

**OVERSIGHT OF THE AMERICAN RECOVERY AND
REINVESTMENT ACT: BROADBAND, PART 2**

HEARING
BEFORE THE
SUBCOMMITTEE ON COMMUNICATIONS,
TECHNOLOGY, AND THE INTERNET
OF THE
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COMMERCE
HOUSE OF REPRESENTATIVES
ONE HUNDRED ELEVENTH CONGRESS

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PART 2**

THURSDAY, SEPTEMBER 10, 2009

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY,
AND THE INTERNET,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:05 a.m., in Room 2123 of the Rayburn House Office Building, Hon. Rick Boucher [Chairman of the Subcommittee] presiding.

Members present: Representatives Boucher, Eshoo, Stupak, Inslee, Butterfield, Matsui, Christensen, Space, McNERNEY, Welch, Waxman (ex officio), Stearns, Shimkus, Walden, Terry, Blackburn and Barton (ex officio).

Staff present: Roger Sherman, Chief Counsel, Communications, Technology, and the Internet; Pat Delgado, Policy Director, Communications, Technology, and the Internet; Tim Powderly, Counsel; Amy Levine, Counsel; Shawn Chang, Counsel; Greg Guice, FCC Detailee; and Matt Weiner, Special Assistant.

OPENING STATEMENT OF HON. RICK BOUCHER, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF VIRGINIA

Mr. BOUCHER. Good morning to everyone. Today our subcommittee conducts a second oversight hearing regarding the \$7.2 billion provided by the Economic Recovery act for broadband programs. The Act requires that the programs be administered by the U.S. Department of Commerce through the NTIA and by the Department of Agriculture through the Rural Utilities Service.

It is our pleasure this morning to welcome the NTIA director, Assistant Secretary for Communications and Information, Larry Strickling, and the Rural Utilities Service Administrator, Jonathan Adelstein, both of whom are well known to members of this subcommittee. They will discuss the process they have undertaken for the first round of funding and the standards that their agencies have developed that will govern the funding awards.

The Recovery Act's broadband program presents an historic opportunity for increasing the availability of broadband and elevating the standing of the United States among the developed nations in the world in the percentage of the population that uses broadband. But the program will only be as effective as the standards that gov-

ern the grant awards and the loans as those standards enable it to be. I have some concerns which I will express this morning that the standards that have governed the first round of funding need to be modified for the upcoming rounds, and I will encourage the agencies to consider modifying them accordingly.

My first concern regards access to grant funding for rural applicants. In many circumstances involving very small communities that lack broadband, only through grant funding as distinct from loan funding can broadband access be achieved. While in some situations loan funding can be sufficient, for communities with very small populations that are isolated by mountains, the cost of building broadband can be great, and with populations of as few as 100 homes, that cost cannot be recovered through the revenues to be realized from the broadband service itself. In those situations which are commonly found only through the award of grants can broadband infrastructure be built. In the RUS program, a grant of between 80 percent and 100 percent of project costs is only available to communities that are determined to be remote, and any community that is within 50 miles of a city of at least 20,000 in population is considered to be non-remote, disqualifying that community from receiving grants of more than 50 percent under the RUS program. Almost the entire eastern United States is disqualified from the 80 percent to 100 percent grants by what I think is a very inappropriate standard, and in mountainous terrain, the standard of being within 50 miles or something less than 50 miles of a city of 20,000 is not a reasonable yardstick for determining need. In Virginia, in West Virginia and in other States in the Appalachian region, hundreds of communities in isolated mountain valleys may be within only a few miles of a city but because of the high cost of building the fiber optics or wireless links in those challenging topographies, and given the very small size of the population to be served, only through grants of 80 percent or more of a project cost can these communities receive broadband. The previously existing RUS Community Connect program is well suited to the need that I have described but that program is very small with only \$13 million having been available for grants on a nationwide basis in one recent year. I would urge that in round 2, the definition of "remote" be changed to qualify more truly isolated communities that may be close to a city. In the circumstances I have described, that proximity is functionally irrelevant.

My second concern is that for rural applicants to be considered for the NTIA program, which has more flexible rules for making grants of 80 percent to 100 percent, the application must first go to RUS and be rejected by RUS before NTIA can make an award to that applicant. As a practical matter, I wonder if by the time RUS has reviewed and rejected an application as not qualified under RUS rules, if there is time remaining within that funding cycle for NTIA to review the application and consider it on an equal footing with applications that are initially directed to NTIA, and in the next funding round I hope that you will consider allowing applicants to designate the funding agency that will be primary for purposes of considering an applicant's application.

My third concern relates to the standards that are used to determine areas that are underserved. They appear to be highly restric-

tive. One of three standards would have to be satisfied for an area to be deemed underserved. The first of these is that no more than 50 percent of homes could have a broadband connection greater than 768 kilobits per second. That is a very slow data rate that many would not consider to be true broadband. A speed of at least 1.5 megabits per second might be more appropriate. A second standard that independently could qualify an application for underserved funding is that no provider advertises download speeds of at least 3 megabits per second in the area, but I would suggest that advertising is not a truly reliable measure of genuine broadband availability since advertised speeds frequently exceed the real data rate that subscribers receive. The third standard is that the rate for household subscribership is 40 percent or less in areas that have broadband. The national take rate, I would note, is 55 percent, and we are told that few places where broadband is found have take rates of 40 percent or less, and so I am concerned that these standards will result in many communities finding that the program is less helpful to them than we intended for it to be.

My final concern is that apparently the States have been handed NTIA's entire basket of applications for initial review. We intended for NTIA to have final decision making over its applications, and I am looking for assurance that NTIA in fact will have that final decision making. We have recently heard, in our case, from the State of Virginia, that they were somewhat surprised to have received the entire group of applications directed to NTIA from Virginians and had anticipated only receiving a selected group of applications that had been prescreened through NTIA, and frankly, the State doesn't feel prepared to undertake that challenge and so I would appreciate your response as to why that happened and also some suggestion that we are looking for that you are going to retain final decision making with regard to these.

I have exceeded my time rather substantially and the Chair intends to be very generous with other members who want to express their concerns or make their comments with regard to these matters.

Mr. BOUCHER. The gentleman from Florida, the ranking Republican on our subcommittee, Mr. Stearns, is recognized for his opening statement.

OPENING STATEMENT OF HON. CLIFF STEARNS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. STEARNS. Good morning, and thank you, Mr. Chairman, and thank you for holding this hearing, and let me first of all congratulate Secretary Strickling on his confirmation as Commerce Assistant Secretary for Communications and Information. I believe this is your first opportunity to testify, so welcome. I also want to welcome Administrator Adelstein, who has testified before this committee before, in fact a number of times in different roles, so you are to be commended for being adaptable. From broadband deployment to spectrum policy, both of you certainly will have your hands full, and I appreciate your public service here.

These issues are of tremendous importance to the telecommunications sector, and in fact, when you talk about that sector, you are talking about the entire economy. The American Recovery and Re-

investment Act of 2009 provides a total of \$7.2 billion for broadband, \$2.5 billion of which will go to the Rural Utilities Service and the remaining \$4.7 billion will go to the National Telecommunications and Information Administration. In addition, the Federal Communications Commission will consult with the NTIA and RUS and develop a national broadband strategy. Making sure these programs are administered fairly, efficiently and transparently is one of their top priorities and my top priority also. All of us agree that broadband has the opportunity to transform everyday lives from how we work, how we receive medical information, telemedicine in the future and how we are entertained. What is needed, my colleagues, is a long-term investment in broadband infrastructure that is based upon free market principles and not just a government-run and operated system. We have a remarkable opportunity to start another technological revolution, and I hope we don't squander this opportunity.

So I applaud the folks on this type of transformational infrastructure. This can be only transformational if done right and provides enormous long-term economic benefit. Unfortunately, the haste, I believe, with which the stimulus package was drafted and enacted and the very short time frame it gives the NTIA and RUS to implement the program creates sort of a risk in my mind that taxpayers' dollars will not be used effectively. Dispensing this sort of money, this amount of money entrusted to the NTIA and the RUS in a manner that is fair and efficient, that will be a significant challenge to both of you gentlemen. We are going to have to commit ourselves to vigorous oversight and so, Mr. Chairman, I recommend at a later time we do have further hearings to look into oversight, how much of this huge billions and billions of dollars that are going to be going out in a short amount of time, how it is being used to ensure that the NTIA and the RUS would prioritize grants and States that have completed broadband maps so that we know that the grants are well targeted. This can also help to ensure that requests are made and provide a valuable incentive to complete maps in the remaining States as thoroughly and quickly as possible. In fact, I believe that no money should be spent until mapping is complete and the FCC broadband plan is finished, which I think will be early next year. This national broadband plan will set forth goals and policies on how to best improve broadband access, so it just makes sense that we should know where to spend the money before it is actually spent, and why not have these studies complete first.

In addition, the NTIA and the RUS should prioritize grants in unserved areas before underserved areas. We should ensure that everyone gets firsts before others are allowed to seconds and thirds. Allocating funds to underserved areas first could distort the marketplace because companies will be forced to compete with government-subsidized competitors. This will also spread the subscriber base thin in what is already a difficult market to serve, providing each company with even less revenue to upgrade their facilities.

And finally, the funds should be targeted to projects that demonstrate they can exist without government continued subsidizing into the future so that in 3 to 4 years we do not need to have them come back and say we need a bailout because we cannot meet our

continued development. The NTIA and the RUS should not be in the business of funding projects that will impose new and expansive demands on the Universal Service Fund tomorrow. How they recognize these projects will be a difficult task.

I am also concerned about the use of the stimulus funding process to expand on the FCC broadband policy statement obligations. I have been a skeptic of net neutrality, and these obligations strike me as another unjustified step down the slippery slope towards regulation of the Internet. I doubt that these non-discrimination rules will benefit consumers, expand broadband adoption or drive network availability in areas that simply lack broadband access. I fail to see how the imposition of these obligations dovetail with the rationale for the stimulus package in the first place, the near-term creation of jobs. If done right, we have a tremendous opportunity to boost our economy and transform the way we live but if we throw money indiscriminately at the problem only to say we are doing something, I don't think we will accomplish our long-term economic goals and also will not provide broadband investment the best means of deployment.

So we cannot let this opportunity pass. I welcome this hearing, and Mr. Chairman, I look forward to further discussions and talking to our witnesses. Thank you.

