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HEARING TO REVIEW RURAL BROADBAND PROGRAMS

HEARING

BEFORE THE

SUBCOMMITTEE ON RURAL DEVELOPMENT, BIOTECHNOLOGY, SPECIALTY CROPS, AND FOREIGN AGRICULTURE

OF THE

COMMITTEE ON AGRICULTURE
HOUSE OF REPRESENTATIVES

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

JULY 9, 2009

Serial No. 111–22

Printed for the use of the Committee on Agriculture
agriculture.house.gov

U.S. GOVERNMENT PRINTING OFFICE

52–651 PDF WASHINGTON : 2009

For sale by the Superintendent of Documents, U.S. Government Printing Office
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HEARING TO REVIEW RURAL BROADBAND PROGRAMS

THURSDAY, JULY 9, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON RURAL DEVELOPMENT,
BIOTECHNOLOGY, SPECIALTY CROPS, AND FOREIGN AGRICULTURE,
COMMITTEE ON AGRICULTURE,
Washington, D.C.

The Subcommittee met, pursuant to call, at 10:00 a.m., in Room 1300, Longworth House Office Building, Hon. Mike McIntyre [Chairman of the Subcommittee] presiding.

Members present: Representatives McIntyre, Bright, Minnick, Conaway, Roe, Thompson, Cassidy, and Lummis.

Staff present: Aleta Botts, Claiborn Crain, Tyler Jameson, John Konya, April Slayton, Rebekah Solem, Patricia Barr, Mike Dunlap, and Jamie Mitchell.

OPENING STATEMENT OF HON. MIKE McINTYRE, A REPRESENTATIVE IN CONGRESS FROM NORTH CAROLINA

The CHAIRMAN. This hearing of the Subcommittee on Rural Development, Biotechnology, Specialty Crops, and Foreign Agriculture to review rural broadband programs will come to order. As you can see, we are starting very promptly on time because we have word we may be interrupted by 13 votes. So we are going to ask our witnesses to the extent they can to homogenize, reduce and summarize their remarks so that we can get your testimony. We have to use agricultural terms here.

We want to welcome everybody to today's hearing to review rural broadband programs and funding for these programs that was included in economic stimulus legislation, in particular, that was passed earlier this year by Congress. Thank you all for being here as we examine this important topic.

It was the very first week of this year, in fact the day after our swearing in to the new Congress, that I hosted a roundtable discussion in this room to talk about rural needs and particularly rural broadband. We had rural organizations from around the country come and talk about significant infrastructure needs, and also how rural areas were faring within the economic environment. We had some tough discussions. As a result we were pleased in the following weeks to be able to secure $7.2 billion within the stimulus package to address rural broadband needs across the country.

We know that with the impact of the Internet upon our everyday lives, that we have an economy that can be fueled by millions of

computers literally across the globe with the ability to speak to each other just with the stroke of a key. We want to make sure that, as we look at health care, as we look at education, as we look at business relationships, opportunities, and economic possibilities that we have that opportunity for rural areas not to be left behind.

The biggest telecommunications issue right now, I know, in our district of southeastern North Carolina is the deployment of broadband to bring these vital Internet services into consumers' homes. And even while many people in the urban and suburban areas have high-speed Internet, there are huge swaths of rural counties that remain dependent upon unreliable dial-up connections. The poor quality and speed of dial up prevents many individuals from being able to run a business, help their children with school research projects, and be able to hook into distant health care providers for medical assistance.

Broadband deployment can and will be a huge economic success for rural America. We appreciate the companies that are already working in this regard to hook up their customers to broadband in areas previously unserved. The economic stimulus bill included $2.5 billion for the Rural Utilities Service and more than $4 billion for the NTIA Broadband Program. With this legislation Congress charged both agencies with the difficult task, but necessary task, of developing programs quickly that could expand access to broadband and bridge the digital divide.

I was pleased to see the Notice of Funds Availability in the *Federal Register* this past week and recognize the tremendous work done by both agencies to bring us to this point. However, I am concerned that some of the provisions in the notice will arbitrarily disqualify large areas of unserved rural areas from receiving grant dollars.

Also, other provisions appear to permit the Federal Government to make broadband investments in areas that may already have been adequately served by private providers. So this is something we hope our witnesses can help us clear up today, and also address if these are problems that are, indeed, still germane to this issue of providing full rural broadband service.

This Committee dealt with many of the same issues in the writing of the 2008 Farm Bill, and through the amendments we were able to make the Broadband Loan Program that is authorized through that legislation. After hearing many concerns that the program was simply not reaching the unserved rural areas that Congress intended, changes were made in the farm bill to target those areas without forcing existing incumbent service providers out of business.

The funding provided in the stimulus holds enormous potential to reduce the digital divide and provide our rural areas with increased broadband access. However, let us all make no mistake that funding will not be sufficient to reach every single rural unserved area, particularly if a large proportion of those funds end up going to increasing the areas that are already served, or to provide service where providers are already present. With limited funds we must prioritize.

If our goal is universal access to broadband, the programs we construct must aim for that goal. I would ask our speakers to par-

ticularly note that and address that. To be clear, I do appreciate the effort taken with this funding notice to accomplish that goal, and we are making progress. I would encourage the agencies involved, however, to consider these issues and the history of the Federal Broadband Deployment Program as you approve applications to ensure that the same mistakes are not made twice.

I look forward to hearing from both agencies on their plans for these programs, and learning more from USDA on the plans for the Broadband Loan Program regulations that are still unpublished over a year after the 2008 Farm Bill was enacted.

Finally, I hope the witnesses on the second panel will provide additional context for us to understand the funding notice from the perspective of the entities providing the broadband service on the ground. We want to make sure we are not just meeting technical regulations, but that we are within the spirit of what we want to provide with broadband service in unserved areas. That is the ultimate goal.

I would encourage witnesses to use the 5 minutes provided for their statements to highlight the most important points in their testimony. Please do not read your testimony unless you can read it within 5 minutes, or you can at least read the highlights within 5 minutes. Pursuant to Committee rules, testimony by witnesses along with questions and answers by Members and witnesses will be stopped at 5 minutes. Our preference today is to shorten that even more with the large interruption of votes that we expect, unfortunately. Your complete written testimony, please be assured, however, will be submitted and be allowed to be printed in its entirety in the record.

[The prepared statement of Mr. McIntyre follows:]

PREPARED STATEMENT OF HON. MIKE MCINTYRE, A REPRESENTATIVE IN CONGRESS FROM NORTH CAROLINA

Good morning, and welcome to today's hearing to review rural broadband programs and funding for these programs provided in the economic stimulus legislation Congress passed earlier this year. I want to thank all of you for being here as we examine this important topic, and I want to especially thank our witnesses who will be testifying before us today.

The very first week of the 111th Congress, before the Agriculture Committee was even fully organized and operational, I held a roundtable discussion on the importance of funding rural broadband throughout the country. I invited rural organizations to discuss the significant infrastructure needs faced by rural communities and how rural areas were faring in the current difficult economic environment. As a result, we were able to secure $7.2 billion within the stimulus package to address rural broadband needs across the country.

The impact of the Internet is clear on our everyday lives. Our economy is fueled by millions of computers across the globe with the ability to speak to each other with the stroke of a key. Students in Japan can directly communicate with students right in my home town of Lumberton, North Carolina through chat rooms, educational *fora,* and telephone Internet services like Skype. Patients and their doctors can have personal consultations despite being hundreds of miles of apart. Even visitors to our nation's Capitol must access the Internet to make reservations!

The biggest telecommunications issue in my district right now is deployment of broadband to bring these vital Internet services into consumers' homes. While many citizens in our urban and suburban areas of Wilmington and Fayetteville have high-speed Internet, huge swaths of my rural counties remain dependent on unreliable dial-up connections. The poor quality and speed of dial-up Internet prevents many individuals from being able to run a business, help their children with school research projects, and hook into distant health care providers for medical assistance.

Broadband deployment can and will be a huge economic success for rural America. And all of our witnesses testifying here today will be integral parts of that success story. Already, companies serving my district like Verizon, Embarq, and the rural telephone cooperatives are hooking up customers to broadband in areas previously unserved, and I look forward to that continuing.

The economic stimulus bill included $2.5 billion for the Rural Utilities Service and more than $4 billion for the NTIA broadband program. With this legislation, Congress charged both agencies with the difficult task of developing programs quickly that could expand access to broadband and bridge the digital divide. I was pleased to see the Notice of Funds Availability in the *Federal Register* this past week and recognize the tremendous work done at both agencies to bring us to this point. However, I am concerned that some of the provisions in the Notice will arbitrarily disqualify large swaths of unserved, rural areas from receiving grant dollars. Furthermore, other provisions appear to permit the Federal Government to make broadband investments in areas that may already be adequately served by private providers.

This Committee dealt with many of these same issues in the writing of the 2008 Farm Bill and through the amendments we made to the broadband loan program that is authorized through that legislation. We carefully evaluated the history of the loan program after hearing concerns from many that it simply was not reaching the unserved, rural areas that Congress intended, and made changes to the program to target better those areas without forcing existing incumbent service providers out of business.

The funding provided in the stimulus holds enormous potential to reduce the digital divide and provide our rural areas with increased broadband access. However, make no mistake: that funding will not be sufficient to reach every rural, unserved area, particularly if a large proportion of those funds go to increasing speeds in already served areas or goes to provide service where providers are already present. With limited funds, we must prioritize and if our goal is universal access to broadband, the programs we construct must aim for that goal.

To be clear, I do appreciate the effort taken with this funding notice to accomplish that goal, and I think we are making progress. I would encourage the agencies involved, however, to consider these issues and the history of Federal broadband deployment programs as they approve applications to ensure we do not make the same mistakes twice. I look forward to hearing from both agencies on their plans for these programs and to learning more from USDA on the plans for the broadband loan program regulations that are still unpublished over a year after the 2008 Farm Bill was enacted. Finally, I hope the witnesses on the second panel will provide additional context for us to understand the funding notice from the perspective of the entities providing broadband service on the ground.

The CHAIRMAN. We thank you for your cooperation in advance, and I now call on Ranking Member, Mr. Conaway, for any comments he would like to make.

OPENING STATEMENT OF HON. K. MICHAEL CONAWAY, A REPRESENTATIVE IN CONGRESS FROM TEXAS

Mr. CONAWAY. Thank you, Mr. Chairman. I thank you for holding this hearing to review rural broadband programs. I am pleased that we have a broad set of witnesses here today to share their thoughts on the recent announcement of available funds, and I thank them for taking their time to be with us here today.

The current economic climate places new and acute burdens on rural America. From the small businesses in each of our communities, to the farmers and ranchers working every daylight hour, the benefit of broadband access can help them gain access and to compete in a global market. Bridging the broadband divide can send American jobs to rural America, not overseas. This in turn will create a sustainable and thriving future for small communities across the country. To achieve that goal, access must be affordable and accessible to people living in rural America.

The 2008 Farm Bill provided additional guidance to help focus efforts to deploy broadband access in the countryside. Unfortunately,

even though that bill came out over a year ago, we have yet to see the rule for the Broadband Loan Program. I hope that the Administration can provide an explanation for the delay and can provide an assurance as to when the rule might be forthcoming.

I also hope the witnesses will discuss the nondiscrimination and interconnection obligations required of the grant loan applicants. These new provisions seem to preempt the FCC's rulemaking procedures and put applicants in a precarious legal quandary when the FCC has yet to rule on definitions for *nondiscrimination* and *interconnection*. I am concerned that these new requirements will prevent competitive applicants from applying because of the broad ramifications that would be required of the overall network.

It seems obvious the nondiscrimination and interconnection obligations would go against the goals of expanding broadband across the country and providing an economic stimulus to regions in the most need.

This Subcommittee has been carefully watching how the funds are going to be disbursed since February of this year. Even though it is an imperfect approach to economic policy with an unprecedented increase in the size and cost of the government, it is incumbent upon Congress to ensure over a trillion dollars is directed to the areas of greatest need. Unfortunately, this approach also forces the Broadband Program to move forward without the benefit of a comprehensive plan or a map of the existing service.

It is my belief that the Davis-Bacon requirements included in this rule will increase the cost of grants and loans in states like Texas and lessen the impact of the stimulus. In previous testimony the USDA has projected that costs will be 10 to 20 percent higher than under existing programs and would have an impact on how many projects will be funded.

The recent Notice of Funding Availability for broadband programs contain several items which cause me to be concerned. When this Committee contemplated how to best secure rural access for rural America, the primary issues addressed were what the optimum connection speeds should be, the sustainability of the investment, and how the program targets the most remote areas like many corners of Texas. It is not clear whether the current NOFA adequately addresses these concerns.

I hope that our first panel of witnesses can provide additional insight as to how the broadband programs under the stimulus program will be administered, and I look forward to their testimony. I also look forward to the testimony from our witnesses on the second panel as they represent the private partnership side of a very important initiative.

Thank you, Mr. Chairman. I look forward to the testimony of our witnesses.

The CHAIRMAN. Thank you so much.

The Chairman requests that other Members submit any opening statements they may wish to have for the record so witnesses may begin their testimony and we can move ahead to questions after that.

[The prepared statement of Mr. Peterson follows:]

PREPARED STATEMENT OF HON. COLLIN C. PETERSON, A REPRESENTATIVE IN CONGRESS FROM MINNESOTA

Thank you, Chairman McIntyre, for holding this hearing today to look at how rural broadband programs are working.

USDA's Rural Development programs are responsible for financing essential infrastructure that most urban and suburban residents take for granted.

Reliable, affordable broadband Internet service is one of the most important areas of infrastructure development needed in rural America today. It is a vital tool that facilitates job creation and retention, economic development, business innovation, education, and medical technology.

While reliable data about broadband availability in rural areas is limited, the National Telecommunications and Information Administration estimates that only 38 percent of rural households subscribe to broadband service, compared to 58 percent of urban households. At least part of this digital divide results from a lack of access to broadband service in rural areas.

In order to effectively expand broadband services in areas where none is currently available, it is important to target funding for these services to areas that are truly rural and unserved.

In the 2008 Farm Bill, we refined the criteria used by USDA to prioritize applications for the broadband loan program. We redefined rural areas so that communities near larger cities and towns would not get preference over areas that are actually rural. We also required that loans not be made in areas where more than three providers are already providing broadband service. We should not be in the business of subsidizing broadband buildup in metropolitan suburbs and resort communities. The goal here is to bring service to areas where access is limited or non-existent. Unfortunately, we are still waiting for the regulations implementing these changes, and until those are published, the program is making no loans.

With regard to the stimulus bill, when Congress was considering this legislation, I made clear my concerns about the capacity of the Federal Government—particularly the National Telecommunications and Information Administration—to distribute this large amount of grant funds for broadband deployment efficiently and effectively. I supported broadband funding for USDA to allocate to rural, unserved areas because I understand that only through grants will some of these areas ever receive broadband access. Now that the first funding notice for these dollars has been released, I am concerned that the money included in the stimulus bill that was meant to support our efforts to expand access to broadband service in rural areas may never reach those areas. Under the application requirements associated with the stimulus money for broadband programs, only "remote" areas will qualify for RUS grants, despite the fact that there are many rural areas in need of broadband service that will not meet the arbitrary 50 mile' limit from an urban city or town. Additionally, before rural applicants can apply for grant money from the better-funded National Telecommunications and Information Administration, they must first apply for the Rural Utilities Service program. If they are rejected by RUS, then they can ask for NTIA money, which happens to force them to compete with communities where there is already service.

We are talking about billions of dollars in stimulus money here, and I want to be sure that the money is getting to the right places and that we are getting the most bang for our buck with these investments.

I thank our witnesses for being here today. I am sure that there will be a lot of questions for them, and I look forward to their testimony.

The CHAIRMAN. We welcome our first panel: Ms. Cheryl Cook, who is the Deputy Under Secretary For Rural Development; and Mark Seifert, Senior Advisor to the Assistant Secretary at the National Telecommunications and Information Administration.

And, Ms. Cook, as you begin your testimony, I will give you the honor of introducing your Assistant Administrator, and then you may begin.

STATEMENT OF CHERYL COOK, DEPUTY UNDER SECRETARY FOR RURAL DEVELOPMENT, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, D.C.; ACCOMPANIED BY DAVID J. VILLANO, ASSISTANT ADMINISTRATOR, RURAL DEVELOPMENT TELECOMMUNICATIONS PROGRAM, RURAL UTILITIES SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Ms. COOK. I appreciate the opportunity to appear here this morning to discuss with you the role of Rural Development in the new Broadband Initiative Program. Thank you for your leadership in the development of the American Recovery and Reinvestment Act, ensuring that rural America would be front and center in this extra effort to increase access to broadband technology. We literally wouldn't be here today without the work of this Subcommittee.

As you know, the $2.5 billion initiative is the only brand new program Rural Development received in the Recovery Act. In all other cases the stimulus package provided a boost in funding to programs already available to rural families, businesses and communities. Of course, while the Broadband Initiative Program put important new tools in our toolbox for financing telecommunications infrastructure, the USDA has been in the lending field in telecommunications for 60 some years. Our regular Telecommunications Program has required, for some time now, that the facilities we finance be broadband capable.

In addition, the Distance Learning and Telemedicine Program and the Community Connect Program have added to our ability to link end-users and to establish broadband capacity where it had not previously existed. Both have served as models for how we will use Recovery Act funds.

Most recently, as you have noted, last year's farm bill authorized 5 more years of authority for loans and loan guarantees for broadband infrastructure, and made other adjustments to the program authorized in the 2002 bill. Regulations to implement those statutory improvements and, frankly, to reflect other lessons we have learned in the last 7 years are under development and will be released later this summer.

In the meantime, though, the Recovery Act has given us an important new approach, one that more resembles the Water and Wastewater Disposal Program in its flexibility between loan and grant funds, rather than the loan-only approach of the farm bill program and predecessor telecommunications financing. It is our belief that this flexibility, along with the significant levels of funding provided in the Recovery Act, will allow for a substantial down payment on the enormous task of providing access to broadband in unserved and underserved rural areas.

Section 6112 of last year's farm bill charged the Federal Communications Commission Chairman, in coordination with the Secretary of Agriculture, with developing a comprehensive broadband strategy for rural America. Before the 1 year window for developing that plan had closed, the Recovery Act came along and charged the Federal Communications Commission Chairman, using funding provided by the Secretary of Commerce, with developing a nationwide broadband strategy.

Clearly in both statutes it was Congress' intent that the Executive Branch agencies work together on broadband. To the best of our ability, and, frankly, at the insistence of the White House, we have done so. The Notice of Funds Availability that was posted on our website a week ago and published in the *Federal Register* today is the result of significant interagency work. This is the first of several NOFAs anticipated for Recovery Act funding, and it provides, as seamlessly as possible, access to the Broadband Initiative Program from USDA and the Broadband Technology Opportunities Program from the Department of Commerce.

We have used common definitions and standards to the extent possible, given variations in statutory language. We have agreed to a common application. And on Tuesday of this week, we began with NTIA a series of joint public information and outreach workshops. As important, USDA Rural Development is also leveraging all of the resources of our mission area, because as critical as broadband infrastructure is, it is simply the means to the end of economic and community development, and not an end in itself.

As we continue to finance rural libraries, schools, hospitals, community colleges, senior centers and other essential communities facilities through our Rural Housing Programs, we will incorporate end-user access to broadband to bring medical knowledge, educational opportunities and emergency services management to rural communities. As we help farmers form new cooperatives to add value to their farm commodities or to market their products, we can facilitate their e-commerce capacity. As we finance new entrepreneurs and modernize rural businesses to keep jobs in rural America through our Rural Business Programs, we can help our customers use broadband tools to create and retain wealth in rural areas. And finally, as we finance our other infrastructure programs, we can help rural communities gain tools that they need to manage water and sewer systems as effectively as possible.

Mr. Chairman, I am a dedicated user of broadband technology, I am a passionate advocate for the role that broadband can play in economic and community development, but, frankly, it is all magic to me. And so I brought with me David Villano, who is our Associate Administrator for the Rural Utilities Service, just in case you had a more technical question than how do you turn it on and use it. He and I will be happy to answer any questions that you may have.

[The prepared statement of Ms. Cook follows:]

PREPARED STATEMENT OF CHERYL COOK, DEPUTY UNDER SECRETARY FOR RURAL DEVELOPMENT, U.S. DEPARTMENT OF AGRICULTURE, WASHINGTON, D.C.

Chairman McIntyre, Ranking Member Conaway, and Members of the Subcommittee, thank you for your invitation to testify before you today on USDA's Rural Development programs. This Subcommittee has been a leader in working for the accelerated deployment of broadband in rural America. I know that you recognize the strategic importance of broadband in increasing economic opportunity and improving the quality of life in rural communities, and I appreciate your understanding, support, and at times criticism and counsel in this effort.

For over 7 decades, we have helped deploy electric, telecommunications, water, and wastewater service to small towns and rural communities across the country. Broadband is the newest addition to our portfolio. It is a natural evolution of our traditional infrastructure telecommunications program. USDA's Telecommunications Program, working with private investors, was already involved in the 1970's

in the development of the nation's first fiber optic system for commercial use. As telecommunications technology moves from copper to cable, fiber, and wireless, we must and will evolve to assist rural communities in mastering new opportunities.

The current broadband loan program was established by the 2002 Farm Bill and was subsequently amended by the 2008 Farm Bill. This program to date has provided over $1.1 billion in funding for broadband projects in rural communities in 42 states. In February of this year, the American Recovery and Investment Act (ARRA) made an additional $7.2 billion available for a program to deploy broadband in unserved and underserved areas nationwide. Of this total, $2.5 billion was provided to USDA for loans, grants, and loan/grant combinations. The Notice of Funds Availability—the NOFA—for Recovery Act broadband funding will apply to both USDA and the Department of Commerce and was published in the *Federal Register* today.

The prompt and efficient implementation of this initiative is a high priority for Secretary Vilsack. The Secretary had the privilege on July 1 of joining Vice President Biden, Commerce Secretary Gary Locke, and FCC Chairman Julius Genachowski in Wattsburg, Pennsylvania, to announce the first round of Recovery Act broadband funding. As the Vice President stated, "[This] announcement is a first step toward realizing President Obama's vision of a nationwide 21st Century communications infrastructure—one that encourages economic growth, enhances America's global competitiveness, and helps address many of America's most pressing challenges." We are committed to this effort.

Broadband Authorized in the Farm Bill

Under the Rural Electrification Act, we administer four broadband-related programs. Our telecommunications program has for some years required that all new capacity financed by USDA be broadband capable. In addition, through the Community Connect and the Distance Learning and Telemedicine Programs, we have achieved considerable success and garnered invaluable experience in deploying broadband and related services to rural and underserved communities.

Finally, the Farm Bill Broadband Loan Program has to date provided over $1.1 billion in loans to 97 broadband infrastructure projects across rural America. Implementation of this program involved a steep learning curve, and we acknowledge the criticisms and suggestions we have received. We have worked hard to incorporate these lessons in the pending broadband regulation and the Recovery Act NOFA. New regulations governing our traditional broadband program are expected to be published later this year. These regulations will implement the changes authorized by the 2008 Farm Bill and build on the experience we have gained over the last 7 years. When these regulations are published, outreach programs will be conducted to explain the new requirements and to assist prospective applicants with applying. And as always, Telecommunications Programs general field representatives can assist service providers and rural community leaders with these new programs, as well as current loan and grant programs. We expect that these new regulations and procedures will continue to keep our portfolio healthy and delinquencies low.

Broadband Under the Recovery Act

I will now turn to the Rural Development broadband program authorized under the Recovery Act to fund broadband deployment in rural, unserved, and underserved areas. The Recovery Act provided $7.2 billion for broadband deployment divided between USDA Rural Development and the National Telecommunications Information Administration (NTIA). We have named the USDA portion of this joint effort the Broadband Initiatives Program or BIP.

Since enactment, both USDA and NTIA, with the active engagement of the FCC, have worked very closely to develop a common strategy, common definitions, and consistent standards. Our goal is to achieve the President's vision of universal access, ensure that no community is arbitrarily excluded, and that we do the best job possible of leveraging the taxpayers' dollars for maximum benefit.

To this end, USDA and NTIA published a joint Request for Information soliciting public comment on implementation of the ARRA broadband program. We held six public meetings to provide an opportunity for public comment and received over 1,000 comments from institutions and individuals on key questions, including the definitions of "broadband," "unserved," and "underserved." We then spent weeks drafting the Notice of Funds Availability (NOFA), which was posted on-line on July 1st and published in the *Federal Register* today.

We believe that this NOFA, the first of three anticipated NOFAs, meets the tests I have just described. It was not an easy task, but the result reflects diligent effort and a wealth of expertise and experience. It also reflects President Obama's vision

that rural America, and our nation as a whole, have a world class, 21st century broadband infrastructure.

In this effort, it is a top priority for USDA to ensure that our share of Recovery Act broadband funds are deployed effectively to spur economic development in the most rural and unserved areas that currently lack adequate broadband service. In comparison to the existing farm bill broadband program, the Recovery Act program provides new tools and greater flexibility.

Under USDA's traditional loan program, for example, many potential applicants who want to serve the most rural and unserved areas cannot make a business case for a loan to serve these areas because costs exceed revenues. The Recovery Act allows USDA to provide a flexible mix of loans, grants and loan/grant combinations, which will make many more projects in currently unserved areas feasible and eligible for funding. The Recovery Act allows USDA to give preference to these types of projects in unserved areas, and we will do so under the NOFA.

In addition, priority under the NOFA will be given to projects that:

- Spur economic development and create jobs *in addition* to those created by the construction and operation of broadband networks;
- Give residents a choice of more than one service provider;
- Provide service to the highest proportion of rural residents who do not have access to broadband service;
- Are current or former RUS borrowers; and
- Are fully funded and can commence immediately.

The long-term objective is to promote rural economic development. We are now at the beginning of the application process. Of the total $7.2 billion in budget authority made available by the Recovery Act, $4 billion of available funding has been allocated to this NOFA. From July 14 through August 14, RUS and NTIA will accept applications for projects that meet these NOFA requirements. Awards will be announced starting in November.

We anticipate that remaining funds will be made available through additional NOFAs. Subsequent NOFA requirements will vary as we learn from our experience, respond to public and Congressional suggestions and concerns, and work to better achieve the Administration's priorities.

I would like to emphasize again that—while the USDA and NTIA programs each have unique characteristics—we have worked hard to ensure that implementation is a collaborative and coordinated effort and that our activities are complementary, transparent, enhance efficiency of the application process and prevent duplication of funding.

Applicants requesting over $1 million in support will be required to use the broadband portal—*www.broadbandusa.gov*—to submit applications. USDA and the Department of Commerce will utilize a two-step application process that will first establish viable applications, and then will identify those applicants most qualified to receive funding through additional information review. All applicants must also agree to nondiscrimination and interconnection requirements that connect to the public Internet backbone with reasonable rates and terms and that do not favor applications or content. This is a policy choice, and an important one; it will elicit much discussion from the industry, but we believe it is an appropriate standard for the use of public funds.

Because the purpose of the Recovery Act is to spur job creation and stimulate long-term economic growth and opportunity, all $7.2 billion in Recovery Act funding will be obligated by September 30, 2010.

In closing, I acknowledge that the Broadband Initiatives Program, combined with our traditional broadband program, the Community Connect program, and the Distance Learning and Telemedicine program, will not connect every rural and remote place in the United States. The need is large and we will not complete the task overnight.

These programs will, however, continue to help bridge what's been termed "the digital divide." Today, broadband has become as vital to communities as basic telephone, electricity and running water. We are committed to bringing broadband service to rural America and will continue to work hard to connect rural residents to the rest of the world.

Thank you for your generous support of the Rural Development mission. Our ability to offer programs to create economic opportunity and improve the quality of life in rural America is the result of your work. It is an honor and privilege to work with you on behalf of the 60 million Americans in our rural communities.

The CHAIRMAN. Thank you. Thank you very much, and thank you for your timely testimony.

Mr. Seifert.

STATEMENT OF MARK G. SEIFERT, SENIOR ADVISOR TO THE ASSISTANT SECRETARY, NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE, WASHINGTON, D.C.

Mr. SEIFERT. Chairman McIntyre, Ranking Member Conaway and Members of the Committee, thank you for this opportunity to testify this morning on the implementation of the Broadband Technology Opportunities Program, or, as we call it, BTOP, by the National Telecommunications and Information Administration. My name is Mark Seifert, and I oversee the BTOP Program. This opportunity to testify this morning is the closing of a circle for my family. My grandfather Ernie Seifert was a first-generation German farmer in Pierce County, Wisconsin. He was famous for his innovative techniques. He was the first member in his county to have a radio, to have a telephone, to have a television. He understood the value of technology. In fact, it is family lore that he saved the farm during the Depression nearly 8 decades ago. So it is a great honor for me to be here and talk about our program, and about how we are going to do our best to bring the benefits of broadband to all parts of America, and especially rural America.

The BTOP Grant Program and the Rural Utilities Service Loan and Grant Program form a critical component of the Obama Administration's plan to expand the availability and quality of broadband services in the United States. These two programs funded at a total of $7.2 billion under the Recovery Act are intended to preserve and create jobs and promote economic recovery.

Last week at a rural high school in Wattsburg, Pennsylvania, Vice President Biden, along with Secretary Locke and Secretary Vilsack, announced the availability of these funds to help bring broadband service to unserved and underserved communities across America. NTIA and RUS released a joint Notice of Funds Availability, or NOFA, to implement our respective Recovery Act broadband programs. This NOFA reflects months of collaborative efforts undertaken by NTIA and RUS, with the technical assistance of the Federal Communications Commission, to implement these programs and ensure that the agency's activities and development of these programs are complementary and integrated.

We have worked hard to ensure that taxpayer funds are utilized as effectively and efficiently as possible, and that the application process for both programs is as accessible as possible for potential applicants. Working closely together, our agencies have leveraged our collective experience, talents and resources to develop and implement a coordinated Federal Government approach to expand the access and quality of broadband services.

This $7.2 billion will not completely answer this challenge, but it can serve as an effective jump start for our efforts. Ultimately all American consumers, and especially those living in rural areas, will be the beneficiaries of these efforts.

