broadband service providers. Reviewers should give particular weight to services provided to community anchor institutions, especially those in unserved and underserved areas, as well as any community colleges within the proposed funded service area, whether or not they are located in unserved and underserved areas. Reviewers may take into account any comments submitted by existing broadband service providers in response to the announcement described in Section V.D.3.d. of this NOFA in making the evaluation of a proposed funded service area as unserved or underserved, as applicable. Reviewers also should consider the extent to which the project will provide, directly or indirectly, residential and business broadband services within the proposed funded service area(s).

iii. *Network Capacity and Performance.* Applicants will be evaluated on the ability of the proposed network to provide sufficient capacity, as well as scalability, to meet the comprehensive needs of the communities in the proposed funded service area(s). The Middle Mile components of the network should provide capacity sufficient to serve the

<sup>57</sup> See Recovery Act sec. 6001(b), 123 Stat. at 512-13 (stating the purposes of the program are to provide broadband access to unserved areas; to provide improved broadband access to underserved areas; to provide broadband access, education, and support to community anchor institutions, or organizations and agencies serving vulnerable populations, or job-creating strategic facilities located in State- or Federally-designated economic development areas; to improve access to, and use of, broadband service by public safety agencies; and to stimulate the demand for broadband, economic growth, and job creation).

<sup>58</sup> See *id.* sec. 6001(h)(2)(C), 123 Stat. at 515.

<sup>59</sup> 15 U.S.C. 637(a)(4) (as modified by the Small Business Administration's approval of NTIA's request to adopt an alternative small business concern size standard for use in BTOP).

anticipated Last Mile networks, community anchor institutions, and public safety entities, and the number of end users served by them, as projected by the applicant, taking into consideration the nature of the services for which these institutions and end users are likely to seek to utilize the network. Applications that include Last Mile components also will be evaluated on the extent to which the advertised speed for the network's highest offered speed tier exceeds the minimum speed requirement for broadband service (768 kbps downstream and 200 kbps upstream). Networks with higher end-user speeds will receive greater consideration. Proposed networks with high latency will be viewed unfavorably. Applicants may gain additional consideration if the applicant can demonstrate a clear and affordable upgrade path for the network.

iv. *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(s) or based on nationwide averages. Applicants should demonstrate that this pricing is competitive and affordable to their target markets. However, pricing levels also should be reasonable and market-based, so as to maximize the efficient use of Federal grant funds.

v. *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 Section V.D.3. of this NOFA. Additional consideration will be given for 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. Additional consideration will be given to applicants that commit to offering wholesale access to network elements and project facilities at reasonable rates and terms. Additional consideration also will be given to applicants that commit to binding private arbitration of disputes concerning the awardees' interconnection obligations as explained in Section V.D.3. of this NOFA. Reviewers also will consider whether the application proposes to construct infrastructure and implement a business plan that would allow more than one provider to serve end users in the proposed funded service area(s). Reviewers also may consider other factors to assess the degree of openness of the network.

c. Project Viability (30 Points)

i. *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, coherence, and cost-effectiveness of the system designs.

ii. *Applicant's Organizational Capability.* Reviewers will assess whether the applicant has the organizational capability necessary to undertake and complete the project. Reviewers will consider the years of experience and expertise of the project management team and the past track record of the organization with projects of a similar size and scope, as well as the organization's capacity and readiness.

iii. *Level of Community Involvement in the Project.* Reviewers will evaluate linkages to unaffiliated organizations in the project area (from the public, non-profit, and private sectors), particularly community anchor institutions and public safety organizations, as an ongoing and integral part of the project planning and operation. Applicants should demonstrate that each linkage is substantial and meaningful.

d. Project Budget and Sustainability (30 Points)

i. *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. To the extent that a CCI project includes a Last Mile component, the cost per household or cost per subscriber should not exceed \$10,000. Additional consideration will be given to applicants that present cost per household or cost per subscriber proposals below the \$10,000 maximum based on a sliding scale.

ii. *Sustainability of the Project.* Applicants must convincingly demonstrate the ability of the project to be sustained beyond the funding period. Reviewers will consider business plans, market projections, third-party funding commitments, and other data as may be appropriate to the nature of the applicant and the proposed project.

iii. *Leverage of Outside Resources.* Reviewers will consider whether the applicant has demonstrated 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. Additional consideration will be given to applicants that provide a cost match of 30 percent or greater of the total eligible costs of a project. Reviewers also will evaluate whether the applicant has tailored the proportion of Federal funding to the level that is necessary to make the project economically feasible and sustainable. Reviewers will give additional consideration to proposals that provide cash matches. For purposes of this evaluation, applicants that have received a full or partial waiver of the cost-matching requirement will be treated as having provided a 20 percent non-cash match.

2. BTOP Public Computer Center Projects

a. Project Purpose (20 Points)

i. *Fit with Statutory Purposes.* Applications will be evaluated with respect to each of BTOP's statutory purposes.<sup>60</sup> Reviewers will consider, relative to each purpose, whether the applicant is addressing a compelling problem of the sort that the statute is intended to resolve, 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. Additional consideration also will be given to applicants that address more than one statutory purpose and project category (e.g., CCI, PCC, or SBA) in a convincing manner. Reviewers also will consider the ability of the project to enhance broadband service for healthcare delivery, education, and children as contemplated by the Recovery Act.<sup>61</sup>

ii. *Potential for Job Creation.* The application will be scored on the project's potential to create jobs, particularly for jobs created directly by the project. Reviewers will assess the methodology used to calculate job estimates, the number and quality of the jobs created, and how the project balances job creation with cost efficiency.

<sup>60</sup> See Recovery Act sec. 6001(b), 123 Stat. at 512-13 (stating the purposes of the program are to provide broadband access to unserved areas; to provide improved broadband access to underserved areas; to provide broadband access, education, and support to community anchor institutions, or organizations and agencies serving vulnerable populations, or job-creating strategic facilities located in State- or Federally-designated economic development areas; to improve access to, and use of, broadband service by public safety agencies; and to stimulate the demand for broadband, economic growth, and job creation).

<sup>61</sup> See *id.* sec. 6001(h)(2)(C), 123 Stat. at 515.

iii. *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. Examples include the Department of Energy's Smart Grid Investment Program, the Department of Housing and Urban Development's Public Housing Capital Fund, and other investments where collaboration would lead to greater project efficiencies. In each case, the applicant must convincingly demonstrate that these leveraging efforts are substantive and meaningful.

iv. *Indian Tribes and Socially and Economically Disadvantaged Small Businesses.* Reviewers will grant consideration to applicants that are Indian tribes or certify that they meet the statutory definition of a socially and economically disadvantaged small business concern (as modified by the Small Business Administration's approval of NTIA's request to adopt an alternative small business concern size standard for use in BTOP), or that have established agreements in principle to partner or contract with Indian tribes or such socially and economically disadvantaged businesses.

b. Project Benefits (20 Points)

i. *Availability to the Public.* Applications will be scored on the availability of the computer center to the public. Reviewers will consider the capacity of the computer center, its hours of availability, any membership or usage fees charged, restrictions on usage, the proportionality of the computer center's capacity and hours of availability to the population the applicant proposes to serve, public outreach, and the computer center's accessibility to persons with disabilities, accounting for both the physical accessibility of the facility and the accessibility of the computer equipment and software.

ii. *Training and Educational Programs Offered.* Applicants will be scored on the availability, accessibility, and quality of training and educational programs offered through the computer center. Reviewers will consider the degree to which the programs meet the documented needs of the community.

iii. *Availability and Qualifications of Consulting and Teaching Staff.* Applications will be evaluated on the strength of the consulting and teaching staff at the computer center. Reviewers will consider the qualifications and training required of such staff as well as whether the number of available staff is

sufficient for the capacity of the computer center.

iv. *Projects in Community Colleges.* Reviewers will grant consideration to applicants that will create computer centers in community colleges, especially where the applicant can demonstrate that such computer centers will deliver substantive benefits to the college's core mission.

c. Project Viability (30 Points)

i. *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.

ii. *Applicant's Organizational Capability.* Reviewers will assess whether the applicant has the organizational capability necessary to undertake and complete the project. Reviewers will consider the years of experience and expertise of the project management team, and the past track record of the organization with projects of a similar size and scope, as well as the organization's capacity and readiness.

iii. *Level of Community Involvement in the Project.* Reviewers will evaluate linkages to unaffiliated organizations in the project area (from the public, nonprofit, and private sectors), particularly community anchor institutions and public safety organizations, as an ongoing and integral part of the project planning and operation. Applicants should demonstrate that each linkage is substantial and meaningful.

d. Project Budget and Sustainability (30 Points)

i. *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.

ii. *Sustainability of the Project.* Applicants must convincingly demonstrate the ability of the project to be sustained beyond the funding period. Reviewers will consider past performance of the applicant, community and institutional support for the project, third-party funding commitments, and other data as may be appropriate to the nature of the applicant and the proposed project.

iii. *Leverage of Outside Resources.* Reviewers will consider whether the

applicant has demonstrated 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. Reviewers also will give additional consideration to proposals that provide cash matches. For purposes of this evaluation, applicants that have received a full or partial waiver of the cost-matching requirement will be treated as having provided a 20 percent non-cash match.

3. BTOP Sustainable Broadband Adoption Projects

a. Project Purpose (20 Points)

i. *Fit with Statutory Purposes.* Applications will be evaluated with respect to each of BTOP's statutory purposes.<sup>62</sup> Reviewers will consider, relative to each purpose, whether the applicant is addressing a compelling problem of the sort that the statute is intended to resolve, 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. Additional consideration also will be given to applicants that address more than one statutory purpose and project category (e.g., CCI, PCC, or SBA) in a convincing manner. Reviewers will also consider the ability of the project to enhance broadband service for healthcare delivery, education, and children as contemplated by the Recovery Act.<sup>63</sup>

ii. *Potential for Job Creation.* The application will be scored on the project's potential to create jobs, particularly jobs created directly by the project. Reviewers will assess the methodology used to calculate job estimates, the number and quality of the jobs created, and how the project balances job creation with cost efficiency.

iii. *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

<sup>62</sup> See Recovery Act sec. 6001(b), 123 Stat. at 512–13 (stating the purposes of the program are to provide broadband access to unserved areas; to provide improved broadband access to underserved areas; to provide broadband access, education, and support to community anchor institutions, or organizations and agencies serving vulnerable populations, or job-creating strategic facilities located in State- or Federally-designated economic development areas; to improve access to, and use of, broadband service by public safety agencies; and to stimulate the demand for broadband, economic growth, and job creation).