Mr. BOUCHER. Thank you very much, Mr. Stearns, and let me assure you that we will be having further hearings on the broadband stimulus program.

The gentleman from Michigan, Mr. Stupak, is recognized for 2 minutes.

OPENING STATEMENT OF HON. BART STUPAK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. STUPAK. Thank you, Mr. Chairman, and thank you for holding this second oversight hearing on the American Recovery and Reinvestment Act. Welcome, Mr. Strickling and Mr. Adelstein, to our committee. I look forward to your testimony today.

I also wish to thank John Morabito with the NTIA along with John Claffee and Jessica Sufilo with the RUS for speaking at our rural caucus staff briefing on the stimulus package that we hosted in July. It was great help to us all of us and to our staffs.

Broadband access is of high interest for rural communities that wish to be part of today's 21st century economy. This interest was demonstrated in real numbers when 2,200 entities filed applications to link 28 billion in requests with the Departments of Commerce and Agriculture for broadband grants and loans this August. A quick search on Broadband USA shows northern Michigan alone accounts for 54 of these applicants, totaling more than \$100 million in requests in middle mile, last mile and remote projects. Of course, these numbers far exceed the actual amount Congress appropriated towards expanding broadband access but we all knew that the demand would outpace the funding. The Broadband Technology Opportunities Program and the Broadband Initiative Program represent opportunities for the federal government to demonstrate that the American Recovery and Reinvestment Act can permanently improve the quality of life for rural communities.

Now, that is not to say that the funding distributed so far has not been a necessary investment in our rural infrastructure, but at the end of the day, it is access to broadband that will make rural America's economy competitive for years to come. That leaves an enormous challenge for our witnesses and the agencies they represent. There is a lot of questions on how the applications will be handled and what mechanisms will be put in place to ensure the public money is distributed fairly. I look forward to hearing from our witnesses today.

Thank you, Mr. Chairman, for holding this hearing. I yield back the last 7 seconds.

Mr. BOUCHER. Thank you very much, Mr. Stupak.

The gentleman from Illinois, Mr. Shimkus, is recognized for 2 minutes.

OPENING STATEMENT OF HON. JOHN SHIMKUS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. SHIMKUS. Thank you, Mr. Chairman. How generous of Mr. Stupak with those 7 seconds. I will try to be as courageous and bold.

I want to thank you for the hearing and also for Ranking Member Stearns. You know, we are spending and plan to spend a huge chunk of taxpayers' dollars and actually increase indebtedness for this program, and this oversight hearing and the next oversight hearings that the chairman has promised are very, very important in this process. As an opponent of the stimulus bill, I am receptive to being proved wrong in certain areas. During the district work period, I went to Carlyle Lake, a Corps of Engineers lake, and really 50 percent of their backlog of unmet needs are being filled by some stimulus dollars. So where I still would have voted no, I am willing to say there are some positive things that might be going on and highlight that.

So that is the importance of the oversight, to really make sure that taxpayers' indebtedness, there is a good return on that, and that is the importance of the job that you all are doing. When we had our first oversight hearing, we had the California Public Utilities commissioner here, and the question I posed, which I think is already kind of precedent based upon some of the comments have been made is, she testified that they would have spent money poorly had they not had done broadband mapping first, and so I would like to encourage that. I would not go as far as the ranking member of this committee saying no money should be doled out before that but I do think that those areas that have done broadband mapping and have already invested should also be taken into consideration when we look at where this money should go. Connect Southern Illinois has been trying to do that in southern Illinois. That is modeled after the Kentucky program. We have had numerous hearings on that. I would hope that that would be taken into consideration. And Commissioner Adelstein, we talked prior to the hearing about 911 and PSAPs. That is my part of my opening comment. The public safety aspect of this is really critical as we look at the importance of the broadband delivery system to emergency services communications. And, you know, in rural parts of the country, they just are not at the point of major metropolitan areas.

And so I did not live up to Bart Stupak's time commitment. I apologize, and I yield back my time, Mr. Chairman. Thank you.

Mr. BOUCHER. Thank you very much, Mr. Shimkus.

The gentlelady from California, Ms. Matsui, is recognized for 2 minutes.

OPENING STATEMENT OF HON. DORIS O. MATSUI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. MATSUI. Thank you, Mr. Chairman, and thank you very much for your leadership on this very important issue and for calling the second hearing. I would also like to thank Mr. Strickling and Mr. Adelstein for being with us here today and I look forward to your testimonies.

We are here today to examine the efforts of NTIA and RUS in carrying out the broadband programs established by the Recovery Act. The broadband package included a \$7.2 billion investment in our Nation's broadband system. This investment will help expand broadband access to more and more Americans across the Nation. I am particularly interested to hear how the broadband program is helping households, schools, libraries, health facilities, among others, in urban underserved communities to achieve greater access to broadband services. In the current economic climate, more and more hardworking families need access to the Internet to find a new job, manage their finances during this difficult period, obtain news alerts, apply to college. The broadband stimulus package will help build out the infrastructure to many more communities throughout this Nation. Moving forward, I believe it is critically important that we address affordability of Internet access for all. In doing so, it would truly help close the digital divide for millions of Americans, and that is why I will soon be introducing legislation that will expand the Universal Service Fund's Lifeline Assistance program for universal broadband adoption. The legislation will help more lower income Americans living in urban and rural areas with assistance in subscribing to affordable broadband services.

I thank you, Mr. Chairman, for holding this very important hearing today and I yield back the balance of my time.

Mr. BOUCHER. Thank you, Ms. Matsui.

The gentleman from Nebraska, Mr. Terry, is recognized for 2 minutes.

OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA

Mr. TERRY. Thank you, Mr. Chairman. Gentlemen, thank you for being here today.

I am concerned that the goal of improving the broadband access to those Americans without it today was not fulfilled in this first round of stimulus problems funding. During the passage of the stimulus bill, the minority was assured that telecommunications carriers serving rural America would have access to stimulus dollars to deploy networks to their unserved customers throughout the RUS. Somewhere between passage and the RUS and the NTIA releasing the rules for the first round of most of rural unserved America was left out. What we have today are rules that prohibit

an applicant from receiving anything higher than 50 percent grant to serve a remote area. By definition, a remote area is a 50-mile radius from a population center of 20,000 or more. I am not sure if it was the intent to exclude most of rural America but that is exactly what happened. In Nebraska, you may have to drive a couple hundred miles to find a town that big. As a result of the “remote” definition coupled with the burdensome regulation on the network, the three largest carriers in Nebraska decided not to apply for stimulus broadband money. If the carriers that were shovel-ready are not willing to apply, then I am concerned that the NTIA and RUS may award money to applicants who do not have the expertise or business to sustain networks in rural high-cost America.

I want to associate myself with the chairman’s remarks, particularly about the speed, and hope to learn in today’s hearing more about how the applications will meet America’s remote areas and rural needs.

Mr. BOUCHER. Thank you very much, Mr. Terry.

The chairman of the full Energy and Commerce Committee, the gentleman from California, Mr. Waxman, is recognized for 5 minutes.

OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. WAXMAN. Thank you, Chairman Boucher, for holding this timely hearing. I want to welcome Assistant Secretary Strickling, who is appearing before our committee for the first time as the administrator of the National Telecommunications and Information Administration, NTIA, as well as Jonathan Adelstein, who left the Federal Communications Commission after 7 years of service as a commissioner to lead the Rural Utilities Service. I welcome you both. I also want to congratulate both of you on your recent confirmations and we look forward to working with you.

As you are well aware, the overriding purpose of the American Recovery and Reinvestment Act of 2009 was to stimulate the economy by creating and preserving jobs. NTIA and RUS deserve high praise for issuing the initial application guidelines in a timely fashion while incorporating enhanced transparency and accountability measures, and I am pleased that the Notice of Fund Availability broadly reflects the objectives of the Recovery Act in stimulating the economy, creating and saving jobs and extending broadband to hard-to-reach and underserved communities. You and your staffs have worked around the clock to get the program up and running so that Recovery Act funds might have an immediate impact, and thank you for your ongoing efforts.

There are many skeptics who said you could not get it done and there were those who said that Congress placed so many conditions on these funds, there would be too few applicants to make this effort worthwhile. Contrary to these fears, the response to the NOFA has been overwhelming. It is clear that the public interest obligations that attach to this public money have not deterred interest or innovation, and it is clear that with 2,200 applications seeking over \$28 billion in funds, there is a keen interest across the tele-

communications and technology sector in providing all of our citizens with access to advanced broadband networks. I am confident that broadband stimulus funds will lead to new and innovative offerings that benefit our Nation.

While we understand that your work is just beginning, now that you have established the framework for releasing these funds, you must make certain they are released wisely, transparently and efficiently. I think most members of this committee and the American public recognize that this overall program is an unprecedented endeavor in scope and speed. We understand that you will want to refine certain details to improve performance and maximize the benefits of the public's investment in these efforts, and I know you will be interested in receiving constructive suggestions from both sides of the aisle.

I look to hearing your testimony and I thank you for being here today and I thank the chairman for convening the hearing.

[The prepared statement of Mr. Waxman follows.]

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Opening Statement of Rep. Henry A. Waxman
Chairman, Committee on Energy and Commerce
Oversight of the American Recovery and Reinvestment Act: Broadband, Part 2
September 10, 2009

Thank you, Chairman Boucher, for holding this timely hearing.

I want to welcome Assistant Secretary Strickling, who is appearing before our Committee for the first time as the Administrator of the National Telecommunications and Information Administration (NTIA), as well as Jonathan Adelstein, who left the Federal Communications Commission after seven years of service as a Commissioner to lead the Rural Utilities Service (RUS).

I also want to congratulate both of you on your recent confirmations and I look forward to working with you.

As you are well aware, the overriding purpose of "The American Recovery and Reinvestment Act of 2009" was to stimulate the economy by creating and preserving jobs.

NTIA and RUS deserve high praise for issuing the initial application guidelines in a timely fashion while incorporating enhanced transparency and accountability measures. I am pleased that the Notice of Fund Availability (NOFA) broadly reflects the objectives of the Recovery Act in stimulating the economy, creating and saving jobs, and extending broadband to hard-to-reach and underserved communities.

You and your staffs have worked around the clock to get the program up and running so that Recovery Act funds might have an immediate impact. Thank you for your ongoing effort.

There were many skeptics who said you could not get it done. And there were those who said that Congress placed so many conditions on these funds there would be too few applicants to make this effort worthwhile.