The BTOP Program seeks to serve the highest priority needs for Federal investment, particularly projects that offer the potential for

economic growth and job creation and provide benefits to education, health care and public safety. The program also will favor viable, sustainable and scalable projects that satisfy the public interest specified in our portion of the statute and detailed in the NOFA. These projects will bring immediate benefits to the communities that they serve, but they will also serve as models for future broadband investments as economic conditions improve.

In keeping with the statutory requirements for BTOP, NTIA expects to distribute grants across geographic areas across the United States addressing the public purpose as set forth in our portion of the Recovery Act. We will issue grant awards on a technologically neutral basis and expect to support projects employing a wide range of technologies, including fixed and mobile wireless, fiber and satellite. With up to $1.6 billion in BTOP funds available, BTOP will make grant awards across the three project categories as defined by our section of the statute: broadband infrastructure, public computing centers and innovative programs for sustainable broadband adoption.

To streamline the application process, NTIA and RUS have created a single portal, *www.broadbandusa.gov*, for both the BTOP and RUS programs. The deadlines for the applications under this first NOFA is August 14, 2009, and the first grant awards are tentatively planned to be announced in early November. NTIA and RUS envision that two additional funding rounds will be held with all funds obligated by September 30, 2010, as required by the Recovery Act.

To assist potential applicants, we will be holding a series of joint workshops, as the Under Secretary mentioned, in ten locations throughout the country. Two were already held this week, and a third is being held in Charleston on Friday. Additional workshops will be held in Birmingham, Alabama; Lonoke, Arkansas; Billings, Montana; and Albuquerque, New Mexico, to mention a few. We are also making the training materials available online for those unable to attend the workshop.

The states have an important role in our overall effort. One of the critical roles, and one which I believe Congressman Conaway addressed, was finding out where broadband is and where it isn't. So we have released a NOFA this week about mapping, and we think it is critical to determine where broadband is and where broadband isn't. With that information, policymakers such as ourselves and, most importantly, Congress will know where they need to invest funds. And so we look forward to robust participation by the states in that effort.

I will conclude by saying thank you for this opportunity, and I look forward to answering your questions.

[The prepared statement of Mr. Seifert follows:]

PREPARED STATEMENT OF MARK G. SEIFERT, SENIOR ADVISOR TO THE ASSISTANT SECRETARY, NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE, WASHINGTON, D.C.

Chairman McIntyre, Ranking Member Conaway, and Members of the Subcommittee, thank you for the opportunity to testify this morning on behalf of the National Telecommunications and Information Administration (NTIA) at this hearing to review the Federal Government's rural broadband programs. An agency of the U.S. Department of Commerce, NTIA is the principal advisor to the President on

domestic and international telecommunications and information policy matters. NTIA's portfolio grew upon the enactment of the American Recovery and Reinvestment Act of 2009[1] (Recovery Act) on February 17, 2009, which authorized and provided $4.7 billion in funding for the Broadband Technology Opportunities Program (BTOP), a grant program to support the deployment of broadband infrastructure and promote the adoption of broadband service. The program will advance objectives articulated by the President in his Inaugural address on January 20, 2009, in which he stated:

> "[W]e will act, not only to create new jobs, but to lay a new foundation for growth. We will build the roads and bridges, the electric grids and digital lines that feed our commerce and bind us together."

Eight days ago in Wattsburg, Pennsylvania, Vice President Biden, joined by Secretary of Commerce Gary Locke and Secretary of Agriculture Tom Vilsack, announced the "first step toward realizing President Obama's vision of a nationwide 21st century communications infrastructure—one that encourages economic growth, enhances America's global competitiveness, and helps address many of America's most pressing challenges." Secretary Locke is working to ensure we make this vision a reality—and the Department of Commerce has been charged with administering a key part of the President's broadband expansion initiative. The first step to which the Vice President referred was the release of the first Notice of Funds Availability (NOFA) by NTIA and the U.S. Department of Agriculture's Rural Utilities Service (RUS) for the broadband initiatives included in the Recovery Act—NTIA's BTOP and the RUS Broadband Initiatives Program (BIP).[2] On July 1, 2009, NTIA also released a NOFA announcing the availability of funds to implement the State Broadband Data and Development Grant Program (State Broadband Data Program) to fund state-level broadband data collection, mapping and planning projects and the development and maintenance of a national broadband map.

In my testimony, I will focus on NTIA's implementation of BTOP and the State Broadband Data Program, and address our collaborative efforts with RUS and the Federal Communications Commission (FCC) to achieve the objectives of the Recovery Act and expand access to broadband services in the United States.

Statutory Provisions and Interagency Coordination

The Recovery Act allocates $4.7 billion to BTOP for the general purpose of accelerating the deployment and adoption of broadband services. Of that amount, at least $250 million is to be made available for programs that encourage sustainable adoption of broadband services, and at least $200 million is to be made available for expanding public computer center capacity, including at community colleges and public libraries. The Recovery Act further provides for up to $350 million to implement the State Broadband Data Program and to develop and maintain a broadband inventory map.

As set forth in the Recovery Act, Congress designed BTOP to accelerate broadband deployment in unserved and underserved areas and to strategic community institutions that provide important public benefits. The Act also focuses on stimulating demand for broadband services. The Act specifies that the program be designed to stimulate job creation, economic growth, and demand for broadband services. Other purposes of BTOP include: improving access to and the use of broadband services by public safety agencies and providing funds for broadband education, awareness, training, access, and support to a number of institutions including schools, libraries, job-creating strategic facilities, and organizations that provide broadband outreach and assistance to vulnerable populations.

The Recovery Act specifies the key elements NTIA must consider in awarding BTOP grants. For example, in the case of broadband infrastructure grants, the Act directs NTIA to consider whether:

- an application will increase the affordability of, and subscribership to, services to the greatest population of users in an area;
- the application will enhance service for health care delivery, education, or children to the greatest population of users in an area;
- an application, if approved, will not result in unjust enrichment as a result of support from another Federal program in the area;
- the applicant is a socially or economically disadvantaged small business; and

[1] Public L. No. 111–5, 123 Stat. 115.

[2] The NOFA provides general policy and applications procedures for BTOP and the RUS Broadband Initiatives Program (BIP).

- the application will provide the greatest broadband speed to the greatest population of users in an area.

Consistent with the statute, NTIA also aims to award grant funds to at least one project in each state.

As we have worked to implement the Recovery Act's broadband provisions, NTIA has coordinated closely with the other Federal agencies directed to lead these efforts including the USDA's RUS, which was appropriated $2.5 billion by the Recovery Act for broadband loans and grants and the FCC which recently published its Rural Broadband Strategy and is also required to develop a national broadband plan. NTIA, RUS, and the FCC are working together closely to leverage our authorities and resources to develop and implement a coordinated Federal Government approach to addressing the challenge of expanding the access and quality of broadband services across the country.

Our coordinated efforts began on March 10 of this year with a public meeting that NTIA, RUS and the FCC cosponsored to initiate public outreach about the current availability of broadband services in the United States and ways in which the availability of broadband services could be expanded. NTIA and RUS followed the March 10 meeting with the release of an Request for Information (RFI) and six additional public meetings and field hearings, all convened by NTIA and RUS in March 2009. Nearly 120 panelists—including representatives from consumer and public interest groups, state and local governments, tribal governments, minority and vulnerable populations, industry, academia, and other institutions—made presentations at the hearings and commented on ways to make BTOP and BIP effective, equitable and efficient.

In response to the RFI and public meetings, RUS and NTIA received over 1,500 written comments from institutions and individuals. These comments along with more than 5 months of constant meetings among the agencies' staff and a concerted effort to leverage the combined significant experience brought to the table by the two agencies all played a crucial role in formulating the structure of the NTIA and RUS broadband programs and the development of the NOFA. In establishing the coordinated grant and loan programs that make up the broadband initiatives, we believe, we have had an unprecedented level of coordination between the two cabinet-level agencies and an independent Federal agency. We also believe that ultimately consumers, especially rural consumers, will be the beneficiaries of this work.

BTOP Implementation

The NOFA, which NTIA and RUS released jointly on July 1, 2009, announces the availability of approximately $4 billion in program funding and describes application requirements for the first round of BTOP grants and BIP loans and grants. The collaborative approach that NTIA and RUS have taken in this NOFA will help to ensure that the agencies' activities are complementary and integrated, taxpayer funds are best utilized, and the application process is easy to understand.

BTOP will seek to serve the highest priority needs for Federal investment—particularly projects that offer the potential for economic growth and job creation, and provide benefits to education, health care, and public safety. The program will favor viable, sustainable, and scalable projects. NTIA will also favor proposals that satisfy the public-interest objectives specified in the statute and detailed in the NOFA. These projects can serve as models for future private investments once economic conditions improve.

In keeping with statutory requirements for NTIA, NTIA expects to distribute grants across geographic areas of the United States, addressing these various public purposes. We will issue grant awards on a technologically neutral basis, and we expect to support projects employing a range of technologies, including fixed and mobile wireless, fiber, and satellite.

Up to $1.4 billion in BTOP funds will be available in this first grant round.[3] The application deadline for the first round of grants is August 14, 2009. Consistent with its appropriation, BTOP is divided into three categories of projects. Under the first NOFA, the Broadband Infrastructure category will fund up to $1.2 billion in projects that deliver broadband service to unserved and underserved areas. Applications to fund broadband infrastructure projects in areas that are at least 75 percent rural are required to be submitted to RUS for consideration under BIP. If an applicant intending to serve such rural areas also chooses to have an application considered for BTOP funding, the applicant must complete the additional elements required of

[3] NTIA retains the discretion to divert funds from one project category to another. Up to $200 million is reserved to augment any of the individual BTOP funding categories in this round or remain unused for subsequent NOFAs.

BTOP infrastructure applicants. NTIA may determine such applications to be meritorious and make grant awards if RUS reviews the application and determines not to fund it. All other Broadband Infrastructure applications—*i.e.,* those projects with proposed service areas that are less than 75 percent rural—must be submitted to NTIA for consideration under BTOP. A single application portal—*www.broadbandusa.gov*—will help streamline the process for grant applicants.

Within the Broadband Infrastructure category, NTIA and RUS determined that a distinction should be made in funding infrastructure projects, and we have created the broad categories of Last Mile and Middle Mile projects. Applications for Last Mile projects under BTOP must be for unserved or underserved areas and have the predominant purpose of providing broadband service to end-users (and end-users devices), including households, businesses, community anchor institutions, public safety entities, and critical community facilities. Applications for Middle Mile projects under BTOP also must be for unserved or underserved areas, but these projects should have an express purpose other than providing broadband service to end-users and end-user devices and may include such things as interoffice transport, backhaul, Internet connectivity, or special access services.

The second BTOP grant category, Public Computer Centers, will fund projects that expand public access to broadband services and enhance broadband capacity at entities that permit the public or specific vulnerable populations, such as low-income, unemployed, aged, children, minorities, and people with disabilities to use these computer centers. In the first round, BTOP will fund up to $50 million for public computer centers.

The third BTOP grant category, Sustainable Broadband Adoption, will fund innovative projects that promote broadband demand and affordability, such as projects focused on broadband education, awareness, training, access, equipment and support, particular among vulnerable populations where broadband technology has traditionally been underutilized. In this first round, BTOP will fund up to $150 million in broadband demand projects.

BTOP Eligibility

The Recovery Act delineates those entities that are eligible to apply for BTOP funding, including the U.S. states and their subdivisions, U.S. territories and possessions, tribes, and nonprofit entities. Consistent with the Recovery Act, the Assistant Secretary of Commerce for Communications and Information found it to be in the public interest to permit for-profit corporations and nonprofit entities not otherwise encompassed in the Recovery Act that are willing to promote the goals of the Act and comply with the statutory requirements of BTOP to be eligible for a grant. By adopting this approach, the Assistant Secretary enabled a large and diverse applicant pool to participate in BTOP and to expand broadband capabilities in a technologically neutral manner.

Other eligibility factors set forth in the NOFA require that all BTOP applicants: submit a complete application and all supporting documents; demonstrate the project can be substantially completed within 2 years of the grant issuance date and fully completed within 3 years of the grant issuance date; advance one or more of BTOP's five statutory purposes; provide matching funds of at least 20 percent toward total eligible project costs (unless a waiver petition is approved); document that the project would not be implemented during the grant period but for a Federal grant; and demonstrate that the budget is reasonable.

Applicants for Broadband Infrastructure grants are also required to satisfy the following additional eligibility criteria:

- The applicant must propose to offer "broadband" service as defined in the NOFA—*i.e.,* two-way data transmission with advertised speeds of at least 768 kbps downstream and at least 200 kbps upstream to end-users; or sufficient capacity in a middle-mile project to support "broadband" service to end-users.
- The applicant must provide information that enables NTIA to determine that the proposed project is technically feasible, including submitting a system design and project timeline certified by a professional engineer for any project requesting funds over $1 million.
- The applicant must demonstrate the ability of the project to be sustained beyond the funding period.
- The applicant must commit to the program's Nondiscrimination and Interconnection Obligations—(1) adherence to the FCC's Internet Policy Statement;[4] (2) not favor some lawful Internet applications and content over others; (3) de-

[4] FCC 05–151, adopted August 5, 2005.

scribe and display any network management policies; (4) connect to the public Internet and not be an entirely private closed network; and (5) offer interconnection where technically feasible, including the ability to connect to the public Internet and physical interconnection for the exchange of traffic.[5]

- Applicants for Last Mile infrastructure projects must provide service to the entire territory of each Census block included in the funded service area unless the applicant can provide a reasoned explanation as to why providing coverage for an entire Census block is infeasible.

BTOP Application Process

The NOFA sets forth a two-step application review process. The goal in step one is to create a pool of viable and potentially fundable applications. After an initial screening to determine whether applications meet eligibility factors (such as application completeness) step one will consist of evaluating and scoring each BTOP application against objective criteria and not against other applications. Applications will be evaluated by at least three expert reviewers against objective criteria within four general categories: (1) project purpose, (2) project benefits, (3) project viability, and (4) project budget and sustainability. Scores will be averaged and the applications that are considered to be the most highly qualified will advance for further consideration.

The goal of step two, which we consider to be the "due diligence" phase, is to fully validate the applications that advance from step one and identify the most highly qualified applications for funding. In step two, NTIA will request that applicants submit additional information as necessary to substantiate representations made in their application. The nature and scope of additional information requested will depend on the BTOP funding category in which the application was made. NTIA will review and analyze supplemental information and assign a rating, based on a five-point scale, reflecting the consistency of the application with supporting documents. Not all applications that are selected for step two will necessarily receive a grant. Grant recipients will be notified if their application has been selected for a BTOP grant. NTIA and RUS intend to announce awards beginning on or about November 7, 2009.

To assist potential applicants with their applications for both BTOP and BIP, NTIA and RUS are jointly conducting ten workshops this month throughout the country. The workshops include an overview of both BTOP and BIP and a review of the application process for funding.

The locations of the workshops are representative of rural and urban needs, as well as a diversity of regions, populations, topographies and city/metropolitan-area sizes. Two workshops were held earlier this week here in Washington DC and in Boston. Tomorrow, a workshop is scheduled in Charleston, West Virginia. In the coming weeks, workshops will be held in: Birmingham, Alabama (July 14); Memphis, Tennessee (July 15); Lonoke, Arkansas (July 16); Billings, Montana (July 17); Minneapolis, Minnesota (July 21); Albuquerque, New Mexico (July 23); and Los Angeles, California (July 24). For those unable to attend any of the workshops, NTIA will also have a webinar version of the workshops available on our website. We will also post application guidance and frequently-asked-questions on issues of general applicability to assist applicants complete a successful application. For the second and third rounds of funding for BTOP and BIP, NTIA and RUS anticipate that additional workshops will be held to aid applicants.

Participation of the States in BTOP

States will play an important role in BTOP. First, the NOFA invited each state to review and prioritize applications for projects in or affecting the state. Second, through a separate NOFA released on July 1, 2009, creating the State Broadband Data Program, NTIA is encouraging all states to collect broadband data for use in the national map mandated by the Recovery Act.[6] The State Broadband Data Program is a competitive, merit-based matching grant program to fund projects that collect comprehensive and accurate state broadband mapping data, develop state broadband maps, and provide for broadband planning. With data collected at the state level, NTIA will develop and maintain a national broadband map, a key priority of this program. As such, NTIA intends to fund high-quality projects that are

[5] The NOFA also requires that applicants disclose proposed interconnection, nondiscrimination, and network management practices in the application. These requirements are subject to the needs of law enforcement and reasonable network management.

[6] See Recovery Act, Pub. L. No. 111–5, 123 Stat. 115 (2009); Broadband Data Improvement Act, Title I of Pub. L. No. 110–385, 122 Stat. 4096 (2008).

designed to gather data at the address level on broadband availability, technology, speed, infrastructure, and average revenue per user across the project area.

The Recovery Act authorizes NTIA to expend up to $350 million to support state mapping and planning efforts and for the development and maintenance of a broadband inventory map. NTIA expects to make approximately $240 million available for this activity, with grant awards that range between $1.9 million and $3.8 million per state for the mapping portion of each project, and up to $500,000 for the planning portion of each project. The amount of grant awards will depend on the specifics of each project and the quality of each project as determined in NTIA's review, as well as demographic and geographic features unique to each state.

As set forth in the NOFA for the State Broadband Data Program, broadband mapping projects must propose:

- the collection of comprehensive and verifiable broadband data meeting the Program standards that will be accessible and clearly presented to NTIA, the public, and state and local governments without unduly compromising data or the protection of confidential information;
- a workable and sustainable framework for repeated updating of data;
- a plan for collaboration with state-level agencies, local authorities, and other constituencies, as well as a proposal for planning projects designed to identify and address broadband challenges in the state;
- feasibility as demonstrated by a reasonable and cost-efficient budget, and a showing of applicant capacity, knowledge, and experience; and
- a timeline for expedient delivery of data with a preference for initial delivery by November 1, 2009.

For broadband planning projects, the NOFA requires that applicants propose projects or award uses that relate to broadband planning activities, such as the identification of barriers to the adoption of broadband service and information technology services, the creation and facilitation of local technology planning teams, and the establishment of computer ownership and Internet access programs.[7]

Grant recipients may use the collected broadband data for any lawful use consistent with the requirements of the program. In addition to providing all data collected to NTIA, applicants are expected to use the data to develop and maintain a statewide broadband map separate and distinct from the national broadband map.

The collected data will be used to inform future NTIA grant-making decisions under BTOP and for the development and maintenance of a national broadband map. As described in the NOFA for this program, NTIA expects that these and other data will publicly display the following information about broadband service: geographic areas in which broadband service is available; technologies used to provide broadband service; spectrum used for the provision of wireless broadband service in such areas; the speeds at which broadband service is available; and broadband service availability at public schools, libraries, hospitals, colleges and universities, and all public buildings. The national map will also be searchable by address and, to the greatest extent possible, at every address, provide the type and speed of broadband service that will be provided. For providers of wireless broadband service, the spectrum used for the provision of service will be provided.

Conclusion

Congress has entrusted NTIA with a significant responsibility. We believe the collaborative, open and transparent approach that we have taken in developing these two NOFAs is not only responsive to the statutory mandates for these programs, but also to the goals these programs are intended to achieve—to expand the access and quality of broadband services in the United States, preserve and create jobs, and promote economic recovery. NTIA intends to continue our close collaboration with RUS and the FCC as these programs progress and we look forward to getting Recovery Act funds into the hands of those who can use it to create jobs and to promote broadband deployment in unserved and underserved areas.

All Americans, no matter where they live or what our individual circumstances may be, deserve to enjoy all of the promises that broadband service has to offer. The Administration is committed to realizing the President's vision of bringing the benefits of broadband technology to all Americans.

Thank you and I look forward to your questions.

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[7] Only applications that meet NTIA's broadband mapping purposes will be considered for planning funding. Mapping proposals do not need to include a planning component in order to be eligible for funding.

The CHAIRMAN. Thank you, Mr. Seifert.

Do you have a copy of those maps with you?

Mr. SEIFERT. Of the maps we are trying to create? We are sending out a grant program for states to actually map and get that information and send back to us.

The CHAIRMAN. So when do you plan to have those done?

Mr. SEIFERT. With the state's participation, we anticipate a rudimentary map probably in the January to February timeframe. Again, a lot of this depends on how quickly the states move. We are really pushing the states hard to get this information out. We believe we will have enough information to make the first round of grants in an appropriate fashion, but having an overall map which will compare apples to apples will allow policymakers to move forward in a reasonable and rational fashion, will occur later.

The CHAIRMAN. Can you provide us copies of those maps to the panel Members as soon as they are available?

Mr. SEIFERT. Certainly. Those will also be available publicly. The statute requires us to put up a public map of that information. But we would be happy to make sure you get that information.

The CHAIRMAN. Please do.

Have you given the states a deadline?

Mr. SEIFERT. Yes.

The CHAIRMAN. Have you told them when to get it done by?

Mr. SEIFERT. They have 1 month to get their grant application in to us. And I have to tell you, they are already very concerned about meeting that deadline to get the application in. And then the deadline—and I will make sure I get the dates right to your staff, but I believe it is within 2 months of getting that information to us so that we can then assemble it into a map.

The CHAIRMAN. All right. Thank you, sir.

I have spoken with Ranking Member Conaway, and we would like to welcome the gentlewoman Mrs. Lummis. Although not a Member of Subcommittee, she has joined us. I am pleased to have her join us, and we welcome her in questioning the witnesses at the appropriate time today.

Mrs. LUMMIS. Thank you, Mr. Chairman.

The CHAIRMAN. Yes, ma'am.

The chair would like to remind Members they will be recognized for questioning in order of seniority, for Members who were here at the start of the hearing. After that Members will be recognized in the order of arrival pursuant to Committee rules.

In the remaining time that I have, I wanted to ask the panelists this question: I am concerned about the ability of both of these programs to reach the rural unserved areas that were not served via the loan program that desperately need broadband access. Specifically, I am concerned about rural unserved areas not meeting the extremely harsh definition of *remote*. In fact, I have found zero out of 100 counties of all 100 counties in North Carolina eligible for grants under RUS.

If such areas meet the *rural* definition, they will be required to apply for funds from RUS, be denied the grant, and then turn around and have to compete for the funds at NTIA with communities that have service already. How do you respond to this concern, Ms. Cook?

Ms. COOK. Thank you, Mr. Chairman.

I would note that the remote requirement applies only to 100 percent grants; that a rural area may still end up in a loan/grant combination. And by not being remote, you are not being totally denied grant money, you are just not going to get all-grant money.

With that said, we have had several conversations now with staff, and some of the feedback we have gotten from the workshops that we have been doing this week suggest that we do need to consider ways that we might clarify the *remote* definition. And we will, if need be, issue that within the next 2 weeks so that by the time the window for application opens, that everybody has that revision or that clarification.

The CHAIRMAN. All right. I think we do have the need for that to be done, so if you can do that within the next 2 weeks.

Ms. COOK. We will indeed do that. But part of the rationale for doing this in three steps or several NOFAs, as opposed to rolling the whole thing out in one, is that it gives us the benefit of experience then as we move forward. I am sure, as Mr. Seifert says, as we move from the first NOFA to later rounds that we will be making those adjustments as we go.

It is difficult to know without the maps in place just what is remote. I happen to be from Pennsylvania and served as the Pennsylvania State Director for Rural Development in the Clinton Administration. The most remote area in Pennsylvania is probably Potter County. It is along the New York State border. You cannot get there from here without going through the Allegheny National Forest. By all accounts it is a remote area. It also happens to house the home base of Adelphia, and it is one of the best-served areas in the Commonwealth of Pennsylvania in terms of broadband. So we just don't know, until we get a little further down the road, the best way to describe what a remote area is.

The CHAIRMAN. What is the highest percentage of grants for nonremote areas?

Ms. COOK. The point is to get to an affordable user rate, and it will be a combination of loan and grant that will vary with the application.

The CHAIRMAN. So is that yet to be determined then?

Ms. COOK. Well, 50 percent is the max that we are looking for in loan/grant combinations. It won't be 50 percent every time; it may be a lesser amount depending on debt capacity of the area.

The CHAIRMAN. I will let my Ranking Member pick up on that line of questioning since my time is running out. I want to give Mr. Seifert a chance to answer my broader question. You go ahead.

Mr. SEIFERT. I want to make sure I answer the right broader question, if you could.

The CHAIRMAN. Do you have any—when I mentioned earlier about those applying to RUS, being denied the grant, and then having to compete for funds at NTIA with communities that already have service.

Mr. SEIFERT. We believe that there are communities—in fact, Washington, D.C., is a perfect example—where there are competitors providing service, but there are communities that are not getting that service. And some people call this functional redlining. And if you will look through the NOFA, we have made sure that

we are not going into places where there is robust provision, where people are adopting it, where it is affordable and putting more money into those places. We don't think that is a wise investment of the taxpayers' dollars.

We do know, and received many comments, lots of comments, about service in different parts of America that varies greatly by quality, by speed, by availability. And so we are allowing the applicants to come and make that demonstration. And they may be able to make it, they may not be able to make it, but we believe we set up a fairly stringent set of guidelines by which we will adjudicate those grants. And again, we don't believe $7.2 billion is going to solve our broadband issues all across the country, but we believe that we can come up with a playbook, almost, about how to bring broadband in the future to areas such as those that you were talking about in North Carolina. So, that is our approach at this point.

The CHAIRMAN. Thank you, sir.

Mr. Conaway.

Mr. CONAWAY. Thank you, Mr. Chairman. I appreciate it.

Ms. Cook, what is the normal volume for RUS loan processing in a year?

Ms. COOK. Are you speaking specifically to the Telecommunication Program or all——

Mr. CONAWAY. Yes, ma'am. Yes, ma'am.

Ms. COOK. Do you want to answer that?

Mr. VILLANO. One billion dollars.

Mr. CONAWAY. So a billion dollars in loan processing.

Mr. VILLANO. We did about $1.2 billion last——

Mr. CONAWAY. How does that compare to the money that was going to be spent under this new program?

Mr. VILLANO. Under the Recovery Act we anticipate doing about $7.9 billion in loans and grants.

Mr. CONAWAY. Do you have the capacity to do that?

Mr. VILLANO. Yes, we do.

Mr. CONAWAY. Seven times, eight times what your normal volume is without a director?

Mr. VILLANO. The Recovery Act gave us the ability to use some of the funds for salaries and expenses, so we are in the process of hiring additional staff, and we will also have a contractor onboard to work with us.

One of the advantages of being part of the Rural Development mission area is that we also have 6,000 employees throughout the country who work on business loans, community facility loans. So if need be, we can also task some of those employees to help us with the broadband loans and grants.

Mr. CONAWAY. But, obviously, you have a concern about being able to do this wisely. I hope you have the resources to get that done.

This is a bit random, but your applications for the BIP Program, BTOP Program and the other things require that the grantee tell you which Congressional district. Why is that of remote interest to you?

Ms. COOK. Well, every Federal application, the Standard Form 424 that the entire Federal Government uses includes that information on it, but it is specifically important for the Recovery Act

funds because we want to be able to demonstrate where those funds are going.

Mr. CONAWAY. Okay.

Ms. COOK. I am sure you have heard constituents ask, where is my share of the recovery money? We currently have the ability to map out where every dollar from the USDA share of recovery funds have gone.

Mr. CONAWAY. Well, Ms. Cook, I have yours and Mr. Seifert's personal assurances that that information won't be used in a discriminatory way. There are news reports that the funds are being focused on Obama-friendly Administrations, all of your comments about Obama's vision for all of these things, and so the fact that I voted against the stimulus package and this funding, will that work against my Congressional district in your processing?

Ms. COOK. Absolutely not. Absolutely not, Mr. Conaway. Congressional district information is only for the sake of transparency.

Mr. CONAWAY. All right. The nondiscrimination and interconnection stuff is not required under the Act for the RUS loans and grants. Why did you automatically extend it to the RUS arena? What is your authority for doing that?

Mr. VILLANO. We felt that we should have one broadband program, and to the extent possible that is where we went with common definitions, and we felt that those were important, not just for urban or commerce customers, but also for Rural Development customers, so we adopted those provisions.

Mr. CONAWAY. So you acknowledge there is not statutory authority to do that. Does that give you pause that there are going to be lawsuits in this area?

Mr. VILLANO. No, I don't believe so.

Mr. CONAWAY. If the FCC handles the complaints on nondiscrimination interconnection processes, the FCC rules unfavorable to what the consumers wants. Then, as said in your notice, they simply write you a letter and tell you that they are dissatisfied. What is your intention, are you going to set up a new bureaucracy that would affect, oversee what the FCC has already ruled on?

Mr. VILLANO. No, we don't intend to set up another——

Mr. CONAWAY. What is the notice? Why the letter? If you are just going to frustrate folks who don't think that the providers are meeting the nondiscrimination and interconnection requirements, what are you going to do with the letter?

Ms. COOK. Well, again, our hope is to better inform ourselves for later rounds of NOFAs.

Mr. CONAWAY. You require signage? Are there going to be limits on the amount of money spent on signs for the stimulus package? Is there an equivalent to four Last Mile grants that we will use in the signage, instead of those—what is your intention on limiting the amount of money spent on nonprogram processes like signs?

Ms. COOK. We have tried to be reasonable about that as we have rolled out other programs, getting funding under the Recovery Act. In water and waste, for example, there is a sign around the project that would describe that this had been funded by the Recovery Act.

Mr. CONAWAY. So, there are Middle Mile projects that may run several miles, you have one every mile or every telephone pole?

Ms. COOK. No. No, sir.

Mr. CONAWAY. Mr. Seifert, you mentioned limited dollars and limited resources. And so to the extent we don't spend these directly on the problem, then we are wasting taxpayer monies. And, by the way, every nickel of the stimulus money is borrowed from somebody else. We don't generate the revenues to fund this deal, we borrowed the money. So we are particularly keen to make sure it gets spent the right way.

I yield back. Thank you.

The CHAIRMAN. Thank you, Mr. Conaway.

We will have time for one more set of questions.

Mr. Bright.

Mr. BRIGHT. Yes, sir. Thank you, Mr. Chairman, for having this hearing today.