<sup>63</sup> See *id.* sec. 6001(h)(2)(C), 123 Stat. at 515.

project. Examples include the Department of Energy's Smart Grid Investment Program, the Department of Housing and Urban Development's Public Housing Capital Fund, the Department of Transportation's Capital Assistance for High Speed Rail Corridors and Intercity Passenger Service program, and other investments where collaboration would lead to greater project efficiencies. In each case, the applicant must convincingly demonstrate that these leveraging efforts are substantive and meaningful.

iv. *Indian Tribes and Socially and Economically Disadvantaged Small Businesses.* Reviewers will grant consideration to applicants that are Indian tribes or that certify that they meet the statutory definition of a socially and economically disadvantaged small business concern (as modified by the Small Business Administration's approval of NTIA's request to adopt an alternative small business concern size standard for use in BTOP), or that have established agreements in principle to partner or contract with Indian tribes or such socially and economically disadvantaged businesses.

b. Project Benefits (20 Points)

i. *Number of New Subscribers.* Applications will be scored on the number of new broadband subscribers and other regular users the project will generate. Reviewers will take into consideration both the overall number of new subscribers and users and the proportion that these new subscribers and users represent of the number of non-subscribers and non-users in the relevant area. Reviewers also will consider the applicant's plan to effectively track and measure the benefits generated by the project.

ii. *Cost Per New User.* Applications will be evaluated on the cost-effectiveness of the program. Reviewers will consider the cost per projected new subscriber or other regular user, taking into account the applicant's explanation of why the approach selected is a cost-effective approach given the particular circumstances of the project.

iii. *Innovation.* Applications will be evaluated on the degree to which the project demonstrates replicable new ideas, approaches, and methods to encourage sustainable broadband adoption.

iv. *Support for Vulnerable Populations.* Reviewers will evaluate applications on their level of support for vulnerable populations. In this regard, reviewers will assess both the numbers of people in vulnerable populations likely to be affected by the project as

well as the steps that the applicant plans to take to engage and address the specific needs of those populations.

c. Project Viability (30 Points)

i. *Operational Feasibility of the Proposed Project.* Reviewers will assess the operational details of the project. Applicants will be scored on the clarity and detail of their project plan and how convincing the rationale behind the plan is.

ii. *Applicant's Organizational Capability.* Reviewers will assess whether the applicant has the organizational capability necessary to undertake and complete the project. Reviewers will consider the years of experience and expertise of the project management team and the past track record of the organization with projects of a similar size and scope, as well as the organization's capacity and readiness.

iii. *Level of Community Involvement in the Project.* Reviewers will evaluate linkages to unaffiliated organizations in the project area (from the public, non-profit, and private sectors), particularly community anchor institutions and public safety organizations, as an ongoing and integral part of the project planning and operation. Applicants should demonstrate that each linkage is substantial and meaningful.

d. Project Budget and Sustainability (30 Points)

i. *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.

ii. *Sustainability of the Project Impact.* Reviewers will consider whether the increases in broadband adoption rates in the project area caused by the project will be sustained beyond the conclusion of the project.

iii. *Leverage of Outside Resources.* Reviewers will consider whether the applicant has demonstrated 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. Reviewers also will give additional consideration to proposals that provide cash matches. For purposes of this evaluation, applicants that have received a full or partial waiver of the cost-matching requirement will be

treated as having provided a 20 percent non-cash match.

**VIII. Anticipated Announcement and Award Dates**

NTIA intends to announce BTOP Round 2 awards on a rolling basis starting in June 2010. All grants will be awarded by September 30, 2010.

**IX. Award Administration Information**

*A. Award Notices*

Applicants will be notified in writing by the Department of Commerce's (DOC) Grants Officer if their application is selected for an award. The DOC's Grants Officer notification will come from either the National Institute for Standards and Technology (NIST) or the National Oceanic and Atmospheric Administration (NOAA), both of which function as Grants Offices for the BTOP Program. If the application is selected for funding, the DOC's Grants Officer will issue the grant award (Form CD-450), which is the authorizing financial assistance award document, either electronically if from NOAA or in writing if from NIST. By signing the Form CD-450, the awardee agrees to comply with all award provisions, terms, and conditions. The awardee must sign and return the Form CD-450 to NIST or submit the executed form to NOAA by electronic means without modification within 30 days of receipt.

If an applicant is awarded funding, neither the DOC nor NTIA is under any obligation to provide any additional future funding in connection with that award or to make any future award(s). Amendment of an award or to extend the period of performance is at the discretion of the DOC and of NTIA.

*B. Administrative Requirements*

Administrative and national policy requirements for BTOP grant funding, *inter alia*, are contained in the *Pre-Award Notification Requirements for Grants and Cooperative Agreements* (DOC Pre-Award Notification),<sup>64</sup> as amended. All BTOP applicants are required to comply with all applicable provisions set forth in the DOC Pre-Award Notification.

*C. Award Terms and Conditions*

1. Scope

Awardees and subrecipients are required to comply with the obligations set forth in the Recovery Act and the requirements established herein. Any obligation that applies to the awardee

<sup>64</sup> The DOC Pre-Award Notification was published in the *Federal Register* on February 11, 2008. 73 FR 7696.

shall extend for the life of the award-funded facilities.

## 2. Sale or Lease of Project Assets

### a. Restriction on Assets

The sale or lease of any portion of the award-funded broadband facilities or equipment during the life of the facilities or equipment is prohibited, except as provided herein. Nothing in this section is meant to limit CCI awardees from leasing facilities to another service provider for the provision of broadband services, nor is this section meant to restrict a transfer of control of the awardee.<sup>65</sup> Awardees are required to comply with all applicable regulations regarding the disposition of real property and equipment.<sup>66</sup>

### b. Petition for Waiver

NTIA will consider a petition for waiver of the above restriction if: (a) The transaction is for adequate consideration; (b) the purchaser or lessee agrees to fulfill the terms and conditions relating to the project after such sale or lease; and (c) the transaction would be in the best interests of those served by the project. The petition for waiver may be submitted at any time during the life of the award-funded facilities and equipment, and it must include supporting documentation and justification regarding why the petition should be granted.

## 3. Access to Records for Audits, Site Visits, Monitoring, and Law Enforcement Purposes

The Inspector General of the DOC, or any of his or her duly authorized representatives, and NTIA representatives, or any of their duly authorized representatives, shall have access to and the right to inspect the broadband system and any other property funded by the grant, and all books, records, accounts, invoices, contracts, leases, payrolls, time sheets, canceled checks, statements, and other documents, papers, and records of the parties to a grant, including their subsidiaries, if any, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, site visits, excerpts, transcripts, copies, or other examinations as authorized by law. An

<sup>65</sup> Note that certain equipment is exempt from obligations to the Federal government and may be used and sold at the awardee's will. See 15 CFR 14.34(g), 24.32.

<sup>66</sup> See, e.g., 15 CFR 14.32–14.34; 15 CFR 24.31–24.32.

audit of an award may be conducted at any time.<sup>67</sup>

## 4. Broadband Data Collection

All CCI 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.

## 5. Certifications

a. The applicant must certify that he or she is the duly Authorized Organization Representative (AOR) and has been authorized to submit the application on its behalf.

b. The AOR must certify that he or she has examined the application, that all of the information and responses in the application, including certifications, and forms submitted, all of which are part of the grant application, are material representations of fact and are true and correct to the best of his or her knowledge; that the entity(ies) that is requesting grant funding pursuant to this application as well as any subgrantees and subcontractors will comply with the terms, conditions, purposes, and Federal requirements of the grant program; that no kickbacks were paid to anyone; and that false, fictitious, or fraudulent statements or claims on this application are grounds for denial or termination of a grant award, and/or possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001 and civil violations of the False Claims Act.

c. The AOR must certify that the entity(ies) he or she represents have and will comply with all applicable Federal, State, and local laws, rules, regulations, ordinances, codes, orders, and programmatic rules and requirements relating to the project. The AOR must acknowledge that failure to do so may result in rejection or deobligation of the grant or loan award. The AOR must acknowledge that failure to comply with all Federal and program rules could result in civil or criminal prosecution by the appropriate law enforcement authorities.

d. The AOR must certify that the entity(ies) he or she represents has and will comply with all applicable administrative and Federal statutory, regulatory, and policy requirements set forth in the Department of Commerce

<sup>67</sup> Note that Section 1515 of the Recovery Act also authorizes the Inspector General to examine records and interview officers and employees of the grantee and other entities regarding the award of funds. See Recovery Act sec. 1515, 123 Stat. at 289.

Pre-Award Notification;<sup>68</sup> the DOC Financial Assistance Standard Terms and Conditions;<sup>69</sup> the DOC American Recovery and Reinvestment Act Award Terms (April 9, 2009);<sup>70</sup> and any Special Award Terms and Conditions that are included by the Grants Officer in the award.

e. The AOR must certify that any funds awarded to the entity(ies) he or she represents as a result of this application will not: (a) Result in any unjust enrichment as a result of support for non-recurring costs through another Federal program for service in the area that would be served by the project described in this application; (b) duplicate any funds such entity(ies) receive under Federal universal service support programs administered by the Universal Service Administration Corporation (USAC); or (c) duplicate any funds such entity(ies) receive through grant or loan programs administered by RUS.

f. The AOR must certify that the entity(ies) he or she represent has secured access to pay at least 20 percent of the total project cost or has petitioned the Assistant Secretary for a waiver of the matching requirement.

## D. Reporting Requirements

### 1. General Recovery Act Requirements

Any grant awarded under this NOFA shall be subject to the applicable statutes and regulations regarding reporting on Recovery Act funds.<sup>71</sup> If Recovery Act funds are combined with other funds to fund or complete projects and activities, Recovery Act funds must be accounted for separately from other funds. Recipients of funds under this NOFA also must comply with the accounting requirements as established or referred to in this NOFA. For a complete list of the reporting requirements, see <http://www.FederalReporting.gov>.<sup>72</sup>

<sup>68</sup> See Department of Commerce Pre-Award Notification (Feb. 11, 2008) available at [http://oam.ocs.doc.gov/docs/GRANTS/GCA\\_manual.pdf](http://oam.ocs.doc.gov/docs/GRANTS/GCA_manual.pdf).

<sup>69</sup> See Department of Commerce Financial Assistance Standard Terms and Conditions (Mar. 8, 2009) available at <http://oamweb.osec.doc.gov/docs/GRANTS/DOC%20STCsMAR08Rev.pdf>.

<sup>70</sup> See U.S. Department of Commerce American Recovery and Reinvestment Act Award Terms (Apr. 9, 2009) available at <http://oam.ocs.doc.gov/docs/ARRA%20DOC%20Award%20Terms%20Final%205-20-09PDF.doc.pdf>.

<sup>71</sup> See, e.g., Recovery Act sec. 1512(c), 123 Stat. at 287; 2 CFR part 176; OMB, Interim Final Guidance for Federal Financial Assistance, 74 FR 18449 (Apr. 23, 2009); Implementing Guidance for Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009 (OMB M-09-21 June 22, 2009), available at [http://www.whitehouse.gov/omb/assets/memoranda\\_fy2009/m09-21.pdf](http://www.whitehouse.gov/omb/assets/memoranda_fy2009/m09-21.pdf).

<sup>72</sup> See *infra* Section X.V.1.

## 2. BTOP-Specific Reporting Requirements

In addition to the general Recovery Act reporting requirements, BTOP award recipients also must report to NTIA on the information requested below.<sup>73</sup> The information requested will vary depending on the type of project being funded. Pursuant to the Recovery Act, NTIA will make these reports available to the public.<sup>74</sup>

### a. All BTOP Award Recipients

All BTOP award recipients must report on:

- i. The progress in achieving the project goals, objectives, and milestones as set forth in their applications;
- ii. Expenditure of grant funds and the amount of remaining grant funds; and
- iii. The amount of non-Federal investment being added to complete the project.

If a recipient is permitted by NTIA to complete its project after two years, then it must specifically state in the applicable quarter when it has met 67 percent of its milestones and received 67 percent of its award funds.<sup>75</sup> Reaching these thresholds will indicate that the recipient has “substantially completed” its project consistent with the Recovery Act.<sup>76</sup>

### b. Comprehensive Community Infrastructure Award Recipients

Recipients receiving CCI grants must report on the following:

- i. The terms of any interconnection agreements entered into during the reporting period;
- ii. Any traffic exchange relationships (e.g., peering) and terms;
- iii. Any broadband equipment purchases;
- iv. The total and peak utilization of access links;
- v. The total and peak utilization of interconnection links to other networks;
- vi. Internet protocol address utilization and IPv6 implementation;
- vii. Any changes or updates to network management practices;
- viii. Any average end-user and Middle Mile megabit per second increases;
- ix. The total market potential for households, businesses, and community anchor institutions in the area served;
- x. The number of households and businesses passed, subscribing to broadband service, subscribing to new broadband service, and receiving improved access;
- xi. The number and type of community anchor institutions passed,

subscribing to broadband service, subscribing to new broadband service, and receiving improved access;

- xii. The advertised and averaged broadband speeds;
- xiii. The number of existing network miles deployed, new network miles deployed, and new network miles leased;
- xiv. For projects with a Middle Mile component, the “cost per mile,” “cost per household,” and, if applicable, “cost per tower” to offer broadband service;
- xv. For projects with a Last Mile component, the “cost per household” and “cost per subscriber” to offer broadband service; and
- xvi. The price of the broadband services.