Contrary to these fears, the response to the NOFA has been overwhelming. It is clear that the public interest obligations that attach to this public money have not deterred interest or

innovation. And, it is clear that with 2,200 applications seeking over \$28 billion in funds, there is keen interest across the telecommunications and technology sector in providing all of our citizens with access to advanced broadband networks. I am confident that broadband stimulus funds will lead to new and innovative offerings that benefit our nation.

But we all understand that your work is just beginning. Now that you have established the framework for releasing these funds, you must make certain they are released wisely, transparently and efficiently.

I think most members of this Committee and the American public recognize that this overall program is an unprecedented endeavor in scope and speed. We understand that you will want to refine certain details to improve performance and maximize the benefits of the public's investment in these efforts. And I know you will be interested in receiving constructive suggestions from both sides of the aisle.

I look forward to hearing your testimony, and thank you again for appearing today.

Mr. BOUCHER. Thank you very much, Chairman Waxman.
The gentlelady from Tennessee, Ms. Blackburn, is recognized for 2 minutes.

OPENING STATEMENT OF HON. MARSHA BLACKBURN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE

Mrs. BLACKBURN. Thank you, Mr. Chairman. I want to welcome both of you. Mr. Adelstein, it is going to be a pleasure to continue our ongoing conversation about broadband and intellectual property. Mr. Strickling, congratulations. I have enjoyed my visit with you and look forward to more. I think all of you know that I am very concerned about broadband and the effect that that has on my constituents in Tennessee's 7th Congressional District and I am also going to look forward to hearing from you all not only about how we go about with that broadband deployment and the program that is before us and the oversight we need to do on this, addressing the applications, addressing spectrum relocation, how to best achieve our shared goal of universal access, and the development of a broadband map, the use of those maps. There are all topics that you have heard from others.

This morning I do want to touch on one thing I don't think anyone has touched on, and that is non-discrimination in Internet content, and I support the policy goal of ensuring that all Americans do have access to broadband. Universal broadband access can greatly increase economic opportunity for all Americans. Indeed, many times we have talked about the need for this in the rural part of my district. They look at economic jobs recruitment and retention. So it is important not only to me but to all of us. The Internet, though, should not—it is not and should not be neutral with respect to unlawful content. I fear that misguided non-discrimination regulations that fail to distinguish between legal and illegal content would undermine broadband adoption.

So I know I am out of time but I do want to highlight that with you all. I am also going to want to look at how you spend the \$7 billion in the broadband stimulus funds, where that is going to go, how those are going to be vetted, how we are going to go about vetting those applications. I have got a couple of concerns that I want to highlight on that.

Thank you, Mr. Chairman. I look forward to the discussion.

[The prepared statement of Mrs. Blackburn follows:]

The Honorable Marsha Blackburn (TN-07)
Committee on Energy and Commerce
Subcommittee on Communications, Technology, and the
Internet
Hearing: "Oversight of the American Recovery and
Reinvestment Act of 2009: Broadband, Part 2"
September 10, 2009

Thank you, Mr. Chairman. I appreciate you holding this very important hearing on Broadband deployment. Without proper oversight of the BTOP and BIP programs, I am concerned that broadband deployment in the rural unserved communities in Tennessee's 7th District will suffer.

I look forward to the testimony of Assistant Secretary Strickling and Administrator Adelstein on important issues such as providing broadband to rural communities, spectrum relocation, how to best achieve the goal of universal access, and the development of the broadband map, among other important topics.

This morning I would like to talk a little about non-discrimination and internet content. I support the policy goal of ensuring all Americans have access to broadband. Universal broadband access can greatly increase economic opportunity by and for all Americans. However, the Internet is not, and should not, be neutral with respect to unlawful content. I fear that misguided non-discrimination regulations that fail to distinguish between legal and illegal content would undermine broadband adoption.

As your agencies look to spend over \$7 billion in broadband stimulus funds, it is important that the necessary steps are being taken to create a broadband environment that respects the rights and freedoms of all legal broadband participants. I want to be sure that grantees from these programs are employing reasonable and effective network management practices to crack down on illegal activity on these taxpayer-subsidized networks. Federal policy and taxpayer dollars should not be used to facilitate illegal activity online, including the exploitation of children and the theft of intellectual property.

As we know, non-discrimination does not apply to illegal content under FCC principles. Under FCC principles, applicants are all subjected to the needs of law enforcement and reasonable network management. Therefore, with limited bandwidth capacity threshold, the more illegal content that is removed, the better Internet experience the consumer will have. I look forward to working with the Committee and the Administration to carry out this important goal of universal Broadband service and yield back the balance of my time.

Mr. BOUCHER. Thank you very much, Ms. Blackburn.
The gentleman from Ohio, Mr. Space, is recognized for 2 minutes.

**OPENING STATEMENT OF HON. ZACHARY T. SPACE, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO**

Mr. SPACE. Thank you, Chairman Boucher and Ranking Member Stearns and to our witnesses today. Assistant Secretary Strickling and Mr. Adelstein, thank you for taking the time out of your busy schedules to be here and I would like to congratulate you both on your recent appointments.

The task Congress presented to NTIA and RUS at the beginning of the year was daunting. I commend both of your teams for taking on the challenges of the statute and implementing a number of innovative approaches. Streamlining the application process to eliminate duplicity and promote efficiency in time and resources seems to have warranted praise from many sectors, and the efforts you have taken in holding public forums and workshops are to be commended as well. Furthermore, I hope that your commitment to transparency remains as we move ahead.

I do believe that following the completion of the first round of funding, there is some room for improvement. Fortunately, the process is structured to allow for such changes to be made before progressing with the second round of funding. Specifically, I am concerned that the RUS's definition of "remote" may exclude regions of the country very worthy of seeing those Recovery Act dollars. The State of Ohio in particular remains essentially ineligible for these funds, and I think some of my constituents in Appalachia would argue that they live in truly remote areas. I do look forward to working with you both as part of this ongoing process, and of course, I share your support for providing broadband access and the seemingly infinite benefits that such access affords to all Americans.

Thank you, and I yield back my time.

Mr. BOUCHER. Thank you very much, Mr. Space.

The gentlelady from the Virgin Islands, Ms. Christensen, is recognized for 2 minutes.

**OPENING STATEMENT OF HON. DONNA M. CHRISTENSEN, A
REPRESENTATIVE IN CONGRESS FROM THE VIRGIN ISLANDS**

Mrs. CHRISTENSEN. Thank you, Mr. Chairman, and thank you for holding this hearing. You know, when it came to deciding my second subcommittee, I was torn, but your leadership, Mr. Chairman, and the importance of the work of this subcommittee to, as the President said last night, not just dealing with crisis but to building a future, has reaffirmed that I made a good choice, the right choice.

I also want to welcome Assistant Secretary Strickling and Administrator Adelstein this morning. I am not going to use my opening remarks to lay out concerns. I will get to some of those in the questioning period, but I share some of them that have already been expressed. Today I just want to commend both agencies for the way you have worked together and have reached across the country and for your commitment to simplifying the process, to

bringing broadband to every person in this country and to using the federal dollars that have been entrusted to you efficiently, effectively and responsibly.

The U.S. Virgin Islands and I have had a long relationship with RUS and so I know of your long experience in carrying out technology across the country, and we appreciate not only that you don't forget us but that you always include the territories, and we applaud your ability to have leverage of \$2.5 billion to over \$7 billion. NTIA, when you were here before, you convinced me that you were not only aware of the territories but embraced the fact that your responsibility extended to us, and being a representative both in my district and as a racial minority of those who are referred to in your testimony and your priorities as our most vulnerable populations, I applaud the goal to close the broadband gap and bring maximum broadband benefits to communities that are often left out and left behind.

Speaking on behalf of my own and other providers, we also appreciate that stimulating broadband demand is also one of the priorities, so I look forward to the discussion after your presentations. I know the devil is in the details, but thank you once again for your aggressive approach to building for our future.

Mr. BOUCHER. Thank you very much, Ms. Christensen.

The gentleman from California, Mr. McNerney, is recognized for 2 minutes.

Mr. MCNERNEY. Thank you, Mr. Chairman. I do want to thank you for your leadership on this issue, and especially holding this hearing this morning. I want to thank Mr. Strickling and Mr. Adelstein for your work in developing the definitions and putting together a framework for releasing the funds. I understand that a large number of applications have been received, far larger than what was predicted, and so it is critically important that we distribute those monies in a way that creates jobs and improves broadband service throughout the country.

So with that in mind, I look forward to working with you all to make sure that we meet those goals, and with that, I just yield back the balance of my time.

Mr. BOUCHER. Thank you, Mr. McNerney.

The gentlelady from California, Ms. Eshoo, is recognized for 2 minutes.

OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Ms. ESHOO. Thank you, Mr. Chairman. It is great to be back, and I want to welcome the two outstanding people that are here today, Assistant Secretary Strickling and, of course, the new administrator, Jonathan Adelstein. It is wonderful to see you in your new position, and I congratulate you.

I am really pleased that we have this opportunity to talk not only about your roles in the broadband stimulus program, because we are really depending on you on both, NTIA and the RUS, to ensure that the recovery funds really spur growth and speed economic recovery in our country. It is why the language and the dollars were placed in that very large package, and I think one of the

most important parts of it. So I know that you are going to work hard to meet these priorities.

Assistant Secretary Strickland—Strickling. We had a Strickland on our committee so I am sorry for the slip of tongue. You have taken over NTIA at a time when it is really shifting gears and re-adjusting its priorities. You have gone from handing out DTV coupons to reviewing broadband applications in the space of a few weeks, so that is a big shift, and we want to see you prosper in this. In May of this year, Representative Markey and I wrote to Secretary Lock and Secretary Vilsack to urge the prioritization of broadband projects under the Recovery Act based on advanced capabilities and speeds. Improved access to distance learning, telemedicine, economic growth and job creation are dependent upon network construction that delivers capacity for high-bandwidth applications. We don't want to start out moving like a turtle. When this is implemented, we want it at the highest speeds possible. That is really how we are going to define success, in my view, anyway. The recovery funds should go toward this goal as well as projects aimed at unserved areas.