Ms. Cook, I have a couple of questions before we have to leave here to vote. In the projects going that you offer five points to, "portability of service," what do you define as *affordable?*

Ms. COOK. We have been using take rate as an indicator of affordability, and in the definition of *underserved area,* 40 percent is the threshold that we are looking at.

Mr. BRIGHT. Okay. Thank you very much. As you know, I am from Alabama, and my area is very rural, so we are really interested in this program and the resources from this program.

Second, some providers may be in 75 percent rural areas, but not qualify for 100 percent grant funding. If applicants only want to be considered for grants and not loan/grant combos, will there be a way to signify that on the application so that you will know to go ahead and send their application over to the NTIA?

Ms. COOK. Rural applicants will come to us first. In the event we are not able to serve them with a 100 percent grant, then, yes, we will pass that on.

Mr. BRIGHT. Will that information have somewhere on the application an indication where that will be open and obvious so that if you do refer it over there, it won't take up additional time and waste additional time?

Ms. COOK. There may be additional things that they would want to apply to NTIA to receive that are not part of the RUS Program.

Mr. SEIFERT. Maybe I can clear this up. When an applicant that wants to apply to both programs fills out the application at the same time, RUS—we will be evaluating at the same time RUS will be evaluating, so there will be no lag time. The only processing is RUS says these are the applications that we are funding, and if any of ours are on that list, we take them off, and then we can move and fund more applications. So it is just to adhere to the statutory requirement that is in the agriculture section, which is don't fund two wires running down the same side of the highway.

Mr. BRIGHT. Thank you.

Mr. Seifert, one question for you, and this will be my last, Mr. Chairman. The RUS grant funding is limited to remote areas. NTIA grant funding has no such restriction. What happens with rural unserved areas that do not qualify as remote, but do not have the financial potential for a loan or loan/grant combo?

Mr. SEIFERT. First off, I am also from Alabama. I know Wiregrass very well.

Mr. BRIGHT. I need to be in close contact with you.

Mr. SEIFERT. So the way it works, the grants are competitive, and you come in with a blank slate to us and tell us what your problem is, you tell us how you are going to solve it, and you tell us how you are going to make a business out of it. We want taxpayer dollars in going concerns. We want this to continue after the capital expenses have been in. So even if they don't qualify for the loan, we do our own independent analysis under our statutory factors, and if they qualify and they are competitive, then we will consider them.

Mr. BRIGHT. Okay, good.

Mr. Chairman, I yield back the remainder of my time.

Thank you, panelists. I look forward to working with you closely in the near future. Thank you.

The CHAIRMAN. Mr. Thompson, I am going to let you go very quickly if you would like to ask your questions. I know you have been here since the beginning.

Mr. THOMPSON. Sure. I appreciate that, Mr. Chairman.

Actually I do represent Potter County, so I appreciate you noting Potter County; also Cameron County, which does not have access, although they sit very close together.

I would like to start my question with Ms. Cook. Can you explain the further definition intent of *remote areas?* And since I am limited on time, if you could—I have a quick follow-up question. If you could keep your answer under a minute, that would be great.

Ms. COOK. Okay. The remote area is the key to accessing 100 percent grant funding under the Broadband Initiative Program from the USDA. The public policy intent was to use those dollars in the most rural locations as possible, recognizing that in states like Pennsylvania that can get a little difficult because it is sometimes hard to tell where the urban area stops and the rural area starts.

As I indicated earlier, we have been receiving feedback both from committee staff and from others as we have done these outreach workshops. Perhaps we need to clarify further the definition of *remote.* We will do that—if we do that, we will do that within the next 2 weeks so that everybody has the same definition in hand at the time that the application window opens.

Mr. THOMPSON. Well, representing a Congressional district that is larger than nine states, including New Jersey, what is the definition of *rural?*

Ms. COOK. The definition of *rural* in this program is communities of fewer than 20,000.

Mr. THOMPSON. Okay. Can you explain how the joint application process will work? In other words, if an applicant is rejected by the RUS because the applicant is not serving a remote area, what happens to the application? Does it automatically get sent to NTIA?

Ms. COOK. The applicant—if it is a rural application, if they apply to both agencies, we will process first. The first—first stop for a rural applicant is Rural Utilities Services in USDA. As Mr. Seifert noted, if someone applies to both agencies, they will be processed simultaneously rather than serially. In the event Rural Utilities Service doesn't fund that application, NTIA would be able to pick right up.

Mr. THOMPSON. Thank you. I will yield back.

The CHAIRMAN. I thank the gentleman. Thank you for your cooperation.

I want to thank the panel. With the series of votes we have, we want to be able to release the panel. If not before, I will allow Mr. Conaway to make a quick statement, and then I have some instructions for the panel before we release the first panel.

Mr. CONAWAY. Thank you, Mr. Chairman.

On this map that is going to be critical to this deal, what if states just decide they don't want to participate? It is also a matching grant. We have states like California that are broke and can't meet their half of the deal. What are your plans for going into states where the state itself——

Mr. SEIFERT. To be clear, we are concerned about that. We implemented the Broadband Data Improvement Act, which was a statute that was passed before the Recovery Act. It passed out of the House, 100 percent. And so we understand concerns of the states. We are working with them on in-kind matching that is appropriate under the law that should help the vast amount of states to be able to cover that part of it. If a state doesn't participate, we have other options. It is my fervent hope that we will have the Subcommittee, in fact the full Committee on Agriculture, encouraging their states to participate, because it is tremendously important to you to have that data to make your decisions going forward.

Mr. CONAWAY. I have a privacy issue as well. Some of the details on the mapping that is required on the NOFA—you are going to map it all the way to my house so you know what I am buying, what my speeds are, those kinds of things?

Mr. SEIFERT. No, sir. We want it at the address level so that if somebody wants to know what is available—not what you are taking, but should you want to take—what are your options, your name will never appear.

Mr. CONAWAY. But my address will.

Mr. SEIFERT. Your address is public information already.

Mr. CONAWAY. Not mine, but my constituent's are more important.

Mr. SEIFERT. Your constituent's address is available in a public database. The concept is not that we reveal what the constituent is taking, but what the possibility is for that constituent. And if the constituent has no possibilities, that is something I believe this Subcommittee really wants to know. We certainly want to know, because that helps us direct our efforts.

Mr. CONAWAY. I do have some privacy concerns. Mr. Chairman, I hope we may be able to have another hearing in September with this panel to get a progress report of what we are doing.

The CHAIRMAN. Thank you. The panel—and I would like the members of panel to know that—Members of the Subcommittee panel to know you are welcome to submit questions. I know because of the limitation of the votes that we did not get to spend the time with this first testifying panel that we had hoped, but please do submit your questions. We would ask those that are giving the testimony today from this first panel of witnesses to please respond within 10 days after you receive the questions from these Members. We will take these questions just as seriously as though you were physically present answering them before the audience

that is assembled today. So in light of the fact that we have 13 votes or more, possibly, pending right now, we will release this panel with the understanding you will respond to our additional questions within 10 days.

And we thank you for your time today. We allow the first panel to be released and look forward to hearing from the second panel. This Committee will suspend until such time as we can reconvene after the series of votes on the floor of the U.S. House.

[Recess.]

The CHAIRMAN. We will reconvene the meeting of this Subcommittee.

We would like to welcome our second panel to the table: Mr. Delbert Wilson, General Manager, Hill Country Telephone Cooperative, on behalf of the National Telecommunications Cooperative Association, Ingram, Texas; Mr. Walter B. McCormick, Jr., President and CEO of USTelecom Association; Mr. Curt Stamp, President of Independent Telephone & Telecommunications Alliance; Mr. Tom Simmons, Senior Vice President of Public Policy, Midcontinent Communications, on behalf of the National Cable and Telecommunications Association, Sioux Falls, South Dakota; and Mr. G. Edward Evans, Chairman and CEO of Stelera Wireless, Oklahoma City, Oklahoma.

I believe Mr. Conaway would like to provide a special introduction to the witness from Texas.

Mr. CONAWAY. I would like to personally introduce Delbert Wilson from Ingram, Texas, which is just off the edge of the best district in all of America. Mr. Wilson is the General Manager of the Hill Country Telephone Cooperative. His testimony represents the providers that are servicing the most rural and smallest communities in the country.

Over the last 5 years, Hill Country Telephone Cooperative has been deploying a scalable infrastructure that will service central Texas communities for years to come, and I'm pleased to welcome his testimony and proud of his work in central Texas.

The CHAIRMAN. Mr. Wilson, you may begin.

STATEMENT OF DELBERT WILSON, GENERAL MANAGER, HILL COUNTRY TELEPHONE COOPERATIVE, INGRAM, TX; ON BEHALF OF THE NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

Mr. WILSON. Chairman McIntyre, Ranking Member Conaway, I would like to thank you for the opportunity to be here today to discuss rural broadband programs. I am here on behalf of Hill Country Telephone Cooperative of Ingram, Texas, and the National Telecommunications Cooperative Association, NTCA, which represents more than 580 small, rural, community based communication service providers throughout the nation.

Hill Country, where I serve as General Manager, provides telecommunication services in 15 exchanges located in 14 counties spread over 2,900 square miles in rugged terrain equivalent to the combined size of Rhode Island and Maryland. Organized as a cooperative, Hill Country's top priority has always been to provide every one of our consumers, who are also our owners, with the very best communications and customer service possible, an entrepre-

neurial spirit which is representative of our 1,100+ rural counterparts that together serve 50 percent of the nation's land mass but only ten percent of the population.

Listening to the needs of rural consumers, and understanding the ever-growing importance of broadband in everyday life, Hill Country is actively engaged in a major outside plant modernization project. This $57 million initiative involves the deployment of 560 miles of fiber-optic cable, 280 digital loop carriers, and state-of-the-art soft switches throughout a substantial portion of our market area.

Why are we doing this? Quite simply, in an effort to provide the broadband infrastructure that is necessary to support the growing bandwidth needs of our members.

However, in spite of all of our efforts tied to this modernization project, including the maximization of our debt load, 543 households—approximately five percent of our market area—will remain unserved from a broadband perspective because the costs of providing service in these remote, economically challenging areas are simply overwhelming. These 543 households are in the outlying areas that are beyond the 18,000 kilofeet standard where DSL will typically operate effectively.

According to a recent study conducted by Hill Country, 522 miles of fiber-optic cable would need to be installed to provide broadband service to the five percent of the market that remains unserved. This effort would cost approximately $20 million, at an average cost of $37,000 per subscriber, about four times the average cost per subscriber of the other 95 percent of our market.

A typical business plan that would sustain itself simply cannot be constructed for this segment of our market. It is in these unserved areas that support from the RUS and National Telecommunications and Information Administration broadband funding incentives, which are associated with the American Recovery and Reinvestment Act of 2009, will be critical in enabling our system to overcome the economic challenges of providing broadband to 100 percent of our customers. Clearly, there is a real and true need for these dollars. Undoubtedly, they will have an immediate stimulating effect during the construction stage and thereafter during the consumer usage stage.

Rural areas throughout our nation are low density and have even higher costs. Some refer to these underserved areas as market failures, where competition and existing Federal programs have failed to help provide consumer choice. I like to refer to these areas as economic realities. Serving our nation's rural citizens with telephone service has always been challenging, and bringing broadband to these partially populated areas is even more challenging. It is these economic realities that leads to our discussion today about the potential impact of the broadband stimulus plan.

As you know, last week's Notice of Funding Availability announced the policy and application procedures for the stimulus bill's broadband initiatives. To ensure the funding provided by the stimulus bill does not yield unintended consequences and to achieve the bill's objectives of increasing access to broadband and inciting economic development, we would like to highlight a couple of areas of concern:

First, we believe it is important to ensure support is directed towards areas with significant need; for example, unserved areas first. Therefore, we are pleased that the Broadband Initiative Program will make grants available for remote, unserved, rural projects. However, given the extremely high cost of building out the last mile to remote areas, the $400 million provided by the BIP for the projects may not be sufficient to meet the needs of the rural market. While $400 million sounds like a lot of money, remember, we have submitted that it will cost about $20 million to reach just 543 homes in Hill Country's outlying areas.

Second, rural providers must retain their right to effectively manage their networks. The rural sector of the communications industry has a long history of adopting new technologies to meet evolving economic and security interests of their consumers. Therefore, policymakers must ensure any net neutrality or nondiscrimination actions do not unwittingly stymie this entrepreneurial spirit. At first glance, the regulations appear to mostly meet this objective. However, we are concerned that the requirements are uniformly applied to NTIA and RUS when in fact the law didn't impose applications of interconnection and nondiscrimination to the RUS. In addition, we are also concerned that these interconnection and nondiscrimination requirements may supersede the exemptions set forth by the Communications Act of 1934 that recognizes the unique circumstances that is confronting rural telecommunications providers.

As for the RUS Broadband Loan and Loan Guarantee Program, it has been instrumental in helping accelerate broadband deployment in rural communities throughout Texas and the rest of the country. However, there remains room for improvement to ensure its funding is utilized to the maximum extent possible.

We recommend the following changes to the RUS Broadband Loan Program:

Require a 20 percent credit support of the requested loan amount. The 2008 Food, Conservation, and Energy Act, the farm bill, eliminated the 20 percent credit support requirement for some entities. Broadband providers who cannot meet the 20 percent threshold will not likely have sufficient financial stability to maintain service to their broadband customers.

Increase the deadline for completion of projects from 3 years to 5 years. The 3 year build-out time frame is too short for many program applicants given telecommunication planning horizons, changes in technology, and regulatory environments.

Lengthen the 30 working day notice period for incumbents to 60 to 90 days to give incumbents more time to see and respond to new applications to ensure these scarce resources are not wasted by funding duplicative systems in markets that cannot even effectively sustain one provider.

Require all applicants to submit a market survey. The painstaking process of a RUS loan is intended to protect the American taxpayer. Therefore, the market survey requirement, which was eliminated by the farm bill for those proposing to have a subscriber projection of less than 20 percent, should be reinstated.

Finally——

The CHAIRMAN. Mr. Wilson, I will have to ask you to make your concluding sentence, please.

Mr. WILSON. All right, sir.

We emerged in these markets where no one else was willing to go. We understand these markets and what their needs are. We are committed to these markets because our systems are locally owned and operated. We understand the programs, like these, and how to utilize them to achieve our goal of ubiquitous broadband deployment that will reclaim our international leadership in the communications sphere.

Thank you.

[The prepared statement of Mr. Wilson follows:]

PREPARED STATEMENT OF DELBERT WILSON, GENERAL MANAGER, HILL COUNTRY TELEPHONE COOPERATIVE, INGRAM, TX; ON BEHALF OF NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION

Chairman McIntyre, Ranking Member Conaway, Members of the Subcommittee, I would like to thank you for the opportunity to be here today to discuss rural broadband programs. I am here on behalf of Hill Country Telephone Cooperative of Ingram, Texas and the National Telecommunications Cooperative Association (NTCA), which represents more than 580 small, rural, community-based communications service providers throughout the nation.

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Hill Country came into being, like many other telecommunications systems, soon after the 1949 passage of the Telephone Amendment to the Rural Electrification Act (REA), which made Rural Utilities Service (RUS) loan funds available to finance rural telecommunications systems. At that time, the Bell companies and other large telecommunications companies were already well established in the nation's cities and growing suburban areas. However, they were not interested in providing telephone service, much as they are not interested today in providing broadband service, to sparsely populated rural areas without imposing expensive line-extension charges. Therefore, in large part due to support from the RUS, the unfulfilled need for telephone service was met by the men and women of rural communities who joined together to develop, finance, and build their own community based telecommunications systems. If it were not for RUS, and other crucial Federal cost recovery mechanisms like the universal service program and the intercarrier compensation regime, many rural areas of our nation would still be without adequate telecommunications service.

Now, the focus and the need have appropriately shifted to more advanced communications services. Working in tandem with the aforementioned cost recovery mechanisms, and private investment, the RUS's broadband loan and grant programs are helping rural communications service providers replicate the success of their telephone service build-out by steadily deploying broadband infrastructure and related services to an increasing percentage of their subscribers.

Listening to the needs of rural consumers and understanding the ever-growing importance of broadband in everyday life, Hill Country is actively engaged in a major outside plant modernization project. This $57 million initiative involves the deployment of 560 miles of fiber optic cable, 280 digital loop carriers and state-of-the-art soft switches throughout a substantial portion of our market area. Why are we doing this? Quite simply, in an effort to provide the broadband infrastructure that is necessary to support the growing bandwidth needs of our members.

However, even in spite of all our efforts tied to this modernization project, including the maximization of our debt load, 543 households—approximately five percent of our market area—will remain unserved from a broadband perspective, because the costs of providing service in these remote, economically challenging areas are simply overwhelming. These 543 households are in outlying areas that are beyond the 18,000 kilofeet standard where DSL will typically operate effectively. According

to a recent study conducted by Hill Country, 522 miles of fiber optic cable would need to be installed to provide broadband service to the five percent of our market that remains unserved. This effort would cost $20 million at an average cost of $37,000 per subscriber—about four times the average cost per subscriber of the other 95 percent of our market.

A typical business plan that would sustain itself simply cannot be constructed for this segment of our market. It is in these unserved areas that support from the RUS and National Telecommunications and Information Administration (NTIA) broadband funding incentives, which are associated with the American Recovery and Reinvestment Act of 2009 (stimulus bill), will be critical in enabling our system to overcome the economic challenges of providing broadband to 100% of our customers. Clearly, there is a real and true need for these dollars and undoubtedly they will have an immediately stimulating effect during the construction stage and thereafter during the consumer usage stage.

Rural areas throughout our nation are low density and even higher cost. Some refer to these unserved areas as "market failures," where competition and existing Federal programs have failed to help provide consumer choice. I like to refer to these areas as "economic realities." Serving our nation's rural citizens with telephone service has always been challenging and bringing broadband to these sparsely populated areas is even more challenging. It is these "economic realities" that lead to our discussion today about the potential impact of the broadband stimulus plan.

Broadband is not only the great equalizer between rural and suburban/urban areas of our nation, but also with the United States in relation to the rest of the world. Broadband infrastructure deployment is critical to the economic development and national security of our nation. As applications evolve over broadband, all Americans connected will experience untold opportunities for employment, health care, education, as well as entertainment. As the world is getting increasingly competitive, it is essential that the United States have a ubiquitous national broadband network where all Americans, whether urban, suburban, or rural have access. Although our rural areas are sparse in population, these people are critical in our nation's economy and security—providing food, fiber, and energy for a growing nation.

As you know, last week's Notice of Funding Availability (NOFA) announced the policy and application procedures for the stimulus bill's broadband initiatives. To ensure the funding provided by the stimulus bill does not yield unintended consequences and to achieve the bill's objectives of increasing access to broadband and inciting economic development, we would like to highlight a couple areas of concern:

- First, we believe it is important to ensure support is directed toward areas with significant need, *i.e.,* unserved areas first. Therefore, we are pleased that the Broadband Initiatives Program (BIP) will make grants available for remote, unserved, rural projects. However, given the extremely high cost of building out the "last mile" to remote areas, the $400 million in grants provided by the BIP for "last mile" projects may not be sufficient to meet the needs of the rural market. While $400 million sounds like a lot of money, remember, we have estimated that it will cost about $20 million to reach just the 543 homes in Hill Country's outlining areas.
- Second, rural providers must retain their right to effectively manage their networks. The rural sector of the communications industry has a long history of adopting new technologies to meet the evolving economic and security interests of their consumers. Therefore, policymakers must ensure any net neutrality or "non-discrimination" actions do not unwittingly stymie this entrepreneurial spirit. At first glance, the regulations appear to mostly meet this objective. However, we are concerned that the requirements are uniformly applied to NTIA and RUS when in fact the law didn't impose application of the interconnection and nondiscrimination provisions to the RUS. In addition, we are also concerned that these interconnection and "non-discrimination" requirements may supersede the exemptions set-forth by the Communications Act of 1934 that recognize the unique circumstances confronting rural telecommunications providers.
- As our members prepare their applications and further review the NOFA's regulations, we will provide the agencies and this Subcommittee with further input regarding any additional concerns or comments we may have. Like the agencies, we reserve our right to provide further evaluation of these proposals as the process moves forward.
- Finally, while not directly related to the stimulus bill, we believe it is important that the cap on the Universal Service Program's High Cost Fund be removed if we truly want ubiquitous broadband. The cap has reduced cost recovery sup-

port for Hill Country by about $2 million annually—resources that remain unavailable to help expand our broadband network.

As for the RUS Broadband Loan and Loan Guarantee Program (RUS Broadband Loan Program), it has been instrumental in helping accelerate broadband deployment in rural communities throughout Texas and the rest of the country. However, there remains room for improvement to ensure its funding is utilized to the maximum extent possible. We recommend the following changes to the RUS Broadband Loan Program:

- Require a 20 percent credit support of the requested loan amount. The 2008 Food, Conservation, and Energy Act (farm bill) eliminated the 20 percent credit support requirement for some entities. Broadband providers who cannot meet the 20 percent threshold will not likely have sufficient financial stability to maintain service to their broadband customers.
- Increase the deadline for completion of a project from 3 years to 5 years. The 3 year build-out time frame is too short for many Program applicants given telecommunications planning horizons, changes in technology, and regulatory environments.
- Lengthen the 30 working day notice period for incumbents to 60 or 90 days to give incumbents more time to see and respond to new applications to ensure these scarce resources are not wasted by funding duplicative systems in markets that cannot even effectively sustain one provider.
- Require all applicants to submit a market survey. The painstaking process of a RUS loan is intended to protect the American taxpayer. Therefore, the market survey requirement, which was eliminated by the farm bill for those proposing to have a subscriber projection of less than 20 percent, should be reinstated.

Finally, RUS perceived a need, and responded accordingly, when it developed the Community Connect Grant program several years ago to provide financial assistance in the form of grants to establish community-oriented broadband points of presence in areas of great need—those that are extremely rural, lower income in nature and currently unserved. This approach has brought broadband within the reach of thousands of rural citizens that otherwise would not have been able to enjoy such access due to the economic circumstance of themselves as well as the community as a whole. We encourage the Committee to continue to support this important program.

Many have asked what role this program should play in light of the emergence of the broadband stimulus funds. We believe the stimulus funds change nothing with regard to the need for this critical program. The Community Connect Grant Program brings broadband services and equipment to community oriented locales such as community centers, libraries and the like so that citizens that cannot afford to maintain their own individual services at home still have the ability to come to such centers and conduct business or entertainment on the community-managed system. It is a wonderful program that has and will continue to make a difference in numerous communities.

I believe that the funding provided by the stimulus bill, in combination with other programs, such as the RUS Broadband Loan and Loan Guarantee Program, the Community Connect Program, Universal Service, and the intercarrier compensation regime will help enable America's rural, community-based telecommunication system providers to meet the broadband needs of our nation's rural citizens.

We emerged in these markets where no one else was willing to go. We understand these markets and what their needs are. We are committed to these markets because our systems are locally owned and operated. And we understand the programs, like these, and how to utilize them to achieve your goal of ubiquitous broadband deployment that will reclaim our international leadership in the communications sphere.

Thank you again for inviting me to testify. I look forward to answering any questions you may have.

The CHAIRMAN. Mr. McCormick.

STATEMENT OF WALTER B. MCCORMICK, JR., PRESIDENT AND CEO, USTELECOM ASSOCIATION, WASHINGTON, D.C.

Mr. MCCORMICK. Mr. Chairman, Ranking Member Conaway, Members of the Committee, thank you very much for having me appear before you today.

The USTelecom Association represents innovative companies ranging from some of the smallest rural telecommunications companies in the nation to some of the largest corporations in our economy. The vast majority of our members are small businesses serving small communities, and our diverse membership is united by our shared determination to deliver the broadband future to all Americans no matter where they may live.

The nation's 1,400 broadband providers have invested more than half a trillion dollars since the beginning of this decade in building out broadband networks, and recent statistics bear this out. Today, fewer than five percent of Americans cite the lack of available broadband services as the reason they don't have broadband at home. But that five percent live exclusively in areas of rural America that have proven uneconomic for the private sector to reach on its own.

So, with that in mind, last year we recommended improvements to the RUS Broadband Loan Program. The thoughtful amendments that you championed in the farm bill could make it more feasible for companies to serve underserved areas, but, like you, we are frustrated that more than a year after enactment we still have no RUS implementing regulations. We do believe that a timely confirmation for former FCC Commissioner Adelstein would help resolve that matter.

With regard to the stimulus bill, we applaud Congress and the Administration for their commitment to reviving our nation's broadband infrastructure and for reviving our nation's economy. But, we are concerned by what we see in the broadband stimulus rules issued last week. They are exceedingly complex. Some of them impose new and prescriptive requirements that go well beyond current law and FCC rules. And the first round of funding will not be awarded until early November, just as the weather turns and the ground begins to freeze across large spots of rural America.

While our analysis of the rules is not entirely complete, there are four issues that stand out thus far as having the potential to cause the kind of uncertainty and delay that are antithetical to the stimulus' primary goal of job creation.

First, in addition to requiring recipients to abide by the FCC's policy statement, which we support, the rules also impose new and controversial obligations that may require companies to operate in new and untested ways.

Second, the RUS scoring system seems to disadvantage very rural populations by offering a maximum of only 5 out of 100 points for serving rural residents in unserved areas and then apparently requiring applicants to serve at least 10,000 homes in order to get even one point.

Third, technological neutrality has been cast aside. In the scoring of broadband speeds, a wireline network must be ten times faster than a wireless network to score the same number of points.

Fourth, some restrictions and ambiguities may disadvantage small telephone companies that serve rural areas. For example, areas that are at least 75 percent rural must apply to RUS but may only be eligible for a maximum of 50 percent grant funding;

whereas a provider in a less rural area can go to NTIA for up to 80 percent grant funding, even if it's less expensive to deploy there.

Mr. Chairman, I have provided the Committee with a couple of maps. One is of your district, and one is of Ranking Member Conaway's district. As you will see, Mr. Chairman, in your district, there appears to be no point within your rural district where an applicant would qualify for a hundred percent loan that would be available to a remote rural area. The areas within your district where an applicant could apply for a rural loan would be up to 50 percent, but an applicant could go to the higher population centers in Lumberton or Wilmington where there is already service, where it is cheaper to serve and offer expanded service and qualify for an 80 percent loan.

We think it's really turned this program on its head to come up with definitions that were not part of the legislation-making distinctions between rural areas and remote rural areas. Having a differentiation in the funding scheme really disadvantages projects to areas that are today totally unserved, expensive to serve, and they are only qualified for a 50 percent loan.

Finally, Mr. Chairman, we think that while it made sense to guard against speculative flipping of facilities with Federal funds, the rules flatly prohibit the sale of any property for 10 years, and we think this could prevent even two very small companies that serve adjacent rural areas from combining to provide their customers with better service at lower costs, and that, too, we think is antithetical to the goals of the Act.

Mr. Chairman, thank you.

[The prepared statement of Mr. McCormick follows:]

PREPARED STATEMENT OF WALTER B. MCCORMICK, JR., PRESIDENT AND CEO, USTELECOM ASSOCIATION, WASHINGTON, D.C.

Chairman McIntyre, Ranking Member Conaway, Members of the Subcommittee: Thank you for this opportunity to appear before you today. I am Walter McCormick, President and CEO of the USTelecom Association.

USTelecom represents innovative companies ranging from some of the smallest rural telecoms in the nation to some of the largest corporations in the U.S. economy. Our member companies offer a wide range of services across the communications landscape, including voice, video and data over local exchange, long distance, Internet and cable networks. USTelecom is the nation's oldest—and largest—association representing rural telecom providers. Almost all of our member companies serve rural areas. The vast majority of them are small businesses serving small communities and the surrounding sparsely populated areas. They are proud members of these communities and deeply committed to their future development. What unites our diverse membership is our shared determination to deliver innovative voice, video and data services to the consumer—a commitment we know this Subcommittee shares.

Broadband in the United States has developed with a speed and scope unparalleled by any prior technology. Moreover, unlike any other infrastructure effort of its scope, it has done so largely with private sector investment. By some estimates, cumulative capital expenditures by broadband providers from 2000–2008 were over half a trillion dollars, and private investment in broadband infrastructure has grown consistently since 2003. As a result of this massive private investment in infrastructure, an overwhelming majority of Americans today can choose among *multiple* broadband platform providers.

While this has been an extraordinary decade of growth for both broadband technology and access, more needs to be done. As you well know, portions of rural America are unlikely to see robust broadband without government support. This Committee, through its support of the Rural Utilities Service (RUS) broadband program, has recognized that when it comes to deploying broadband to areas that are uneconomic to serve, using Federal resources to leverage the initiative and expertise of

established private sector broadband providers is clearly preferable to direct operation and ownership by the government.

USTelecom has urged establishing a national goal of 100% broadband access and adoption by 2014. While these are certainly stretch goals, setting a lesser bar for this important effort would simply be aiming too low. Still, approaching this goal will require the combined efforts of network providers, applications providers, and community organizations, together with Federal, state and local governments.

The RUS Broadband Loan Program

This Committee has been at the forefront of helping advance the development of rural America, from bringing electricity and safe running water to communities that never had it before, to connecting the country via the telephone and now via high-speed broadband. USTelecom and its member companies are proud of the role we play connecting the country, and we fully support the critical role played by the RUS in helping to bring broadband to rural areas.

When I appeared before you in 2007, I recommended several improvements to the RUS broadband loan program. These included:

(1) Better targeting of areas currently not served;

(2) Enhancing incentives for investment in the areas not served;

(3) Expanding program eligibility;

(4) Improving loan processing at USDA; and

(5) Exploring public-private partnerships.

The Committee adopted these needed reforms to the RUS broadband program as part of the farm bill enacted last year. Your thoughtful modifications to this important program will significantly improve the targeting of funds to areas unserved by broadband, streamline the application process, take into account the greater degree of loan security associated with financially strong borrowers, and expand the availability of money to providers of all sizes. In addition, the Committee improved program transparency by beefing up requirements for publication of notices of each application. Furthermore, a 3 year build out requirement was included to ensure that borrowers either promptly construct broadband facilities or relinquish the claim and allow another provider to apply for funding to serve that same area.