### c. Public Computer Center Award Recipients

Recipients receiving PCC grants must report on the following:

- i. The number of new and upgraded public computer centers;
- ii. The number of new and upgraded workstations available to the public;
- iii. The total hours of operation per week that the public computer center(s) is open;
- iv. The speed of broadband to the public computer center(s);
- v. The primary uses of the public computer center(s);
- vi. The average number of users per week in the public computer center(s);
- vii. The total hours per week of training provided at the public computer center(s);
- viii. The number and cost of any broadband equipment deployed; and
- ix. The total project cost per workstation.

### d. Sustainable Broadband Adoption Award Recipients

Recipients receiving SBA grants must report on the following:

- i. The technology being fostered;
- ii. Efforts to aggregate demand for each location, including the role of the local community;
- iii. The increase in the number of households, businesses, and community anchor institutions subscribing to broadband service, and the methodology used to measure the increase;
- iv. The number and type of awareness campaigns provided, including the total number of individuals reached;
- v. The number and cost of any broadband customer premises equipment or end-user devices deployed;
- vi. The total market potential for households, businesses, and community anchor institutions in the area served; and

vii. Other program elements as proposed by the applicant and agreed to by NTIA.

## 3. Reporting Deadlines

All reports are due ten days after the quarter in which the award was issued ends and, unless otherwise noted, each quarter thereafter until a final report is made at the end of three years or sooner depending on when the project is completed. The final report should summarize the recipient’s quarterly filings and State whether the project’s goals have been satisfied. Pursuant to OMB Guidelines, Recovery Act reports should be submitted electronically to <http://www.FederalReporting.gov>. The BTOP-specific reports should be sent to NTIA.

If the recipient fails to submit an acceptable quarterly report or audited financial statement within the timeframe designated in the grant award, NTIA may take appropriate actions, including suspension of payments, suspension of award, or termination.<sup>77</sup> Additional information regarding reporting requirements will be specified at the time the award is issued.

## X. Other Information

### A. Funding Rounds

This is the second of two announced funding rounds. NTIA does not anticipate further funding rounds, although it reserves the right to release a subsequent NOFA to ensure that all BTOP funds are awarded by September 30, 2010.

### B. Discretionary Awards

The government is not obligated to make any award as a result of this announcement, and will fund only projects that are deemed likely to achieve the Program’s goals and for which funds are available.

### C. Third Party Beneficiaries

BTOP is a discretionary grant program that is not intended to and does not create any rights enforceable by third party beneficiaries, except sub-recipients or subcontractors.

### D. Limitation on Expenditures

The Recovery Act imposes an additional limitation on the use of funds expended or obligated from appropriations made pursuant to its provisions. Specifically, for purposes of this NOFA, funds appropriated or otherwise made available under the Recovery Act may not be used by any State or local government, or any private

<sup>73</sup> See *id.* sec. 6001(i)(1)–(2), 123 Stat. at 515.

<sup>74</sup> *Id.* sec. 6001(i)(1), 123 Stat. at 515.

<sup>75</sup> See *supra* Section V.D.

<sup>76</sup> Recovery Act sec. 6001(d)(3), 123 Stat. at 513.

<sup>77</sup> DOC Grants Manual, ch. 11, sec. B.

entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.<sup>78</sup>

#### E. Recovery Act Logo

All projects that are funded by the Recovery Act shall display signage that features the Primary Emblem throughout the construction phase. The signage should be displayed in a prominent location on site. Some exclusions may apply. The Primary Emblem should not be displayed at a size less than six inches in diameter.

#### F. Environmental and National Historic Preservation Requirements

Awarding agencies are required to analyze the potential environmental impacts, as required by the National Environmental Protection Act (NEPA) and the National Historic Preservation Act (NHPA), for applicant proposals and awardee projects seeking Recovery Act funding.<sup>79</sup> All CCI applicants and PCC applicants with projects containing construction and/or ground disturbing activities are required to complete the Environmental Questionnaire in the application and to submit all other required environmental documentation as necessary. All PCC applicants with projects that do not contain construction and/or ground disturbing activities and all SBA applicants are required to complete the DOC Environmental Checklist in the application.

It is the applicant's responsibility to obtain all necessary Federal, State, and local governmental permits and approvals necessary for the proposed work to be conducted. Applicants are expected to design their projects so that they minimize the potential for adverse impacts on the environment. Applicants also will be required to cooperate with NTIA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposed projects. The failure to do so may be grounds for not making an award. Applications will be reviewed to ensure that they contain sufficient information to allow agency staff to conduct a NEPA analysis so that appropriate NEPA documentation can be submitted to NTIA, along with the recommendation for funding of the selected applications.

If additional information is required after an application is accepted for funding, funds can be withheld by NTIA under a special award condition requiring the awardee to submit

additional environmental compliance information sufficient for the agency to make an assessment of any impacts that a project may have on the environment.

#### G. Davis-Bacon Wage Requirements

Pursuant to Section 1606 of the Recovery Act, any project using Recovery Act funds requires the payment of not less than the prevailing wages "at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor," in accordance with 40 U.S.C. 3142(b), for "all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government."<sup>80</sup> With respect to the labor standards specified in this section, the Secretary of Labor shall have the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (64 Stat. 1267; 5 U.S.C. App.) and Section 3145 of Title 40, United States Code.

#### H. Financial and Audit Requirements

To maximize the transparency and accountability of funds authorized under the Recovery Act, all applicants are required to comply with the applicable regulations set forth in OMB's Interim Final Guidance for Federal Financial Assistance.<sup>81</sup>

Recipients that expend \$500,000 or more of Federal funds during their fiscal year are required to submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with the U.S. Government Accountability Office's Government Auditing Standards, located at <http://www.gao.gov/govaud/ybk01.htm>, and OMB Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations, located at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. For-profit awardees must comply with the Program specific audit requirements set forth in OMB Circular A-133, Subpart B, § \_\_.235. Awardees are responsible for ensuring that sub-recipient audit reports are received and for resolving any audit findings.

#### I. Deobligation

NTIA reserves the right to deobligate awards made under this NOFA to recipients that demonstrate an insufficient level of performance, or wasteful or fraudulent spending, and to

award these funds competitively to new or existing applicants.

#### J. Confidentiality of Applicant Information

Applicants are encouraged to identify and label any confidential and proprietary information contained in their applications. NTIA will protect confidential and proprietary information from public disclosure to the fullest extent authorized by applicable law, including the Freedom of Information Act, as amended (5 U.S.C. 552), the Trade Secrets Act, as amended (18 U.S.C. 1905), and the Economic Espionage Act of 1996 (18 U.S.C. 1831 *et seq.*). Applicants should be aware, however, that the Recovery Act requires substantial transparency. For example, NTIA is required to make publicly available on the Internet a list of each entity that has applied for a grant, a description of each application, the status of each application, the name of each entity receiving funds, the purpose for which the entity is receiving the funds, each quarterly report, and other information regarding awardees.<sup>82</sup>

#### K. Policy on Sectarian Activities

NTIA encourages applications from faith-based organizations. On December 22, 1995, NTIA issued a *Notice* in the **Federal Register** on its policy with regard to sectarian activities. Under NTIA's policy, while religious activities cannot be the essential thrust of a grant, an application will be eligible for a grant under the Program where sectarian activities are only incidental or attenuated to the overall project purpose for which funding is requested.<sup>83</sup>

#### L. Disposition of Unsuccessful Applications

Applications accepted for review for BTOP will be retained for two years, after which they will be destroyed.

#### M. State Certifications

With respect to funds made available under the Recovery Act to State or local governments for infrastructure investments, the governor, mayor, or other chief executive, as appropriate, must certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. This certification must include a description of the investment, the estimated total cost, and the amount of funds to be

<sup>78</sup> *Id.* sec. 1604, 123 Stat. at 303.

<sup>79</sup> In addition, there are documents relating to NEPA and NHPA requirements that have been developed specifically for BTOP that are outlined more fully in the BTOP Grant Guidance.

<sup>80</sup> Recovery Act sec. 1606, 123 Stat. at 303.

<sup>81</sup> See OMB, Interim Final Guidance for Federal Financial Assistance, 74 FR 18449.

<sup>82</sup> See Recovery Act sec. 6001(i)(5), 123 Stat. at 515.

<sup>83</sup> 60 FR 66491 (Dec. 22, 1995).

used, and must be posted on the recipient's Web site and linked to <http://www.recovery.gov>. A State or local agency may not receive infrastructure investment funding from funds made available under the Recovery Act unless this certification is made and posted.<sup>84</sup>

#### N. Waiver Authority

It is the general intent of NTIA not to waive any of the provisions set forth in this NOFA. However, under extraordinary circumstances and when it is in the best interest of the Federal government, NTIA, upon its own initiative or when requested by an applicant, may waive any of the provisions in this NOFA. Waivers may only be granted for requirements that are discretionary and not mandated by statute or other applicable law. Any request for a waiver must set forth the extraordinary circumstances for the request and be submitted with the application.

With respect to requests for waiver of Section VI.E. (filing instructions), further information regarding the procedures for seeking such waivers will be made available in the Grant Guidance.

#### O. Compliance With Applicable Laws

Any recipient of funds under this NOFA shall be required to comply with all applicable Federal and State laws, including but not limited to: (i) The nondiscrimination and equal employment opportunity requirements of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.*, 7 CFR pt. 15); (ii) Section 504 of the Rehabilitation Act (29 U.S.C. 794 *et seq.*; 7 CFR part 15b); (iii) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*; 45 CFR part 90); (iv) the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 *et seq.*); (v) the Uniform Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101–19.6); and (vi) the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, and certain related Federal environmental laws, statutes, regulations, and Executive Orders found in 7 CFR part 1794.

#### P. Communications Laws

Awardees, and in particular, CCI awardees, will be required to comply with all applicable Federal and State communications laws and regulations as applicable, including, for example, the

Communications Act of 1934, as amended (47 U.S.C. 151 *et seq.*); the Telecommunications Act of 1996, as amended (Pub. L. 104–104, 110 Stat. 56 (1996)); and the Communications Assistance for Law Enforcement Act (47 U.S.C. 1001 *et seq.*) (CALEA). For further information, see <http://www.fcc.gov>.

#### Q. Buy American Notice

##### 1. General Prohibition and Waiver

None of the funds appropriated or otherwise made available by the Recovery Act may be used for the construction, alteration, maintenance, or repair of a public building or public work (as such terms are defined in 2 CFR 176.140) unless all of the iron, steel, and manufacturing goods used in the project are produced in the United States.<sup>85</sup> On July 1, 2009, the Department of Commerce published a notice in the **Federal Register** stating that the Secretary of Commerce had determined that applying the Buy American provision for the use of certain broadband equipment in public BTOP projects would be inconsistent with the public interest.<sup>86</sup>

As explained below, to the extent that an applicant wishes to use broadband equipment or goods that are not covered by the Secretary's waiver, it may seek an additional waiver on a case-by-case basis as part of its application for Recovery Act funds.

##### 2. OMB Buy American Notice Requirement

Pursuant to OMB guidance on the Recovery Act,<sup>87</sup> NTIA is required to provide notice as prescribed in 2 CFR 176.170.