I know that the first round of applications brought forward some complaints from software breakdowns to onerous application questions that might reveal proprietary information. There are concerns that the program doesn't encourage higher speeds in underserved markets or spur anchor institutions but focuses instead on lower speeds in rural regions. Rural regions should not be subjected to lower speeds, period. This is the United States of America. I think we should have the highest standards and the highest speeds across the entire country. Just because they are rural should not equate to low speeds. Thankfully, we are only in the first round of the process and the funds remain available to achieve all of Congress's priorities and goals. I hope you have a plan to encourage projects that utilize the most advanced highest bandwidth. I also hope you have a plan for addressing concerns about the application process and improving it during the next round.

So again, thank you for taking on the jobs that you have. I am sure that we are going to be working closely with one another and tracking this because it really is so important for the future of our country. So congratulations again and I look forward to not only working with you but also questioning you as well. Thank you, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Ms. Eshoo.

The gentleman from North Carolina, Mr. Butterfield, is recognized for 2 minutes.

OPENING STATEMENT OF HON. G.K. BUTTERFIELD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NORTH CAROLINA

Mr. BUTTERFIELD. Thank you, Mr. Chairman.

Mr. Chairman, thank you for holding the second part of this very important hearing. This is an opportunity to hear testimony from Mr. Strickling as well as Administrator Adelstein. I want to sincerely congratulate both of you for your respective appointments and I certainly look forward to working with you to better serve the people of my state, which is the state of North Carolina, the 1st

Congressional District. My district is a rural district. In fact, we have the fourth poorest district among the Congressional districts in the country.

As you know, \$3.8 billion was made available through the first of two Notices of Funds Availability for broadband deployment across the United States, and these are critically important funds needed to help ensure that our struggling communities are able to join the global economy. America's unserved and underserved communities are decades behind our technologically advanced areas of the country. I know because I represent many of these communities. Access to broadband is something many of us take for granted yet it is still out of reach for nearly half of all U.S. households. We have a responsibility to make certain that funding for broadband deployment be distributed to those communities with the greatest need. It is vitally important that these funds be distributed quickly and efficiently so that access to broadband technology will be realized throughout the country. Last January, during the full committee markup, I strongly advocated for Congress, not NTIA, to have the discretion to define unserved and underserved. While NTIA's definitions do identify a number of needed communities, many deserving communities are still being left behind.

While broadband access may be available to just over 40 percent of households, it is certainly not affordable for low-income populations, and this is the situation in my hometown of Wilson, North Carolina. Since 2008, through a public effort, my city has spent \$30 million in an effort to provide broadband service to every household. The city has been proactive in deploying broadband to households and aims to provide broadband services at reduced cost to every home within the city. While this city of Wilson is partially served by high-priced broadband service providers, the city's service called Green Light provides a fiber to home alternative. Unfortunately, without additional assistance, the city will be unable to continue to deploy affordable broadband access to low-income sections of the city.

Mr. Chairman, I see that my time is expired. I ask unanimous consent that the entire statement be included in the record.

[The prepared statement of Mr. Butterfield follows:]

OPENING STATEMENT
CONGRESSMAN G. K. BUTTERFIELD
HOUSE COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMUNICATIONS, TECHNOLOGY, AND THE INTERNET
OVERSIGHT OF THE AMERICAN RECOVERY AND REINVESTMENT ACT: BROADBAND, PART II
SEPTEMBER 10, 2009

Chairman Boucher, thank you for holding the second part of this very important hearing. This is an important opportunity to hear testimony from NTIA Assistant Secretary Larry Strickling and RUS Administrator Jonathan Adelstein. I want to sincerely congratulate you both on your respective appointments, and I certainly look forward to working with you to better serve the people of North Carolina's First Congressional District.

As you know, \$3.8 billion was made available through the first of two Notices of Funds Availability

(NOFA) for broadband deployment across the United States. These are critically important funds needed to help ensure that our struggling communities are able to join the global economy.

America's "unserved" and "underserved" communities are decades behind our technologically advanced areas of the country – I know because I represent many of these communities. Access to broadband is something many of us take for granted, yet it is still out of reach for nearly half of all U.S. households.

We have a responsibility to make certain that funding for broadband deployment be distributed to

those communities with the greatest needs. It is vitally important that these funds be distributed quickly and efficiently so that access to broadband technology will be realized throughout the country.

Last January during the full committee markup of the Recovery Act, I strongly advocated for Congress, not NTIA, to have the discretion to define “unserved” and “underserved”. While NTIA’s definitions do identify a number of needy communities, many deserving communities are still being left behind. While broadband access may be available to just over 40 percent of households, it is certainly not affordable, and the poor population continues to be unserved. This

is the situation my hometown of Wilson, North Carolina finds itself in.

Since 2008, through a public effort, the City of Wilson has spent \$30 million in an effort to provide broadband service to every household. The city has been proactive in deploying broadband to households and aims to provide broadband service at reduced costs to every home within the City. While Wilson is partially served by a high-priced broadband service provider, the City's service, called Greenlight, provides a "fiber-to-the-home" alternative.

Unfortunately, without additional assistance the City will be unable to continue to deploy affordable

broadband access to the poor sections of the City and large swaths of the population will continue to be unserved. It is my hope that NTIA will use a commonsense approach to this issue by granting waivers to needy and deserving communities like Wilson so that affordable access to broadband will finally be a reality to every American household.

I look forward to seeing the dream of a truly connected America coming to fruition and I stand ready to assist NTIA and RUS in realizing that goal. I would like to commend Assistant Secretary Strickling Administrator Adelstein, and their staffs for their quick work in getting these programs underway.

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

Mr. BOUCHER. Without objection, and the Chair thanks the gentleman for his comments, and we welcome now our witnesses for this morning, and I want to add my voice to those of the subcommittee—oh, I am sorry. I did not see Mr. Barton arrive, so my welcome to you will have to be postponed. At this time I am pleased to recognize the ranking member of the full Energy and Commerce Committee, the gentleman from Texas, Mr. Barton.

**OPENING STATEMENT OF HON. JOE BARTON, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS**

Mr. BARTON. Mr. Chairman, normally I wouldn't interrupt but my staff's feelings are going to be hurt if I don't read at least some of their excellent opening statement.

Let me thank you, Mr. Chairman, for calling this hearing. Let me welcome Assistant Commerce Secretary Strickling and congratulate him on his recent appointment, and to our other witness, you have a new job now. I am used to seeing you as the FCC commissioner and now you have moved over, so we are glad that you are here.

I am glad we got the DTV transition behind us, Mr. Chairman. You know, all of those worries of Armageddon turned out not to be true. The biggest problem was that I never got around to asking for a coupon so I still have television sets that are inoperable, and it is the Congress's fault, you know. But I am going to take it up with my Congressman at the appropriate time with the appropriate letter of strong condemnation.

Let us simply say that in terms of broadband implementation, my staff indicates that over 2,000 requests have been received for \$28 billion. That is four times the amount of money that the Congress has allotted, so let me tell you two gentlemen, as long as you fund the applications in my Congressional district, we won't have a lot of problems, and I guess Mr. Boucher and Mr. Shimkus and Mr. Terry, I am looking on the other side, my friends over there, you know, fund the ones that are here in attendance when the gavel sounds and we will be OK.

We do think that projects should be prioritized where the mapping is already complete. There is nothing in the statute that would prevent you from taking that. My understanding is that maps have been completed in at least 10 States and there are 10 other States where they almost completed. This is an opinion and not necessarily a fact, but I believe that there should be some prioritization for areas that are totally unserved as opposed to underserved because underserved is in the eyes of the beholder but unserved is unserved and there is no—you know, that is an either/or digital decision. They either have service or they don't.

I guess with that, Mr. Chairman, I will yield back and submit my formal statement for the record, but again, I welcome our two witnesses and we look forward to hearing your testimony. Thank you, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Barton.

And now I am pleased to welcome our two witnesses and congratulate both of them upon their appointments to head their respective agencies. This subcommittee is very familiar with both of these gentlemen, who have appeared before us previously. Mr.

Strickling was at one time head of the common carrier bureau at the FCC, and Mr. Adelstein for a number of years served as a commissioner at the FCC, and I would say that both of these agencies are certainly fortunate to have your services as is the United States government.

Mr. Strickling is now the assistant secretary for communications and information of NTIA. Mr. Adelstein is the administrator for the Rural Utilities Service at the U.S. Department of Agriculture, and I want to commend both of you for the way in which you have coordinated your work as the standards for making grants and loans under the broadband program have been developed. I think it is commendable that you have worked together this well and that you have a seamless program for all intents and purposes. I think that serves our purposes in terms of making sure the program is effective and I commend you for that coordination that you have undertaken.

Without objection, your prepared written statements will be made a part of the record and we would welcome your oral presentation of approximately 5 minutes. Mr. Strickling, we will be pleased to begin with you.

STATEMENTS OF LAWRENCE E. STRICKLING, ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION, NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION; AND JONATHAN S. ADELSTEIN, ADMINISTRATOR, RURAL UTILITIES SERVICE

STATEMENT OF LAWRENCE E. STRICKLING

Mr. STRICKLING. Thank you very much, Chairman Boucher and Ranking Members Stearns and Barton. I want to thank all of you for the invitation to testify today on behalf of the NTIA on the implementation of the Broadband Technology Opportunities Program and the development of the national broadband map as set forth in the Recovery Act. I welcome this opportunity to come before you early in my tenure as assistant secretary to begin this dialog in collaboration on our shared priorities of fostering innovation and growth in the communications and information sectors and ensuring that all of our citizens are able to participate in today's Information Age. I am also very pleased to appear here today with Jonathan Adelstein, who oversees the Broadband Initiatives Program at the U.S. Department of Agriculture. Our two agencies, as has been noted, have worked hand in hand the last several months to implement the broadband provisions of the Recovery Act, and the result has been a highly coordinated and well thought out approach that takes advantage of the individual expertise of the two agencies.

The message we bring to you today is that we have put our programs in place. We have receiving an overwhelming response to our initial round of funding and we look forward to the challenge of awarding grants later this fall to a diverse set of grant recipients. I want to assure you that these funds will be well spent. We expect to leverage these programs into significant and lasting improvements in America's technological innovation and economic health, which will allow us to take a significant step forward to

achieve President Obama's vision of bringing the benefits of broadband to all Americans.