Unfortunately, although the farm bill was signed into law in June of last year, we are now ¾ of the way into Fiscal Year 2009 without the necessary implementing regulations. As a result, no loans have been made from the over half a billion dollars Congress provided for enhancing broadband access in rural areas. While it is certainly understandable that RUS has been focused on developing rules for the new broadband grant and loan program authorized under the American Recovery and Reinvestment Act of 2009 (ARRA), RUS had 7 months after the enactment of the farm bill and prior to the passage of the ARRA to promulgate regulations.

The broadband loan program reauthorized in the farm bill remains an important tool to bring high speed broadband to rural areas and the regulations should be published promptly. RUS has indicated that such regulations will be published in "interim final" form, allowing them to be immediately implemented but permitting public comment. This less than ideal procedure would not have been required had RUS promptly published regulations within a reasonable period after adoption of the farm bill. Given the current circumstances, we hope the Committee will seek assurances that RUS will still give serious consideration to public comments received on its broadband loan program regulations.

Finally, while we acknowledge and appreciate the efforts of the current management of the agency during this busy time, we urge the other body to promptly consider and approve the confirmation of Jonathan Adelstein as Administrator of RUS. At this crucial time for the RUS program, it would greatly benefit from the expertise and leadership that Commissioner Adelstein will bring. Commissioner Adelstein has been a tireless advocate for both broadband and rural America, and as such is ideally suited to lead RUS at this moment in its history.

Stimulus Presents RUS With a Tremendous Responsibility and a Momentous Opportunity

The ARRA presents the RUS with both a tremendous responsibility and a momentous opportunity. The opportunity, of course, is to make significant progress toward the goal of ensuring that all Americans have access to high-speed broadband services. The responsibility is to do so in a manner that fulfills the fiduciary duty placed on it by Congress, the President and the American public, that RUS must target broadband stimulus funds toward projects that will immediately stimulate economic activity, create jobs and provide high-speed broadband service.

As the RUS worked to develop regulations for its program, USTelecom offered a number of recommendations designed to meet those twin goals. We pointed out that implementation of the Recovery Act should support, not hinder, the ability of providers to continue to expand and enhance services and speeds. In that regard, we are concerned that some view these important programs in the ARRA less as engines for economic recovery and job creation than as an opportunity to advance policies that deserve far greater deliberation and thoughtful debate. This is likely to inject an element of uncertainty and delay that is antithetical to the ARRA's primary objective of promoting economic recovery and creating jobs.

We also urged the RUS to rank applications by focusing on bringing areas most lacking in broadband infrastructure up to levels available to the majority of Americans with a particular emphasis on grants rather than loans. Most of the areas that remain unserved and underserved are not so because of the absence or the price of credit, but due to the inability of broadband providers to demonstrate a feasible business case to bring service to very high cost, low density markets. By allocating new funds that could be used for grants, Congress recognized that loans alone are not sufficient to address the lack of broadband infrastructure in sizable portions of unserved rural America.

Finally, in addition to proper loan and grant ratios, the program requires clear, simple and streamlined procedures and definitions.

Department of Agriculture's Rural Utilities Service Broadband Initiatives Program

On July 1, the Department of Commerce's National Telecommunications and Information Administration and the Department of Agriculture's Rural Utilities Service (RUS) released a 121 page Notice of Funding Availability (NOFA) detailing the rules and process for the distribution of the first phase of broadband loans and grants established by the ARRA. Even though RUS had indicated that there would be three tranches of funding, this NOFA will be used to distribute at least half of the funding allocated to RUS's Broadband Initiatives Program (BIP).

Applications for this first phase of both programs may be filed beginning July 14 and must be in no later than August 14. There will be a two-part review process, with those applicants making the first cut likely to be required to provide additional information to the agencies in mid-October. The agencies expect to announce awards around November 7.

The NOFA, in accord with USTelecom's recommendation, defines broadband as 768 kbps downstream and 200 kbps upstream. It defines unserved areas as those where at least 90% of households are without broadband access. Underserved areas are defined broadly as:

—those areas where less than 50% of households have access to broadband, or

—those areas where no broadband service provider advertises speeds of at least 3 mbps downstream, or

—those areas where broadband subscribership is 40% of householdsor less.

In addition to requiring applicants to abide by the FCC's Internet Policy Statement, which USTelecom supports, the agencies have also chosen to require adherence to a non-discrimination principle ("not favor any lawful Internet applications and content over others") and an apparently broad interconnection obligation. The NOFA does allow exceptions for law enforcement, managed services and for reasonable network management. These obligations would apply to any facility supported by the funding, but not any existing network arrangements, and continue to apply for the life of that facility.

BIP funding is split between that for rural and remote areas. Remote areas (those 50 miles outside of non-rural areas) are eligible for grants up to 100% and rural areas that are non-remote can get grants up to 50% of the cost of the project with the remainder being loans. The loan portion will have "attractive loan terms with reasonable security requirements." No further information is provided as to the details of the loan terms and reasonable security requirements. However, as this Committee knows from its work reforming the broadband loan program, those details will be a critical component in the success or failure of this aspect of the program.

Finally, the BIP allocates $1.2 billion for last-mile projects, both remote and non-remote. Approximately $400 million is for remote area grants and $800 million for rural but non-remote loans and grants. BIP will fund last-mile facilities to end-users and middle-mile facilities connecting up the provider to the Internet backbone. Applications for areas that are at least 75% rural must be made to BIP, but can also be submitted to NTIA's broadband program. Applications for all other areas go to NTIA's program.

The NOFA is quite complex, and USTelecom staff is continuing to analyze its details. But let me offer some preliminary thoughts about several aspects of the NOFA that USTelecom focused on in its commentary to the Administration.

We believe the rules implementing the Recovery Act's requirement that "priority for awarding [RUS] funds shall be given to project applications for broadband systems that will deliver end-users a choice of more than one service provider" should be interpreted as awarding a priority to those applicants that agree to adhere to the FCC's Broadband Policy Statement. More than 3 years of experience under that Policy Statement has demonstrated its successful balancing of interests among stakeholders—consumers, cable and wireline broadband service providers, application and content providers and technology companies. The NOFA, however, appears to exceed the principles laid out in the Policy Statement. We are concerned that this could impact the number and type of applications the RUS receives and therefore undermine the goals of the ARRA to immediately stimulate economic activity and deploy high speed broadband service.

Further, the scoring system for prioritizing applications for funding has some troubling implications. For example, out of a possible 100 points awarded to an application, only a maximum of five points are awarded for serving rural residents located in unserved areas. And each of those five points requires serving 10,000 unserved households—the vast majority of our members have substantially less than 10,000 customers *in their entire service areas,* so smaller companies or those seeking funding for smaller scale projects serving pockets of customers without broadband service may be ignored. These are the very places that we believe Congress intended to support through the ARRA and this proposal appears to unduly disadvantage these areas. Of similar concern is the reduced availability of grant funding for "non-remote" rural areas—those within 50 miles of towns larger than 20,000 people. It can be prohibitively expensive to provide broadband in these areas, and we are concerned that a maximum of 50 percent grant funding may not be adequate to structure a financially feasible project.

Furthermore, technological neutrality is clearly cast aside. The same number of points is awarded to a wireless provider that builds a system that will deliver a total of 2 megabits per second upstream and downstream, while a wireline provider must construct a system ten times as fast to be awarded the same number of points.

Finally, there are unnecessarily restrictive provisions on the sale or lease of award funded facilities which may discourage potential applicants from providing needed broadband service to rural consumers. The NOFA prohibits an awardee from selling or leasing stimulus financed facilities for 10 years, and only then may the awardee request a waiver. While restrictions on transferring such facilities is reasonable to prevent speculation, the rule specifying a 10 year timeframe is excessive. For example, the public interest would not be well served by prohibiting two small rural companies wishing to better serve their subscribers with broadband service from merging.

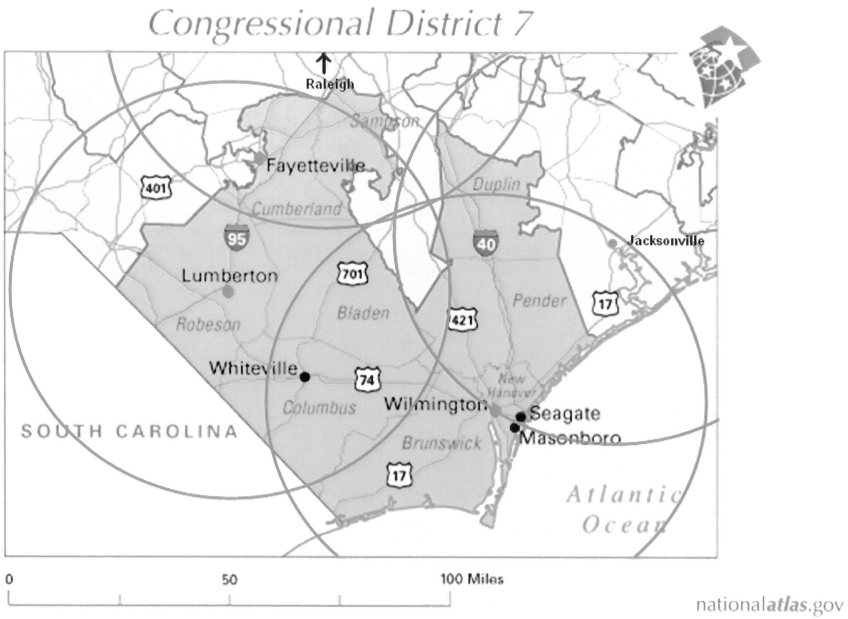
Conclusion

Mr. Chairman, in closing, let me reiterate that it is critically important that rural areas be included in the nationwide drive for greater bandwidth capacity. This modernization of the nation's communications infrastructure will seed economic growth, attract new businesses to rural America and expand opportunities ranging from telecommuting to distance learning to telemedicine.

After 60 years of success, the RUS loan programs remain an essential public-private partnership conceived with the best of intentions—spreading opportunity throughout the country and helping the private sector overcome the often significant economic barriers associated with our nation's vast geography. The results have been impressive: RUS loans generate more revenue than they cost. RUS loans, loan guarantees and grants provide incentives where the market does not, so that private companies can invest in infrastructure that promotes rural economic development. And, it expands our citizens' access to services that can vastly enhance their quality of life and the economic opportunities available to them in their own communities.

We thank you for your invitation to appear today. USTelecom and its member companies look forward to working with the Subcommittee and this Congress to achieve our shared objective of making broadband as ubiquitous today as electricity, water and telephone service. Broadband is an essential building block of every modern American community. We look forward to working with you to make its many opportunities accessible to all Americans. Thank you.

ATTACHMENT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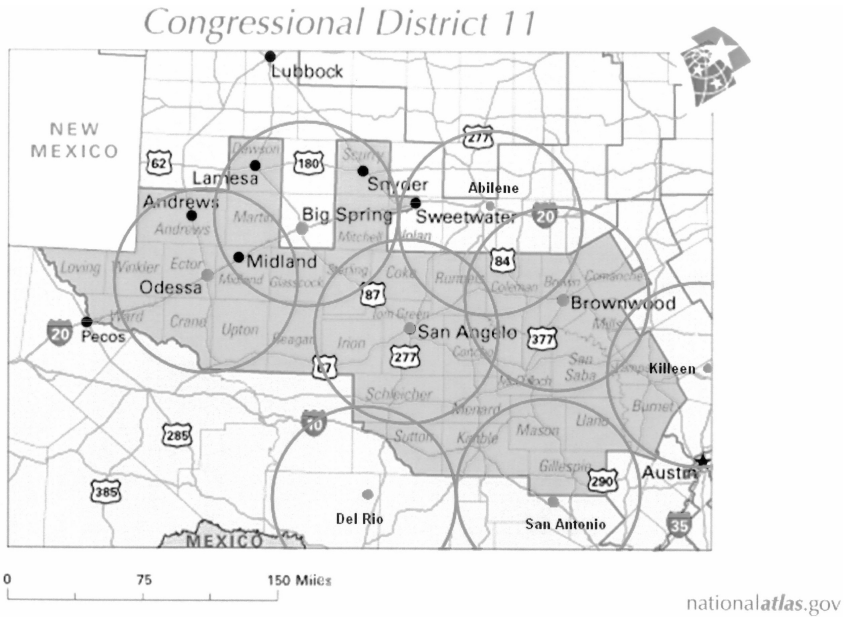
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The CHAIRMAN. Thank you.

Mr. Stamp.

STATEMENT OF CURTIS W. STAMP, J.D., PRESIDENT, INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE, WASHINGTON, D.C.

Mr. STAMP. Thank you.

Good afternoon, Chairman McIntyre and Ranking Member Conaway. I appreciate the opportunity to testify before you on the development of rural broadband.

I am Curt Stamp, President of the Independent Telephone & Telecommunication Alliance, the national trade association of mid-size telecommunication carriers who serve more than 30 million customers in 44 states, primarily in rural and small markets with very low population densities. ITTA's members face the challenges inherent in bringing service to wide-open spaces of the nation; and, despite these challenges, they are at the forefront of providing advanced services to rural America.

Today, on average, broadband is available to between 80 and 90 percent of the customers served by ITTA member companies; and our members continue to push broadband further into rural America, at faster speeds, while investing hundreds of millions of dollars in their networks. But even with these efforts, portions of these areas are very difficult to serve without some sort of external assistance such as stimulus funding.

Through the leadership of Congress, monumental broadband incentives have been enacted. The focus of these efforts should be on making broadband available to those who have no access today. To do otherwise would risk expanding the digital divide that currently exists.

The Recovery Act represents the concrete and commendable commitment of Congress and the Administration to expanding broadband to Americans who do not have access today. The success of its implementation will be judged upon whether it expands broadband service to unserved area. ITTA encourages the Subcommittee to exercise its oversight authority to ensure this is the case. This is particularly crucial given that all of RUS's Recovery Act funding may be distributed in the first round of applications.

ITTA and its members commend RUS, NTIA, and the FCC for their efforts in implementing the Recovery Act. We are pleased that RUS and NTIA recognize that it is in the public's interest to allow private companies like our members to participate in the program and to grant reasonable waivers of the Buy America provisions when necessary so projects can go forward.

ITTA and its members continue to review the rules released last week but have identified a few issues to bring to your attention.

First, although grants, and not loans, are needed to spur deployment in the remaining unserved areas, RUS's BIP rules cap grants at 50 percent in all but the most remote areas and prioritizes applications with greater loan amounts as compared to those seeing seeking only grants. RUS and NTIA have determined that NTIA, which offers higher grant percentages, will not forward funds to predominantly rural areas unless RUS first declines to fund a

project. This causes more delay and more denial of service to unserved customers.

Second, the BIP rules favor slower wireless projects over faster wireline projects, are not technologically neutral, and could result in inferior connection speeds in rural areas. For example, all things being equal, BIP would prioritize a wireless project that offered speeds of 2 megabits over a wired project offering speeds of 19 megabits. This preference for slower wireless connections seem contrary to Congressional intent to use broadband to facilitate rural economic development without regard to specific technologies employed.

Third, the BIP rules do not seem to place priority on deploying broadband to unserved customers in the manner called for by the Act. While the statute dictates that priority for awarding funds be given to projects that provide service to the highest proportion of rural residents who do not have access, applications to deploy broadband to unserved areas appear to be afforded little, if any, priority over applications that would merely insert another provider into an area where service is already available.

This is further complicated by RUS's decision to limit grants to unserved areas on the basis of whether the rural area qualifies as remote or not. A survey of our members indicates that most projects in unserved areas do not fall within the territory that RUS would deem remote. Limiting funds based on this new standard effectively will prevent many high-cost unserved areas from receiving broadband.

It was refreshing to hear RUS's commitment to continue to look at this. However, the 2 week deadline that she offered up is well beyond the start of the application process, which begins on July 14th.

Finally, we are concerned about the nondiscrimination and interconnection provisions and how they may apply to our network, especially if they end up applying to the entire network, since it is not easy for our members to cordon off a portion of their network that may or may not receive stimulus funding.

Also, I would like to thank you for the leadership on the Subcommittee on the positive changes to the farm bill; and we, too, are anxious for the implementation of those rules.

In closing, I would like to add this is a very exciting time in broadband policy. We look forward to working with you and Jonathan Adelstein, once he is confirmed, to ensure broadband continues to be made available for all Americans.

Thank you. I look forward to your questions.

[The prepared statement of Mr. Stamp follows:]

PREPARED STATEMENT OF CURTIS W. STAMP, J.D., PRESIDENT, INDEPENDENT TELEPHONE & TELECOMMUNICATIONS ALLIANCE, WASHINGTON, D.C.

Good morning Chairman McIntyre, Ranking Member Conaway, and Members of the Subcommittee. Thank you for the opportunity to testify on the development of rural broadband and, specifically, the implementation of the 2008 Farm Bill and the Broadband Technology Opportunities Program ("BTOP") and the Broadband Initiatives Program ("BIP") which are administered, respectively through the National Telecommunications and Information Administration ("NTIA") and the Rural Utilities Service ("RUS").

I am Curt Stamp and I am the President of the Independent Telephone & Telecommunications Alliance ("ITTA"). ITTA is an alliance of mid-size telecommuni-

cation carriers[1] that serve more than 30 million customers in 44 states. ITTA members primarily serve rural and small markets with low population densities, and face the challenges inherent to bringing service to the wide open spaces of the nation. Despite the challenges of these markets, ITTA members are at the forefront of providing advanced services to rural America. Their respective efforts have included not only serving rural America with robust and affordable broadband service, but also programs such as partnering with computer manufacturers to bring value-priced computers to consumers. These initiatives increase not only availability, but subscribership as well.

Today, on average, broadband is available to somewhere between 80 and 90 percent of the consumers serviced by ITTA member companies. ITTA members continue to push broadband further and further into rural America, at faster and faster speeds. In 2008, ITTA members invested hundreds of millions of dollars in their networks and broadband deployment.

Through the leadership of Congress, monumental broadband deployment incentives—including broadband mapping legislation, RUS reforms in the 2008 Farm Bill, and most recently, broadband stimulus funding included in the American Recovery and Reinvestment Act of 2009 ("ARRA")—have been enacted. As these programs are implemented the focus should be on making broadband accessible to those who have no access today. Getting some broadband to all must take priority over funding multiple providers in areas that already enjoy the benefits of broadband.

As Congress has recognized, serving America with broadband can be an economically challenging endeavor, particularly when compared to serving urban or suburban areas. While rural networks must cover substantially more area than more densely populated regions of the country, rural areas contain fewer consumers to buy those services. On average, rural consumers are older and have less money to buy such services than their counterparts in other parts of the country. Although ITTA members have done an excellent job deploying fast and affordable broadband services to the vast majority to their customers, these factors make some portion of these rural areas extremely difficult to serve without government support.

For wireline companies serving rural America, the incidence of fewer customers per square mile increases dramatically the amount of per customer investment that is necessary to provide service. An average ITTA member company has fewer than 24 access lines per square mile. The result is that the remaining 10–15 percent of customers who currently do not have access to broadband are the most expensive to serve and cannot be reached without some sort of external assistance like Universal Service support, RUS Rural Broadband Loan Program, or stimulus funding.

While the Universal Service Fund and RUS programs have helped bring broadband to additional rural consumers, much needed reform of the programs to reflect today's changing telecommunication landscape has been slow to come. Understandably, this is partly due to the fact that technological innovation can often move forward more rapidly than normal regulatory processes. Thanks to the leadership of this Subcommittee, however, the RUS program was reformed in the 2008 Farm Bill, which currently is at the Department of Agriculture awaiting final rule implementation. In regard to the Universal Service Fund, ITTA has worked closely with Congressmen Boucher and Terry on reforms for mid-size, rural carriers that were included in H.R. 2054 in the 110th Congress. We remain optimistic that Congressmen Boucher and Terry will reintroduce their USF reform bill and again mid-size rural carrier reforms will be included. Once in place, these reforms will help more consumers obtain the benefit of comparable broadband service to those living in more densely populated areas.

ARRA Implementation:

The commitment made by Congress and the Administration in ARRA to expanding broadband to Americans who do not have access today is commendable. The primary purpose of ARRA was to bring robust and affordable broadband service to consumers who currently do not have broadband available to them. Its success, therefore, will be judged upon whether its implementation expands broadband service to unserved areas. ITTA encourages the Committee to exercise its oversight authority to ensure this is the case, especially during the first round of funding, and to seek changes if ARRA programs fail to fund significant new deployment in unserved areas.

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[1] ITTA member companies include CenturyLink, Comporium Communications, Consolidated Communications, FairPoint Communications, Frontier Communications, Iowa Telecom, Qwest Communications, TDS Telecom, and Windstream Communications.

ITTA and its member companies commend RUS, NTIA, and the Federal Communications Commission ("FCC") for their efforts in implementing ARRA. ITTA further commends RUS and NTIA for recognizing that it is in the public interest to allow private companies, like ITTA's membership, to participate in the program and that waiver of the Buy America provision for certain telecommunications equipment was needed. Of course ITTA and its members are still actively reviewing the complex and substantial rules released only late last week, but ITTA has identified a few issues that it would like to bring to the attention of the Committee as it exercises its oversight of this critical legislation. As we gain further insight from the BIP and BTOP application, I hope that there will be additional opportunities to speak on issues raised in the stimulus provisions adopted by RUS and NTIA. My comments today are limited to potential issues that immediately stood out to ITTA, but other regulatory provisions (such as those prohibiting the sale and lease of broadband facilities and those imposing onerous reporting and monitoring obligations) also may warrant Congressional attention.

First, although grants, not loans, are needed to spur deployment in most remaining unserved areas, BIP effectively limits grants at 50 percent for all but the most remote areas and prioritizes applications with greater loan amounts as compared to grants. RUS and NTIA have further determined that NTIA, which offers grants for up to 80 percent of project costs, will not award funds to predominantly rural areas unless RUS first has declined to offer a project funding. It is unclear how this provision will be implemented, but it could have the effect of delaying or blocking predominantly rural areas from receipt of NTIA funding, which is significant due to the substantially higher available grant amount cap available from NTIA's BTOP program as compared to RUS' BIP program. To ensure adequate funding is available for unserved consumers, the Subcommittee should recommend that a substantial share of NTIA's BTOP funding be set aside for last mile deployment in predominantly rural areas.

Second, BIP rules favoring slower wireless projects over faster wired projects, are not on their face technologically neutral and consequently could result in deployment of inferior connection speeds in rural areas, which could expand the rural-urban digital divide. Under BIP rules, wireless projects will receive prioritization at speeds that are ten times slower than the threshold established for wireline broadband service providers. For example, all things being equal, BIP would prioritize a wireless broadband project that offers consumers speeds of 2 Mbps over a wired project that offers 19 Mbps. Although broadband providers using all different kinds of technologies should be eligible to compete for funding, this preference for slower wireless connections appears to be contrary to Congressional intent to use broadband to "facilitate rural economic development," without regard to specific technologies employed.

Third, the BIP rules do not seem to place priority on deploying broadband to unserved consumers in the manner called for by ARRA. Although the statute dictates that "priority for awarding funds . . . be given to projects that provide service to the highest proportion of rural residents that do not have access to broadband,"[2] applications to deploy broadband to unserved areas appear to be afforded little, or no, priority over applications that would merely insert another broadband provider into an area where service is already available.

Finally, ITTA is concerned that the nondiscrimination and interconnection provisions of the NOFA create special obligations on broadband providers that are ready and willing to deploy broadband in areas that are the most difficult to reach. The uncertainty associated with these new obligations unnecessarily complicates the calculus for carriers considering seeking funding, and may reduce the number and quality of providers stepping forward to compete. For years, ITTA members have abided by the principles contained in the Internet Policy Statement adopted by the FCC. Our members recognize that in today's competitive marketplace customers will not tolerate an inability to access the lawful content and applications they wish on the Internet. The proposed requirements, however, go well beyond the FCC's Internet Policy Statement and could implicate a broadband provider's entire network, as network providers cannot easily cabin off one portion of their network from the rest. To the extent new prophylactic rules regarding nondiscrimination and interconnection are warranted (and there is no record suggesting they are), any such obligation would be most properly assessed and adopted in the context of a traditional rulemaking conducted by the expert agency—which here is the FCC.

[2] American Recovery and Reinvestment Act of 2009, Pub. L. 111–5, 123 Stat. 118–119 (2009).

RUS

With passage of the 2008 Farm Bill positive reforms were made. ITTA is hopeful that the new rules will be implemented soon. Any future delays in rule implementation process will only further undermine the value of the RUS broadband loan program and slow the expansion of broadband to those who need it most.

In regard to the 2008 Farm Bill, ITTA strongly supported the following reforms:

- Priority to applicants that that can provide broadband service to households that currently, are unserved by a broadband provider.
- Entities must complete build out of the broadband service not later than 3 years after the initial date on which the loan was made available.
- Loans cannot be provided to areas where more than 75% of the households are offered broadband by two or more incumbent service providers. In areas with three or more incumbent providers loans may not be granted.
- Improved transparency on all applicants as well as streamlining the application process.

Conclusion

Mr. Chairman and Members of the Committee, in closing, I would like to add that this is a very exciting time in National broadband policy. At no other time in our nation's history has more public policy attention been directed towards broadband than today. The FCC has opened a major proceeding on a National Broadband Plan and the President is committed to ensuring that every child has "the chance to get online" and broadband "will strengthen America's competitiveness in the world."[3] Under the leadership and oversight of this Committee and Congress strides have been made in ensuring broadband availability across America. ITTA is hopeful that with your oversight we can work with RUS to develop a program that will help realize the goals of Congress and to bring the economic, health-care, and educational benefits of broadband to rural and high-cost areas throughout the nation.

Thank you for the opportunity to testify today. I would be happy to answer any questions that you may have.

The CHAIRMAN. Thank you very much.

Mr. Simmons.

STATEMENT OF W. TOM SIMMONS, SENIOR VICE PRESIDENT OF PUBLIC POLICY, MIDCONTINENT COMMUNICATIONS, SIOUX FALLS, SD; ON BEHALF OF NATIONAL CABLE AND TELECOMMUNICATIONS ASSOCIATION

Mr. SIMMONS. Chairman McIntyre, Members of the Subcommittee, thank you for inviting me to testify today as part of your review of rural broadband programs.

My name is Tom Simmons. I am the Senior Vice President of Public Policy for Midcontinent Communications. Midcontinent is the leading provider of cable television services as well as local and long-distance telephone service, high-speed Internet access, cable advertising services for communities in North Dakota, South Dakota, and Minnesota.

I am also representing the National Cable and Telecommunications Associations. NCTA is the principal trade association of the cable industry, which has long been at the forefront of the growth and deployment of broadband service.

Extending broadband to unserved areas should be the government's highest priority. While broadband access has grown, many Americans in rural areas still lack access to broadband infrastructure and services. The $2.5 million that Congress provided in the stimulus bill for their Broadband Initiatives Program, or BIP, will help address this critical need. BIP builds on Congress' determina-

[3] "Obama: Broadband Computers Part of Stimulus Package," Network World (Dec. 8, 2008).

tion in the 2008 Farm Bill that government subsidies should be focused on unserved rural areas.

While we are still reviewing last week's Notice of Funds Availability, or NOFA, for BIP, we are pleased that the NOFA places special emphasis on remote and rural areas without any first-generation broadband. Specifically, under the NOFA, BIP grants will be used exclusively to fund projects in these areas.

The application scoring criteria also underscores the focus on bringing broadband to unserved areas. The greater the number of unserved households in the area, the more points a proposal will receive. The more remote a proposed project, the more points the application will receive.

We also applaud RUS's recognition in the NOFA that investment in middle-mile facilities is critical for some rural areas. This approach is consistent with the language and intent of the Recovery Act's broadband provisions, which do not favor any particular technology.

While BIP will also provide loans and loan/grant combinations for underserved areas, we are hopeful that RUS will administer this aspect of the program in a manner that avoids subsidizing areas where Midcon and others have already invested risk capital to provide broadband services. In this regard, we urge RUS to rigorously enforce the NOFA's presumption that an application meet at least two of the three specified factors in order to qualify as an underserved area project, and avoid subsidizing areas merely because broadband penetration there is low. Using scarce government funds to subsidize broadband where it is already available is not the best use of taxpayer money.

We also welcome the NOFA's requirement that BIP applicants provide a detailed description of the proposed funded service area and a plan to post each such description on the *broadbandUSA.gov* website for a 30 day public inspection period. This transparent, open process will assist both the agencies evaluating loans and grants and the public whose tax money supports the programs.

We are concerned, however, that some provisions in the Recovery Act and the NOFA could undermine the job creation and other benefits of rapid broadband deployment intended by Congress. In particular, the broad interconnection and nondiscrimination requirements applicable to BIP and BTOP projects go beyond the existing FCC broadband principles, and include a first-time broadband interconnection mandate.

Requiring providers to implement new and largely undefined requirements could chill investment and bog providers down in litigation. We urge RUS and NTIA to apply these requirements in a manner that gives them maximum flexibility.

Having adopted an interconnection requirement for BIP, however, RUS should not prohibit the use of BIP interconnection agreements to provide services that compete with projects funded by existing REA telephone loans. This one-sided restriction would effectively prevent new entrants from using interconnection to provide voice service and competition with existing borrowers, disserving consumers and violating the statutory priority for BIP projects that give end-users a choice of broadband providers.

I would like to take a moment to talk about the existing RUS Broadband Loan Program. As you know, that program has had a troubled past. We were, therefore, pleased when Congress reformed the loan program as part of the 2008 Farm Bill. We believe the changes made in that law will address many of the problems identified by the Inspector General in two separate reports.

In particular, the farm bill prioritizes funds for unserved areas and, equally important, redefined the term *rural* to encompass an area that has a population of 20,000 or less, but not including any urbanized area adjacent to a city or town that has a population of greater than 50,000. That definition was also adopted in the NOFA for the BIP. The farm bill has also established more stringent eligibility standards and improves the transparency of the line process, which we strongly support.

We also are confident that Jonathan Adelstein, should he be confirmed by the U.S. Senate as Administrator of the RUS, will fully implement the reforms of the 2008 Farm Bill. We also urge RUS to release those revised regulations governing the program in order the bring it in line with these reforms.

Mr. Chairman, thank you for inviting me to testify today. I am happy to answer any questions you or any Member of the Committee may have. Thank you.