#### **§ 176.170 Notice of Required Use of American Iron, Steel, and Manufactured Goods (covered under International Agreements)—Section 1605 of the American Recovery and Reinvestment Act of 2009.**

When requesting applications or proposals for Recovery Act programs or activities that may involve construction, alteration, maintenance, or repair of a public building or public work, and involve iron, steel, and/or manufactured goods covered under international agreements, the agency shall use the notice described in the following paragraphs in the solicitation:

(a) *Definitions. Designated country iron, steel, and/or manufactured goods, foreign iron, steel, and/or manufactured goods, manufactured goods, public*

*building and public work, and steel, as used in this provision, are defined in 2 CFR 176.160(a).*

(b) *Requests for determinations of inapplicability.* A prospective applicant requesting a determination regarding the inapplicability of Section 1605 of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5) (Recovery Act) should submit the request to the award official in time to allow a determination before submission of applications or proposals. The prospective applicant shall include the information and applicable supporting data required by 2 CFR 176.160(c) and (d) in the request. If an applicant has not requested a determination regarding the inapplicability of Section 1605 of the Recovery Act before submitting its application or proposal, or has not received a response to a previous request, the applicant shall include the information and supporting data in the application or proposal.

(c) *Evaluation of project proposals.* If the Federal Government determines that an exception based on unreasonable cost of domestic iron, steel, and/or manufactured goods applies, the Federal Government will evaluate a project requesting exception to the requirements of Section 1605 of the Recovery Act by adding to the estimated total cost of the project 25 percent of the project cost if foreign iron, steel, or manufactured goods are used based on unreasonable cost of comparable domestic iron, steel, or manufactured goods.

(d) *Alternate project proposals.*

(1) When a project proposal includes foreign iron, steel, and/or manufactured goods, other than designated country iron, steel, and/or manufactured goods, that are not listed by the Federal Government in this Buy American notice in the request for applications or proposals, the applicant may submit an alternate proposal based on use of equivalent domestic or designated country iron, steel, and/or manufactured goods.

(2) If an alternate proposal is submitted, the applicant shall submit a separate cost comparison table prepared in accordance with paragraphs 2 CFR 176.160(c) and (d) for the proposal that is based on the use of any foreign iron, steel, and/or manufactured goods for which the Federal Government has not yet determined an exception applies.

(3) If the Federal Government determines that a particular exception requested in accordance with 2 CFR 176.160(b) does not apply, the Federal Government will evaluate only those proposals based on use of the equivalent domestic or designated country iron,

<sup>84</sup> See Recovery Act sections 1511, 1526, 123 Stat. at 287, 293.

<sup>85</sup> *Id.* sec. 1605, 123 Stat. at 303.

<sup>86</sup> See 74 FR 31402 (July 1, 2009).

<sup>87</sup> See 2 CFR part 176.

steel, and/or manufactured goods, and the applicant shall be required to furnish such domestic or designated country items.

#### R. Executive Order 12866

This notice has been determined to be “economically significant” under Executive Order 12866.<sup>88</sup> The Recovery Act appropriates \$4.7 billion to NTIA for broadband grants and other purposes. Awards must be made no later than September 30, 2010. In accordance with Executive Order 12866, NTIA updated its economic analysis, which was completed for the first round of funding and outlined the costs and benefits of implementing BTOP, to reflect the changes made to the Program for the second round of funding. The complete analyses are available from NTIA upon request.

#### S. Executive Order 13132

It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.<sup>89</sup>

#### T. Administrative Procedure Act Statement

This NOFA is being issued without advance rulemaking or public comment under the Administrative Procedure Act of 1946, as amended (5 U.S.C. 553) (APA). The APA has several exemptions to rulemaking requirements. Among them is an exemption for “good cause” found at 5 U.S.C. 553(b)(B), which allows effective government action without rulemaking procedures where withholding the action would be “impracticable, unnecessary, or contrary to the public interest.”

The DOC has determined, consistent with the APA, that making these funds available under this NOFA for broadband development, as mandated by the Recovery Act, is in the public interest. Given the emergency nature of the Recovery Act and the extremely short time period within which all funds must be obligated, withholding this NOFA to provide for public notice and comment would unduly delay the provision of benefits associated with these broadband initiatives and be contrary to the public interest.

For the same reasons, NTIA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness for this action. Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553(d)(3) or any other law, the analytical

requirements of the Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

#### U. Congressional Review Act

NTIA has submitted this NOFA to the Congress and the Government Accountability Office under the Congressional Review of Agency Rulemaking Act (Congressional Review Act), 5 U.S.C. 801 *et seq.* It has been determined that this NOFA is a “major action” within the meaning of the Act because it will result in an annual effect on the economy of \$100,000,000 or more. This NOFA sets out the administrative procedures for making grants totaling approximately \$2.6 billion to implement a nationwide broadband initiative to expand the reach and quality of broadband services in the United States.

With funds made available through the Recovery Act, BTOP will provide a total of \$4.7 billion through NTIA to provide broadband grants throughout the United States for unserved and underserved communities, to increase public computer center capacity, and to encourage sustainable adoption of broadband services. The Recovery Act provides that BTOP awards must be made no later than September 30, 2010. Moreover, projects funded under the Program must be substantially completed no later than two years following the date of issuance of the award. A 60-day delay in implementing this NOFA pursuant to the Congressional Review Act would hamper NTIA’s mission to provide expeditiously assistance to eligible entities to begin and complete projects within the statutory requirements of the Recovery Act.

Thus, NTIA finds good cause under 5 U.S.C. 808(2) that prior notice and public procedure are impracticable, unnecessary, and contrary to the public interest. To the extent that NTIA provided a 60-day delay in effectiveness pursuant to the Congressional Review Act, NTIA would not be able to execute the statutory duties required by the Recovery Act in a timely manner. This finding is consistent with the objectives of the Recovery Act, which specifically provides clear preferences for rapid agency action and quick-start activities designed to spur job creation and economic benefit. Accordingly, this NOFA shall take effect upon publication in the **Federal Register**.

## V. Paperwork Reduction Act

### 1. Reporting and Registration Requirement Under Section 1512(c) of the Recovery Act

The Recovery Act requires the recipient of an award to complete projects or activities that are funded under the Recovery Act and to report on the use of Recovery Act funds provided through the award.<sup>90</sup> Information from these reports will be made available to the public. The recipient shall submit its first report no later than 10 calendar days after the end of the initial calendar quarter in which the recipient receives the assistance award funded in whole or in part by the Recovery Act.<sup>91</sup> Thereafter, the recipient shall submit reports no later than the tenth day after the end of each calendar quarter.<sup>92</sup> The recipient and its sub-recipients must maintain current registrations in the CCR (<http://www.ccr.gov>) at all times during which they have active Federal awards funded with Recovery Act funds. A DUNS number is one of the requirements for registration in the CCR. The recipient shall report the information described in Section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> unless the information is pre-populated.

### 2. NTIA’s Additional Paperwork Reduction Act Analysis

Copies of all forms, regulations, and instructions referenced in this NOFA may be obtained from NTIA. Data furnished by the applicants will be used to determine eligibility for Program benefits. Furnishing the data is voluntary; however, the failure to provide data could result in Program benefits being withheld or denied.

The collection of information is vital to NTIA to ensure compliance with the provisions of this NOFA and to fulfill the requirements of the Recovery Act. In summary, the collection of information is necessary in order to implement the Program.

<sup>90</sup> Recipients who fail to submit reports pursuant to Section 1512(c) of the Recovery Act are considered to be non-compliant. Non-compliant recipients, including those who are persistently late or negligent in their reporting obligations, are subject to Federal action, up to and including the termination of Federal funding or the ability to receive Federal funds in the future. Memorandum for the Heads of Executive Departments and Agencies re: Improving Compliance in Recovery Act Recipient Reporting (OMB M-10-05 November 30, 2009), available at [http://www.whitehouse.gov/omb/assets/memoranda\\_2010/m10-05.pdf](http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-05.pdf).

<sup>91</sup> Recovery Act sec. 1512(c), 123 Stat. at 287.

<sup>92</sup> *Id.*

<sup>88</sup> Exec. Order No. 12,866, 58 FR 51735 (Sept. 30, 1993).

<sup>89</sup> Exec. Order No. 13,132, 64 FR 43255 (Aug. 4, 1999).

The following estimates are based on the average over the first three years the Program is in place.

#### *Comprehensive Community Infrastructure*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 225 hours per response.

*Respondents:* States, local governments, and any agency, subdivision, instrumentality, or political subdivision thereof; the District of Columbia; a territory or possession of the United States; an Indian tribe (as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)); a native Hawaiian organization; a non-profit foundation, a non-profit corporation, a non-profit institution, or a non-profit association; other non-profit entities; for-profit corporations; limited liability companies; and cooperative or mutual organizations.

*Estimated Number of Respondents:* 1,394.

*Estimated Number of Responses per Respondent:* 1.27.

*Estimated Number of Responses:* 1,770.

*Estimated Total Annual Burden (hours) on Respondents:* 398,250.

#### *Public Computer Center*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 128 hours per response.

*Respondents:* States, local governments, and any agency, subdivision, instrumentality, or political subdivision thereof; the District of Columbia; a territory or possession of the United States; an Indian tribe (as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)); a native Hawaiian organization; a non-profit foundation, a non-profit corporation, a non-profit institution, or a non-profit association; other non-profit entities; for-profit corporations; limited liability companies; and cooperative or mutual organizations.

*Estimated Number of Respondents:* 472.

*Estimated Number of Responses per Respondent:* 1.23.

*Estimated Number of Responses:* 581.

*Estimated Total Annual Burden (hours) on Respondents:* 74,368.

#### *Sustainable Broadband Adoption*

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 151 hours per response.

*Respondents:* States, local governments, and any agency, subdivision, instrumentality, or political subdivision thereof; the District of Columbia; a territory or possession of the United States; an Indian tribe (as defined in Section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b)); a native Hawaiian organization; a non-profit foundation, a non-profit corporation, a non-profit institution, or a non-profit association; other non-profit entities; for-profit corporations; limited liability companies; and cooperative or mutual organizations.

*Estimated Number of Respondents:* 382.

*Estimated Number of Responses per Respondent:* 1.4.

*Estimated Number of Responses:* 535.

*Estimated Total Annual Burden (hours) on Respondents:* 80,785.

The grant application forms for BTOP CCI, PCC, and SBA projects and the subsequent data collection will be submitted to OMB for review under the Paperwork Reduction Act of 1995. OMB control numbers will be assigned and published in separate **Federal Register** notices. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

#### **W. Recovery Act**

Additional information about the Recovery Act is available at <http://www.Recovery.gov>.

#### **X. Authorized Signatories**

Only authorized grant officers can bind the Government to the expenditure of funds.

#### **Appendix to Notice of Funds Availability—Broadband Technology Opportunities Program Policy Justification**

##### **Streamlining the Application**

During the initial round of funding, applicants had a choice to complete a Broadband Infrastructure application, a Public Computer Center (PCC) application, or a Sustainable Broadband Adoption (SBA) application, depending on the type of project being proposed. Those applicants considered highly qualified after completing Step One of the review process were required to submit additional information during the Step Two “due diligence” review to substantiate the representations provided in the application.<sup>93</sup> During the initial round of funding, some stakeholders, especially those

applicants completing the Broadband Infrastructure application, stated that completing the initial application was overly burdensome due to the type and amount of questions asked and the number of attachments required. RUS and NTIA tentatively concluded that the application process should be streamlined and invited public comment in the RFI.<sup>94</sup>

Commenters generally support the current two-step review process and the level of information and supporting documentation that NTIA requires.<sup>95</sup> Only a small minority of commenters suggest doing away with the two-step review process in favor of a simplified one-step process modeled after NTIA’s Technologies Opportunities Program.<sup>96</sup> Additionally, while a minority of commenters advocate increasing the information requirements of Step One in order to validate the legitimacy of applications,<sup>97</sup> most commenters urge that NTIA require less information initially and defer the collection of supplementary budget and financial information until the Step Two due diligence review.<sup>98</sup> Commenters also argue that applicants should not be required to obtain engineering certifications,<sup>99</sup> environmental reviews,<sup>100</sup> or antenna sites and backhaul facilities<sup>101</sup> until Step Two. To minimize the burden of the application and review process, commenters recommend that NTIA increase the amount of time available to applicants to submit due diligence materials.<sup>102</sup>

NTIA concludes that it will modify aspects of the two-step review process to collect the most essential information upfront in the application, with the option to collect additional data during the due diligence review, as needed.