Today we are in the thick of reviewing the initial applications we received in late August. Between our two agencies, we received over 2,200 applications requesting nearly \$28 billion in funding, which was seven times the funding available in the first round. When we include the over \$10 billion in matching funds that our applicants have committed, these applications represent more than \$38 billion in proposed broadband projects. At least one application was filed for each State, each territory and the District of Columbia. The applicant pool is diverse and includes States, tribal nations, local governments, nonprofit organizations, telephone, cable and wireless companies and anchor institutions such as schools, libraries and hospitals. I am very encouraged by this extremely high interest level shown by the applicants in our first round and I urge all of you to take a look at our Web site, BroadbandUSA.gov, which is now up and running with a searchable database containing descriptions of all the applications we have received. Soon we will be posting the maps of the geographical areas of coverage proposed by our first round applicants.

In our evaluation of these applications, first at least three expert reviewers will grade each application against established criteria including the proposed project's purpose, benefits, viability and sustainability. These reviewers have been selected based on their expertise and background and we are carefully screening them for any actual or apparent conflicts of interest. The reviewer's scores for each application will be averaged and those applications considered the most highly qualified will advance for further consideration. Mr. Chairman, you made a comment raising a concern about the sequencing of our review, and I want to assure you that we are going to be looking at all of the applications that we have received and will not be waiting to review the joint applications submitted to both of our agencies until the Department of Agriculture has completed its review, so everything will be looked at in sequence without any delay.

Each State and territory will be given the opportunity to prioritize and comment on the applications relevant to its jurisdiction. Again to clear up any misconception, the States are not reviewing the applications in lieu of the reviews that we are conducting, and as always we retain the decision as to which grants will be awarded. However, the Act does recognize that State and territorial officials have a unique perspective on broadband needs within their jurisdictions, and we look forward to their input.

For those applications that merit further consideration, we will engage in additional due diligence, which will include our requesting supplementary information from applicants. NTIA staff will review and analyze this information and prepare recommendations as to which projects should be funded. Those recommendations will be presented to me and I will make the final selections consistent with the statutory directives established in the Recovery Act. We expect to begin announcing grant awards in November and hope to complete the first round of awards by the end of the year.

I would also like to update the subcommittee on our progress to develop the national broadband map. Under the State broadband

data and development grant program for which Congress appropriated \$350 million, I am pleased to report that we received an application from every State, territory and the District of Columbia. We will also be awarding grants to States to support their own planning efforts for broadband just as the Recovery Act allows. With respect to those planning grants, 52 applicants requested a total of \$26 million in funding for that planning project. As with the broadband grants, there will be review by technical experts followed by a second review performed by our own staff. We hope to award a broadband mapping grant to every State and if necessary we will work with the States to revise and refine their proposals so that each proposal meets our standards. We expect to announce the first mapping awards by the end of September. We expect to receive a substantially complete set of State-level availability data by November followed by a complete verified set of all requested data by next spring. We will complete that map by February 2011 as required by the Recovery Act.

Even in the middle of all this activity to review the broadband applications and the mapping applications, we are constantly thinking about ways to improve the program. For example, our experience with this first round is leading both of our agencies jointly to explore the option of holding just one more round of funding. This may have the potential of yielding benefits for all stakeholders. First, it would enable us to complete the entire grant-making process in the summer of 2010 as opposed to next September, and expedite the stimulative benefits for the economy and job creation that the Recovery Act promises. Combining the second and third rounds into a single funding round would also allow us to adjust the next application deadline, giving additional time first to the stakeholders to provide us their views as to how the first round worked for them and to our agencies so we can learn from our experience and adjust those aspects of the process that need to be improved. Finally, combining the two rounds may also save administrative expenses.

With respect to the mapping program, we announced yesterday that we will initially fund the State data collection efforts for a 2-year period as opposed to the 5-year period originally contemplated. Again, this approach allows us to assess lessons learned, determine best practices and investigate opportunities for improved data collection methods prior to awarding funds for subsequent years. Based on what we have received, we expect that the funding for 2 years will cost approximately \$100 million, far less than the \$350 million appropriated by Congress, and in no way will this change affect our ability to publish a comprehensive map by the February deadline.

For both the broadband grants and the mapping grants, we are devoting substantial efforts to meeting our oversight obligations for the program. We are committed to ensuring that taxpayers' money is spent wisely and efficiently. Since the passage of the Act, we have been working with the Department of Commerce's inspector general to design the program in a manner that minimizes the risk of waste, fraud and abuse. Just last week we met with the inspector general's office to kick off its audit of the program as called for in the Recovery Act. As we move forward and begin to make

awards, we will ramp up our auditing and monitoring responsibilities including site visits to grantees. We are working extremely hard to ensure that the projects funded by the Recovery Act serve as valuable inputs to our long-term broadband strategy. I look forward to working with all of you in the months ahead to ensure that the Nation's policies benefit our communications and information industries and American consumers.

Thank you again for the opportunity to testify, and I look forward to answering your questions.

[The prepared statement of Mr. Strickling follows:]

Testimony of Lawrence E. Strickling

Assistant Secretary for Communications and Information
National Telecommunications and Information Administration
U.S. Department of Commerce

Before the
Subcommittee on Communications, Technology and the Internet
Committee on Energy and Commerce
U.S. House of Representatives

Oversight of the American Recovery and Reinvestment Act:
Broadband, Part 2

September 10, 2009

I. Introduction.

Chairman Boucher, Ranking Member Stearns, and Members of the Subcommittee, thank you for your invitation to testify on behalf of the National Telecommunications and Information Administration (NTIA) on the implementation of the Broadband Technology Opportunities Program (BTOP) and the development of the national broadband map as set forth in the American Recovery and Reinvestment Act (Recovery Act or Act). I welcome the opportunity to come before you early in my tenure to begin what I trust will be an ongoing and productive dialogue and collaboration on our shared priorities of fostering innovation and growth in the communications and information sectors, and ensuring that all of our citizens are able to participate in today's information age. NTIA also is very appreciative of the capable and proactive leadership of Secretary Locke, who, from day one, made clear that BTOP is a top priority for the Department.

I am also very pleased to be here today with Jonathan Adelstein, the new Administrator of the U.S. Department of Agriculture's Rural Utilities Program (RUS), which administers BTOP's sister project, the Broadband Initiatives Program (BIP).

While we do not expect the Recovery Act broadband initiatives to solve all of the country's broadband challenges, we do believe they will allow us to take significant steps forward to achieve President Obama's vision of bringing the benefits of broadband to all Americans. I assure you this will be money well spent: just as investments in transportation infrastructure supported the development of the national highway system, these investments will serve as valuable building blocks for future private investments in the national broadband plan, helping to bring the electronic interchanges and roads to areas of the country that need them the most, particularly rural areas. Additionally, we are confident that multiple communities across

America will use this funding to provide sustainable broadband infrastructure to hospitals, schools, libraries, and public safety entities; infrastructure that also will be used by tens of thousands of households and businesses. These communities can point the way for future private investment and will provide instructional, focused case-studies for the program. In short, I believe that we can leverage these programs into significant and lasting improvements in America's broadband deployment, technological innovation, and economic health.

Under the Recovery Act, Congress authorized NTIA to expend \$4.7 billion in implementing BTOP and specifically to award grants to support the deployment of broadband infrastructure and to promote the adoption of broadband service. We will award the bulk of the dollars in support of projects to deploy broadband networks in unserved and underserved areas in rural and urban America. In addition, NTIA will provide at least \$250 million to projects that encourage sustainable adoption of broadband services, and at least \$200 million to enhance public computer center capacity, including at community colleges and public libraries.

The Recovery Act further provides up to \$350 million of BTOP funding for implementation of the Broadband Data Improvement Act (BDIA) and to develop and maintain a broadband inventory map. NTIA used this authority to establish the Broadband Mapping Program, under which it implemented the State Broadband Data and Development Grant Program to provide grants to the single designated eligible entity in every State for the collection of broadband data for use in the national map and for broadband planning in the States.

As directed by Congress, NTIA is implementing BTOP in line with several crucial goals. First, close the broadband gap in America, focusing in particular on ensuring that unserved and underserved areas – whether rural, urban or in between – have access to modern

communications services and the benefits those services offer for education, high-value jobs, quality health care and more.

Second, bring the maximum broadband benefits possible to our schools, libraries, community centers, and medical centers, as well as to our most vulnerable populations and geographic areas.

Third, improve broadband service for public safety users.

Fourth, help stimulate broadband demand, economic growth, and job creation. As President Obama often stated, broadband has a transformative power to generate growth across many sectors of the economy, improve America's overall competitiveness, and contribute to solving some of our Nation's most pressing problems.

Additionally, NTIA will develop a publicly accessible and regularly updated national broadband map. This map will serve to educate consumers and businesses about broadband availability, enable broadband providers and investors to make better-informed decisions regarding the use of their private capital, and allow Federal, State, and local policy-makers to make more data-driven decisions on behalf of their constituents.

My testimony today will begin with a snapshot of the applications we have received in the first round of BTOP, BIP and Broadband Mapping funding. I will also briefly describe the effort that has gone into these programs to date and will conclude my testimony by discussing what is ahead for BTOP and by mentioning a few issues and challenges I see on the horizon for NTIA in the coming months.

II. Overview of First Round Broadband Applications Received

We are extremely pleased with the level of interest shown by applicants in the first round of BTOP and BIP funding and the broadband mapping grant program. We received over 2,200

applications requesting nearly \$28 billion in funding for proposed broadband projects reaching all 50 U.S. States, five territories, and the District of Columbia. When including about \$10.5 billion in matching funds committed by the applicants, these applications represent more than \$38 billion in proposed broadband projects. The fact that applicants requested nearly seven times the total amount of funding available in this one round of broadband funding underscores the extent of interest in expanded access to broadband service throughout the country.

In this first round of funding, NTIA will award up to \$1.6 billion in grants. Of this amount, up to \$1.2 billion will fund broadband infrastructure, both last mile and middle mile projects. We will also award grants totaling \$50 million for public computer center projects and \$150 million for projects that promote broadband demand and affordability.

Applications came in from a diverse range of parties including State, tribal and local governments; nonprofits; industry; anchor institutions, such as libraries, universities, community colleges, and hospitals; public safety organizations; and other entities in rural, suburban, and urban areas. As I mentioned, applicants proposed over \$10 billion in matching funds. The Recovery Act requires BTOP applicants to commit matching funds equal to at least 20 percent of the value of the project, but in the aggregate, applicants' proposed matches actually exceeded 25 percent of the value of all projects, meaning that the Recovery Act is already stimulating private sector interest and investment beyond the statutory baseline minimum.