[The prepared statement of Mr. Simmons follows:]

PREPARED STATEMENT OF W. TOM SIMMONS, SENIOR VICE PRESIDENT OF PUBLIC POLICY, MIDCONTINENT COMMUNICATIONS, SIOUX FALLS, SD; ON BEHALF OF NATIONAL CABLE AND TELECOMMUNICATIONS ASSOCIATION

Chairman McIntyre and Members of the Subcommittee, thank you for inviting me to testify today as part of your review of rural broadband programs. My name is Tom Simmons and I am the Senior Vice President of Public Policy for Midcontinent Communications. Midcontinent is the leading provider of cable television services, as well as local and long distance telephone service, high-speed Internet access, and cable advertising services for communities in North Dakota, South Dakota and Minnesota. Midcontinent's service area includes over 200 communities serving nearly 250,000 customers. The size of our communities ranges from densities of 5 to 116 homes per mile of cable plant and populations range from less than 125 in Dodge, North Dakota to our largest community, Sioux Falls, South Dakota, which has a population of more than 150,000.

I am also here today representing the National Cable and Telecommunications Association ("NCTA"). NCTA is the principal trade association of the cable industry in the United States. NCTA represents cable operators serving more than 90 percent of the nation's cable television households and more than 200 cable program networks, as well as equipment suppliers and providers of other services to the cable industry. The cable industry has long been at the forefront of the growth and deployment of broadband service. Since 1996, the cable industry has invested over $145 billion to upgrade and expand its networks to provide broadband access. The result of this investment is that cable operators today offer broadband to 92 percent of U.S. households. The cable industry is expected to invest another $14 billion continuing such upgrades and expansion this year.

The cable industry believes strongly that quality broadband services should be available to all regions of the country, including the least densely populated areas of the country. Broadband is a crucial driver of economic recovery and global competitiveness. Broadband links rural America to the rest of the country and the world, creates jobs, improves educational opportunities, and delivers health care more efficiently. Midcontinent has invested over $100 million to bring broadband to our service areas, but we recognize that there are still some rural consumers who lack access to broadband. And even in areas where one or more providers offer broadband service, there can be other barriers to adoption—such as affordability, the lack of a computer or other equipment needed to connect to the Internet, and low levels of basic "digital literacy."

Bringing service to these unserved areas and facilitating broadband adoption by underserved populations, *e.g.,* low income consumers, are the appropriate objectives for rural broadband programs. Thanks to the hard work of this Subcommittee, Congress substantially reformed the rural broadband program in the 2008 Farm Bill to focus on unserved areas, and we look forward to seeing the Rural Utilities Service ("RUS") implement this program in accordance with the statutory intent.

Likewise, we are pleased that the Broadband Initiatives Program ("BIP") funded by the stimulus bill places special emphasis on remote and rural areas without *any* first generation broadband. Specifically, under the Notice of Funds Availability ("NOFA") released last week, BIP grants will be used exclusively to fund projects in these areas. While broadband projects in "underserved" rural areas are also eligible for support, underserved has been carefully defined in a way that we are hopeful will avoid wasting taxpayers' monies by subsidizing additional competitive entrants in communities where an existing provider has already invested private risk capital. We agree with RUS' determination that only loans and loan/grant combinations should be used to fund projects in these areas.

My testimony today will address each of these points in a little more detail.

Rural Broadband Programs Should Focus on Unserved Areas and Underserved Populations

Extending the physical availability of broadband where it currently does not exist should be the government's highest priority in terms of distributing broadband grants for infrastructure construction. While the number of consumers with access to broadband at home has grown over the past year,[1] some geographic areas still lack the necessary infrastructure to offer broadband services. As the Department of Agriculture recently noted, "broadband Internet access is becoming essential for both businesses and households" and "many compare its evolution to other technologies now considered common necessities . . . ."[2] Broadband Internet access would benefit businesses as well as provide "rural residents access to goods and services that may not otherwise be available locally or via dial-up Internet."[3]

Even where broadband is available, two key obstacles—lack of interest and lack of resources—greatly affect whether Americans subscribe to broadband. Enabling underserved *populations* to acquire and make effective use of broadband service is a critical component of our national broadband strategy. Many rural and low-income households do not subscribe to the broadband services that are available because they do not have the necessary equipment, training, or educational opportunities to take advantage of the benefits of Internet use. Indeed, approximately 35 million households in the United States who currently have access to broadband do not use it.[4] Examples of possible demand-side stimulus programs include making computers or laptops available at a discount to qualifying households, subsidizing monthly service fees for low-income households, providing for reimbursement of telehealth expenditures, or other tailored means designed to stimulate adoption by targeted groups.

The Broadband Initiative Program Is Properly Focused on Unserved and Remote Areas

Today's hearing is extremely timely in light of last week's release of the NOFA for the $2.5 billion in rural broadband stimulus funding, now known as the Broadband Initiatives Program. The rural broadband provisions of the Recovery Act[5] and last week's NOFA build on Congress's determination in the 2008 Farm Bill that government subsidies should be focused on unserved rural areas.

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[1] PEW INTERNET & AMERICAN LIFE PROJECT, HOME BROADBAND ADOPTION 2009, at 3 (June 2009) ("Pew"); *http://www.pewinternet.org/~/media//Files/Reports/2009/Home-Broadband-Adoption-2009.pdf* (finding that 63% of adult Americans had broadband at home as of April 2009, "up from 55% in May, 2008").

[2] U.S. DEPT. OF AGRICULTURE, ECONOMIC RESEARCH SERVICE, *Rural Broadband at a Glance,* at 1 (February 2009), available at *http://www.ers.usda.gov/Publications/EIB47/EIB47_SinglePages.pdf.*

[3] *Id.* at 4.

[4] *Moving the Needle on Broadband: Stimulus Strategies to Spur Adoption and Extend Access Across America,* National Cable and Telecommunications Assoc., at 2 (Mar. 17, 2009). Notably, of that number, only 30 percent have more than a high school education. *Id.* Broadband adoption continues to increase in households with a high school education or greater. The Pew Internet & American Life Project's most recent study indicates that home broadband adoption increased between 2008 and 2009 at a rate of 30% for those with a high school education, 8% for those with "some college" education, and 5% with at least a college education. *See* Pew at 16.

[5] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5, 123 Stat. 115 (2009) ("Recovery Act").

Consistent with the farm bill, the Recovery Act appropriately targeted funding to areas "without sufficient access to high speed broadband service to facilitate rural economic development." Also like the farm bill, the Recovery Act gives priority to projects that provide service to the highest proportion of rural residents that do not have access to broadband service; projects that will be fully funded if the requested funds are provided; and projects that can start promptly after the enactment of the Act.[6]

Midcontinent and NCTA welcome the Recovery Act's focus on unserved areas and Secretary Vilsack's recent Senate testimony that his intent is to direct "at least 75% [of the stimulus funds] to unserved rural areas." With about ten million households, most located in rural areas, lacking access to broadband,[7] this is surely the right approach. While we are still reviewing the 121 page NOFA, we are pleased that it appears to confirm the Secretary's intent and fulfill Congress's objective to bring broadband to areas of the country that lack this critical service today.

Specifically, the NOFA directs that broadband *grants* will be available solely in unserved rural areas, defined as rural areas without even first generation broadband with speeds of 768 kilobits per second downstream. The scoring criteria announced in the NOFA underscores the focus on bringing broadband to unserved areas: the greater the number of unserved households in an area, the more points a proposal will receive; the more remote a proposed project, the more points the application will receive. Midcontinent is currently pulling together the needed information to apply for BIP funding to expand its broadband footprint to areas that are currently unserved.

Prioritizing unserved areas for government support is not only the best use of stimulus funds, it also avoids creating disincentives for providers to continue deploying broadband through private investment. A robust broadband strategy inevitably depends on this continued private investment—government subsidies cannot fund all the broadband deployment needed for the country to become truly broadband-accessible. Companies that have taken the financial risk of serving a rural market without government assistance cannot realistically be expected to continue to do so if they must face a government-subsidized competitor. Moreover, devoting funds to already-served areas creates a greater risk that loans may not be repaid because borrowers will face pre-existing competition. We strongly support RUS' adoption of an application process to ensure that loans will not subsidize competitive entrants.

We also applaud Secretary Vilsack's recognition that the best use of stimulus funding may not be the same in all rural areas. As he noted, "[i]n some parts of the country, it may be more important that we fund the 'middle mile,'" while in other areas "it may be the last mile that's most important."[8] Accordingly, the NOFA confirms that middle mile projects will be available for BIP funding. This approach is consistent with the language and intent of the Recovery Act's broadband provisions, which do not favor any particular technology but rather contemplate that RUS will judge applicants based on which "will best meet the broadband access needs of the area to be served, whether by a wireless provider, a wireline provider, or any provider offering to construct last-mile, middle-mile, or long haul facilities."[9]

While demand-side programs for underserved populations will not be funded through BIP, RUS will provide loans and loan/grant combinations for underserved *areas*. The NOFA appears to largely address our concern that funding for underserved areas could result in the subsidization of areas where Midcontinent and others have already invested risk capital to provide broadband, by establishing a presumption that at least two of three specified factors will need to be present in an area to qualify as "undeserved."[10] To ensure that BIP loans and loan/grant combinations are appropriately targeted at areas with the greatest need, we urge RUS to rigorously enforce the NOFA's presumption that an application meet at least two of these factors in order to qualify as an underserved area project.

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[6] *Id.*

[7] Jon M. Peha, *Bringing Broadband to Unserved Communities,* The Hamilton Project, at 11 (The Brookings Institution) (July 2008); *http://www.brookings.edu/~/media/Files/rc/papers/2008/07_broadband_peha/07_broadband_peha.pdf.*

[8] *Vilsack: Broadband Program Will Target Unserved Areas, Offer Simple Process,* TR DAILY (June 4, 2009).

[9] H. CONF. REP. NO. 111–16, at 774 (2009).

[10] Those factors are: (1) no more than 50 percent of the households in the proposed funded service area have access to facilities-based, terrestrial broadband service at greater than 768 kilobits downstream; (2) no fixed or mobile broadband service provider advertises broadband transmission speeds of at least 3 megabits per second downstream in the proposed funded service area; or (3) the rate of broadband subscribership for the proposed funded service area is 40 percent of households or less.

The Broadband Stimulus Program Must be Administered With Transparency

Also like the 2008 Farm bill, the Recovery Act and its implementing rules include important governance and accountability standards, requiring the Secretary of Agriculture to report to the Appropriations Committees on planned spending and actual obligations describing the use of the funds. Ensuring accountability is essential, particularly given the Inspector General's recent concerns about RUS' ability to disburse Recovery Act funds:

> We remain concerned with RUS' current direction of the Broadband program, particularly as they receive greater funding under the [Recovery Act], including its provisions for transparency and accountability. As structured, RUS' Broadband program may not meet the Recovery Act's objective of awarding funds to projects that provide service to the most rural residents that do not have access to broadband service.[11]

We are confident that Jonathan Adelstein, should he be confirmed by the U.S. Senate as Administrator of the RUS, recognizes the importance of transparency and accountability and will move swiftly to address OIG's concerns.

To ensure that funding is properly dedicated to unserved areas and only those underserved areas meeting the requisite factors, it is important that the entire award process be transparent to the public. The provision of inaccurate information has hindered RUS' efforts in its loan determination and allowed loans to be made on the basis of faulty information.[12] In this regard, we welcome the NOFA's requirement that BIP applicants provide a detailed description of the proposed funded service area[13] and RUS' plan to post each such description on the *broadbandusa.gov* website for a 30 day public inspection period. The transparent, open process contemplated by the Recovery Act will assist both the agencies evaluating loans and grants, and the public, whose tax money supports the programs.

Applicants should also be required to identify all sources of funding for the project. For example, the Recovery Act requires applicants for BTOP funds to "disclose . . . the source and amount of other Federal or state funding sources from which the applicant receives, or has applied for, funding for activities or projects to which the application relates."[14] The NOFA confirms this requirement for all BIP applications.

RUS Should Minimize the Burdens of New Regulatory Requirements Adopted in the NOFA and Ensure Competitive Parity

There remain a number of provisions in the Recovery Act and the NOFA that could undermine the job creation and other benefits of rapid broadband deployment intended by Congress. The precise impact of these provisions will depend on how RUS implements them. *First,* the broad interconnection and nondiscrimination requirements applicable to BIP and BTOP projects go beyond the existing FCC broadband principles and include a first-time broadband interconnection mandate. We are concerned that requiring providers to implement new and largely undefined requirements could chill investment and bog providers down in litigation—at the very time when the focus should be on swiftly building broadband and creating jobs. We urge RUS and NTIA to apply these requirements in a manner that gives providers maximum flexibility rather than tying their hands with complex technical and service rules. Broad questions about policies like "open access" and "net neutrality" are more appropriately addressed at the FCC.

Second, while we were disappointed that Congress established a statutory priority under BIP for current or former borrowers under the REA's rural telephone loan program, we believe the NOFA properly limited this priority to a single five point

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[11] REPORT NO. 09601–8–TE, U.S. DEPARTMENT OF AGRICULTURE, OFFICE OF INSPECTOR GENERAL, RURAL UTILITIES SERVICE BROADBAND LOAN AND LOAN GUARANTEE PROGRAM, AUDIT REPORT, at 2 (March 2009) ("OIG 2009 Report").

[12] *See, e.g., Iowa Cable and Telecomm. Assn. and Mediacom Comm. Corp.* v. *United States Dep't of Agriculture,* Case No. 06–C–256, Complaint for Declaratory and Injunctive Relief (filed S.D. Iowa May 30, 2006).

[13] The description must include a map; data describing the geography and demographics of the proposed funded service area, including information as to whether the proposed funded service area is unserved or underserved; names of the Census designated communities and identification of areas not within a Census designated community within the proposed funded service area; information as to whether these communities and areas are rural or non-rural, remote and unserved, underserved or served; the methodology for making the above classifications; and whether the applicant is seeking a waiver from providing less than 100% coverage of any Census block.

[14] Recovery Act, § 6001(e)(6).

preference. That said, we believe that even this preference is appropriate only for borrowers in good standing. To the extent a previous borrower has not completed past projects in a timely manner or otherwise is behind in its loan repayments, a deduction from the scoring of its application is warranted.

Finally, we are concerned by the prohibition on the use of interconnected facilities funded by BIP to provide services that compete with projects funded by existing REA loans. This one-sided restriction would effectively prevent new entrants from using BIP interconnection agreements to provide voice service in competition with existing borrowers. Having adopted an interconnection requirement for BIP, RUS should not limit the requirement in this anti-consumer manner. By inhibiting competitors from offering a "triple play" of services (voice, video, and data), moreover, the restriction arguably violates the statutory priority for BIP projects that give end-users a choice of broadband providers (a priority, by the way, that is not explained in the NOFA).

Notwithstanding these reservations, based on our review of the NOFA to date we believe that it faithfully implements the Recovery Act. Of course, the ultimate success of BIP will be determined by the hundreds of decisions that RUS will have to make in response to specific applications. We look forward to working with RUS and this Subcommittee to ensure that the program fulfills its promise.

The 2008 Farm Bill Will Improve the Existing RUS Loan Program

While the Recovery Act and the NOFA help point the rural broadband stimulus programs in the right direction, the existing rural broadband loan program has had a troubled past. We were therefore heartened when Congress reformed the RUS broadband loan program as part of the 2008 Farm Bill[15] and we believe that the changes made in that law will address many of the problems identified by OIG. We thank the Members of this Subcommittee and the full Committee for your hard work in achieving these reforms.

By now, we are all familiar with the 2005 USDA Inspector General's audit of the rural broadband loan program, which was established in 2002. The Office of the Inspector General (OIG) found that the program had "not maintained its focus on rural communities without preexisting service" and was instead subsidizing competition in suburban areas and in communities already served by one or more existing broadband providers.[16]

The threat of a government subsidized competitor in rural markets also creates a disincentive for a company that does not receive Federal support to extend service to rural communities. As the OIG report made clear, "[the] RUS may be setting its own loans up to fail by encouraging competitive service; it may also be creating an uneven playing field for preexisting providers operating without Government assistance"[17] Perhaps even more fundamentally from a taxpayer standpoint, subsidizing competition is a waste of scarce RUS loan funds that should instead be targeted to areas where a market-based solution has not developed.

Regrettably, it appears that RUS has not yet addressed OIG's 2005 findings and recommendations. Just a few months ago, in March 2009, OIG released a second report concluding that "the key problems identified in our 2005 report—loans being issued to suburban and exurban communities and loans being issued where other providers already provide access—have not been resolved."[18] Despite OIG's 2005 initial findings, "RUS continued to make loans to providers in areas with preexisting service, sometimes in close proximity to urban areas" while awaiting the enactment of the 2008 Farm Bill.[19] The loan application statistics contained in the OIG report bear out the Inspector General's concerns about the program. OIG reported that of "37 applications approved by RUS since September 2005, 34 were granted to applicants in areas where one or more private broadband providers *already offered service.*"[20] And although the 2008 Farm Bill does not explicitly prohibit granting loans to preexisting service areas, OIG expressed its concern that "the overwhelming majority of communities (77 percent) receiving service through the

[15] Food, Conservation, and Energy Act of 2008, Pub. L. No. 110–246, § 6110 ("2008 Farm Bill").

[16] AUDIT REPORT 09601–4–TE, RURAL UTILITIES SERVICE BROADBAND GRANT AND LOAN PROGRAMS, U.S. DEPARTMENT OF AGRICULTURE, OFFICE OF INSPECTOR GENERAL, SOUTHWEST REGION, at ii (Sept. 2005).

[17] *Id.*

[18] OIG 2009 Report at 9.

[19] *Id.* at 2.

[20] *Id.* at 5 (emphasis added).

broadband program already have access to the technology, without RUS' loan program."[21]

We are hopeful that the new RUS Administrator will quickly redress these failings by implementing the reforms of the 2008 Farm Bill. In particular, the farm bill prioritized funds for unserved areas and directed the Secretary of Agriculture to "give the highest priority to applicants that offer to provide broadband service to the greatest proportion of households that, prior to the provision of the broadband service, had no incumbent service provider."[22] Equally important, the Act also redefined the term "rural" to encompass an area that has a population of 20,000 or less, but not including any urbanized area contiguous or adjacent to a city or town that has a population of greater than 50,000.[23] We are pleased that the NOFA adopted this definition of "rural area" for the BIP.

The farm bill also established more stringent project eligibility standards, requiring, with certain exceptions, that not less than 25% or more households in the proposed service territory be served by not more than one broadband service provider and no portion of the proposed service territory be served by three or more providers in order for a project to be eligible for funding.[24] The law also improved the transparency of the loan process by directing the Secretary of Agriculture to publish a notice for each loan or loan guarantee application describing the content of the application, including the identity of the applicant; each area proposed to be served by the applicant; and the estimated number of households without terrestrial-based broadband service in those areas.[25]

Although the 2008 Farm Bill took the appropriate steps towards ensuring that unserved rural areas receive first loan priority and implementing additional disclosure requirements, the revised regulations governing that program have yet to be released. In order to bring the rural loan program in line with the reforms Congress mandated last year, we urge that RUS release these rules as soon as possible.

Conclusion

The cable industry strongly supports the goal of ensuring that all Americans, including citizens in rural areas, have access to broadband services. We have invested billions of dollars to help achieve this goal. We also understand and accept that government assistance through subsidies may be the only answer in some unserved rural areas, but any government program designed to promote broadband deployment must be carefully defined and targeted at those unserved areas that lack broadband service. The new Broadband Initiatives Program and the existing rural broadband loan program, as restructured by the 2008 Farm Bill, appear to meet these objectives and both will be subject to stringent government oversight to ensure that government funds are allocated appropriately, taxpayers are protected, and private entrepreneurs already serving the community are not harmed or penalized in the process.

Mr. Chairman, thank you for inviting me to testify today. I am happy to answer any questions you or the Members of the Committee may have.

The CHAIRMAN. Thank you.

Mr. Evans.

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[21] *Id.* at 6.

[22] 2008 Farm Bill, § 601(c)(2); *see also* CONF. REP. NO. 110–627, at 832 (2008). And the House Report indicated that eligibility requirements were tightened for the broadband loan program in order "to refocus on both rural and unserved areas of the country and provides additional criteria to USDA to prevent entities from receiving loans to serve only markets already sufficiently served with high-speed and affordable broadband service." *See* HOUSE REP. NO. 110–256, at 232 (2008).

[23] 2008 Farm Bill, § 601(b)(3).

[24] Farm Bill, §§ 601(d)(2)(A)(i), (ii).

[25] 2008 Farm Bill, § 601(d)(5). Transparency would be further served by requiring each applicant to include in its application a project area map, whether and to what extent that project area is believed to be served based on the data collected by the FCC on its Form 477; information on the number of potential customers in the proposed project area; a geographical representation and numerical estimate of the unserved households within the proposed project area that the applicant believes will be served upon completion of the project; the number and identity of existing providers of broadband service, if any, in the proposed project area; and details regarding planned network construction, including types of equipment that will be deployed, and a showing that network performance will meet or exceed the speed eligibility requirements. As noted above, these are similar to the showing required in a BIP application.

STATEMENT OF G. EDWARD EVANS, FOUNDER AND CEO, STELERA WIRELESS, LLC; MEMBER, BOARD OF DIRECTORS, CTIA—THE WIRELESS ASSOCIATION®, OKLAHOMA CITY, OK

Mr. EVANS. Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to appear before you to discuss rural broadband issues today, specifically the broadband portion of the American Recovery and Reinvestment Act and the U.S. Department of Agriculture's Broadband Loan Program.

My name is Ed Evans. I am the Founder and CEO of Stelera Wireless, a start-up company now constructing broadband wireless systems in 55 rural towns around the country using spectrum we acquired in the Advanced Wireless Services auction a couple of years back. I am also a Member of this Board of Directors of CTIA—The Wireless Association®.

Since you may not be familiar with Stelera Wireless, allow me to provide a little background. Stelera is a start-up company formed in 2006 to participate in the FCC's Advanced Wireless Services auction. That auction concluded in September of 2006, with winning bidders paying almost $14 billion for the rights to the AWS spectrum. I am pleased to say that Stelera succeeded in winning 42 of those licenses, mostly in rural markets. Having spent almost $8 million to acquire these licenses, we are currently investing an additional $35 million to build out the first phase of our network.

The towns in our markets range in size from Benton, Washington, population of 2,624, to Lubbock, Texas, a population of 199,000. Three-fourths of the towns in our footprint have a population of less than 10,000 people. In some of those towns, Stelera will be the first company to offer broadband service because technology, terrain, lack of density has made it infeasible to provide wireline broadband services previously in those areas. In other towns, we will be the first provider to offer speeds comparable to those that you receive today in major metropolitan areas.

Stelera's business plan is to use this spectrum to provide competitively priced broadband services in our markets both on a month-to-month basis and under longer term contracts. We are using third- and fourth-generation wireless technology called High-Speed Packet Access, which provides transmission speeds of up to 14.4 megabits per second today, and will evolve to even faster speeds in the very near future.

We allow our customers to choose any Voice-over-IP provider or to choose an offering that we will have ourselves in the near future. We do not restrict customers from accessing any website or running any applications on our network, although, of course, we monitor total usage and reserve the right to take action against any abusive subscriber. This is critical in a wireless network, since one subscriber abusing the network can adversely affect many other subscribers that are around them.

While there are still many unanswered questions with the NOFA and how it will be implemented, I am excited that this Administration recognizes the power that wireless broadband has to transform rural America. In particular, I am pleased the NOFA defines *underserved areas* to include communities that have been typically ignored by some of the larger incumbent providers, thus making

funding available to support expansion of broadband in these often overlooked communities.

The Administration is also to be commended for building a flexible scoring system that will grade applications that are based on a flexible set of criteria, rather than a rigid checklist that sometimes prejudices one technology over another.

In short, I believe the NTIA–RUS NOFA mostly got it right; and now it is up to the providers like Stelera to take advantage of this funding opportunity, going forward.

However, the NOFA raises several concerns for smaller advanced wireless broadband providers. For example, there appears to be a potential material tax liability to small businesses that are awarded grant money. As an example, if Stelera were to apply for a project costing $100 million, under the current program, Stelera would be required to match 20 percent—or $20 million. However, in addition to this $20 million, Stelera would have a significant tax bill at the end of the first year. That tax bill could be as high as $30 or $40 million in addition.

While the money is being used to acquire assets and Stelera would depreciate these assets to receive the tax benefit over the life of the asset, Stelera would still be forced to have a significant cash tax problem at the end of the first year.

This tax penalty will greatly reduce the ability of any small business to participate in the stimulus program. I would encourage Congress to address this issue by eliminating the potential tax burden associated with participating in the stimulus program.

Now I would like to turn to the USDA's Broadband Loan and Loan Guarantee Program as reauthorized by the 2008 Farm Bill. Our impression overall has been very good. We have been a participant in that program, for we have a $35 million loan in order to facilitate the build-out of our 55 rural markets. While the applications are time consuming and they are cumbersome at times, the process did proceed at a very reasonable pace. I found the staff at the Department of Agriculture to be very helpful throughout the process.

I am concerned, though, that with the sudden availability of a significant amount of additional funding, the Department of Agriculture's staff will become overwhelmed with the new applications. I fear the onslaught of applications will lead to significant delays in processing those applications.

In conclusion, I would like to again thank the Committee for inviting me to speak today. Stelera identified the need for rural broadband services long before any Federal stimulus program. We have demonstrated in these markets that they are very viable and in need of our service. We are very pleased with the opportunity to accelerate our growth programs and to expand our coverage into rural communities across our licensed footprint.

Thank you again for inviting me today, and I look forward to your questions.

[The prepared statement of Mr. Evans follows:]

PREPARED STATEMENT OF G. EDWARD EVANS, FOUNDER AND CEO, STELERA WIRELESS, LLC; MEMBER, BOARD OF DIRECTORS, CTIA—THE WIRELESS ASSOCIATION®, OKLAHOMA CITY, OK

Mister Chairman and Members of the Subcommittee, thank you for the opportunity to appear before you to discuss rural broadband issues—specifically the broadband portion of American Recovery and Reinvestment Act ("stimulus plan"), and the U.S. Department of Agriculture's (USDA) broadband loan program.

My name is Ed Evans and I am the Founder and CEO of Stelera Wireless, a start-up company now constructing broadband wireless markets in 55 rural towns around the country, using spectrum we purchased in the advanced wireless services auction. I am also a Member of the Board of Directors of CTIA—The Wireless Association®.

Since you may not be familiar with Stelera Wireless, allow me to provide a little background. Stelera was formed in 2006 to participate in the FCC's Advanced Wireless Services (AWS) auction. That auction concluded in September 2006, with winning bidders paying almost $14 billion for the rights to the AWS spectrum. I am pleased to say that Stelera succeeded in winning 42 licenses, mostly in rural markets. Having spent almost $8 million to acquire these licenses, we are currently investing an additional $35 million dollars to build out the first phase of our network.

The towns in our markets range in size from Benton, Washington (population 2,624) to Lubbock, Texas (population 199,000). Three-fourths of the towns in our footprint have a population of less than 10,000. In some of those towns, Stelera will be the first company to offer broadband service because technology, terrain, or lack of density has made it infeasible to provide wireline broadband access. In other towns, we will be the first provider to offer speeds comparable to those in major metropolitan areas.

Stelera's business plan is to use this spectrum to provide competitively priced broadband wireless services in our markets, both on a month-to-month basis and under longer term contracts. We will be using third and fourth generation (3G and 4G) wireless technology called High-Speed Packet Access (HSPA), which provides transmission speeds of up to 14.4 megabits per second today, and will evolve to even faster speeds in the near future. We will allow the consumer to choose any VoIP provider or to choose our offering once available. We will not restrict customers from accessing any website or running any applications, although of course we will monitor total usage and reserve the right to take action against abusive subscribers. This is critical in a wireless network, since one subscriber abusing the network can adversely affect many other subscribers.

In announcing his candidacy in 2007, then candidate Obama said, "Let us be the generation that reshapes our economy to compete in the digital age . . . let's lay down broadband lines through the heart of inner cities and rural towns all across America." I could not agree with President Obama more. In fact, as CEO of Stelera we are deploying "broadband lines" to rural towns throughout the U.S. today—only through the air using advanced wireless technology.

There is little need to explain to this Committee how broadband is changing life in rural America. Today, because of wireless broadband farmers are able to monitor their crops for soil and moisture content without leaving their combine. Implement dealers are able to diagnosis mechanical problems and order new parts while at a customer's farm. Ranchers are able to check, in real-time, livestock futures with their handheld smartphone. Doctors are able to provide health care to patients hundreds of miles from their clinics. And, most important, our schoolchildren are able to harness the power of the Internet giving them opportunities they only dreamed about a short time ago. Because of wireless broadband, rural Americans are experiencing the transformational power of the Internet, while maintaining the unique character of rural America.

When Congress passed and President Obama signed the Stimulus Act earlier this year, policymakers cheered that the plan would save and create jobs, increase investment and put us back on the path to economic prosperity. And while time will tell whether the entire stimulus plan succeeded in its purpose, I believe that with proper focus and guidance, the broadband portion of the plan holds great potential for consumers who lack robust broadband service today.

This past Wednesday, Vice President Biden along with Secretaries Vilsack and Locke, FCC Chairman Genachowski and Congresswoman Dahlkemper outlined the rules for the broadband portion of the stimulus plan. In announcing the Notice of Funds Availability (NOFA), the Vice President said, "We believe we are in the process of transforming rural America . . . so it's integrated with the country, without losing its character. Getting broadband to every American is a priority for this Administration."

And while there are still many unanswered questions with the NOFA and how it will be implemented, I am excited that this Administration recognizes the power that wireless broadband has to transform rural America.

In particular, I am pleased the NOFA defines "underserved areas" to include communities that have been typically ignored by some of the larger incumbent providers, thus making funding available to support expansion of broadband in these often overlooked communities. The Administration should also be commended for building a flexible 'scoring' system that will grade applications based on a flexible set of criteria rather than a rigid 'checklist' that often prejudices one technology over another.

Finally, the NOFA appears to allow Internet providers the ability to portion off part of their network to offer 'managed services' which use private network connections that offer a better quality of service. That's important because many Internet providers have been exploring the idea of offering enhanced quality of service to entities like hospitals and schools that often require secure and private connections.