Commenters also offer numerous technical changes that would help streamline the application submission process during this round of funding. Commenters recommend that the Easygrants® System be tested for

<sup>94</sup> See 74 FR 58940, 58941 (Nov. 16, 2009).

<sup>95</sup> See, e.g., RVW, Inc. at 1 (Nov. 30, 2009); Merit Network at 1 (Nov. 30, 2009); City of Grover Beach at 1 (Nov. 30, 2009); Nemont Tel. Coop. at 1 (Nov. 30, 2009).

<sup>96</sup> See, e.g., Hous. Opportunities & Concepts at 1 (Nov. 25, 2009); Wireless Internet Serv. Providers Ass’n (WISPA) at 3–6 (Nov. 30, 2009).

<sup>97</sup> See, e.g., Nemont Tel. Coop. at 1; Mont. Indep. Telecomms. Sys. at 3 (Nov. 30, 2009); Nat’l Rural Telecomms. Coop. & DigitalBridge Commc’ns at 2 (Nov. 30, 2009).

<sup>98</sup> See, e.g., Fla.’s Heartland REDI at 1–2 (Nov. 30, 2009); Am. Library Ass’n at 5–6 (Nov. 30, 2009); Wis. Dep’t of Pub. Instruction at 2 (Nov. 30, 2009); Sch., Health, & Libraries Broadband Coal. at 8 (Nov. 30, 2009).

<sup>99</sup> See, e.g., Commonwealth of Pa. at 1–3 (Nov. 25, 2009); WISPA at 3–6; E. Or. Telecom at 1 (Nov. 19, 2009).

<sup>100</sup> See, e.g., Ctr. for Soc. Inclusion at 2 (Nov. 30, 2009); Rural Broadband Corp. at 11–13 (Nov. 30, 2009); Commonwealth of Pa. at 1–3.

<sup>101</sup> See, e.g., Penasco Valley Tel. Coop. at 2 (Nov. 30, 2009).

<sup>102</sup> See, e.g., Vantage Point Solutions at 10–11 (Nov. 30, 2009); Nat’l Educ. Broadband Serv. Ass’n at 3 (Nov. 30, 2009); Internet2 at 26–27 (Nov. 30, 2009); Rural Broadband Corp. at 6.

<sup>93</sup> See 74 FR at 33107.

stability and usability<sup>103</sup> and modified to accept alternative documents, such as graphical project timelines.<sup>104</sup> Multiple respondents advocate improving the mapping tool by creating separate versions for Last Mile and Middle Mile applications or by allowing applicants to submit mapping data in a number of different forms, including computer-aided design (CAD) or geographic information system (GIS) format.<sup>105</sup>

Commenters suggest achieving consistency between the application forms and guidance materials<sup>106</sup> and eliminating redundant questions, particularly those duplicating the Executive Summary requirements.<sup>107</sup> Commenters also suggest that eliminating or altering a number of attachments, including the engineering certification<sup>108</sup> and financial documentation,<sup>109</sup> would significantly improve the applicant experience.

NTIA agrees with commenters that the application process can be more user-friendly. Accordingly, it makes numerous adjustments to the online application system to streamline the intake of information and reduce applicant burden. These steps include separating the BTOP infrastructure application from the BIP infrastructure application, consistent with the independent administration of the BIP and BTOP programs, separating the PCC application from the SBA application, as well as eliminating the requirement to use the mapping tool to create proposed funded service areas. NTIA also makes it easier for applicants filing applications in multiple project categories to link these applications in furtherance of NTIA's focus on comprehensive communities. NTIA further simplifies the application requirements, including eliminating the submission of an engineering certification form with the initial application.

A majority of the commenters advocate abandoning Census blocks in favor of other means of specifying proposed funded service areas.<sup>110</sup> Commenting municipalities and cities unanimously express their dissatisfaction with the use of Census block data, citing it as a cumbersome method of reporting proposed funded service area

designations.<sup>111</sup> Multiple commenters offer zip codes, city boundaries, or even latitude and longitude coordinates as less burdensome alternatives for applicants.<sup>112</sup> Several commenters propose using Census tract data as a less burdensome alternative to Census block data, in part because broadband service providers are already required to report their subscriber and demographic information according to Census tracts in order to file FCC Form 477.<sup>113</sup>

NTIA agrees with commenters that requiring applicants to provide proposed funded service areas by Census block data is overly burdensome, especially when applicants could use other methods to indicate these areas. In this funding round, NTIA will instead require applicants to indicate their proposed funded service area using Census block groups or Census tracts.

#### Relationship Between BIP and BTOP

Because the Recovery Act prohibits a project from receiving funding from NTIA in areas where RUS has funded a project, the First NOFA required applicants whose proposed funded service areas were at least 75 percent rural to submit infrastructure applications to RUS for consideration under BIP, with the option of additional consideration under BTOP. The First NOFA provided that NTIA would not fund such an application unless RUS had declined to fund it. In response to informal comments from stakeholders during the initial round of funding, the agencies' RFI invited public comment on whether the agencies should continue to require that these kinds of rural infrastructure applications be submitted to RUS first or whether the agencies should permit applicants to file largely rural applications directly to NTIA without also having to submit them to RUS.<sup>114</sup>

The majority of commenters agree that rural applicants should be permitted to apply directly to NTIA for BTOP grants without being required first to apply to RUS for BIP loans or grants.<sup>115</sup> The most widely cited rationale was the needless burden imposed on applicants to provide the additional financial analysis required by the RUS loan application for rural projects that do not qualify as remote and unserved or are not viable with only 50 percent grant funding.<sup>116</sup> Commenters also cite the inefficiency of requiring RUS to review proposals that are not even viable for BIP.<sup>117</sup>

A majority of commenters favor the continued use of a common BIP-BTOP application to avoid the duplicative effort of

completing multiple applications.<sup>118</sup> A few of these commenters favor maintaining the approach taken in the initial round of funding that required concurrent joint applications and reserving to RUS the first option to fund eligible proposals.<sup>119</sup> The chief benefit adduced in support of this position is RUS's expertise in evaluating rural applications so as to avoid redundant awards to "active" RUS borrowers.<sup>120</sup> Commenters further recommend that the agencies implement a "check box" by which an applicant may request immediate consideration by NTIA because its rural project requires more than a 50 percent grant to be viable or seeks to address one of NTIA's broadband objectives<sup>121</sup> and allow applicants to produce only one financial analysis to demonstrate an ability to support either a 50 percent contribution (as required for BIP) or a 20 percent contribution (as required for BTOP) to a project.<sup>122</sup>

In this funding round, RUS and NTIA conclude that applicants that are eligible for both BIP and BTOP have the option to apply to either agency for funding for the same project, but applicants should apply to only one agency for a given project. Applicants who are current RUS borrowers or grantees, applicants who are proposing a Last Mile service area that is 75 percent or more rural, or applicants whose Last Mile component (to residential consumers and non-community anchor institutions) exceeds 20 percent of total eligible project costs are strongly encouraged to apply to RUS for funding under BIP.

Mindful of the statutory prohibition against duplicative funding, several parties suggest that RUS and NTIA might coordinate their funding determinations to leverage Federal resources most efficiently and effectively by having NTIA fund only grants and RUS fund only loans for rural projects;<sup>123</sup> awarding preference for BIP loans to applicants that apply to RUS first;<sup>124</sup> considering projects that are 75 percent rural for BTOP grant-only financing to leverage existing infrastructure and cooperative relationships (e.g., wireless network *via* rural electric cooperative);<sup>125</sup> and avoiding the appearance of duplicative funding by not funding in areas where BIP loans are active or have been recently approved.<sup>126</sup>

NTIA is in accord with the views of commenters who point out that the agencies are statutorily prohibited from funding

<sup>118</sup> See, e.g., Tex. Statewide Tel. Coop. at 5 (Nov. 25, 2009).

<sup>119</sup> See, e.g., Vantage Point Solutions at 5-7; Rural Cmty. Assistance P'ship at 2 (Nov. 19, 2009); RVW Inc. at 2; Mid-Rivers Commc'ns at 6-7 (Dec. 1, 2009); S.D. Telecomms. Ass'n at 5, 11 (Nov. 30, 2009).

<sup>120</sup> See, e.g., Mid-Rivers Commc'ns at 6.

<sup>121</sup> See, e.g., Nat'l Rural Telecomms. Coop. & DigitalBridge Commc'ns Corp. at 6-7 (Nov. 30, 2009).

<sup>122</sup> See, e.g., John Staurulakis, Inc. at 18; TCA at 1-2.

<sup>123</sup> See, e.g., E. Shore of Va. Broadband Auth. at 2 (Nov. 30, 2009).

<sup>124</sup> See, e.g., Penasco Valley Tel. Coop. at 5.

<sup>125</sup> See, e.g., TransWorld Network at 3 (Nov. 24, 2009).

<sup>126</sup> See, e.g., Mid-Rivers Commc'ns at 6.

<sup>103</sup> See, e.g., Tex. A&M at 1 (Nov. 29, 2009); City of Grover Beach at 1.

<sup>104</sup> See, e.g., City of Seattle at 3 (Nov. 30, 2009); Penasco Valley Tel. Coop. at iv, 3; City of N.Y. at 3 (Nov. 30, 2009).

<sup>105</sup> See, e.g., Rural Broadband Now! at 5 (Nov. 30, 2009); Nat'l Educ. Broadband Serv. Ass'n at 4 (Nov. 30, 2009); Mid-Rivers Commc'ns at 3-4 (Dec. 1, 2009).

<sup>106</sup> See, e.g., Mass. Executive Office of Hous. and Econ. Dev. at 5 (Nov. 30, 2009); NATOA at 20 (Nov. 30, 2009).

<sup>107</sup> See, e.g., FiberTower Corp. at 3-4 (Nov. 30, 2009); Cal. Broadband Coop. at 3 (Nov. 30, 2009).

<sup>108</sup> See, e.g., Ass'n of Commc'ns Engineers at 1-2 (Nov. 30, 2009); WHRO-TV at 1 (Nov. 30, 2009).

<sup>109</sup> See, e.g., Hostos Cmty. Coll. at 1 (Nov. 30, 2009); City of Philadelphia at 4 (Nov. 30, 2009); Broadband Satellite Commenters at 10 (Nov. 30, 2009).

<sup>110</sup> See, e.g., NCHT-Cleartalk at 1 (Nov. 21, 2009); Commonwealth of Pa. at 4; Satellite Indus. Ass'n at 4 (Nov. 30, 2009); New Am. Found. at 21 (Nov. 30, 2009).

<sup>111</sup> See, e.g., Montgomery County at 2 (Nov. 30, 2009); Oakland County at 1 (Nov. 30, 2009); City of N.Y. at 2; City of San Francisco at 3 (Nov. 30, 2009).

<sup>112</sup> See, e.g., Open Range Commc'ns at 4 (Nov. 30, 2009); Ctr. of Soc. Inclusion at 2; Harris Corp at iii (Nov. 30, 2009).

<sup>113</sup> See, e.g., John Staurulakis, Inc. at 14 (Nov. 30, 2009); Rural Broadband Corp. at 7.