A review of the first round applications also demonstrates the wisdom of NTIA's and RUS's decision to implement our respective Recovery Act broadband initiatives in a coordinated fashion, and the success of those coordinated efforts in both educating the public about BTOP and BIP and establishing rules and intake mechanisms that encourage diverse and broad-based participation.

One result of our collaboration was the decision to allow applicants in rural areas to seek funding under both RUS's BIP and under NTIA's BTOP, although of course no project would be funded twice. Parties submitted more than 830 applications jointly, requesting nearly \$12.8 billion in infrastructure funding. Thus, a rural applicant who is not awarded funding by BIP remains eligible for BTOP funding without needing to refile.

NTIA received an additional 260 applications that were filed solely with the BTOP program, requesting over \$5.4 billion in grants to fund broadband infrastructure projects in unserved and underserved areas. In addition, parties filed more than 320 applications with NTIA requesting nearly \$2.5 billion in grants from BTOP for projects that promote sustainable demand for broadband services, including projects to provide broadband education, awareness, training, access, equipment or support, including among vulnerable population groups where broadband technology has traditionally been underutilized. Parties submitted more than 360 applications with NTIA requesting more than \$1.9 billion in grants from BTOP for public computer center projects, which will expand access to broadband service and enhance broadband capacity at public libraries, community colleges, and other institutions that provide the benefits of broadband to the general public or specific vulnerable populations. NTIA and RUS are posting online – at www.broadbandusa.gov – a searchable database containing descriptions of all applications received, as well as maps of the geographic areas of coverage proposed by applicants in the first funding round.

Our proactive outreach regarding the Mapping Grant Program also paid dividends, as we have received application packages from every State, territory, and the District of Columbia. These 56 applicants to the Mapping Grant Program have requested a total of \$187 million in grant awards to fund broadband mapping projects and \$26 million to fund broadband planning

projects. Unlike BTOP's multiple round approach, the Broadband Mapping Grant Program will issue awards in a single round, and, pursuant to BDIA, only a single state-designated entity per State or territory is eligible to receive a grant. This will help ensure that the projects will benefit from significant state involvement and oversight. We are asking awardees to submit initial data as early as November and hope to leverage the information gained in this program to make data-driven decisions on BTOP grants. We will have a first set of substantially complete broadband mapping data by February 2010, and we will complete a comprehensive, interactive national broadband map by February 17, 2011 as directed by the statute.

After months of hard work by the staffs at NTIA and RUS, as well as by public and private applicants all over the nation, I am confident that we have before us a strong initial pool of broadband proposals. As we now undertake the hard work of choosing the most qualified applications from this pool, we look forward to awarding grants and making investments that will stimulate the economy and expanding the promise of broadband to more Americans.

III. Interagency Coordination and Public Outreach.

We have gotten where we are today by embracing an approach that is based upon collaboration and transparency. In implementing the Recovery Act's broadband initiatives, NTIA coordinated closely at every turn with other Federal agencies and stakeholders, in particular with RUS. Because the BTOP and BIP programs have significant similarities, NTIA and RUS have joined arm-in-arm to implement the two programs in unison. In March, we released a joint Request for Information (RFI) seeking public comments on how best to implement the BTOP and BIP programs. The over 1,000 comments we received in response to that RFI played a crucial role in formulating the first BTOP/BIP Notice of Funds Availability (NoFA), which we jointly issued on July 1, 2009.

This collaborative approach further enables our two agencies to leverage our resources and streamline the process by which projects in rural areas can be considered by both agencies without requiring parties to complete two separate applications. We launched www.broadbandusa.gov, a “one-stop-shop” portal where stakeholders can go to complete BTOP and BIP applications, and access application guidelines and other information.

We have also reached out to other Federal agencies, including the Federal Communications Commission (FCC), the States and territories, tribal governments, the public interest community, public safety entities, academia, the broadband industry and many others, all of whom have generously contributed their valuable expertise and assistance. These outreach efforts began in March with a public meeting that NTIA, RUS, and the FCC co-sponsored to initiate public input about the Recovery Act’s broadband initiatives. Following release of the BTOP-BIP NoFA, we embarked on an aggressive educational campaign, holding ten in-depth workshops all across the country¹ to assist potential applicants with our application process. We also held three additional meetings focusing on the challenges faced by minorities and small and economically disadvantaged businesses. For those unable to attend the workshops, NTIA and RUS made available online workshop presentation materials, step-by-step application guidance, and answers to frequently asked questions to assist applicants in completing their applications.

IV. Overview of Application Evaluation Process and Evaluation Criteria.

Having received nearly 2,200 applications, we have now begun the initial review phase for the first round of completed BTOP applications. In this phase, at least three expert reviewers will grade each application against established criteria, including the proposed project’s purpose, benefits, viability, budget, and sustainability. The expert reviewers’ scores for each application

¹ In July 2009, NTIA held public workshops in the following cities: Washington, DC area; Boston, MA area; Charleston, WV; Birmingham, AL; Memphis, TN; Lonoke, AR; Billings, MT; St. Paul, MN; Albuquerque, NM; and Los Angeles, CA.

will be averaged and those applications considered the most highly qualified in the initial review phase will advance for further consideration.

Each State and territory will be given the opportunity to prioritize and comment on the applications relevant to its jurisdiction. The Act recognizes that State and territorial officials have a unique perspective on broadband needs within their jurisdictions and we look forward to their input.

During the second review phase, NTIA also will engage in additional “due diligence,” which may include requesting that applicants submit supplementary information as necessary to substantiate representations made in their applications. NTIA staff will review and analyze this supplemental information. I will make the final selections, consistent with the statutory directives established by Congress in the Recovery Act.

As with BTOP, applications for broadband mapping grants also are being evaluated by at least three expert technical reviewers, and program staff will perform a second review of the application. We hope to provide a broadband mapping grant to every program applicant. If necessary, NTIA will work with applicants to revise and refine project proposals such that each proposal meets the program’s standards. NTIA expects to announce the first awards by the end of September. The timing of subsequent award announcements will depend on the quality of the applications and the necessary amount of revision and refinement.

In consideration of NTIA’s charge to both create and maintain the national broadband map, and its responsibility to use funds in a fiscally prudent manner, NTIA decided to initially fund mapping and data collection efforts for a two-year period as opposed to a five-year period as originally contemplated. This approach will allow NTIA to assess lessons learned, determine best practices, and investigate opportunities for improved data collection methods prior to

awarding funds for subsequent years. Based on the information submitted by applicants, NTIA estimates funding requests for the first two years to total approximately \$107 million. All of these efforts will ensure that NTIA publishes a comprehensive, interactive national broadband map on or before February 17, 2011 as provided by statute.

NTIA established the development and maintenance of a national broadband map as one of its highest priorities and, in following Congress' directive that it develop and maintain a "comprehensive" map of both "capability and availability," NTIA will fund high-quality projects that are designed to gather data on broadband availability, technology, speed, infrastructure, and, in the case of wireless broadband, the spectrum used. I believe that this information is critical to fulfilling NTIA's statutory mandate, and I am pleased that this effort received support from government, public interest and industry stakeholders alike.

V. Future Funding Rounds.

Although NTIA and RUS previously indicated that we planned to hold up to three rounds of funding, our review of our experience in this first round, leads us to now explore the option of holding just one more round of funding. This more consolidated approach may have the potential of yielding benefits for all stakeholders.

First, it would enable us to complete the entire grant-making process in the summer of 2010, as opposed to next September, thus expediting the stimulative benefits for the economy and job creation that the Recovery Act promises.

Combining the second and third rounds into a single funding round, and adjusting the application deadline, could afford additional time – both to stakeholders, to provide us with well-informed views on how the first round worked for applicants, and to NTIA and RUS, to learn from our experience and adjust those aspects of the process that need to be improved. Also,

parties who wish to collaborate on an application, such as through consortia or public-private partnerships, could have additional time to work out the details of those arrangements. Finally, combining the final two rounds may also economize on administrative expenses.

As we evaluate this option, however, we want to ensure that our framework promotes the development of high quality applications and the funding of projects that meet the most compelling priorities. This was the reason that we initially designed the program with multiple funding rounds.

Our goal remains producing the best possible results for the American public, in terms of both the quality of the broadband projects we support and the speed with which the program will contribute to our economic recovery.

IV. Oversight.

Looking forward, I must underscore the importance of our oversight objectives for the program. NTIA is committed to ensuring that taxpayers' money is spent wisely and efficiently. Since the inception of BTOP, we have been working with the Department of Commerce's Inspector General to design this program in a manner that minimizes the risk of waste, fraud, and abuse. As we move forward and project construction begins, NTIA will enhance its auditing and monitoring responsibilities, including site visits to grantees. I will, of course, keep the Committee apprised of our progress on those efforts.

V. Conclusion.

NTIA is working extremely hard to ensure that the broadband projects funded by BTOP and the broadband mapping information developed under the Broadband Mapping Program serve as valuable inputs to our long-term broadband strategy. At its core, the broadband

initiatives in the Recovery Act offer a tremendous opportunity to stimulate job creation and economic growth both in the near term and for the future.

I am convinced that NTIA's mission and programs can play an important role in the Nation's economic recovery and future growth and for the quality of life for all Americans. I look forward to working with the Subcommittee in the months ahead to ensure that the Nation's policies benefit our communications and information industries and Americans consumers.

Thank you again for the opportunity to testify this morning. I will be happy to answer your questions.

Mr. BOUCHER. Thank you very much, Mr. Strickling.
Mr. Adelstein.

STATEMENT OF JONATHAN ADELSTEIN

Mr. ADELSTEIN. Thank you, Mr. Chairman, Ranking Member Stearns, Ranking Member Barton and members of the subcommittee, and thank you for inviting me back to testify. Mr. Chairman, I especially appreciate your longstanding leadership in support of our mission to serve rural America. In my previous capacity in the FCC, I worked closely with many of you to promote broadband against America in rural areas as well. Increasing broadband deployment and adoption rates in rural areas is a top priority for President Obama, for USDA Secretary Vilsack and all of us at RUS. I know it is for the subcommittee and for this Congress as well. It is a special honor to appear with my good friend, Larry Strickling, who has done such an outstanding job of leading the NTIA through this period. Our challenge is clear. Broadband continues to lag in America and it continues to lag in rural America, and we can't allow this to continue.