In short, I believe the NTIA–RUS NOFA 'got it mostly right' and now it's up to providers like Stelera to take advantage of this funding opportunity.

However, the NOFA raises several concerns for smaller advanced wireless broadband providers. For example, there appears to be a potential material tax liability to small businesses that are awarded grant money. If Stelera elected to apply for a broadband project costing $100 million, under the current program Stelera would be required to match 20% of the cost or $20 million. However, in addition to this $20 million, Stelera would also have a significant tax bill at the end of the year. The tax bill could be as high as an additional $30M. While the money for the project is being used to acquire assets and Stelera would depreciate the assets and receive the tax benefit of the depreciation over the life of the asset, Stelera would still be forced to pay a significant cash tax at the end of the year. This tax penalty will greatly reduce the ability of any small business to participate in the stimulus program. I would encourage Congress to address this issue by eliminating the potential tax burden associated with participating in the stimulus program.

I'd like to turn now to the USDA's broadband loan and loan guarantee program as reauthorized by the 2008 Farm Bill and provide a first-hand impression of the overall program. My experience with the USDA program has been positive. Stelera applied for and was approved for a $35M loan in 2008 in order to facilitate the build out of 55 rural cities. While the application was time consuming and cumbersome, the process did proceed at a reasonable pace. I found the staff at the Department of Agriculture to be helpful and thorough throughout the application process. I am concerned that, with the sudden availability of a significant amount of additional funding, the Department of Agriculture's staff will become overwhelmed with new applications. I fear the onslaught of applications will lead to significant delays in the processing of applications. The process was time consuming prior to the introduction of the stimulus package; I am concerned the time line to approval will be significantly longer going forward. In my opinion, it is critical that appropriate agencies have adequate staffing and training to expedite the approval process in order for the program to have the desired effect.

In conclusion, I would like to again thank the Committee for inviting me to speak today. Stelera identified the need for rural broadband services long before any discussion of Federal stimulus programs. We have demonstrated that these markets are viable and in need of our services. We are very pleased with the opportunity to accelerate our growth plans and to expand our coverage into rural communities across our licensed footprint. Thank you again for inviting me today. I would be happy to answer any questions.

The CHAIRMAN. Your company received funds in 2008 through the traditional broadband loan program for deployment of broadband in 55 rural cities. How many households will you reach through those funds?

And, also, could you explain why a loan made deploying broadband to those areas is feasible and how those areas might differ from those areas that are good targets for grants instead?

Mr. EVANS. Well, to start out with, the homes passed at the conclusion of our 55 city build-out will be approximately a half million homes that we pass throughout four states around the country, including what was identified by Ranking Member Conaway as the

greatest district in the country. So we will pass roughly a half million homes.

Our experience has been that cities that have 20,000 people, down to approximately 3,000 people, are viable for our technology to go into. Once we get down below 3,000 people—because of the lack of population and the expense required—those types of cities are probably going to require grant money to go in and feasibly serve, as opposed to us being able to repay that over a period of time.

When you take out the capital component and just have to rely on the operational expense, it looks like cities down to 750 to 1,000 people become viable at that point.

The CHAIRMAN. Mr. Stamp, RUS grant funding is limited to remote unserved areas. *Remote* is defined, as you know, as 50 miles from a non-rural area. Could you provide some examples of rural unserved areas that your member companies might be interested in serving that would be out of the running for these grant funds due to this definition?

Mr. STAMP. At this time, I can't provide you specific communities, but I know from an anecdotal standpoint a lot of the currently unserved areas that our members look at are probably 5, 10, 15 miles outside of town. Most of our members use DSL technology, which has a range of about 3 miles. So, as you can tell, they kind of—the donut around town is primarily an unserved area in some of these small communities. Obviously, those would not be within that 50 mile range.

I can give you specific city examples if you allow me to follow up with my members.

The CHAIRMAN. That would be great if you could provide it within 10 days.

Mr. Conaway.

Mr. CONAWAY. Thanks for being here.

Any sense of how many applications are in the pipeline headed directly to RUS and NTIA?

What I am trying to figure out is—Mr. Evans talked about it. We have a bureaucracy that is used to working at a certain pace. They now have 14 months, 15 months, I guess, to the end of September of 2010 to get an awful lot of work done. Any sense of how many applications cumulative that your members are working on? Mr. Wilson?

Mr. WILSON. Congressman Conaway, not at the time. I don't have an idea how many are going to be doing that. I know we are working on one.

Mr. CONAWAY. That might be helpful to get that to us. Because we want to make sure that RUS—you were here this morning when I asked the question of Ms. Cook, did they have the resources, and they seemed to say that they did.

I am new to some of the speed issues, and the speed requirements that are in these applications are set based on advertised speeds. Any concern among you that that is unworkable or that the actual speeds delivered will in fact be in excess of those advertised speeds, and may be a bit of an unauditable kind of deal?

Mr. EVANS. I think it is—if I may take a second. I think it is—you are going to put down what the network is technologically ca-

pable of doing. There are an infinite number of variables that take place on any network, wireless or wireline, at any time. In order to give you what the real average throughput is going to be, as an example, I can tell you from real-world experience right now my devices are capable of 7.2 megabits download. We see peak speeds between 6 and 6.5 megabits. My average throughput today is somewhere between 2.5 and 3 megabits.

Mr. CONAWAY. What do you advertise at?

Mr. EVANS. We say up to 7.2 megabits. But the average throughput, like I said, is somewhere between 2.5 and 3 megabits.

Mr. CONAWAY. So the 768 kbps, everybody—all of your systems—you will never get below that, would you?

Mr. WILSON. In our current project today we have speeds up to 3 megabits with uplinks back up to 1 by 1 meg. But the project we are currently working on, our modernization, we will be able to deliver 17 to 20 meg down, file upload speeds up to 1 by 1.

Mr. CONAWAY. The relatively short application period: is there enough time for the August 14th deadline to create or look at service areas that you might not have previously had business plans ready to go for, and create the application? In other words, the more remote areas that you knew you couldn't do without grants, are your members nimble enough to be able to put together the right application to be able to apply in those areas where they might not previously have been thinking about serving?

Mr. WILSON. I think, in most cases, most rural telephone companies know where their members are lacking. I know our base. We are able to go in and select these customers and pull them out. So I would say most small companies, particularly, have some idea of the customers that are in need of applying for a grant to serve them.

Mr. CONAWAY. So being able to put together the grant request, what appears to be less than 6 weeks is not a hardship for this state?

Mr. MCCORMICK. The only thing I would say, as Mr. Stamp pointed out, this definition of *remote* is a real problem, and we were pleased that the RUS today said they were going to clarify it, but it is not really clarification that is needed. It is a very significant difference to go in and apply for—whether the economics of the project are going to work or not is going to depend on whether it is 100 percent grants, 80 percent grants, or 50 percent grants. If it is just a 50 percent grant, there are a lot of projects that will not be applied for because they are not economic.

Mr. CONAWAY. I know what you are talking about. But to get into the record, what does it mean to the monthly fee, as an example, for the service? If you can give us some sense of what a 50 percent loan/grant ratio *versus* a 100 percent loan/grant would do. What impact would that have on the customer's monthly bill for your service?

Mr. EVANS. In my perspective, just to tell you what we experience, is currently today we offer our services for $39 a month and then they lease a modem for an additional $9.95 per month.

So the difference in going into a 50 percent loan where I have to buy that modem, and then I subsequently lease it to the consumer, *versus* a grant environment where I can purchase that

modem and not lease it to the consumer, you are looking at a 25 percent reduction in what their monthly fee would be.

Mr. CONAWAY. Can anybody else give us a sense of what the impact is?

Mr. WILSON. For us, there would be no impact. We concur in the National Exchange Carrier Association's tariff for DSL, so we charge the same rate regardless. Whether it be a grant or loan, it wouldn't have any impact on what we ultimately charge the customer.

Mr. CONAWAY. That is counterintuitive. If you are having to pay money back on a loan *versus* a hundred percent grant, does everybody else subsidize that loan repayment?

Mr. WILSON. No, sir. We concur in the National Exchange Carrier again. We charge a standard rate for DSL. There are about 1,100–1,200 of us in the NECA pool and we charge the same DSL rate.

So just because I went after a grant or a loan for a particular area would not allow me to come in and charge a different rate for those customers *versus* the other——

Mr. CONAWAY. So you can't do it. But, I mean, there is an economic impact to go after those customers if you are having to do 50 percent loans.

Mr. WILSON. Yes, sir, there is one. But, like I say, tariff-wise, being regulated, I have to charge the same rates.

Mr. SIMMONS. Congressman, you are exactly right. I mean, there are going to be a number of non-remote rural areas where the demographics are such that it is actually more expensive to serve those areas than it would be to serve the remote areas. The difference between a 50 percent grant and a 100 percent grant can determine whether or not the project goes forward.

Moreover, the Administration has decided to provide 80 percent grants in areas that are underserved in the more urban areas. So you are providing a higher grant to areas that by definition are more densely populated and a lower level grant to areas that are less densely populated. So it really is a program that requires more than clarification. It requires a rethinking.

Mr. CONAWAY. Thank you.

The CHAIRMAN. Thank you.

I will indulge the Ranking Member for another question in a moment, if he would like. I would like to ask one or two more questions to all of you. If you would just answer this to the point, given that we are soon going to be called to votes again.

Many of your members, of course, serve in rural areas. What subscribership or take rate do they see in these areas?

Second, is it fair to consider an area with less than a 40 percent take rate underserved as the funding notice does?

Mr. Wilson.

Mr. WILSON. We are seeing a significant take rate. We are currently at about 4,187 customers, adding about 135 a month. I think we are currently at about a 45 percent take rate in our cooperative. As our DSL footprint expands, we are seeing more and more customers.

I think all areas need to be considered, sir. I would not want to discriminate against an area that—say is at 40 percent. I think

that DSL having broadband access these days is just too important not to be connected, to have access to the world these days. So I would say I would not want to discriminate against any certain group but try to get access to everyone.

The CHAIRMAN. Mr. McCormick.

Mr. MCCORMICK. Yes. Well, obviously, we think if subscribership is below 40 percent, then the area is in some way underserved. And we think that the future of the information-based economy is that you have to have broadband that is ubiquitous and broadband that is robust. So we think that take rates are going to be in the 80, 90, 100 percent range; and they should be in those areas, because we are moving forward with an economy that is going to be dependent upon broadband communications.

The CHAIRMAN. Mr. Stamp.

Mr. STAMP. We will be happy to get the subscribership information from our members.

I think it varies widely from company to company, but I would agree that less than 40 percent is probably something you would consider underserved. Congress and the Administration should be commended because there are provisions within the NTIA program for projects that actually do things to stimulate adoption as well, and that is one of the challenges.

The CHAIRMAN. Mr. Simmons.

Mr. SIMMONS. I can only speak on behalf of my company. I know what our take rate is. In most of the markets we serve, we, frankly, have take rates beyond 40 percent. But there are a goodly number of markets that show up, at least on my records, as being under 40 percent, and that is because there are other services in those particular markets.

One way of understanding, I guess, of measuring what might be available in markets is not only what we might be doing, what the take rates might be of our cable broadband service, but if there are some other competitors in that particular market as well. Of course, if you have a second competitor in the market, one might assume that it is certainly not underserved. So it is an important consideration.

I think, also, I would ask that the Committee also be mindful of other conditions on why that particular market might be underserved. It may not necessarily be just the availability of broadband but other conditions about that unique community, the individual demographics of those involved in that particular market. Is it a very senior market and the job we'll have to do in order to introduce broadband services to that particular market. Those are considerations also that must be made.

The CHAIRMAN. Mr. Evans.

Mr. EVANS. I would agree with the 40 percent. I think below 40 percent there are clearly other factors there.

One piece that is missed is actually the consumer driving that penetration. Is the quality of the network bad and, therefore, they are not signing up for it? Is the pricing out of line and they are not signing up for it?

So just going in, what we found in many markets is there may be another provider that is in there, but the quality of the network is bad and the pricing is out of line and, therefore, the take rate

is well below what you would expect. So we are very comfortable with the 40 percent rule.

The CHAIRMAN. Just one other criterion is that no provider in the area is offering 3 megabytes per second service. Such areas would be eligible for grants from NTIA and loan/grant combos from RUS. Do you believe these criteria well define an underserved area?

Mr. Wilson.

Mr. WILSON. Yes, sir. I think they do.

Mr. MCCORMICK. I think that they do.

Mr. STAMP. I believe so.

Mr. SIMMONS. I agree.

Mr. EVANS. I am in concurrence. I think 3 megabits is right.

The CHAIRMAN. Mr. Conaway, do you have further questions?

Mr. CONAWAY. Thank you.

Let me ask a couple of questions and pitch it around.

The national map that we are going to spend $350 million on—I am not sure where they came up with that number—any concerns you have of your data going into that national map? Any privacy issues or proprietary information that you are worried is going to get collected and made available to your competitors?

And then any other comments that any of you want to make with respect to the interconnection and nondiscrimination clauses. Are your companies small enough that you can do it everywhere without it being a problem? Are your companies too big, that you don't want to have a different system? Any further clarification you can give us on the nondiscrimination charges.

Mr. MCCORMICK. I would be delighted to comment on both of those.

First, on the nondiscrimination and interconnection, the FCC has a policy statement. It already says that you shall not block, impair, or degrade access. It says you shall allow attachment of any lawful device to the Internet that is running a lawful application.

We all abide by and support the FCC policy statement. These additional requirements that, "you shall not favor any lawful Internet applications and content over others," we're just simply not sure what that means. Does that mean that if somebody came forward with an application that would allow for a heart monitor service and it would require prioritization of our network on a non-managed basis, would we be prohibited from allowing that? That would not seem to be consistent with public policy.

With regard to interconnection, this is a new requirement on interconnection to connect at any technically feasible point. I mean, if you just use a railroad analogy, it is one thing to require interconnection at railroad terminals. It is another thing to require construction of interconnection with a railroad anywhere on the railroad that is technically feasible to construct an interconnection point.

So these are very expansive requirements, and they are potentially very costly requirements, and they are potential litigation risks. So they are of concern to us.

Mr. CONAWAY. Should the FCC work on that area or should USDA and Commerce work on those?

Mr. WILSON. We think it is essential that the FCC work on that area. There has got to be some consistency, and it is the agency of jurisdiction.

Mr. CONAWAY. Privacy issues.

Mr. WILSON. Yes. We are deeply concerned about the privacy issues. We support the idea of a broadband map. We think it makes a lot of sense. But we support it in the context of the Connected Nation approach that has worked so well in Kentucky, is working now in Ohio. Whereby, you are able to provide this information in a way that is not made available to your competitors, but is made available through public-private partnerships that lead to adoption and deployment.

So we would hope that this would not be a big government approach but would instead be a public-private partnership approach.

Mr. STAMP. I would say all of our members share those same concerns in terms of confidentiality. I mean, we are willing to participate in this process, but that is obviously a concern for our members as well.

Mr. WILSON. We are concerned about some of the questions that are being asked, the confidentiality of them. And also we are concerned about the interconnection issues, too, because it only applies to the areas that receive a grant. For us, those 543 customers are spread over 2,800 square miles. There is no way I can pull them out and separate them. So the interconnection issue is definitely an issue we are concerned about.

Mr. EVANS. No concerns on the privacy as such.

I am concerned, longer term, about the accuracy of the data collection because of the speed at which technology is evolving and how fast it is changing. I am just afraid for future opportunities companies will be making decisions based on old and outdated data in the marketplace.

I don't have a solution for it, by the way, but my biggest concern is the amount of bad data that is going to be circulated, and decisions are going to be made off of, as we go forward.

The CHAIRMAN. We are about to conclude today's panel.

Mr. Minnick has stepped in. We welcome you to submit questions or any other Members who may have stepped in or out.

We would ask this panel, as we did the first panel, to please accept these questions that Members may submit just as if you were asked in this public forum. We would expect your answers within 10 days.

We thank you for your attendance at today's hearing and thank you for waiting for over 2 hours for us to return from that long series of votes we had. We do appreciate your indulgence and patience.

Under the rules of the Committee, the record of today's hearing will remain open for 10 calendar days to receive additional material and supplementary written responses from the witnesses, as well as any additional questions that Members would like to pose.

May God bless each of you in your work to help those who are disadvantaged in our society, especially those that we have discussed living in areas of our country that we hope will be benefited as all American taxpayers should be.

This hearing of the Subcommittee on Rural Development, Biotechnology, Specialty Crops, and Foreign Agriculture is now adjourned.

[Whereupon, at 1:40 p.m., the Subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

SUBMITTED STATEMENT OF AMERICAN FARM BUREAU FEDERATION

The American Farm Bureau Federation (Farm Bureau) believes that high-speed broadband services have great potential to bring opportunity to rural Americans. Farm Bureau represents more than six million families who live and work in rural America, many of whom do not have the same access to educational, medical, business and government services as Americans living in more populated areas. Existing Federal telecommunications programs like the Universal Service Fund (USF), Rural Utilities Service's loan and grant programs and new initiatives such as those mandated by the American Recovery and Reinvestment Act of 2009 (ARRA) have the potential to correct this disparity.

Many farmers and ranchers conduct their business operations from their homes. As government agencies increasingly rely on information technology to disseminate and collect information, affordable, high-speed, home-based broadband connectivity is becoming a necessary tool for producers. Farmers and ranchers without access to affordable high speed Internet connections might eventually be unable to comply with government regulations, take advantage of government services or gain market information. Therefore, affordable home broadband access is especially important to keep American agriculture competitive in a world marketplace.

America's farmers and ranchers need viable rural communities to supply the goods and services needed to support their families and that are required for their agricultural operations. To thrive, rural areas need access to health care, government services, educational and business opportunities. For many rural communities access can only be gained by using broadband services and sophisticated technologies that require high speed connections. Rural business owners need access to new markets and well educated employees for their businesses. Rural health care providers need access to health information technology. Rural students need access to educational resources and continuing education opportunities. Current and future generations of rural Americans will be left behind their fellow citizens if they are without affordable high-speed broadband service to tap into health care and educational services, government agencies and new business opportunities.

Affordability is a critical component to broadband use in rural America because rural household incomes are typically lower than those in more populated regions of the nation. In rural areas where broadband service is available, our members have reported that the service is beyond the financial means of many residents of their communities. Therefore, we urge policy makers to consider consumers cost as part of the equation when defining access to broadband services.

Farm Bureau believes that broadband access in rural areas should be increased through any technology, including wireless. We believe that technologies funded by Federal programs should support state-of-the-art telemedicine, education and business applications. Rural America should enjoy access to telecommunications services equivalent to those found in urban and suburban areas.

Broadband should be designated a "supported service" eligible to receive support directly from the USF. The USF should be used to help with long-term deployment of broadband in rural areas. While the funds provided by the ARRA should help with the initial build out of rural broadband, on-going support will be needed to continue the build out, and maintain and improve the current infrastructure.

Farm Bureau is committed to revitalizing our rural communities and ensuring the health and welfare of present and future generations of rural Americans. We look forward to working with the Committee to achieve this important goal.

SUBMITTED STATEMENT OF NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE

July 9, 2009

The National Rural Telecommunications Cooperative (NRTC) and its nearly 1500 electric and telephone cooperative members serve the telecommunications interests of rural America. NRTC applauds the efforts of the Administration and Congress to advance the deployment of broadband to all Americans—particularly those in rural areas where the need is the greatest. We also thank Chairman McIntyre and the Subcommittee for holding today's hearing on this vital topic.

The recent Notice of Funds Availability (NOFA)—issued by the Department of Agriculture Rural Utility Service (RUS) and the Department of Commerce National Telecommunications and Information Administration (NTIA) pursuant to the American Recovery and Reinvestment Act of 2009 (the Act)—has prompted deep concerns about the effectiveness of the broadband funding for rural America.

The NOFA appears to have placed rural America at a significant funding disadvantage and seems to defeat the purpose of stimulus goals of expanding broadband and creating jobs in rural areas.

Under the Act and NOFA, all "rural" areas must be submitted to RUS for funding. However, under that program only areas that are "remote and unserved" are eligible for *grants*. To be "remote" an area must be at least 50 miles from a "non-rural" area, and to be "unserved" at least 90% of the population must lack access to broadband, which is defined at a relatively low speed of 786 Kbps down and 200 Kbps up. If an area is rural yet not remote or unserved an applicant is not eligible for a grant—only a loan or loan/grant combination. Based on many years experience in the rural marketplace, particularly as a provider of broadband services, it is our analysis that very few populated rural areas will meet the requirements for grants.

At the same time, broadband applicants for *non-rural* areas may receive *grants* from NTIA, whether the market is unserved or underserved—even if located in or near an urban or suburban market.

It goes without saying that rural areas are less densely populated and more costly to serve when it comes to telecommunications. Even though government supported loans have been historically available, because of this high cost of service the deployment of broadband has not been feasible in many rural markets, even those that are not "remote". NRTC members, anticipating the availability of grant money from the Act may abandon plans to provide broadband service in their rural markets.

While NRTC greatly appreciates the aims and goals of the Administration and Congress as reflected in the Act, it is difficult to understand why rural areas are placed in this disadvantageous position.

SUBMITTED STATEMENT OF JAY MAXWELL, PRESIDENT, PIXIUS, INC.

Mr. Chairman, thank you very much for holding this hearing on broadband technology and its importance to rural America. Recently, I was pleased to participate in a hearing held by the Department of Health and Human Services' National Advisory Committee on Rural Health Care in Rapid City, South Dakota.

Broadband is critically important to the provision of health care services in rural America as well as other vital services including education.

I am pleased to submit for the record the statement presented to HHS in South Dakota. Thank you very much for making this statement a part of your hearing record.

Statement of Jay Maxwell, President, Pixius, Inc., Before the National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Department of Health and Human Services, Meeting, Rapid City, South Dakota

June 9, 2009

Thank you for allowing me to appear today and to participate in this meeting. I commend our former Governor, Kathleen Sebelius, Secretary of HHS, for convening this forum.

President Obama and Secretary Sebelius have made healthcare reform a major priority for the Administration. In rural America, the distances involved and the lack of specialized services compound all of the healthcare problems we face as a nation. There is a major disparity in the quality of healthcare services provided in rural America as compared to urban America. Those of us who live in rural America should not have to leave our family and our home to receive adequate medical attention. Our young people are leaving rural America because of the lack of critical services, including healthcare.

We must maximize the use of modem technology to bridge the urban-rural divide in America and bring health care to rural areas. Broadband technology can go a long way to bringing healthcare services to rural America.

Let me explain how the use of broadband can bring healthcare services to the entire country.

Remote disease management is a new and effective way to measure and monitor health status in the comfort of a patients living situation, and to give physicians and nurses access to medical information right away so they can quickly identify any changes that need to be addressed. This method of measuring and monitoring health status is interactive, easy to use, affordable, and can provide vital health information to not only the clinical care team but the patient's family as well.

The goal of remote disease management is to keep senior citizens in their own homes as long as possible and out of nursing and long-term care facilities, as well as to minimize hospitalizations, emergency room visits, and scheduled physician vis-

its. In short, technology is being used to improve the quality of life and reduce the nation's healthcare burden.

However, none of this is possible without access to a quality high-speed broadband Internet connection. While this access is common in urban and suburban areas, it is almost a luxury in rural America. Is it a coincidence that rural America is also an area that is unserved or underserved by medical facilities and practioners? Rural America is an area with a population that is aging and placing increased demands on scarce healthcare resources.

The economies of rural communities and the lifestyle associated with rural communities are strong barriers to recruiting and retaining physicians in rural America. Salary is often stated as a barrier to recruitment. A study in 2007 by LocumTenens indicates that on average, incomes for rural doctors do not differ significantly from those in urban areas.

In Kansas, 29 percent of the population is classified as rural. Physicians in Kansas are concentrated in urban areas with only 4% of physicians being located in areas that are classified as rural. Since the providers and services are not located where the need exists, we need to take a different approach to healthcare delivery.

In South Dakota, the most remote areas of the state are the nine Sioux Indian Reservations. The health statistics on the Reservations resemble those of a third world country. The Reservations must be a high priority for broadband.

Remote disease management is one effective solution, but it will only be effective if patients in rural areas have access to a quality high-speed broadband Internet connection. Funding for the improvement of Internet access in rural areas is included in the American Recovery and Reinvestment Act (ARRA).

ARRA funds that will be administered by the Department of Agriculture's Rural Utility Services (USDA–RUS) are targeted toward telemedicine programs and broadband programs in rural America. Funds that will be administered by the National Telecommunications and Information Administration (NTIA) address broadband programs for rural America.

We urge HHS to coordinate to the maximum extent possible with both USDA and NTIA to maximize the use of broadband funds with an eye to improving rural health care. Pixius Communications is committed to providing quality high-speed Internet service in unserved and underserved areas. We understand the unique challenges of communicating in rural America. Through partnerships with leaders in the delivery of remote disease management, we use modern technology to bridge the urban-rural divide in America and bring health care to rural areas. We are available to assist HHS in any way possible as you seek practical solutions to the challenge of extending health care in a uniform manner throughout all of the United States.

Thank you.*

SUBMITTED QUESTIONS

Response from Cheryl Cook, Deputy Under Secretary for Rural Development, U.S. Department of Agriculture

Questions Submitted By Hon. Mike McIntyre, a Representative in Congress from North Carolina

Question 1. What is the status of the broadband loan program regulations required by last year's farm bill? How will that program be integrated with the stimulus programs?

Answer. We anticipate that the regulations implementing the 2008 Farm Bill broadband program will be published as an interim final in the *Federal Register*—with request for comment—this year. We are working diligently to clear the rule in the Department and submit it to OMB. The 2008 Farm Bill program and Recovery Act program have significant differences with regard to the definitions of *unserved* and *underserved,* and *competition.* There is currently demand for the 2008 Farm Bill program as well as the loan and grant programs provided in the Recovery Act. We anticipate that both programs will complement each other and bring broadband service to rural, unserved and underserved communities.

Question 2. One of the criteria for determining if an area is "underserved" is that the rate of subscribership (or take rate) is less than 40 percent. Another criterion is that no provider in the area is offering 3 megabits per second service. Satisfying either of these criteria means an area is eligible to be considered for funding. Given

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*Pixius is a Kansas based company that specializes in broadband communication in rural area. *www.pixius.com*

that either of these criteria could be satisfied within an area that has one or more providers, how are the programs going to avoid putting in place government-funded competition, which, as you know, has been an issue in the past with the loan program and which we tried very hard to fix in the 2008 Farm Bill?

Answer. USDA assistance under the Recovery Act is limited to areas that are at least 75% rural and meet the definition of *unserved* or *underserved*. This is a threshold requirement to determine whether an area is eligible for funding consideration. If the area is eligible, the applicant will then need to prove that the project is feasible and demand is adequate to repay a loan. The existence of competition will be considered in both stages of the application process. The farm bill and RUS' proposed regulations also include a requirement to inform the public of a pending application and give incumbent service providers an opportunity to describe their current service territory and offerings.

Questions Submitted By Hon. K. Michael Conaway, a Representative in Congress from Texas

Question 1. The NOFA speaks of a working relationship with the FCC, NTIA, and RUS. Why did NTIA and RUS not choose to defer to the FCC on all matters regarding non-discrimination and interconnection in definitions and enforcement?

Answer. NTIA and RUS used the FCC's non-discrimination and interconnection rules as a model for the nondiscrimination and interconnection requirements of the NOFA. NTIA, RUS, and the FCC have worked in a coordinated fashion to leverage the authorities and resources provided in the Recovery Act to develop a coordinated Federal Government approach to addressing the challenge of rapidly expanding the access and quality of broadband services across the country. Each agency brings unique skills and resources to this effort. RUS has been the Federal Government leader in bringing telecommunications to rural America for decades. NTIA has experience in awarding technology-related grants through the Technology Opportunities Program and serves as the President's principal advisor on telecommunications and information policies. Moreover, NTIA and the FCC together are responsible for the development of Federal telecommunications policy. The statutory deadline for the FCC's National Broadband Plan is February 2010, therefore the FCC has not yet considered all the issues that NTIA and RUS had to address in the NOFA; however, the consideration given these issues in the NOFA does not supplant the role of the FCC as it addresses the issues of interconnection and non-discrimination. The FCC is responsible for enforcing the Communications Act of 1934, which differs in many respects from the objectives of the Recovery Act.

Question 2. Non-program related spending (*i.e.,* logos and signs) will ultimately take dollars from program implementation. What action is your agency taking to ensure that this spending is held to a minimum, and what is the maximum amount of funding that will be spent on these?

Answer. USDA, under its existing farm bill program and now the Recovery Act program, must approve any and all proposed expenditures proposed by the applicant. As you are aware, USDA's broadband program has been heavily audited by both the Department's Inspector General and the Government Accountability Office (GAO). Non-program related spending (logos and signs) has not presented a negative audit finding. Moreover, USDA will assess the reasonableness of the budget as one of the evaluation criteria for all BIP applications. Through this, USDA will continue to ensure that expenses in these areas are consistent with the spirit and intent of the statute.

Question 3. What will be the increase in cost structure under the Davis-Bacon provisions for broadband projects in Texas?

Answer. Pursuant to section 1606 of the Recovery Act, any project using Recovery Act funds requires that "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" be paid wages at rates no less than those prevailing on similar construction projects in the locality. The Davis-Bacon wage rates can vary tremendously by type—fiber build, satellite, cable or wireless systems—and by location. As one might expect, prevailing wages in rural counties tend to be lower than in metropolitan areas. While prevailing wage rates may run slightly higher than non-Davis-Bacon wage rates, the targeting of the Broadband Initiative Program to non-metropolitan rural areas should diminish cost disparities.

Question 4. How much of the stimulus funding will be used to pay for the audits required under the BIP and BTOP, both by RUS and NTIA, and by the awardee?

Answer. All recipients of Federal loans and grants, whether funded through the Recovery Act or non-Recovery Act appropriated funds, are required to have annual audits to ensure the taxpayers' resources are spent appropriately. These are oper-

ating costs of the borrower. Since USDA's Broadband Initiative Program (BIP) does not finance operating expenses, no Recovery Act funds will be used for this purpose.