<sup>114</sup> See 74 FR at 58941.

<sup>115</sup> See, e.g., Mass. Executive Office of Hous. and Econ. Dev. at 3-4; Am. Library Ass'n at 7.

<sup>116</sup> See, e.g., TCA at 1-2 (Nov. 30, 2009).

<sup>117</sup> See, e.g., XO Commc'ns at 2 (Nov. 30, 2009); TCA at 1-2.

projects in the same area and that such duplicative funding would be wasteful and inconsistent with the objectives of the Recovery Act. Thus, as in the first funding round, RUS and NTIA will not fund infrastructure projects in the same service area. The agencies will coordinate to identify potential service area overlaps and will resolve such conflicts in the manner that best satisfies the statutory objectives of both programs.

#### *Transparency and Confidentiality*

Consistent with the Administration's policy and the Recovery Act's objective to ensure greater transparency in government operations, RUS and NTIA invited public comment on whether the agencies should permit greater access, consistent with applicable Federal laws and regulations, to certain applicant information by other applicants, policymakers, and the public, including State and tribal governments.<sup>127</sup> In the RFI, the agencies tentatively concluded that the application's Executive Summary should be made publicly available in this round of funding.<sup>128</sup>

The overwhelming majority of commenters support the RFI's tentative recommendation to make the Executive Summary available to the public, but differ as to how much applicant information should be made public.<sup>129</sup> The majority of these commenters recommend that applicants be permitted to designate trade secrets, financial projections, and other proprietary information as confidential.<sup>130</sup> The majority of commenters caution, however, that should confidentiality protections not be provided, applicants would hold back critical information needed for an adequate review of the applications.<sup>131</sup> A minority of commenters support making the entire application public and available online without confidentiality protections.<sup>132</sup> Some States propose a compromise position whereby NTIA would publish expanded Executive Summaries disclosing pertinent facts (targeted area, type of technology used, project cost and revenue projections) and withhold only proprietary or patented technology from public disclosure.<sup>133</sup>

NTIA agrees with commenters who advocate more transparency throughout the application and evaluation processes. During this funding round, NTIA will post an announcement identifying each infrastructure application received, along with a list of the Census block groups or tracts that each application proposes to serve through its project, in addition to the information it is required to publicly disclose pursuant to the Recovery Act.

States advocate full access to entire applications, including mapping data, for

purposes of State consultation.<sup>134</sup> Similarly, tribal commenters recommend that, due to historic preservation and tribal sovereignty concerns, NTIA and RUS timely alert relevant tribes about applications that propose to serve their tribal lands.<sup>135</sup> In addition, several commenters contend that transparency should extend to the public notice comment and State consultation processes by making comments from existing service providers and State and tribal entities public.<sup>136</sup>

NTIA is sensitive to the needs of States and tribes when reviewing applications that propose to serve areas within their jurisdictions. NTIA will share with each relevant State and tribe applicants' data that are available on the publicly searchable database. Additional information may be requested directly from applicants by each State or tribe. In addition, NTIA will make the comments of the States and tribes available on the publicly searchable database, with the exception of any confidential information that the comments may contain. NTIA also will make certain information submitted by existing broadband service providers publicly available as part of the announcement process for applicants' proposed funded service areas.

#### **Funding Priorities and Comprehensive Communities**

During the initial round of funding, RUS and NTIA allocated a total of \$4 billion in funding for various project categories, including Last Mile infrastructure, Middle Mile infrastructure, Public Computer Center, and Sustainable Broadband Adoption projects. In response to numerous suggestions concerning how the NOFA could be modified to ensure that Recovery Act funds make the greatest possible impact, the agencies' RFI invited commenters to provide quantitative estimates of the projected benefits of adopting a more targeted funding approach during this round of funding.<sup>137</sup> NTIA and RUS also expressly requested comment on whether the agencies should focus on or limit funding to projects that will deliver Middle Mile infrastructure facilities into a group of communities and connect key anchor institutions within those communities.<sup>138</sup>

Approximately one-third of commenters who address the funding priorities section of the RFI recommend targeting community anchor institutions for special consideration in this round of funding.<sup>139</sup> These commenters suggest that certain institutions,

such as public safety agencies,<sup>140</sup> educational institutions,<sup>141</sup> and health service providers,<sup>142</sup> should receive greater funding priority in order to reflect their impact on economic development and their greater need for or use of broadband services. Many commenters advocating more targeted funding for community anchor institutions suggest that they should not need to meet the unserved/underserved criteria in order to qualify for funding.<sup>143</sup> One commenter suggests an entirely separate application track for community anchor institutions.<sup>144</sup> Supporters of this targeted funding approach agree that any definition of community anchor institutions should include K-12 schools,<sup>145</sup> libraries,<sup>146</sup> higher education facilities,<sup>147</sup> and healthcare facilities.<sup>148</sup> In addition to these entities, which were explicitly noted as priorities in the NOFA for the initial round of funding, some commenters suggest that NTIA use a more expansive definition of community anchor institution that encompasses public access media, performance spaces, and other community organizations.<sup>149</sup> Commenters also suggest focusing increased funding to small businesses<sup>150</sup> and public housing.<sup>151</sup>

A handful of organizations disagree that any one application type should be explicitly targeted for funding, even if it proposes to connect community anchor institutions or serve a "vulnerable" population.<sup>152</sup> In particular, these dissenting commenters advance the opinion that while community anchor institutions should be eligible for funding, they are not necessarily any more meritorious than other eligible entities.<sup>153</sup>

NTIA agrees with commenters that stress the importance of connecting broadband to community anchor institutions. Schools,

<sup>140</sup> See, e.g., Motorola at 8-9; Mass. Executive Office of Hous. and Econ. Dev. at 6-7.

<sup>141</sup> See, e.g., Nat'l Educ. Broadband Serv. Ass'n at 11; Corp. for Educ. Initiatives in Cal. at 1.

<sup>142</sup> See, e.g., Mayo Clinic at 3 (Nov. 24, 2009).

<sup>143</sup> See, e.g., City of N.Y. at 2, City of Philadelphia at 4-6 (Nov. 30, 2009); Sch., Health, & Libraries Broadband Coal. at 18.

<sup>144</sup> See, e.g., The Bill & Melinda Gates Found. at 1.

<sup>145</sup> See, e.g., Hot Springs Greater Learning Found. at 3 (Nov. 30, 2009); The Bill & Melinda Gates Found. at 1; Corp. for Educ. Initiatives in Cal. at 1.

<sup>146</sup> See, e.g., The Bill & Melinda Gates Found. at 1; Corp. for Educ. Initiatives in Cal. at 1; Am. Library Ass'n at 3; Nat'l Educ. Broadband Serv. Ass'n at 5-6.

<sup>147</sup> See, e.g., Hot Springs Greater Learning Found. at 2; The Bill & Melinda Gates Found. at 1; Nat'l Rural Telecomms. Coop. & DigitalBridge Commc'ns Corp. at 9.

<sup>148</sup> See, e.g., Mayo Clinic at 2; Univ. of Cal. Davis Med. Sys. at 2 (Nov. 30, 2009); Wash. State Law and Justice Org. at 3.

<sup>149</sup> See, e.g., Media Alliance at 2; Pub. Broad. Serv. at 1-5; Corp. for Educ. Initiatives in Cal. at 1.

<sup>150</sup> See, e.g., Towerstream at 3-4 (Nov. 30, 2009); Asian Am. Justice Ctr., League of United Latin Am. Citizens, Minority Media & Telecomms. Council, Nat'l Urban League & One Econ. Corp. at 5 (Nov. 30, 2009).

<sup>151</sup> See, e.g., One Econ. Corp. at 4.

<sup>152</sup> See, e.g., Towerstream at 2; Open Range Commc'ns at 6; Utopian Wireless at 7.

<sup>153</sup> See, e.g., Towerstream at 2; Telecom Transp. Mgmt. at 7; Internet2 at 24-25.

<sup>127</sup> See 74 FR at 58942.

<sup>128</sup> *Id.*

<sup>129</sup> See, e.g., Stratum Broadband at 8 (Nov. 14, 2009).

<sup>130</sup> See, e.g., Fairpoint Commc'ns at 5 (Nov. 30, 2009).

<sup>131</sup> See, e.g., Nat'l Rural Telecomms. Coop. and DigitalBridge Commc'ns Corp. at 8.

<sup>132</sup> See, e.g., New Am. Found. at 8.

<sup>133</sup> See, e.g., Commonwealth of Pa. at 5.

<sup>134</sup> See, e.g., Nat'l Ass'n of State Chief Info. Officers at 2 (Nov. 30, 2009).

<sup>135</sup> See, e.g., Forest County Potawatomi at 2 (Nov. 30, 2009).

<sup>136</sup> See, e.g., Motorola at 6 (Nov. 30, 2009); Rural Broadband Now! at 8.

<sup>137</sup> See 74 FR at 58942.

<sup>138</sup> *Id.*

<sup>139</sup> See, e.g., The Bill & Melinda Gates Found. at 1-2 (Nov. 30, 2009); Media Alliance at 2 (Nov. 25, 2009); Pub. Broad. Serv. at 1-5 (Nov. 30, 2009); Mass. Executive Office of Hous. and Econ. Dev. at 6; Mid Am. Reg'l Council at 2; Corp. for Educ. Initiatives in Cal. at 1 (Nov. 28, 2009); Am. Library Ass'n at 3.

libraries, colleges and universities, medical and healthcare providers, public safety entities, and other community support organizations increasingly rely on Internet connectivity to serve their constituencies and their communities. Expanding broadband capabilities for community anchor institutions will result in substantial benefits for the entire community, delivering improved education, healthcare, and economic development. Broadband connections to these facilities will not only enhance their services and effectiveness, but can also provide potential points of interconnection for Last Mile service directly to homes and businesses. For these reasons, NTIA focuses funding in this NOFA towards projects that connect community anchor institutions.

To leverage connections to community anchor institutions, a number of commenters explicitly support the prioritization of Comprehensive Communities.<sup>154</sup> Many supporters of a Middle Mile comprehensive community priority in this round of funding suggest that Middle Mile funding should be contingent upon a commitment from a Last Mile provider.<sup>155</sup> A smaller handful of commenters note that cooperation among Middle Mile and Last Mile providers should be encouraged but not required.<sup>156</sup> In opposition, some commenters argue that it may be too onerous for community anchor institutions such as schools and hospitals to obtain a Last Mile commitment.<sup>157</sup>

The minority of commenters who voice skepticism towards a Comprehensive Community approach to funding worry about the threat a Middle Mile priority would pose to the funding of Last Mile projects.<sup>158</sup> In addition to the relationship between Middle Mile and Last Mile projects, many commenters oppose the creation of set-asides for one type of application.<sup>159</sup>

NTIA agrees with commenters that support targeting the funding available in this round towards comprehensive communities with an emphasis on projects that emphasize Middle Mile broadband capabilities. Preliminary findings by the FCC's National Broadband Plan Task Force indicate that broadband service in unserved and underserved areas of the United States is limited due to insufficient capacity and to significantly higher costs of deploying Middle Mile services in some areas.<sup>160</sup> NTIA finds that the cost of Middle Mile service, particularly in

unserved and underserved areas, stifles broadband expansion for those that need it most. Insufficient Middle Mile broadband service not only limits the availability and affordability of end-user broadband connectivity for consumers and businesses, but it also diminishes the effectiveness of community anchor institutions in fulfilling their missions.<sup>161</sup>

For these reasons, NTIA seeks to focus on these types of projects by adopting a "comprehensive communities" approach to awarding BTOP infrastructure grants, which prioritizes Middle Mile projects integrated with community anchor institutions, including community colleges, or Last Mile service providers as a means of maximizing the leverage of taxpayer investments.