A recent USDA study that we provided to the committee documented how rural communities with access to broadband create more jobs and have higher earnings. Those which lag are economically handicapped. You have given us an historic opportunity through the Recovery Act to address this challenge and at the same time provide urgently needed stimulus to our economy. RUS has long and highly successful experience since its beginnings as the Rural Electrification Administration in 1935 in the deployment of electric, telephone and water service in rural areas. We are now applying this expertise to a newer technology, to broadband. We have been on the cutting edge. Since 1995, we have required all new telecommunications capacity that we finance to be broadband capable. We have also had great success with our Community Connect and distance learning and telemedicine programs. The USDA broadband loan program created by the 2002 Farm Bill has provided over \$1.1 billion in loans to more than 90 broadband projects in rural communities spanning 42 States, so we have got experience.

The Recovery Act marks a major new chapter in this effort. Since its enactment, we have worked side by side with our partners at NTIA, as Assistant Secretary Strickling indicated, with our partners at the FCC, my former colleagues, and with the White House to fulfill the President's vision for promoting broadband access across the Nation. The collaboration between RUS and NTIA has been unprecedented. Our departments have traditionally performed very different roles but I have been thrilled to join forces with someone of Secretary Strickling's caliber as well as his talented staff to bring broadband across the United States.

As Mr. Strickling indicated, we have received an overwhelming demand for funding. The volume of applications demonstrates very clearly the still unmet need for broadband in rural America. RUS received nearly \$18 billion in requests for \$2.4 billion in funding in this round, and applications came from a wide array of partners including State and local tribal governments, nonprofits, industry and public sector organizations in all 50 States and all territories.

We are now evaluating them and we expect to begin awarding grants in November. We estimate that the \$2.5 billion in budget authority entrusted to the RUS could translate into as much as \$7 to \$9 billion in grants, loans and loan-grant combinations to applicants. The first NOFA made available \$2.4 billion of this total. This leaves around three-quarters of the total funds left for subsequent rounds. So any potential applicant that as unsuccessful in the first round or missed the opportunity to apply will still have ample opportunity to compete. As we did with the first NOFA, we ran intensive outreach efforts to open this process to as many potential applicants as possible.

We will take what we learned in the first round, and your concerns, as many of you have articulated them today, to heart in developing our next round of funding. We are aware of the concerns that many of you and others have raised regarding a wide range of issues. These include the definition of rural and remote areas, eligibility standards for unserved and underserved areas, scoring weights for various factors and concerns regarding satellite service. Without speculating about specific changes, we will be guided by your counsel and of course by the evaluation of the experience and the feedback from the first round of projects. We are prepared to make changes accordingly. This is a thoroughly collaborative process with our partners at NTIA. We will avoid duplication. It will exploit the synergies between NTIA, which is running a grant program, and the loan and grant authority available to the RUS. We are committed to very careful stewardship of taxpayers' dollars. We will make this process as transparent and as efficient as possible. In fact, yesterday we posted on the Web all of the applications in a searchable database. I see that Congressman Stupak has already looked at it and seen how many he has in his district, and I encourage all of you to look at that. You will be able to see exactly what has been proposed in your districts. There is a man right there Congressman Terry has. We plan to post maps of their service areas very shortly.

So on behalf of all of us at USDA, we thank you again for your support for this critical mission. Your work has made possible this historic opportunity to restore economic prosperity and improve the quality of life in rural America. It is an honor to work with you on behalf of the 65 million Americans who live in our rural communities. I would be happy to answer any questions that you have.

[The prepared statement of Mr. Adelstein follows:]

**Statement of Jonathan Adelstein
Administrator, Rural Utilities Service
USDA Rural Development
Rural Utilities Service**

**Before the Subcommittee on Communications, Technology and the Internet
Committee on Energy and Commerce
U.S. House of Representatives September 10, 2009**

Mr. Chairman, Ranking Member Stearns, and distinguished members of the Subcommittee, thank you for the opportunity to testify on the U.S. Department of Agriculture's Broadband Initiatives Program (BIP). Having testified before this Subcommittee in my previous capacity as a member of the Federal Communications Commission, I have had the pleasure of working with many of you over the years to promote the deployment of affordable quality broadband service in rural America, and throughout the country.

Secretary Vilsack has made improving quality of life for families in rural communities a centerpiece of USDA's overall mission. The Secretary has repeatedly acknowledged how this Congress and the Administration have helped to provide the building blocks for a new rural economy. These building blocks include renewable energy, local and regional food systems, and broadband, the subject of your hearing today.

To underscore the importance of broadband in renewing the rural economy, Secretary Vilsack directed the USDA's Economic Research Service (ERS) to examine the economic effects of having broadband access in rural America. Last month, the ERS

published a report entitled "Broadband Internet's Value for Rural America," which concluded that employment growth was higher and non-farm private earnings greater in counties with a longer history of broadband availability.

The report also cited certain key benefits of broadband access in rural communities. Such benefits include having access to online course offerings for students in remote areas and the availability of telemedicine and telehealth services which has helped reduce transportation costs for patients in rural areas who would otherwise need to travel to urban areas for urgent care. In addition, the farm sector is increasingly more dependent on internet transactions and on online sales, which makes broadband a critical part of their business.

I am pleased to provide you with a roadmap for how the Rural Utilities Service will accomplish President Obama's goal of investing heavily in rural America with broadband. First, I want to provide you with a brief overview of our mission in serving rural communities.

Since 1935, beginning with the Rural Electrification Administration, we have been a premier lender for rural infrastructure investment, currently with a \$54.1 billion loan portfolio. This portfolio now includes federal financing for water and wastewater, telecommunications, broadband, electric and renewable energy infrastructure projects. The telecommunications program was initiated in 1949 and has a current portfolio--built up over 60 years--of \$4.1 billion.

We are now tasked with applying the technical skills and historical knowledge we have amassed in issuing financing for electricity, telecommunications and water over the past 60 years to obligate the funds over the next year that will build the next generation broadband facilities.

Our goal is to recreate the successes we have achieved in financing the nation's electric grid toward building new broadband networks in rural communities.

Through the American Recovery and Reinvestment Act (ARRA), Congress and the Administration entrusted the Rural Utilities Service with nearly \$4 billion in stimulus funds for infrastructure investment to get the rural economy back on its feet.

Given our historical expertise in providing affordable loan financing opportunities, the Recovery Act dedicated \$2.5 billion rural broadband deployment and \$1.38 billion for rural water infrastructure projects.

I appreciate the faith that Congress placed in USDA to participate in this important initiative, given our long and productive history in providing loan, grant and loan/grant funding throughout rural America.

Since the enactment of the Recovery Act in February, we have worked side by side with our partners at the National Telecommunications Information Administration (NTIA), the

Federal Communications Commission and the White House to fulfill the President's vision for promoting ubiquitous broadband access across the nation. I am grateful for this Committee's continued leadership and guidance as we work towards accomplishing this mandate.

To date, the RUS and NTIA have received more than 2,200 applications for over \$28 billion in funding requests. Applications came from a wide range of parties including state, local and tribal governments, non profits, industry and public sector organizations in all 50 states, 5 territories, and the District of Columbia

This is a clear demonstration of the high degree of interest in our respective loan and grant programs and the great demand and need for broadband in rural America. Based on this level of interest, federal funds dedicated to meeting this demand will make real progress in achieving the President's vision.

USDA's Historic Role in Telecommunications Infrastructure Investment

In 1935, our predecessor agency, the Rural Electrification Administration, began issuing loans to build an electricity grid across rural America. Based on our success in this area, in 1949 Congress authorized the agency to provide loans to fund the build out of telecommunications facilities in rural areas. By the 1970's, the Telecommunications Program led the nation in funding one of the first commercial fiber optic systems, Commonwealth Telephone Company in Pennsylvania.

To ensure that rural communities get access to quality broadband services, the RUS since 1995 started requiring that all new telecommunications infrastructure for both new construction and upgrades of existing systems be capable of supporting at least 1 Mbps in both directions. As technology continues to evolve, we are continuously seeking new ways to deliver next generation services and facilities to end users in rural and high cost areas in a technology neutral manner.

Our legacy in funding telecommunications facilities was enhanced in both the 2002 and 2008 Farm Bills, which authorized RUS to administer three broadband-related programs. The most prominent of these is the Broadband Loan Program, which to date has provided over \$1.1 billion in loans to more than 90 broadband infrastructure projects in rural communities spanning 42 states. In addition, through the Community Connect Grant Program and the Distance Learning and Telemedicine Loan and Grant Program, we have achieved considerable success and gained invaluable experience in deploying broadband and related services to remote rural and underserved communities.

Applying the Lessons Learned from the 2002 Farm bill to Future Applications

Since the enactment of the Broadband Loan Program in 2002, we have gained tremendous insights into the unique challenges of deploying loan financing for next-generation internet architecture in rural high-cost markets. As we develop the regulations for the changes required under the 2008 Farm Bill, we are incorporating the lessons we have learned since 2002 to improve our existing track record. Once these

regulations are approved and published we will launch a national outreach effort to help guide the American public on the new requirements and how to apply for funding.

To further assist prospective applicants with the new farm bill requirements, we will utilize the expertise of our nationwide network of Rural Development field offices and RUS' own General Field Representatives (GFRs), who are stationed in local communities across the country. Within weeks of my arrival at RUS, I met with most of our GFRs and State Directors, who are among our most effective resources in reaching rural Americans.

Rural Development has hundreds of experienced field professionals who work with the community every day in every way. Through the outstanding local outreach performed by our field staff in all 50 states, we have enormous capacity to coordinate our programs and provide assistance and guidance to our borrowers. Our field staff stands ready to assist service providers and rural community leaders with these programs, as well as with the current loan and grant programs. We expect that these new regulations and procedures will continue to keep our loan portfolio healthy well into the future.

Implementation of the BIP Program under the American Recovery and Reinvestment Act: Building on our Service to Rural America

In February of this year, ARRA provided the USDA with \$2.5 billion in budget authority to deploy broadband in rural, unserved and underserved areas nationwide under the Broadband Initiatives Program (BIP). Of the \$2.5 billion in budget authority we received in the Recovery Act for broadband, we will be able to deliver a total \$7 to \$9 billion in loans, grants and loan grant combinations to prospective applicants, thanks to our ability

to leverage our existing funding levels. This strategy is designed to build on RUS' demonstrated expertise in finance and to complement NTIA's Broadband Telecommunications Opportunity Program (BTOP), which is a grant-only program. Under our first Notice of Funding Availability (NOFA) published on July 9, 2009, RUS made available up to \$1.2 billion for Last Mile projects, up to \$800 million for Middle Mile projects and established \$325 million for a National Reserve.