It is also important to note that the cost of these audits will vary depending upon the Awardee type, structure and size of the operation. We do not anticipate the auditing requirements under the Recovery Act to be any more costly or onerous than that of those of the farm bill program.

Question 5. What was the rationale for the Non-Discrimination and Interconnection clause in the NOFA, and how did the agencies address the legal consequences to awardees?

Answer. Section 6001 of the Recovery Act requires that "non-discrimination and network interconnection obligations shall be contractual obligations . . ." of an award and that these obligations, at a minimum, adhere to the principles contained in the FCC's broadband policy statement. The five non-discrimination and network interconnection requirements in the NOFA ensure that public funds will support the public goal of open networks. The standards chosen are largely based on established FCC rules, avoid detailed regulation, and allow for flexibility when network management requires differential treatment (*e.g.,* illegal or harmful activities) or exclusivity (*e.g.,* managed services such as telemedicine or public safety communications). The standards chosen are technologically neutral and appropriate for the widest possible range of applications, because the definition of *reasonable network management* may differ based on the network technology used and other dimensions of the project. Applicants are required to disclose interconnection, nondiscrimination, and network management plans with their applications, and provide regular network reporting, to facilitate compliance and better understanding of appropriate network management techniques. The agencies do not believe these disclosure requirements create any significant legal consequences for awardees. The requirements in the NOFA give awardees the freedom to meet applicable legal requirements, and to address illegal materials on their networks, without violating the non-discrimination and network interconnection conditions.

Question 6. If an application is submitted to RUS for a primarily rural (75%) area and is approved for a combination of grants and loans can the applicant reject the terms of the application and qualify to be automatically considered by NTIA? Would the applicant be required to file parallel applications at both agencies? If RUS rejects an application or the applicant rejects the terms of the loan and grant, can that project be considered in the current round of funding or would it be delayed until a subsequent round?

Answer. In this round of funding, NTIA will consider funding only those rural broadband infrastructure projects that RUS has determined not to fund through a loan, grant or loan/grant combination. If an applicant has been approved for funding by RUS, the applicant will not be eligible for funding in this round by NTIA—regardless of whether the applicant accepts or rejects the terms of funding for RUS. Such an applicant would be welcome to submit another application in the later rounds of funding. With respect to applications rejected by RUS, these applications may be funded by NTIA in the first round of funding if the applicant completed the additional elements required for the BTOP program at the time of application. NTIA will not wait for RUS' decision on a BIP application that has also been submitted to BTOP before reviewing it against BTOP criteria. The application will be reviewed in parallel by both RUS and NTIA. Once RUS has determined not to fund a rural application it will become eligible for funding by NTIA if the applicant completed the additional elements required for the BTOP program at the time of application. The approach outlined by RUS and NTIA in the NOFA permits the government to stretch taxpayer dollars and provide funding for infrastructure projects that demonstrate maximum benefits to the greatest number of rural, unserved, and underserved areas of the United States. Thus, qualified applicants with a demonstrated ability to repay their loans will be eligible to receive the appropriate level of government support through RUS. If, despite meeting the RUS requirements, the applicant is rejected by RUS in favor of even stronger applications, the applicant will retain the opportunity to compete for grant funding through NTIA in the same round if the applicant completed the additional elements required for the BTOP program at the time of application.

Question 7. You testified that USDA would modify the eligibility criteria for remote areas within the next 2 weeks in order to allow communities to qualify under those terms. Will USDA also be delaying or extending the July 14–August 14 application period to allow review of the new rule and provide adequate time for those small, remote communities to apply?

Answer. Based upon our hearing, and questions regarding the definition of "remote" at our joint USDA/Commerce Outreach and Training Workshops, we are cur-

rently reviewing the concerns and looking at potential solutions. The concept of having three NOFAs allows the ability to modify criteria to target pockets of need that become more obvious as the program moves forward. We will be soliciting comments after this first NOFA that will help inform subsequent NOFAs.

Question 8. What will be the ratio of new hires and contractors to existing staff as USDA works to ensure applications are processed within a timely manner?

Answer. The Recovery Act allows USDA to utilize up to three percent of its broadband appropriation for Salaries and Expenses. At the current time, plans are to hire approximately 40 additional staff, on a temporary basis, to assist with implementation of the Broadband Initiatives Program (BIP). These temporary staff will be supplemented by a contractor. Since the contract is still under negotiation, we are unable to disclose the number of staff or staff hours each vendor is proposing for the project. The 40 temporary FTEs represent an approximate 13% *temporary* increase of full-time staff within the Rural Utilities Service (RUS).

Question 9. As an agency that has limited resources how does USDA plan to allocate resources between implementing the stimulus plan and the 2008 Farm Bill?

Answer. The Salaries and Expenses provision of the Recovery Act will allow USDA to supplement its staff through temporary staff and contractors to effectively deliver the Recovery Act programs. Existing staff will work with and supervise our temporary and contract staffs to ensure that all appropriated funds are prudently used.

Question 10. Could you please clarify for the Committee, must all applications seeking up to 100% grants meet all three definitions of *remote, rural,* and *unserved?* Is USDA contemplating waivers for applications seeking greater than 50% grants?

Answer. Based upon the NOFA published in the *Federal Register* on July 9, 2009, to compete for "remote rural" funds, an area must meet all three tests—it must be remote, rural and unserved. This ensures limited grant resources reach the most unserved areas that are typically served by our Community Connect grant program.

In response to your second question, the NOFA does not provide any exception authority to consider higher than 50% grants under the non-remote funding stream. Our goal is to make effective use of the budget authority provided to USDA. Through a combination of grants, loans and loan/grant combinations, USDA anticipates that our $2.5 billion in budget authority will allow us to deliver an estimated $7 to $9 billion in loans, grants and loan/grant combinations.

The demand and experiences learned under this first NOFA will assist both USDA and Commerce in ensuring that future NOFAs most effectively and efficiently deploy funds.

Question 11. Some of the organizations who might apply for funding under the stimulus are already audited fully through their participation in other grant and loan programs, and notably through the Universal Service Fund. Will these entities be subject to an additional, full audit, or will RUS be able to review those audits by other agencies and only require supplemental information that is proprietary to the stimulus funding?

Answer. Annual audited financial statements are a standard performance measurement tool used throughout the lending community. To ensure that taxpayers' resources are adequately protected, RUS similarly requires an annual audited financial statement from its customers. Most lenders and other Agencies will accept the same annual audited financial statement reducing burden and costs to the customer. Through its existing telecommunication programs, USDA has worked hard to ensure that audit requirements are not onerous or duplicative for our customers.

Question 12. The NOFA defines a middle mile project as a broadband infrastructure project that does not predominantly provide broadband service to end-users or to end-user devices, and may include interoffice transport, backhaul, Internet connectivity, or special access. Could you please clarify the furthest point this might include, and whether it might fund projects from the central office to the curb, or "node," or only between the central office and the point of presence (POP)?

Answer. The furthest point would be the interconnection point to the Internet Service Provider (ISP) that is providing service to the last mile area. A last mile project would include the backbone from the central office (CO) to the premise of the end-user.

Questions Submitted By Hon. Glenn Thompson, a Representative in Congress from Pennsylvania

Question 1. Can you explain further the definition and intent of "***remote***" areas?

Answer. : The intent of the "remote" rural bucket of funds under the NOFA published in the *Federal Register* on July 9, 2009, was to target grant resources to the

most remote rural areas that traditionally need a higher level of grant funding to make a business case for broadband deployment.

Question 2. Can you explain how the joint application process will work? In other words, if an applicant is rejected at RUS because the applicant is not serving a "***remote***" area what happens to the application? Does this application get sent to NTIA?

Answer. All applicants will be given the opportunity to self-select whether they wish an application to be considered by USDA, Commerce or both Departments. Applications for areas that are at least 75% rural must first be considered by USDA. This policy was established for three reasons. First, USDA assistance is targeted to rural areas. Second, USDA has the authority to make loans, grants and loan/grant combinations under the Recovery Act, and it is the intent of both Departments to ensure that our limited resources are best leveraged to meet the President's broadband vision. Last, the statute stipulates that the funding by each agency cannot overlap, resulting in funding the same types of projects in the same areas.

Any applicant seeking to finance a broadband project in a service area that is at least 75% rural—remote or non-remote—may request that the application be simultaneously reviewed by USDA and Commerce as long as the applicant has completed the additional elements required of BTOP infrastructure applicants. If USDA declines to make an award, the proposal will automatically compete under Commerce's BTOP program. The approach that RUS and NTIA have adopted specifying that BIP will make award determinations for rural applications before BTOP does not reflect a prioritization of loans over grants, but rather the fact that Congress, in the Recovery Act, intended that RUS focus its activities on rural areas and mandated that NTIA funding could not be applied in the same area funded by RUS under the Recovery Act. RUS gives preference in its evaluation criteria to applicants who request a higher ratio of loans to grants as a means to stretch taxpayer dollars and maximize the number of awards that may be distributed.

Questions Submitted By Hon. Walt Minnick, a Representative in Congress from Idaho

Question 1. If it is a goal of the Administration to extend broadband access to all Americans and close the urban-rural digital divide, why are unserved areas not given priority over underserved areas to receive limited broadband stimulus dollars set aside in the recently released rules?

Answer. In USDA's program, three funding buckets are established to ensure that remote, unserved and underserved areas are each considered for funding opportunities. Remote rural areas have their own competitive bucket of grant funds to ensure that these projects do not compete against applicants that can afford a loan or loan component. Similarly, funding buckets for middle mile and last mile projects are provided to ensure that all rural communities without adequate broadband service can effectively compete for funding.

We believe these funding buckets and the scoring criteria presented in the NOFA provide adequate opportunities for unserved areas to receive funding under the Recovery Act. This is our first NOFA to deploy Recovery Act funds. We will consider changes or modifications to future NOFAs based upon the experiences learned under this NOFA.

Question 2. Grants with specific provisions guaranteeing their use in unserved areas would likely ensure that providers will apply to build infrastructure in areas desperate for broadband. What is the rationale for giving priority access of Recovery Act funds to providers seeking loans, as opposed to grants, and what kind of guarantees will there be that providers will actually build out this infrastructure in unserved communities?

Answer. In this first NOFA, USDA chose to provide loans, grants and loan/grant combinations to leverage the budget authority and serve as many rural communities as possible. In this manner, USDA estimates that the $2.5 billion in budget authority will allow the Department to deliver $7 to $9 billion in funds. In response to your first question, USDA is making "grants only" available to the most remote unserved rural areas. Underserved rural areas may seek loan/grant combinations. In all cases, if an applicant seeking to deliver broadband in rural America is unable to secure funding from USDA, they can elect to be simultaneously reviewed and considered by Commerce for their grant-only program as long as the applicant has completed the additional elements required of BTOP infrastructure applicants. In this manner, rural areas get two opportunities to be considered for funding under this NOFA.

Questions Submitted By Hon. Bill Cassidy, a Representative in Congress from Louisiana

Question 1. Do you currently know which specific areas do not have broadband? The reason why I ask this question is because applicants for rural grants must meet the definition of "rural," "remote," and "unserved" in order to qualify. Many areas in my district are truly rural. However, a number of these rural communities are located less than 50 miles from our state capital in Baton Rouge and do not qualify because they do not meet the definition of "remote." My concern is that these qualifications were not designed with specific unserved areas in mind. Can you please elaborate on how this NOFA will provide a vehicle for rural areas to obtain sustainable broadband?

Answer. At the current time, there is no definitive nationwide map which identifies communities—rural and urban—without broadband service. With this in mind, USDA and Commerce have worked collaboratively to best deploy the $7.2 billion in budget authority provided under the Recovery Act. The Commerce program, by statute, is grant only and may serve rural and non-rural communities. USDA's program may offer loans, grants and loan/grant combos. By providing loans, grants and loan/grant combos, USDA projects that it can leverage its $2.5 billion in budget authority to an estimated $7 to $9 billion in deliverable program level. In addition, the joint NOFA allows rural communities "two bites at the apple." An applicant may elect to be considered for funding from USDA, Commerce or funding from both programs. Applicants for areas that are at least 75% rural will first be considered for USDA funding. If USDA is unable to make an award, the request will automatically be considered for BTOP funds under Commerce as long as the applicant has completed the additional elements required of BTOP infrastructure applicants.

This NOFA provides for grant loan combinations of up to 50% grant. The farm bill program does not allow for this. Having up to 50% grant significantly increases the number of communities and areas that can obtain sustainable broadband.

Question 2. Many of the factors in the application analysis provide for preferences when considering an application. Is any preference given to poorer communities in need of broadband to better serve community needs such as education and healthcare?

Answer. The socioeconomic status of any one community is not directly considered in providing preference under USDA's Broadband Initiatives Program (BIP). To reach unserved and lower-income communities, USDA has provided other priorities such as points for leveraging with other Recovery Act or governmental programs which may be aimed at serving lower-income rural residents. Also, points are awarded for affordability, projects offering a choice of more than one service provider (allowing more price competition), projects with community support, projects that will offer a discounted rate to critical community facilities and projects from disadvantaged and small businesses. In addition, Commerce was appropriated grant funds specifically for sustainable broadband adoption programs and computer learning centers which are targeted through our joint NOFA to vulnerable populations.

Question 3. For those areas currently unserved, do you anticipate that large national providers, such as Comcast, Verizon, or Cox, will move in to provide services to the unserved? If not, will the local providers of last resort respond to this need?

Answer. The NOFA was crafted in a neutral manner and does not seek to advantage any provider (except as statutorily required for Title II borrowers). Our goal is to provide equal opportunities for any viable applicant that has the capacity and ability to bring broadband service to areas of the greatest need.

Response from Mark G. Seifert, Senior Advisor to the Assistant Secretary, National Telecommunications and Information Administration, U.S. Department of Commerce

Questions Submitted By Hon. Mike McIntyre, a Representative in Congress from North Carolina

Question 1. What portion of funds from NTIA will be going to unserved *versus* underserved areas?

Answer. The Recovery Act instructs NTIA to address the broadband needs of both unserved and underserved areas, as well as to enhance broadband capabilities for strategic institutions that provide significant public benefits, improve broadband for public safety, and stimulate broadband demand. The *Notice of Funds Availability* (NOFA) released by NTIA and the Department of Agriculture's Rural Utilities Service (RUS) on July 1, 2009 does not establish minimum or maximum funding levels among unserved or underserved areas. NTIA set aside up to $1.6 billion in budget authority for funding opportunities under this NOFA: $1.2 billion for Broadband Infrastructure grants, including Last Mile and Middle Mile; $50 million for Public

Computer Center projects; $150 million for Sustainable Broadband Adoption projects; and $200 million for a national reserve that may be used to augment these Broadband Technology Opportunities Program (BTOP) funding categories. Each of these amounts is a ceiling for this round of funding. NTIA may distribute funding differently in future rounds if appropriate. Applicants for Broadband Infrastructure projects, including Last Mile and Middle Mile, are required to demonstrate that their proposed funded service area meets the definition of *unserved* or *underserved*. Applications for Public Computer Centers or Sustainable Adoption Projects are not required to serve unserved or underserved areas, but will be evaluated based in part on their ability to meet the greatest broadband needs for vulnerable populations. Many factors—including the type, quality, quantity, and characteristics of applications NTIA receives—will impact the portion of funds awarded to unserved and underserved areas. The NOFA describes in much further detail the eligibility requirements, evaluation criteria, and selection factors that will be used to award BTOP grants.

Question 2. How has NTIA developed the internal resources necessary to ensure proper implementation and management of this very large program?

Answer. NTIA is moving expeditiously to ensure that Recovery Act funds are made available as quickly, transparently, and efficiently as possible. NTIA has increased its staff and now has several dozen qualified and experienced employees working primarily or exclusively on BTOP. NTIA is collaborating with other relevant agencies, principally the Department of Agriculture's Rural Utilities Service (RUS) and the Federal Communications Commission (FCC), to benefit from their skills and expertise as appropriate. We are currently reviewing proposals from outside vendors for grant program support and intend to award a contract by the end of July of this year. The implementation of such a large and first-of-its-kind program under such tight deadlines is a challenge, but one which NTIA and the entire Department of Commerce are committed to meeting.

Question 3. To be considered "underserved", an area can have multiple providers but lack a subscriber rate greater than 40 percent. Given that national subscribership rates only broke the 50 percent level in the past 2 years and rural rates are estimated at less than 50, why does it make sense to set the bar at 40 percent as one of the criteria for "underserved"? Could an area be considered "underserved" even when it has four providers each with 8–10 percent subscriber rate?

Answer. As outlined in the NOFA, a proposed funded service area (defined as one or more contiguous Census blocks) may qualify as underserved for Last Mile projects if no more than 50 percent of the households in the proposed funded service area have access to facilities-based, terrestrial broadband service at greater than the minimum broadband transmission speed of 768 kbps downstream and 200 kbps upstream; no fixed or mobile broadband service provider advertises broadband transmission speeds of at least 3 megabits per second ("mbps") downstream in the proposed funded service area; or the rate of broadband subscribership for the proposed funded service area is 40 percent of households or less. A proposed funded service area may qualify as underserved for Middle Mile projects if one interconnection point terminates in a proposed funded service area that qualifies as unserved or underserved for Last Mile projects. NTIA defined underserved to include a level of broadband subscribership below the national average because low subscribership rates tend to reflect lower income households and vulnerable or disadvantaged population groups. NTIA believes this definition will help ensure that BTOP funding benefits areas in which a minimum level of broadband service may be available to a portion of users, but in which robust competition, investment, or adoption has not taken shape. It is theoretically possible that, for the purposes of awarding BTOP grants, an area could have four providers each with a subscription rate below ten percent and still qualify for underserved. But as a practical matter, areas with low broadband subscribership are less likely to have attracted as many as four providers.

Questions Submitted By Hon. K. Michael Conaway, a Representative in Congress from Texas

Question 1. The NOFA speaks of a working relationship with the FCC, NTIA, and RUS. Why did NTIA and RUS not choose to defer to the FCC on all matters regarding nondiscrimination and interconnection in definitions and enforcement?

Answer. The Recovery Act directed NTIA, in consultation with the FCC, to establish nondiscrimination and interconnection requirements as contractual terms of awards. Consistent with this directive, NTIA and RUS engaged in extensive consultation with the FCC in developing the nondiscrimination and interconnection requirements of the NOFA. NTIA, RUS, and the FCC have worked closely to leverage the authorities and resources provided in the Recovery Act to develop a coordinated

Federal Government approach to addressing the challenge of rapidly expanding the access and quality of broadband services across the country. Each agency brings unique skills and resources to this effort. RUS has been the Federal Government leader in bringing telecommunications to rural America for decades. NTIA has experience in awarding technology-related grants through the Technology Opportunities Program and serves as the President's principal advisor on telecommunications and information policies. Moreover, NTIA and the FCC together are responsible for the development of Federal telecommunications policy. The statutory deadline for the FCC's National Broadband Plan is February 2010, therefore the FCC has not yet considered all the issues that NTIA and RUS had to address in the NOFA. Moreover, the FCC is responsible for enforcing the Communications Act of 1934, which differs in many respects from the objectives of the Recovery Act.

Question 2. Non-program related spending (*i.e.,* logos and signs) will ultimately take dollars from program implementation. What action is your agency taking to ensure that this spending is held to a minimum, and what is the maximum amount of funding that will be spent on these?

Answer. BTOP program staff and grants office staff will review all such spending to determine whether the proposed expenditures are reasonable given the particular details of the application. Moreover, NTIA will assess the reasonableness of the budget as one of the evaluation criteria for all BTOP applications. This evaluation, through a comparison of applications to BTOP's established standards in the competitive grant review, will allow NTIA to identify the applicants who will make the most efficient use of Federal funds.

Question 3. What will be the increase in cost structure under the Davis-Bacon provisions for broadband projects in Texas?

Answer. Pursuant to section 1606 of the Recovery Act, any project using Recovery Act funds requires that "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" be paid wages at rates no less than those prevailing on similar construction projects in the locality. At this time, NTIA is not able to estimate whether or to what extent cost structures for broadband infrastructure projects may be impacted by this provision. NTIA anticipates that it will receive a wide variety of proposals that employ different technologies (*e.g.,* wireline, wireless, satellite, or other) designed to address the broadband infrastructure needs of unserved or underserved areas of Texas and other states. The technological design, build-out schedule, and characteristics of the proposed funded service areas will likely determine the extent to which cost structures may or may not be different because of the Davis-Bacon Wage Requirements of the Recovery Act.

Question 4. How much of the stimulus funding will be used to pay for the audits required under the BIP and BTOP, both by RUS and NTIA, and by the awardee?

Answer. NTIA is committed to ensuring that BTOP funds are used in the most transparent, efficient, and effective manner possible. One of its first acts after the passage of the Recovery Act was the transfer of $10 million to the Department of Commerce Office of Inspector General for the purposes of audits and oversight of BTOP funds. In order to achieve the accountability and transparency required of the Recovery Act, BTOP grant recipients will be required to adhere to a number of Recovery Act reporting and audit requirements, along with BTOP-specific reporting and audit requirements. The costs to audit the grants awarded to state and local governments, educational institutions and nonprofit organizations are typically allowable as indirect costs under the Single Audit Act, as implemented by OMB Circular A–133. The awarding agency may also allow for-profit organizations to recover the costs of audits as a direct cost to an award. The cost of such obligations, and the amount of Recovery Act funding that will go towards such activities, will depend to a significant measure on the number, type, and characteristics of grants awarded under BTOP.

Question 5. What was the rational for the Non-Discrimination and Interconnection clause in the NOFA, and how did the agencies address the legal consequences to awardees?

Answer. Section 6001(j) of the Recovery Act requires that we establish non-discrimination and interconnection obligations as contractual terms of awards under this program that at a minimum, adhere to the principles contained in the FCC's broadband policy statement. The five non-discrimination and network interconnection requirements in the NOFA ensure that public funds will support the public goal of open networks. The standards chosen are largely based on established FCC rules, avoid detailed regulation, and allow for flexibility when network management requires differential treatment (*e.g.,* illegal or harmful activities) or exclusivity (*e.g.,* managed services such as telemedicine or public safety communications). The stand-

ards chosen are technologically neutral and appropriate for the widest possible range of applications, because the definition of *reasonable network management* may differ based on the network technology used and other dimensions of the project. Applicants are required to disclose interconnection, nondiscrimination, and network management plans with their applications, and provide regular network reporting, to facilitate compliance and better understanding of appropriate network management techniques. The agencies do not believe these disclosure requirements create any significant legal consequences for awardees. The requirements in the NOFA give awardees the freedom to meet applicable legal requirements, and to address illegal materials on their networks, without violating the non-discrimination and network interconnection conditions.

Question 6. If an application is submitted to RUS for a primarily rural (75%) area and is approved for a combination of grants and loans, can the applicant reject the terms of the application and qualify to be automatically considered by NTIA? Would the applicant be required to file parallel applications at both agencies? If RUS rejects an application or the applicant rejects the terms of the loan and grant, can that project be considered in the current round of funding or would it be delayed until a subsequent round?

Answer. In this round of funding, NTIA will consider funding only those rural broadband infrastructure projects that RUS has determined not to fund through a loan, grant or loan/grant combination. If an applicant has been approved for funding by RUS, the applicant will not be eligible for funding in this round by NTIA—regardless of whether the applicant accepts or rejects the terms of funding for RUS. Such an applicant would be welcome to submit another application in the later rounds of funding. With respect to applications rejected by RUS, these applications may be funded by NTIA in the first round of funding if the applicant completed the additional elements required for the BTOP program at the time of application. NTIA will not wait for RUS's decision on a BIP application that has also been submitted to BTOP before reviewing it against BTOP criteria. The application will be reviewed in parallel by both RUS and NTIA. Once RUS has determined not to fund a rural application it will become eligible for funding by NTIA if the applicant has met the additional requirements of BTOP at the time of the application. The approach outlined by RUS and NTIA in the NOFA permits the government to stretch taxpayer dollars and provide funding for infrastructure projects that demonstrate maximum benefits to the greatest number of rural, unserved, and underserved areas of the United States. Thus, qualified applicants with a demonstrated ability to repay their loans will be eligible to receive the appropriate level of government support through RUS. If, despite meeting the RUS requirements, the applicant is rejected by RUS in favor of even stronger applications, the applicant will retain the opportunity to compete for grant funding through NTIA in the same round, if the applicant has met the additional requirements of BTOP at the time of the application.

Question 7. Will the State Broadband Data and Development Grant Program produce a map before the first round of grants is awarded?

Answer. While a national broadband map will not be available prior to the first round of grants, it is possible that individual states will have maps available. The Recovery Act requires NTIA to make the national broadband map available to the public by February 17, 2011. NTIA is working as quickly as possible to implement the BTOP and broadband mapping programs consistent with the Recovery Act's objectives. In order to achieve Congress' intent that agencies "commence[] expenditures and activities as quickly as possible consistent with prudent management," BTOP will begin awarding grants through its first round of funding in the Fall of 2009 before the national broadband map is developed. On July 8, 2009, NTIA published in the *Federal Register* its NOFA for the State Broadband Data and Development Grant Program, which sets forth the guidelines for funding projects that collect comprehensive and accurate state-level broadband mapping data, develop state-level broadband maps, aid the development and maintenance of a national broadband map, and fund statewide initiatives directed at broadband planning. Grant applications for the State Broadband Data and Development Grant Program will be accepted from July 14 to August 14, 2009. This NOFA favors applicants that can provide a substantially complete set of availability data by November 1, 2009, and to the extent possible NTIA will use available data to drive decision making. We recognize, as you do, the importance of data-driven decision-making and are pursuing the establishment of the national map as quickly as possible.

Question 8. The stimulus makes available 'up to' $350 million for the State Broadband Data and Development Program mapping activities. Within that authority, how much will NTIA be spending on mapping efforts and what empirical data

was used to determine the amount of funding to be obligated for the State Broadband Data and Development Program?

Answer. NTIA anticipates expending up to $240 million in State Broadband Data and Development Program grants. NTIA consulted with numerous states with experience in broadband mapping as well as private companies that specialize in developing broadband maps. Through these consultations, NTIA was able to determine a range of costs for state-level broadband mapping and used such amounts to estimate the aggregate grant cost for the entire program. Each state grant application will include a detailed budget outlining proposed costs.

Question 9. On July 6, 2009, NTIA posted a solicitation for volunteers to assist in reviewing $4.7 billion in grant applications. While the solicitation requests applicants provide a description of their knowledge of the program, it does not require specific grant experience and indicates no formal training will be provided beyond a webinar. What is NTIA's rationale for using such inexperienced, lightly trained individuals to handle such a crucial component of this grant process?

Answer. Expert review has long been used to evaluate grant proposals using panels of well-qualified reviewers who have expertise and experience in a variety of fields closely related to the proposals. Numerous Federal agencies, among them the National Institutes of Health, Department of Energy, National Oceanic and Atmospheric Administration, National Institute of Standards and Technology, and National Science Foundation, employ similar programs to review grant applications. NTIA plans to assign applications to reviewers that are knowledgeable and appropriate for the subject matter. They may include, for example, professional engineers, MBAs, policy experts, and business managers in networking and telecommunications, and/or in the operation of public computer centers, according to the type of application. The number of reviewers NTIA needs will depend on the volume of applications received. For planning purposes, NTIA anticipates receiving a large number of applications and is actively recruiting as many qualified reviewers as possible. NTIA will provide the necessary training for BTOP reviewers to ensure that they are adequately prepared to review applications thoroughly and efficiently. The training for BTOP reviewers will cover two areas: how to evaluate applications using criteria prepared specifically for BTOP proposals, and how to use the online system that will be used to organize the reviewing process. NTIA will only select reviewers who have demonstrated significant expertise in their fields. In addition, after the technical review process conducted by expert reviewers, each eligible application will be reviewed by NTIA program staff for policy determinations and conformity with policy goals.

Question 10. You indicated during your testimony that NTIA had the proper staff in place to review the applications. Why then is NTIA asking for volunteers to review the applications? Is NTIA at all concerned about the preparatory information that volunteers will be reviewing? Should those submitting BTOP applications be comforted in knowing that their future business decisions and their customer's potential broadband availability may be decided by a volunteer who has no previous experience?

Answer. Expert review has long been used to evaluate grant proposals using panels of well-qualified reviewers who have expertise and experience in a variety of fields closely related to the proposals. Numerous Federal agencies, among them the National Institutes of Health, Department of Energy, National Oceanic and Atmospheric Administration, National Institute of Standards and Technology, National Science Foundation, and the National Institutes of Health, employ similar programs to review grant applications. In addition, the Department of Commerce's Office of Inspector General has encouraged the use of expert reviewers to ensure that projects are high-quality and consistent with program objectives. NTIA plans to assign applications to reviewers that are knowledgeable and appropriate for the subject matter. They may include, for example, professional engineers, MBAs, policy experts, and business managers in networking and telecommunications, and/or in the operation of public computer centers, according to the type of application. The training for BTOP reviewers will cover two areas: how to evaluate applications using criteria prepared specifically for BTOP proposals, and how to use the online system that will be used to organize the reviewing process. NTIA will only select reviewers who have demonstrated significant expertise in their fields. In addition, after the technical review process conducted by expert reviewers, each eligible application will be reviewed by NTIA program staff for policy determinations and conformity with policy goals.

Question Submitted By Hon. Glenn Thompson, a Representative in Congress from Pennsylvania

Question. The NOFA indicates that an environmental questionnaire may be required for funding, including those authorization and permits under the National Environmental Policy Act. Given the short turn around on the application process is it realistic to expect applicants to comply with NEPA in such a short timeframe?

Answer. NTIA is committed to fully addressing National Environmental Policy Act (NEPA) for BTOP projects. In order to comply with NEPA requirements and meet the goals of the Recovery Act to move funding into communities quickly to stimulate the U.S. economy, DOC and NTIA have recently finalized a series of Categorical Exclusions (CEs) that should facilitate the timely completion of NEPA requirements for BTOP. The BTOP environmental questionnaire is designed to further streamline the NEPA process by allowing the approving official to determine quickly and efficiently if the action qualifies for one of the exclusions. While it is envisioned that the majority of the BTOP applications will be covered under the CEs, in the event that a project is not covered under either the NTIA or DOC Departmental CEs, additional environmental documentation will be required. This may include the preparation of either an Environmental Assessment or an Environmental Impact Statement. To minimize time delays associated with the Agency approval process, the Department will assist NTIA with sufficiency reviews and document preparation. Given the time constraints of this program, projects requiring applicants to commence an Environmental Assessment or Environmental Impact Study may be more suitable for later rounds of funding.