Commenters put forth a number of key criteria that NTIA should consider in its evaluation of Comprehensive Community projects, including cost effectiveness,<sup>162</sup> technology approaches,<sup>163</sup> the size of the matching funds,<sup>164</sup> and support from community anchor institutions.<sup>165</sup> Most commenters suggest evaluating projects based on the extent to which the applicant proposes to connect institutions that serve a vulnerable population group,<sup>166</sup> such as a historically black university or an institution serving primarily to Hispanic groups.<sup>167</sup> A smaller number of commenters suggest that NTIA evaluate the number of community anchor institutions connected by the project.<sup>168</sup> The proposal to use sustainability and public-private partnerships as potential criteria for evaluating Comprehensive Communities did not receive much support.<sup>169</sup>

NTIA agrees with many of the criteria suggested by commenters to evaluate Comprehensive Community Infrastructure projects. Evaluation criteria in this funding round will prioritize applications that include a Middle Mile component and demonstrate commitments to serve community anchor institutions, including community colleges, and incorporate public-private partnerships and public safety entities, along with the other project priorities and additional factors that are set forth in Section II. of this NOFA.

### Program Definitions—"Unserved" and "Underserved"

More than seventy commenters offer suggestions for clarifying the definitions of "unserved" and "underserved" used in the First NOFA. Many of these commenters contend that the current definitions are too restrictive and recommend that NTIA craft a broader standard.<sup>170</sup> A common concern among these commenters is that the current broadband penetration thresholds included in the definitions exclude many worthy projects located in urban areas.<sup>171</sup>

A substantial number of commenters advocate applying the definitions of "unserved" and "underserved" differently to different types of applicants.<sup>172</sup> Several commenters request that community anchor institutions<sup>173</sup> and projects that propose to serve vulnerable communities,<sup>174</sup> no matter where they are located, be exempt from having to meet the unserved or underserved definitions. A few commenters suggest that NTIA use different definitions depending on whether an applicant applies as an Infrastructure, PCC, or SBA project.<sup>175</sup>

Several commenters recommend that the socioeconomic status of an area be considered in determining whether that area is unserved or underserved. Specifically, several commenters express concern with using Census blocks to define an unserved or underserved area in the previous round and recommend that NTIA require applicants to use socioeconomic and demographic data instead to identify unserved and underserved areas.<sup>176</sup> Many commenters also suggest that the underserved and unserved definitions consider the effects of poverty on adoption, especially as it relates to the affordability of broadband in an area, and evaluate projects that propose to address these adoption barriers more positively.<sup>177</sup>

Finally, several commenters suggest that NTIA use actual guaranteed speeds as opposed to advertised speeds to determine whether an area is considered underserved.<sup>178</sup> Commenters are divided

<sup>154</sup> See, e.g., Sch., Health, & Libraries Coal. at 15; Am. Library Ass'n at 8; Corp. for Educ. Initiatives in Cal. at 1.

<sup>155</sup> See, e.g., S. C. Broadband Coal. at 3 (Nov. 30, 2009); Mayo Clinic at 3; Univ. of Cal. Davis Med. Sys. at 2.

<sup>156</sup> See, e.g., The Bill & Melinda Gates Found. at 5; Mass. Executive Office of Hous. and Econ. Dev. at 7.

<sup>157</sup> See, e.g., Sch., Health, & Libraries Broadband Coal. at 17; Am. Library Ass'n at 8.

<sup>158</sup> See, e.g., Nat'l Telecomms. Coop. Ass'n at 4 (Nov. 30, 2009); Mont. Indep. Telecomms. Sys. at 4; Nat'l Pub. Broadband at 1 (Nov. 25, 2009); City of N.Y. at 4–5.

<sup>159</sup> See, e.g., Commonwealth of Pa. at 9; RVW, Inc. at 2.

<sup>160</sup> FCC Identifies Critical Gaps in Path to Future Universal Broadband, News Release (Nov. 18, 2009).

<sup>161</sup> See, e.g., The Bill & Melinda Gates Found. at 6–7 (public libraries); May Clinic at 3 (telemedicine); Motorola at 8–9 (public safety).

<sup>162</sup> See, e.g., NTCH-Cleartalk at 1; Spacenet, Inc. at 6 (Nov. 30, 2009); Rural Broadband Now! at 6–7.

<sup>163</sup> See, e.g., NATOA at 12 (Nov. 30, 2009).

<sup>164</sup> See, e.g., Inst. for Local Self-Reliance (ILSR) at 3 (Nov. 30, 2009).

<sup>165</sup> See, e.g., Forest County Potawatomi at 3.

<sup>166</sup> See, e.g., CBN Connect at 2; City of San Francisco at 3; The Bill & Melinda Gates Found. at 2.

<sup>167</sup> See, e.g., Asian Am. Justice Ctr., League of United Latin Am. Citizens, Minority Media and Telecomms. Council, Nat'l Urban League, and One Econ. Group at 5–6.

<sup>168</sup> See, e.g., City of San Francisco at 3; The Bill & Melinda Gates Found. at 2; Corp. for Educ. Initiatives in Cal. at 1.

<sup>169</sup> But see, e.g., Stratum Broadband at 12.

<sup>170</sup> See, e.g., City of N.Y. at 7; New Am. Found. at 20–21; Telecomms. Indus. Ass'n at 8 (Nov. 30, 2009); San Jose Hispanic Chamber of Commerce at 2 (Nov. 30, 2009); City of Chicago at 7; Broadband Satellite Commenters at 15 (Nov. 30, 2009); Nat'l Rural Telecomms. Coop. & DigitalBridge Commc'ns Corp. at 11.

<sup>171</sup> See, generally, E. Or. Telecom at 2; N.Y. State Ass'n of Counties at 2 (Nov. 30, 2009); City of N.Y. at 2.

<sup>172</sup> See, e.g., Towerstream at 3–4; City of N.Y. at 2; San Jose Hispanic Chamber of Commerce at 2; FiberTower Corp. at 8–9.

<sup>173</sup> See, e.g., New Am. Found. at 10; Telecomms. Indus. Ass'n at 14; Am. Library Ass'n at 15.

<sup>174</sup> See, e.g., San Jose Hispanic Chamber of Commerce at 3; Digital Impact Group at 2; Trace Ctr., Univ. of Wis. at 1–3; Broadband for the Deaf & Hard of Hearing at 4.

<sup>175</sup> See, e.g., Digital Impact Group at 2; State of Mich. at 11; City of Phoenix at 3.

<sup>176</sup> See, e.g., Montgomery County, Md. at 2–3; NATOA at 6–7; Mid Am. Reg'l Council at 1.

<sup>177</sup> See, e.g., Cricket Commc'ns at 7–8; Cmty. Connect Network at 1–2; City of Philadelphia at 6–7.

<sup>178</sup> See, e.g., Flow Mobile at 12; City of Seattle at 9–11; Inst. for Local Self-Reliance at 4; City of Portland, Or. at 2; City of Houston at 3; Wireless

whether NTIA should eliminate the provision that defined a service area as underserved or unserved if certain broadband speeds were unavailable, with some commenters recommending that speed be eliminated as a criterion,<sup>179</sup> but many more recommending that available speeds remain a focus for defining unserved and underserved areas.<sup>180</sup>

NTIA disagrees with commenters in a variety of respects. The First NOFA provided very specific definitions of what constitutes an unserved and underserved area for BTOP purposes. In NTIA's review of applications submitted by private companies, community anchor institutions, and other stakeholders in the first funding round, NTIA does not believe that its definitions proved to be overly restrictive or hindered applicants from applying. Additionally, NTIA finds that, for purposes of consistency between the two rounds of funding as well as between BTOP and the Broadband Mapping Program, the definitions of unserved and underserved should remain largely unchanged. NTIA has, however, removed the requirement that infrastructure projects connecting community anchor institutions, including community colleges, must be located in unserved or underserved areas. The Comprehensive Community Infrastructure project category will consider whether a proposed funded service area is unserved or underserved as an additional factor giving an application more priority in scoring. For all of these reasons, NTIA decides against substantially revising its definitions of unserved and underserved.

#### Announcement of Applicants' Proposed Funded Service Areas

The First NOFA allowed existing broadband service providers an opportunity to comment on an applicant's assertions that its proposed funded service areas are unserved or underserved.<sup>181</sup> During the initial round of funding, some stakeholders suggested that this rule may reduce incentives for applicants to participate in BIP and BTOP because of the risk that their applications may be disqualified from funding on the basis of information submitted by existing broadband service providers that they have no means to substantiate or rebut. The RFI sought comment on whether alternative verification methods could be established that would be fairer to both applicants and challengers, what type of information should be collected from the entity questioning the service area, and what information should be subject to public disclosure.<sup>182</sup>

Numerous commenters request a more transparent and defined process in which the agencies describe the procedures and criteria used to determine whether an applicant's

Commc'ns Ass'n Int'l at 5–8; NATOA at 10–11; City of Tacoma at 3; E. Shore of Va. Broadband Auth. at 3.

<sup>179</sup> See, e.g., Commonwealth of Pa. at 13; Wireless Internet Serv. Providers at 13.

<sup>180</sup> See, e.g., Flow Mobile at 12; City of Seattle at 6–7; Am. Cable Ass'n at 13–14; E. Shore of Va. Broadband Auth. at 3; Alcatel Lucent at 2–3.

<sup>181</sup> 74 FR at 33122.

<sup>182</sup> See 74 FR at 58943–44.

proposed funded service area is unserved or underserved and make data submitted during the announcement process available to the public.<sup>183</sup> Further, to assuage concern that an application may be disqualified from funding based on information submitted during the announcement process, many respondents suggest that applicants be provided an opportunity to review and rebut the comments that existing broadband service providers submit.<sup>184</sup> In addition, many commenters suggest that data should be collected from a number of sources before NTIA renders a final determination as to whether broadband is already available, such as FCC Form 477 data.<sup>185</sup>

Commenters also provide suggestions as to what type of information should be gathered from existing broadband service providers seeking to submit comments. Commenters overwhelmingly urge NTIA to require that broadband service providers demonstrate that available broadband claims are based on actual speed<sup>186</sup> and coverage,<sup>187</sup> which is independently verifiable and not simply as advertised.<sup>188</sup> Further, a majority of commenters request that incumbents provide detail at the Census block level corresponding with the application.<sup>189</sup> Some respondents propose that NTIA require existing broadband service providers who comment on an application's proposed funded service area to supply the names and addresses of current subscribers within the designated area<sup>190</sup> or prove coverage by posting coverage availability on their Web site at all times.<sup>191</sup>

For this round of funding, NTIA will post an announcement identifying each CCI application it has received, along with a list of the Census block groups or tracts that each infrastructure application has proposed to serve through its project at <http://www.broadbandusa.gov> for a 15-day period. The announcement will provide existing broadband service providers with an opportunity to voluntarily submit to NTIA information about the broadband services that they currently offer in their respective service territories by Census block group or tract. If an existing broadband service provider submits a response outside the 15-day period, the information may not be considered by NTIA in its evaluation of an

<sup>183</sup> See, e.g., Flow Mobile at 14; Spacenet at 7; Mass. Executive Office of Hous. and Econ. Dev. at 8.

<sup>184</sup> See, e.g., City of Chicago at 3; CONXX at 15; Rural Broadband Now! at 8; NATOA at 17.

<sup>185</sup> See, e.g., Am. Cable Ass'n at 14–16; CONXX at 15; U.S. Telecom at 26; Univ. of Ark. Med. Serv. at 5; Stratium Broadband at 21–22.

<sup>186</sup> See, e.g., New Am. Found. at 23; Inst. for Local Self-Reliance at 5; Merit Network at 8–9; Am. Fiber Sys. at 3; City of Grover Beach at 12.