Questions Submitted By Hon. Walt Minnick, a Representative in Congress from Idaho

Question 1. If it is a goal of the Administration to extend broadband access to all Americans and close the urban-rural digital divide, why are unserved areas not given priority over underserved areas to receive limited broadband stimulus dollars set aside in the recently released rules?

Answer. The Recovery Act instructs NTIA to address the broadband needs of both unserved and underserved areas, as well as to enhance broadband capabilities for strategic institutions that provide significant public benefits, enhance broadband for public safety, and stimulate broadband demand. The Recovery Act directed the Department of Agriculture's Rural Utilities Service (RUS) to enhance broadband capabilities in rural areas of the United States. Consistent with its directive, NTIA intends to fund highly-qualified applications that address the Broadband Infrastructure needs of both unserved and underserved areas. NTIA will also support exemplary proposals for Public Computer Centers and Sustainable Broadband Adoption. In March, NTIA and RUS issued a Request for Information (RFI) seeking public input on the development of the Recovery Act broadband initiatives. Many of the thoughtful public comments received—of which there were more than 1,000—urged NTIA to consider the wide variety of broadband needs in communities across the United States. In the first round of BTOP grants, NTIA has established three categories of funding: Broadband Infrastructure, Public Computer Centers, and Sustainable Broadband Adoption, that will help fulfill the purposes of BTOP outlined in the Recovery Act. RUS has established its program, the Broadband Initiatives Program (BIP), to extend loans, grants, and loan/grant combinations to facilitate broadband deployment in rural areas. NTIA and RUS, as well as the FCC, are working together closely to leverage our resources to implement a coordinated Federal Government approach to addressing the challenge of expanding the access to and quality of broadband services across the country.

Question 2. Grants with specific provisions guaranteeing their use in unserved areas would likely ensure that providers will apply to build infrastructure in areas desperate for broadband. What is the rationale for giving priority access of Recovery Act funds to providers seeking loans, as opposed to grants, and what kind of guarantees will there be that providers will actually build out this infrastructure in unserved communities?

Answer. The eligibility requirements for BIP and BTOP should ensure that grants and loans are both used to deploy infrastructure in unserved and underserved areas. Applications to fund broadband infrastructure projects in areas that are at least 75 percent rural are required to be submitted to RUS for consideration under BIP. If an applicant intending to serve such rural areas also chooses to have an application considered for BTOP funding, the applicant must complete the additional elements required of BTOP infrastructure applicants. NTIA may determine such applications to be meritorious and make grant awards if RUS reviews the application and determines not to fund it. The approach that RUS and NTIA have adopted specifying that BIP will make award determinations for rural applications before BTOP does

not reflect a prioritization of loans over grants, but rather the fact that Congress, in the Recovery Act, intended that RUS focus its activities on rural areas and mandated that NTIA funding could not be applied in the same area funded by RUS under the Recovery Act. RUS gives preference in its evaluation criteria to applicants who request a higher ratio of loans to grants as a means to stretch taxpayer dollars and maximize the number of awards that may be distributed.

Questions Submitted By Hon. David P. Roe, a Representative in Congress from Tennessee

Question 1. Why does NTIA's broadband mapping NOFA specify that the mapping entities must collect average revenue per unit ("ARPU") by county?

Answer. Average revenue per user (ARPU) is calculated by dividing a provider's total monthly residential broadband service revenue for a county in the month for which data is being collected by its average monthly residential subscribers for such county in that month. ARPU is a very commonly-used metric in the telecommunications industry and, by collecting it at the county level, NTIA will obtain a better understanding of local market conditions. Particularly where broadband services are sold as part of a bundle, ARPU can be a good proxy for customer profitability. Additionally, where services are sold in packages at different prices, ARPU is often used as a proxy for price. The Broadband Data Improvement Act, one of the two pieces of authorizing legislation for the State Broadband Data and Development Grant Program, provides that funds under the Program may be used to identify barriers to adoption of broadband, including an assessment of whether the supply for such services is capable of meeting the existing demand. One barrier to meeting existing demand is that the sunk cost of deployment in certain areas may be so high relative to demand that no one finds it profitable to deploy broadband infrastructure. Targeted ARPU data can help NTIA and other policymakers make informed decisions about actions to address such barriers. For example, ARPU data will inform NTIA's consideration of the feasibility and sustainability of broadband projects seeking funding under BTOP. NTIA recognizes that ARPU data is sensitive information and it will take all appropriate steps to ensure that it remains confidential.

Question 2. What research did NTIA conduct to determine the existing availability of this data among rural broadband providers?

Answer. NTIA consulted extensively with the FCC, states, and companies experienced with broadband mapping in determining the data requested under the State Broadband Data and Development Grant Program. Furthermore, numerous entities, including representatives from rural areas, submitted public comments in response to NTIA's request for information (RFI) and urged NTIA to collect pricing or cost data. ARPU is a very commonly-used metric in the telecommunications industry, having very broad applicability across technology types and geographies. Calculation of ARPU for the Program requires the collection of the total monthly residential broadband service revenue for a particular county in the month for which data is being collected; and the average monthly residential broadband subscribers for that county in that month. NTIA believes that the requirement to do so is reasonable and consistent with the objectives of the Broadband Data Improvement Act and the Recovery Act.

Question 3. What it will cost rural broadband providers to create and report this ARPU by county data?

Answer. The cost of generating and reporting ARPU by county will vary depending on particular rural broadband providers' existing accounting and data management practices. Many providers, rural and otherwise, already track ARPU data and ARPU is a very commonly used metric in the telecommunications industry. Furthermore, as previously discussed, in the case that providers do not currently track ARPU, NTIA believes that the requirement to do so is reasonable and consistent with the objectives of the Broadband Data Improvement Act and the Recovery Act.

Questions Submitted By Hon. Bill Cassidy, a Representative in Congress from Louisiana

Question 1. My staff has spoken to service providers in my district who tell us that there appears to be a preference for lower-bandwidth wireless coverage over higher-bandwidth wireline. Could you provide some clarity on which bandwidth speeds and technologies are preferred?

Answer. The definitions, eligibility requirements, evaluation criteria and selection process outlined in the NOFA reflect the technology-neutral approach NTIA intends to employ in the BTOP program. Applications will be evaluated and selected based on their ability to provide the greatest benefits—including the greatest broadband speeds—to the greatest population of users, consistent with objectives outlined by Congress in the Recovery Act. In order to be eligible for Broadband Infrastructure

grants, applicants must, among other requirements, commit to providing broadband speeds of at least 786 kbps downstream and 200 kbps upstream in an unserved or underserved proposed funded service area. Applications will be evaluated and scored on a number of factors, including the broadband speeds that will be provided using BTOP funds. Applications offering higher broadband speeds will receive more favorable consideration than those services with speeds meeting the minimum broadband definition.

Question 2. For the Broadband Technologies Opportunities Grant, the Notice of Funds Availability claims that state governments will be able to submit recommendations on which projects would best suit local needs. How do you plan to weight the states' recommendations?

Answer. The Recovery Act recognizes the valuable role that the states and territories can play in implementing BTOP, and permits NTIA to consult with them in identifying unserved and underserved areas within their borders and in allocating grant funds for projects in or affecting their jurisdictions. States will have more than one opportunity to make recommendations concerning the allocation of funds within their borders. In their application for the State Broadband Data and Development Grant Program, participating states may identify unserved and underserved areas in their state as well as make recommendations for the allocation of broadband funding. Additionally, states will be provided a list of the applications under consideration during step two of the BTOP application process. States may provide a list and prioritization of recommended projects, along with an explanation of why the selected proposals meet the greatest needs of the state. States will have 20 calendar days from the date of notification to submit to NTIA their recommendations. Before NTIA makes final award decisions, it will consider, among other factors, the information and recommendations provided by states. NTIA believes this process fulfills the Recovery Act's intent that states have a strong consultative role in the BTOP process.

Response from G. Edward Evans, Founder and CEO, Stelera Wireless, LLC; Member, Board of Directors, CTIA—The Wireless Association®

Question Submitted By Hon. Mike McIntyre, a Representative in Congress from North Carolina

Question. Wireless systems are often associated with lower speeds. However, you mention a speed of 14.4 megabits per second and an expectation that increases in the future are coming. Could you explain why wireless broadband typically has lower speeds and how you are able to overcome those constraints?

Answer. Wireless has often been associated with slower speeds as you suggest however, wireless technology is evolving at a pace much faster than that of wireline technology. Two technologies exist today than can produce speeds comparable to wireline solutions. HSPA (High Speed Packet Access) and WiMax technologies both offer the ability to provide the speeds I mentioned in my testimony. A third technology, LTE (Long Term Evolution), is close to being commercial and we will begin to see commercial deployments this year.

We chose to deploy HSPA for several reasons. The first and most important was the size of the ecosphere supporting the technology. AT&T, T-Mobile, Vodafone, and over 300 additional wireless carriers globally have committed to use the HSPA standard. As a small business we believed we would not be able to drive the technology through our own needs and we would need the support of a large number of carriers to evolve the technology.

Once HSPA is deployed in a network, software loads and hardware capabilities determine the last mile download speeds a carrier can provide. Typical deployments begin at 1.8mps. The software loads can then increase the last mile network download speeds in the following increments; 3.6mps, 7.2mps, I4.4mps, 21.6mps. A hardware and antenna upgrade will then take the speeds up to 28.8mps. The next step involves increasing the spectrum usage from a single 10mhz carrier to two carriers using 20mhz. By using 20mhz of spectrum at a cell site the download speeds will increase to 48mps and on to 84mps. Upload speeds evolve at a similar pace. Our current upload speed capability is 2mps; it will increase to 5.6mps within the next 90 days and increase over time in a similar manner described above. HSPA has a clear road map that is supported by the GSM Association. Additionally, our network vendor has specific dates for deployment of each upgrade for the foreseeable future.

The second component that determines the speed a consumer experiences on the wireless network is the middle mile or backhaul capabilities of the network. Due to the lack of fiber in rural markets, we chose to build our own wireless microwave backhaul network. Our cell sites are connected by 150–300mps IP based microwave

radios that are daisy chained together to deliver our data back to the nearest metro area. As an example, our South Texas towns are connected together and then linked to a site in San Antonio, Texas. We lease a long haul Ethernet connection (EPLS Circuit) from a third party provider in San Antonio to deliver the traffic back to our core in Oklahoma City.

While each carrier's network is unique there are a few consistent themes in answering your question as to why wireless is often associated with slower speeds. Legacy network elements and legacy consumer devices that are not upgradable may challenge a large carrier's ability to upgrade rapidly. Upgrading to the latest technology is expensive and time consuming. Large wireless networks have become so complex that even minor software upgrades require significant testing and planning prior to implementation in order to make sure consumers are not negatively impacted by any change. AT&T recently announced they would have their entire network upgraded to 7.2mps download by the end of 2011. I believe the time required for the upgrade is not technology driven but more a factor of the complexities involved in upgrading a network of their size.

Another driving factor is the middle mile or backhaul options available at each cell site. Most carriers connect their cell sites to the network via leased or owned wireline facilities. Limited wireline facilities to a cell site and the cost associated with leasing facilities at those cell sites drive the throughput available to the consumer. Depending upon your business model, it is sometimes difficult to justify the cost of leasing a fiber connection to a cell site. In rural areas there simply isn't fiber available for the backhaul. The cost of using traditional telephone, (TDM) connections like a DS–3 type connection is simply cost prohibitive. This is the reason we chose to build our own backhaul and bypass the traditional options.

An additional factor that drives the belief that wireless networks provide slower speeds is the number of technology-limited deployments that have already been completed. There are many wireless technologies that have been deployed that have no clear road map to faster speeds. I believe that in our attempt to remain technology neutral we have unintentionally watered down the acceptable speeds to consumers to protect some technologies that will not survive. Additionally, it appears the slower speed requirements were created to protect incumbent carriers that will require a significant amount of time to upgrade their networks and would not be able to meet the time lines required by the Stimulus Act.

While I was somewhat disappointed by the speed requirements presented in the stimulus package, I must admit that I believe this will actually be a competitive advantage for Stelera. Because we are a new start-up company, a legacy network and old consumer devices do not encumber us. Stelera is able to build the latest technology and deploy the latest generation devices that are upgradable for many years into the future.

In summary, I believe the perception that wireless technologies are slower is sometimes driven by the fact that the deployment of the technology is slower, not the technology itself. I believe that RUS and NTIA must be diligent in awarding funding to technologies that have a clear and defined roadmap to the future. This can be accomplished while remaining technology neutral.

Question Submitted By Hon. K. Michael Conaway, a Representative in Congress from Texas

Question. A limited waiver for 'Buy American' provisions was provided for broadband projects, but specifically excluded from the waiver were fiber optic cable, cell towers, and other facilities. Do you feel the waiver adequately mitigates the higher cost structure imposed on projects through Davis-Bacon wage requirements and Buy American provisions?

Answer. I believe this is a difficult question to answer at this time. While the limited waiver is positive step; it will be difficult to understand its true effect until we begin requesting quotes from the respective vendors. As with any purchase process, the more vendors eligible to bid, the more competition that is created.

In bundling the Davis-Bacon requirements into the "Buy American" provision you create an interesting dichotomy, pay prevailing wages and limit the number of vendors who you can buy from which may increase our costs.

The Davis-Bacon requirements alone may prove interesting. In the current economic situation prevailing wages may be falling. I am concerned the data we use to determine prevailing wages may not be real time data and could overstate prevailing wages at the time construction actually begins. Couple this with a limitation on the number of vendors that we can buy from and we may be forced to over pay for labor and over pay for our materials. This is a bad combination for a model that needs capital assistance to be sustainable in the first place.

Response from Walter B. McCormick, Jr., President and CEO, USTelecom Association

Question Submitted By Hon. Mike McIntyre, a Representative in Congress from North Carolina

Question. You mention the problems with the scoring associated with unserved populations along with the limitations associated with grants going only to remote areas. How could the agencies do a better job of incentivizing the deployment of broadband to rural, completely unserved areas?

Answer. USTelecom represents innovative companies ranging from some of the smallest rural telecoms in the nation to some of the largest corporations in the U.S. economy. Almost all of our member companies serve rural areas. The vast majority of them are small businesses serving small communities and the surrounding sparsely populated areas. They are proud members of these communities and deeply committed to their future development.

Our member companies have identified areas passing a significant number of rural households that can benefit from broadband stimulus funds. However, as discussed at the hearing, the NOFA's "remote/rural" definitions make it problematic to reach these areas. The maximum of 50% grants for rural non-remote areas may discourage potential applicants from applying for ARRA funds. We would also note that for those companies that still choose to apply for ARRA funding, it creates a disincentive to serving rural areas. A rural, non-remote, application to RUS qualifies for a maximum of 50% in grant funds, while an application serving a less rural area qualifies for up to 80% in NTIA grant funding. A far simpler approach would be to synchronize the RUS program with the Commerce Department effort by removing the "remote" definition and making all rural applications eligible for up to 80% grants. This would accomplish two goals—creating sufficient incentives for companies to apply to this voluntary program and eliminate the current disincentive to serve rural areas.

However, addressing the NOFA's "remote/rural" delineation is only part of a comprehensive approach to modifying the current RUS NOFA. Nondiscrimination and interconnection requirements exceeding those required by statute, unnecessarily restrictive provisions on the sale or lease of award funded facilities, and onerous data requirements linked to broadband mapping, can all impact the number and type of applications the RUS receives and therefore undermine the goals of the ARRA to immediately stimulate economic activity and deploy high speed broadband service.

Question Submitted By Hon. K. Michael Conaway, a Representative in Congress from Texas

Question. A limited waiver for 'Buy American' provisions was provided for broadband projects, but specifically excluded from the waiver were fiber optic cable, cell towers, and other facilities. Do you feel the waiver adequately mitigates the higher cost structure imposed on projects through Davis-Bacon wage requirements and Buy American provisions?

Answer. The "Grant Guidelines for the Recovery Act BTOP" issued by NTIA and available at broadbandUSA.gov includes a list of items to which the Buy American waivers recently promulgated by RUS and NTIA do not apply. Such items include fiber optic cables, coaxial cable, cell towers and other facilities or good that are produced in sufficient quantifies in the United States. However, the same publication notes that the Buy American provision applies only to public works and public buildings. It goes on to state that private projects are exempt from the provision. Unless the applicant forms a public-private partnership and is thus treated as public and is subject to the Buy American provision, the requirement does not apply. Thus it most likely will not apply to the vast majority of applications for BIP and BTOP funding submitted by USTelecom members.

Response from W. Tom Simmons, Senior Vice President of Public Policy, Midcontinent Communications; on Behalf of National Cable and Telecommunications Association

Questions Submitted By Hon. Mike McIntyre, a Representative in Congress from North Carolina

Question 1. You mention the need to address the demand side of broadband subscription by making more computers available, subsidizing the cost of service, and other means. Should limited Federal dollars be directed toward deployment of broadband infrastructure or efforts to increase consumer demand?

Answer. There is a need for funding both infrastructure and demand-side projects, but funding needs to be properly targeted. Infrastructure funding should be directed to unserved areas. Not only are those the areas of greatest need, but directing gov-

ernment funds to unserved areas will avoid wasting taxpayers' monies by subsidizing additional competitive entrants in communities where an existing provider has already invested private risk capital.

It is also appropriate to make stimulus funding available for demand-side projects. As studies have shown, lack of interest and lack of resources greatly affect whether Americans subscribe to broadband. Funding demand-side projects can help educate vulnerable populations in particular about the value of broadband and enable them to make effective use of broadband services for improved education, health care, and employment opportunities.

Question 2. You mention that your company is currently pulling together information to determine whether you will be filing an application to reach out to unserved areas. Can you reach those areas via a subsidized loan or a loan/grant combo?

Answer. We could reach those areas using the grant option offered by the program. We are carefully reviewing the specific requirements of the loan side of the program and the potential impact those requirements may have on our ability to finance the continued expansion of services to customers in areas that do not qualify for these programs. (It would be beneficial for our company if RUS guidelines allowed the loan/grant combination to include loans obtained from sources other than the RUS. In other words, if 100% grants are not going to be allowed to deploy in unserved areas within the 50 mile limit, we would like to have the option of obtaining a 50% grant from the RUS and to finance the rest of the project on our own).

Question 2a. Do the areas you are considering qualify as "remote" under the definition of 50 miles from a non-rural area?

Answer. One area is clearly outside the 50 mile limit and should qualify as rural remote. One area we had hoped would qualify is well short of the 50 mile requirement, however. This location is in the Black Hills outside of Rapid City, SD. Because of the terrain and the twisting access roads into the area, it is a high cost area, but because of the 50 mile limit it will likely not qualify as remote.

Question Submitted By Hon. K. Michael Conaway, a Representative in Congress from Texas

Question. A limited waiver for 'Buy American' provisions was provided for broadband projects, but specifically excluded from the waiver were fiber optic cable, cell towers, and other facilities. Do you feel the waiver adequately mitigates the higher cost structure imposed on projects through Davis-Bacon wage requirements and Buy American provisions?

Answer. It is my understanding that at least some of the fiber optic and coaxial cable facilities used to provide broadband are manufactured in countries that would not be exempt from the Buy American restriction in the Recovery Act. While this restriction is not applicable to private sector applicants, it could impede the use of BTOP and BIP fund for public-private partnerships to provide broadband to schools, libraries, and other government buildings. We believe NTIA should extend its Buy American waiver to cover these restrictions. Doing so would promote the development of public-private partnerships to further the goals of the Recovery Act.

Response from Curtis W. Stamp, President, Independent Telephone & Telecommunications Alliance

Questions Submitted By Hon. Mike McIntyre, a Representative in Congress from North Carolina

Question 1. What have been the greatest constraints for your member companies expanding broadband to rural areas without government financing?

Answer. The greatest constraints for mid-size carriers serving rural areas, like ITTA's members, in deploying broadband to the remaining parts of the country without access to broadband are: (1) the high costs of deploying facilities in sparsely populated areas; (2) fewer customer from who to recover those costs; and (3) the absence of substantial grants, not loans to change this dynamic. The fundamental elements of this calculus are the same no matter which broadband technology may be used.

Compared with suburban and urban areas, the costs of deploying in rural America on a per subscriber basis are much greater and, therefore, in many instances investments would not be made under any private investment scenario.

As I stated in my written testimony, although ITTA members have aggressively invested to make fast and affordable broadband available to about 80–90 percent of the consumers in their service areas, the remaining consumers who currently do not have access to broadband are the most expensive to serve. In these high-cost, rural areas, loans are an inadequate tool for addressing the sharp disparity between revenue and costs. The costs to deploy constitute a far more significant impediment

than the absence (or cost) of credit. ITTA's members are committed to continuing to work hard to reach more and more unserved consumers—it is their core business after all to bring broadband to as many consumers in their service areas as possible. But, for the foreseeable future, it will not make business sense to serve many of those remaining customers without substantial stimulus grants. In addition to the strides in expanding broadband availability that will be made as the result of ARRA funding, some of the most rural and high cots parts of the nation may not realize access to broadband without additional governmental support.

Question 2. Can you give the Committee what your broadband adoption rates?

Answer. ITTA members generally have a 36% broadband adoption rate among their customers.

Question 3. Are you aware of any communities that are unserved today that will not be eligible for grants because the community falls within 50 miles of a community of 20,000?

Answer. Windstream Communications a member company of ITTA has identified a number of communities in the districts of: Ranking Member Conaway, Congressman Kissell, Congressman Marshall, and Congressman Bright that are unserved today that would not be eligible for BIP grants under the definition of *remote areas.* I would also add that there is not a single community in the entire 7th District of North Carolina that would eligible for BIP grant funding.

For the record, I would like to submit a list of sampling of communities that would not be eligible for BIP grants under the definition of *remote*. A complete list would be much larger. In addition, I would like to submit to the record maps of the 7th District of North Carolina, the State of Georgia, and the 11th District of Texas that really demonstrates that some very rural parts of our country will be excluded from 100% broadband grants.

Question Submitted By Hon. K. Michael Conaway, a Representative in Congress from Texas

Question. A limited waiver for 'Buy American' provisions was provided for broadband projects, but specifically excluded from the waiver were fiber optic cable, cell towers, and other facilities. Do you feel the waiver adequately mitigates the higher cost structure imposed on projects through Davis-Bacon wage requirements and Buy American provisions?

Answer. ITTA member companies will comply with the Buy American provision although we were disappointed that fiber optic cable was not included within the limited waiver of the Buy American provision contained in the NOFA. Construction cost, including labor and material, remain the most expensive item in building new or rebuilding existing plant. The Buy American provision limits the ability of companies to shop around for the best priced products—lowering costs and maximizing the number of Americans that are able to have access to broadband through BIP and BTOP funding.

A large number of ITTA member company employees are represented by unions today. Because of this representation, ITTA member companies already comply with Davis-Bacon wage requirements as a part of their union contracts.

ATTACHMENT 1

House Subcommittee on Rural Development, Biotechnology, Specialty Crops, and Foreign Agriculture

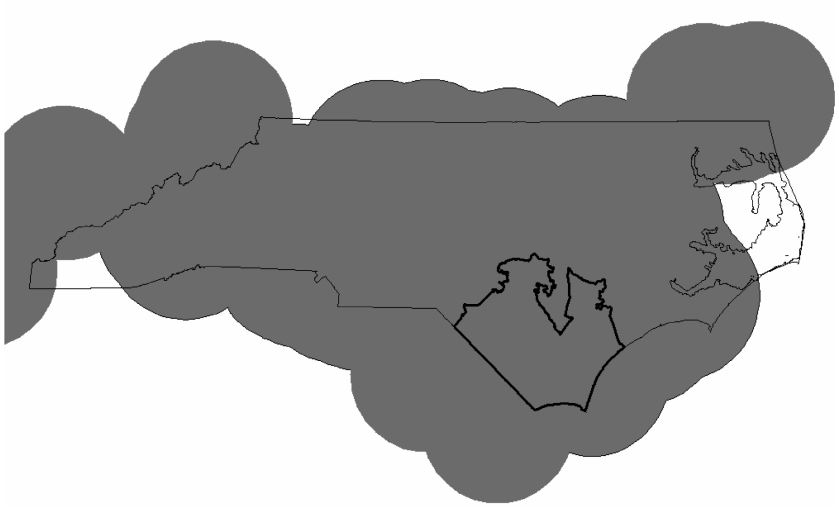
July 14, 2009

List of Windstream exchanges that are located within 50 miles of a town of at least 20,000 population. In these areas, the definition of "remote" will undermine deployment goals.

Congressman Mike Conaway, TX–11	Congressman Larry Kissell, NC–08
Andrews	Ansonville
Frankel City	Lilesville
Lamesa	Morven-NC
Harper	Peachland-Polkton
Loraine	Wadesboro
Blackwell	Laurel Hill
	Wagram
Congressman Jim Marshall, GA–08	Albemarle
Ashburn	Badin
Berlin	New London
Danville	Norwood
Doerun	Oakboro
Fitzgerald	
Funston	
Gordon	Congressman Bobby Bright, AL–02
Haddock	Eclectic
Irwinton	Kowaliga
Irwinville	
Jeffersonville	
Lake Sinclair	
Montrose	
Moultrie	
Norman Park	
Ocilla	
Perry	
Pineview	
Pitts	
Rebecca	
Rochelle	
Toomsboro	

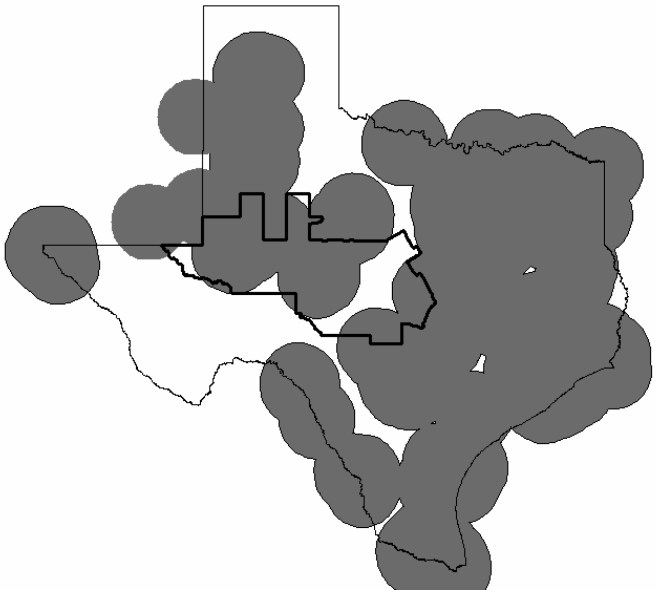
ATTACHMENT 2

NC 7th Dist Areas 50 mi. From Cities over 20K



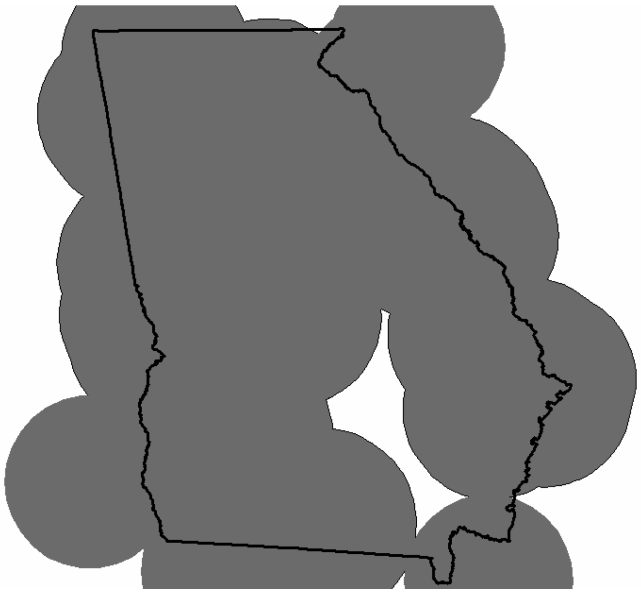
ATTACHMENT 3

TX 11th Dist. Areas 50 mi. From Cities over 20K



ATTACHMENT 4

Georgia Areas 50 mi. From Cities over 20K



Response from W. Tom Simmons, Senior Vice President of Public Policy, Midcontinent Communications; on Behalf of National Cable and Telecommunications Association

Question Submitted By Hon. Mike McIntyre, a Representative in Congress from North Carolina

Question. You mention the 3 year build-out requirement in the farm bill loan program. Please explain why 3 years is not sufficient.

Answer. Chairman McIntyre, as stated in my testimony, I contend that due to telecommunication planning horizons, changes in technology and regulatory environments that the 3 year build out needs to be expanded up to 5 years. Projects such as the one that we currently have under construction, as well as the one we have proposed under the Stimulus Broadband Plan, which is 560 miles of fiber will take us at best efforts 4 to 5 years to complete. We have had environmental issues dealing with the Golden Cheek Wobbler and the Toe Bush Fish Cactus that have delayed our construction for up to 6 months alone. Issues with easements and right-of-ways are enormous in these types of projects. And for small companies such as ours having the available manpower becomes an issue as well. My experience with outside plant construction projects of any size is the 3 year time lines gets really tight for completion.

Question Submitted By Hon. K. Michael Conaway, a Representative in Congress from Texas

Question. A limited waiver for 'Buy American' provisions was provided for broadband projects, but specifically excluded from the waiver were fiber optic cable, cell towers, and other facilities. Do you feel the waiver adequately mitigates the higher cost structure imposed on projects through Davis-Bacon wage requirements and Buy American provisions?

Answer. Congressman Conaway, we have a history and to my knowledge the contractors that have worked for us, of paying the prevailing wages. So the Davis-Bacon wage requirement is not an issue for us. We don't see any issues with the limited waiver for the "Buy American" provisions. We contend these provisions will not inhibit us from obtaining all the necessary equipment we will need to construct a broadband project.

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