<sup>187</sup> See, e.g., Stratium Broadband at 22; NTCH–Cleartalk at 1; Am. Fiber Sys. at 3; City of Grover Beach at 12; CONXX at 15.

<sup>188</sup> See, e.g., New Am. Found. at 23; Flow Mobile at 14; City of Grover Beach at 12.

<sup>189</sup> See, e.g., Merit Network at 8–9; Open Range Commc'ns at 9; Stratium Broadband at 22; Commonwealth of Pa. at 13; Fairpoint Commc'ns.

<sup>190</sup> See, e.g., Loudoun County, Va., OpenBand Multimedia, LLC & Roadstar Internet, Inc at 7; CONXX at 15.

<sup>191</sup> See, e.g., Found. Telecomm. at 1.

applicant's Last Mile or Middle Mile service area(s) as unserved or underserved, as applicable.

NTIA will consider such comments provided they include the information set forth in Section V.D.3 of the NOFA, some of which will be made public.

NTIA adopts this method of evaluating the unserved or underserved status of applicants' proposed funded service area as a means to improve the analysis and minimize the burden on applicants and commenters. NTIA also departs from the evaluation process that RUS will use in that it will no longer use the RUS mapping tool to have applicants and commenters draw service area maps or require existing broadband service providers to submit comments on each proposed funded service area specified in an application. As a result of these process enhancements, NTIA believes it can expedite the time period in which existing service providers have to submit their comments from 30 days to 15 days. This expedited schedule will allow NTIA to begin its evaluation of the unserved or underserved status of applications that enter due diligence much more quickly than in the previous round of funding.

#### Interconnection and Nondiscrimination Requirements

In the RFI, NTIA and RUS invited public comment on whether the interconnection and nondiscrimination requirements for infrastructure applicants in the initial round of funding should be changed.<sup>192</sup> Commenters generally suggest that NTIA maintain the same rules as those of the First NOFA with no modification to their scope or application.<sup>193</sup>

However, several commenters suggest modifying the scope and application of the nondiscrimination and interconnection requirements.<sup>194</sup> Commenters suggest minor adjustments that could be made to these requirements in order to advance certain market efficiencies,<sup>195</sup> including requiring grantees to provide fully functional and comprehensive operations support systems and associated Application Programming Interfaces for their wholesale services<sup>196</sup> and for NTIA to rephrase the network management and managed service exceptions in order to encourage companies to provide shared managed services.<sup>197</sup> Some commenters also request that certain applicants such as tribes<sup>198</sup> and municipalities<sup>199</sup> be exempt from the NOFA's nondiscrimination and

<sup>192</sup> 74 FR at 58944.

<sup>193</sup> See, e.g., Tex. Statewide Tel. Coop. at 12; New Am. Found. at 23; Vantage Point Solutions at 10; Eng'g Ass'n at 4; Harris Corp. at iv; CONXX at 16; City of San Francisco at 1; Am. Fiber Sys. at 4; E. Shore of Va. Broadband Auth. at 5; Mid-Rivers Commc'ns at 10; Commonwealth of Pa. at 14.

<sup>194</sup> See, e.g., Earthlink and New Edge Network at 2; Stratium Broadband at 23–24.

<sup>195</sup> *Id.*

<sup>196</sup> See, e.g., Earthlink and New Edge Network at 2.

<sup>197</sup> See, e.g., Stratium Broadband at 23–24.

<sup>198</sup> See, e.g., United Tribes Technical Coll. at 1.

<sup>199</sup> See, e.g., City of Phoenix at 3.

interconnection requirements.<sup>200</sup> In opposition, some commenters request that the requirements be applied to every applicant, regardless of the nature of the entity.<sup>201</sup>

Commenters express concern that NTIA's requirements would not mirror the rules that are ultimately adopted in the Federal Communications Commission's (FCC) ongoing rulemaking proceeding regarding a Free and Open Internet.<sup>202</sup> These commenters argue that if the requirements applicable to BTOP applicants are inconsistent with those faced by other service providers, then these additional nondiscrimination obligations will prove burdensome or duplicative for broadband service providers receiving grant funds.<sup>203</sup> Commenters suggest that NTIA declare a sunset date for these requirements either when the FCC finalizes its network neutrality rules or at another reasonably foreseeable date.<sup>204</sup> Commenters also recommend that NTIA declare that compliance with the FCC rules would be sufficient to meet the requirements of BTOP.<sup>205</sup>

A few commenters oppose the First NOFA's nondiscrimination and interconnection requirements altogether.<sup>206</sup> These commenters argue that the scope of these requirements chilled participation in the Program during the initial round of funding<sup>207</sup> and that the requirements conflicted with a private company's ability to manage its own network.<sup>208</sup> Commenters also argue that the current approach to the requirements would pose an oversight problem for NTIA and RUS and recommend that compliance be left up to the grant recipients.<sup>209</sup>

A few commenters also recommend that NTIA clarify its interconnection requirements in order to minimize cost and controversy.<sup>210</sup> These commenters are especially concerned that the interconnection and nondiscrimination rules during the initial round of funding were unclear as applied to contractors or subcontractors.<sup>211</sup>

NTIA agrees with commenters that support maintaining the consistency of the interconnection and nondiscrimination

<sup>200</sup> See, e.g., Merit Networks at 9 (suggesting a balancing test when applying the nondiscrimination and interconnection requirements).

<sup>201</sup> See, e.g., Org. for the Promotion & Advancement of Small Telecomms. Companies at 7–8; Indep. Tel. and Telecomms. Alliance at 10.

<sup>202</sup> See, e.g., ADTRAN at 4–5; Telecomms. Indus. Ass'n at 18; Indep. Tel. and Telecomms. Alliance at 10; Open Range Commc'ns at 10–11; U.S. Telecom at 32.

<sup>203</sup> See, e.g., ADTRAN at 2; Telecomms. Indus. Ass'n at 18; U.S. Telecom at 31–33.

<sup>204</sup> See, e.g., Indep. Tel. and Telecomms. Alliance at 10; Open Range Commc'ns at 10–11; ADTRAN at 4–5.

<sup>205</sup> See, e.g., ADTRAN at 4–5.

<sup>206</sup> See, e.g., AT&T at 17–18; State of S.D. at 1; AzulStar at 4.

<sup>207</sup> See, e.g., AT&T at 17–18.

<sup>208</sup> See, e.g., State of S.D. at 1; AzulStar at 4.

<sup>209</sup> See, e.g., AT&T at 18.

<sup>210</sup> See, e.g., Stratum Broadband at 24; Alaska Commc'ns Sys. at 7–8; AT&T at 18–19; U.S. Telecom at 33–34; CONXX at 16.

<sup>211</sup> *Id.*

requirements across the two rounds of funding. Leaving the requirements unchanged from the initial round of funding will help to facilitate the administration of the grants awarded during the first and second rounds and avoid imposing differing nondiscrimination and interconnection standards on recipients. Accordingly, NTIA has decided against making any significant revisions to this section. Any changes made to this section from the First NOFA are intended only to clarify and not change the applicants' obligations.

#### Sale of Project Assets

Section IX.C.2 of the NOFA generally prohibits the sale or lease of award-funded broadband facilities, unless the sale or lease meets certain conditions. Specifically, the agencies may approve a sale or lease if it is for adequate consideration, the purchaser agrees to fulfill the terms and conditions relating to the project, and either the applicant includes the proposed sale or lease in its application as part of its original request for grant funds or the agencies waive this provision for any sale or lease occurring after the tenth year from the date the grant, loan, or loan/grant award is issued.<sup>212</sup> Some stakeholders have suggested that this “ten-year holding rule” is overly restrictive and is a barrier to participation in BIP and BTOP.<sup>213</sup> The agencies invited public comment on whether and how this section should be revised to adopt a more flexible approach toward awardee mergers, consistent with USDA and DOC regulations, while still ensuring that awardees are not receiving excessive profit from the sale of award-funded assets.<sup>214</sup>

The clear majority of forty-seven parties who filed comments on the NOFA's conditions on the post-award sale or lease of project assets support a relaxation of these conditions.<sup>215</sup> Only a few commenters support retention of the rules.<sup>216</sup> Most commenters agree that the prohibitions on the sale or lease of project facilities are unreasonably broad because they fail to provide flexibility for the government to consent to a reasonable lease or sale during the first ten years. One commenter voices a concern shared by many that the conditions restricting post-award sales or leases may inhibit obtaining funding for the project, explaining that “the 10-year prohibition on the sale of the funded assets also seems to cause a ‘chilling effect’ in terms of capital raising by applicants and may have caused many potential broadband providers to avoid BIP/BTOP entirely.”<sup>217</sup>

Commenters supporting greater flexibility regarding the sale of assets recommend the

<sup>212</sup> See 74 FR at 58944.

<sup>213</sup> See, e.g., KeyOn Commc'ns at 3; Commc'ns Finance Ass'n at 1.

<sup>214</sup> See 74 FR at 58944.

<sup>215</sup> See, e.g., Cricket Commc'ns at 12; Stratum Broadband at 12; Flow Mobile at 15.

<sup>216</sup> Eng'g Ass'n, Inc. at 4; E. Shore of Va. Broadband Auth. at 5; Canby Telecom at 1; Mid-Rivers Commc'ns at 10.

<sup>217</sup> See, e.g., KeyOn Commc'ns at 3; E. Shore of Va. Broadband Auth. at 5; Native Broadband Satellite at 8; Alaska Commc'ns Sys. at 8; Cricket Commc'ns at 12; Cal. Broadband Coop. at 5.

following revisions: The second NOFA should allow the government to approve the sale or lease of project assets on a case-by-case basis;<sup>218</sup> the agencies should remove the 10-year limit and focus on unjust enrichment;<sup>219</sup> clarify that the project assets mean only those assets which are purchased directly from grant funds awarded and not \* \* \* equipment or services purchased \* \* \* with “matching funds;”<sup>220</sup> relax rules so that the agencies may approve sales, “as long as the successor agrees to the obligations of the program;”<sup>221</sup> allow for accelerated depreciation of assets;<sup>222</sup> restrictions should not apply to IRUs or leases to research and education networks;<sup>223</sup> and modify the policy to accommodate the sale or lease to accommodate the normal five-year replacement cycle of broadband equipment.<sup>224</sup>

NTIA agrees with the majority of commenters proposing to relax restrictions on the post-award sale or lease of project assets and revises this section accordingly. As a result, awardees may petition for a waiver authorizing the sale or lease of assets at any time during the life of the award-funded facilities and shall include supporting documentation and justification regarding why the petition should be granted.

Dated: January 15, 2010.

**Lawrence E. Strickling,**

*Assistant Secretary for Communications and Information.*

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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

RIN 0572–ZA01

#### Broadband Initiatives Program

**AGENCY:** Rural Utilities Service, Department of Agriculture.

**ACTION:** Notice of Funds Availability (NOFA) and solicitation of applications.

**SUMMARY:** The Rural Utilities Service (RUS) announces its general policy and application procedures for the second round of funding under the broadband initiatives (the Second Round NOFA) established pursuant to the American Recovery and Reinvestment Act of 2009 (Recovery Act) for the Broadband Initiatives Program (BIP) which provides loans, grants, and loan/grant combinations to facilitate broadband deployment in rural areas. In facilitating the expansion of broadband

<sup>218</sup> See, e.g., Rural Broadband Now at 9.

<sup>219</sup> See, e.g., U.S. Telecom at 37–38.

<sup>220</sup> See, e.g., Dixie Tech. Funding Agency at 15.

<sup>221</sup> See, e.g., Monte R Lee & Co. at 8.

<sup>222</sup> See, e.g., Senior Broadband/Internet Adoption Collaborative at 10.

<sup>223</sup> See, e.g., Internet2 at 26–27.

<sup>224</sup> See, e.g., TransWorld Network at 5.