Our goal is to achieve the President's vision of universal access, ensure that every community has a fair opportunity to compete for available funding, and leverage taxpayers' dollars to the greatest extent possible.

To implement this coordinated program, in March the USDA and NTIA initially published a joint Request for Information in the Federal Register 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." Based on the diverse nature of comments received from a wide cross section of public and private stakeholders, our agencies drafted a Notice of Funds Availability (NOFA) which was posted on-line on July 1st and published in the Federal Register July 9th.

The NOFA incorporated the requirements for both the BIP and BTOP programs so that applicants could file a single application for one or both funding opportunities offered.

This NOFA announced the first round of funding under ARRA, with the expectation that one or more additional NOFAs will be released in Fiscal Year 2010. We are mindful that this is an economic stimulus package and all funds must be obligated no later than September 30, 2010 so we are trying to move as quickly but as prudently as possible to meet the objectives outlined in the statute.

RUS and NTIA Coordinated Outreach and Public Education

An outreach and communications strategy was developed jointly by both agencies to ensure that the prospective applicants and other stakeholders would receive accurate, timely and comprehensive information on the programs. The objective of the outreach strategy was to explain the application process to prospective applicants in a short period of time. USDA and the Department of Commerce determined that a series of joint how-to-apply workshops would be conducted by program staff from both agencies. Since the Federal Communications Commission (FCC) is an integral partner to both agencies in addressing telecommunications issues, the FCC was invited to participate in the workshops to provide information on broadband technologies and resources available at the FCC.

The outreach and education workshops jointly sponsored by RUS and NTIA were held in different regions throughout the country, with locations chosen to provide maximum geographic diversity, and to focus on targeted applicant segments. Workshop locations were also chosen based on their proximity to transportation to facilitate attendance from surrounding areas. We also promoted the effort through the USDA/Department of

Commerce joint ARRA broadband website (www.broadbandusa.gov), as well as through our own agency websites and Public Information Coordinators throughout the country, targeted media alerts and e-mailings to state economic development organizations, industry and consumer associations, prospective applicants, and state/local government offices nation wide.

Workshop locations were: Prince Georges County, MD, Boston, MA, Charleston WV, Birmingham, AL, Memphis, TN, Billings, MT, St. Paul, MN, Albuquerque, NM, Los Angeles, CA, and Lonoke, AR. At each event, NTIA and RUS staff provided a general overview of BIP and BTOP program requirements and the application process. Break out sessions offered more detailed information on the BIP and BTOP application process, and included compliance and reporting requirements. In addition to the supplied Application Guides, attendees had the opportunity to meet our program staff and ask questions throughout the event.

The Application Process

The application window opened on July 14th and the electronic application system went live on July 31st. We acknowledge that the volume of applications and the compressed timeframe led to a number of application processing problems. To deal with these issues we added server capacity. We also extended the deadline to submit electronic applications from August 14 to August 20. Applicants who had submitted core

applications by 5:00 p.m. (EST) on August 14, 2009 (the original application deadline), were also given the opportunity to submit electronic applications through August 20.

We provided the notice of extension to applicants by posting it on the BroadbandUSA.gov joint website as well as the respective agency websites. We also provided legal notice in the Federal Register and by actual notice to each applicant by e-mail. The help desk hours and staff were increased to provide service and answer questions from applicants throughout the weekend.

Due to the extraordinary level of demand to upload attachments directly into the system, the RUS and NTIA issued an additional notice on August 19th informing applicants that they would be permitted to submit attachments to their application by alternative means that included CD, DVD, thumb drive, or other electronic media. Attachments delivered by regular mail postmarked by August 24, 2009 were accepted.

Next Steps for Round One and Round Two

We are now evaluating applications and expect to issue awards in early November. The first NOFA made available up to \$2.4 billion in program level funding out of the anticipated \$7-9 billion in total anticipated BIP investment. Well over half of the total investment projected under the BIP program has been reserved for subsequent funding rounds.

Subsequent funding may include enhancements to eligibility and scoring criteria used in Round One. We are cognizant of the concerns and suggestions that have been raised regarding a wide range of issues including the definition of rural and remote areas, eligibility standards for unserved and underserved areas, scoring weights for various factors and concerns regarding overlapping service territories for satellite providers. It would be premature to speculate about specific changes until we have completed the evaluation of first round projects, but it is important to note that this is not a static process.

We welcome input from everyone on this Subcommittee as well as your constituents on how best to move forward and apply the lessons learned in Round One toward the work ahead of us in Round Two. To that end, RUS and NTIA plan to seek formal written comments on ways to better meet the requirements of the Recovery Act. Our next steps will be guided by the input we receive during this process and we will make the necessary changes based these suggestions and our experience

We will continue to ensure that implementation of the ARRA broadband initiative is a collaborative and coordinated effort with our partners at the NTIA and in the Administration. We are also committed to making this process as transparent and as efficient as possible. The purpose of the Recovery Act is to spur job creation and stimulate long-term economic growth and opportunity. To date, we are on track to obligate the \$7.2 billion in ARRA broadband budget authority by September 30, 2010.

We are at a pivotal point in our nation's history, similar to where we were in the 1930's when our country was faced with an economic crisis that eventually led to a new wave of innovation and American ingenuity. Then as now, RUS is tasked with helping to improve the quality of life for all rural citizens by bringing universal access to advanced technology.

This October, we will be celebrating our 60 year anniversary of financing telecommunications infrastructure, which has evolved from delivering voice to distance learning, telemedicine and broadband. On behalf of all of us at USDA Rural Development and the Rural Utilities Service, thank you for your continuing and generous support of this critical mission. Our ability to offer programs to create economic opportunity improve the quality of life in rural America is a result of your work. It is an honor and privilege to work with you on behalf of the 65 million Americans in our rural communities.

Mr. BOUCHER. Thank you, Mr. Adelstein, and thanks to both witnesses for your fine presentations here this morning.

You heard my concerns expressed in my opening statement about the definition of remote, and I was pleased to hear you, Mr. Adelstein, say that that is one of the things that may be reconsidered with regard to the standards for the second round. Let me get you to elaborate just a bit on whether or not you share the concern that I have expressed. There are areas that are truly isolated that could be fairly close to a city. I saw a map yesterday that shows that virtually the entire eastern United States is disqualified from your highest level of grant, which is 80 percent to 100 percent, by virtue of the remote requirement, and any area that is within 50 miles of a city of at least 20,000 population is considered non-remote and therefore not qualified. This is the map. I don't know if you can see it. It is fairly small but as you can see, these dark areas around the eastern United States are the unqualified areas based upon your definition of remote. There are some places in the West that are qualified, but in the East, not, and in the Appalachian region we have these very small pockets of communities that are in mountainous areas that could be within 5 or 10 miles of a city but be for all practical purposes inaccessible. It is difficult to build the fiber links or wireless facilities that can serve such a community, very expensive, and if you have got 100 homes, the revenues that would be derived from a service that expensive serving that small a population would not be sufficient to repay a loan or perhaps encourage a private sector partner to apply for a grant that could only be 50 percent of project cost, and yet that is the maximum grant to which under your rules such a community would be eligible.

So that is the concern broadly stated, and I would just welcome your response, either of you. Mr. Adelstein, it is more in your territory, so let me start with you.

Mr. ADELSTEIN. Well, I certainly understand your concern. All of these issues are under consideration as we review the results of the first NOFA. We are going to go out for comments shortly in October and we will make a decision based on our experience of the current applications in the round of data that we are getting from that. The RUS in the past has been criticized for being too urban, for going too close to urban areas with our funds, and we want to restore our mission to being as rural as possible, to go into remote areas, and that was the impetus behind really forcing the largest amount of grant funds into the most remote parts of the country. We set aside \$400 million for remote grants and saw a huge demand. Some people thought that there wouldn't be interest because of the narrow number of areas that are eligible—

Mr. BOUCHER. But let just ask you if there was a geographic weighting with regard to where those applications came from. I will bet most of them came from the western United States, didn't they?

Mr. ADELSTEIN. I can do an evaluation and supply that for the committee.

Mr. BOUCHER. Well, it would be interesting to see the geographic breakdown of where that came from. Well, I hear you say you un-

derstand the concern we have expressed and that you are willing to consider it. Let me move on to some other issues.

Mr. Strickling, I would like to get your further elaboration on the concerns we have just had expressed to us, at least by my State of Virginia, perhaps some other States, that unexpectedly they have now received your basket of applications whereas in the past they have been given to understand that you were going to do the prescreening and that only maybe the final applicants would be sent to them for their comments, and they feel unprepared from a resource standpoint to review the entire basket of applicants. So what is your response to that? Why did that happen? And what is it you are looking for from these States?

Mr. STRICKLING. Thank you. Let me start with the second part of your question because I think the burden on the States is not as great as perhaps they fear it is. What we are looking for from them is their sense of prioritization of the applications they have seen. We are specifically interested in understanding what areas of their States they believe are the ones in greatest need where we should look the most closely at applications. We are not asking them to review the applications the way we are going to look at them at NTIA to the extent of is it a viable project, is it a sustainable project. They are welcome to do that. That is not what we are asking them to do. In terms of what they have been given, they have been given obviously the same public access to the searchable database that everyone has. In addition, they will have access to the executive summaries, which is about a 5-page description of each project. That will be available to them, we hope starting next week. Beyond that, if they want more information from the applications, we will facilitate getting them more information but we are not sending them the full applications for their review.

Mr. BOUCHER. Well, let me ask this. You in the end are going to retain final decision making with regard to all of these applications, are you not?

Mr. STRICKLING. Absolutely.

Mr. BOUCHER. And so you are looking to the States for comments and you will consider those comments along with other matters in order to make those final decisions?

Mr. STRICKLING. That is correct.

Mr. BOUCHER. One additional question that I want to ask of you. You have said that you will be reviewing applications that are directed to both agencies where that box is checked on the application saying that it is to be considered by both agencies. You will be reviewing those applications simultaneously—

Mr. STRICKLING. Yes.

Mr. BOUCHER [continuing]. With RUS reviewing those applications?

Mr. STRICKLING. Yes.

Mr. BOUCHER. And you will not be waiting until RUS makes a decision with regard to whether or not that application is qualified before you start your review so it would not have to be rejected first at RUS before you begin to review it. Is that correct?

Mr. STRICKLING. That's correct, but we—

Mr. BOUCHER. So here is my follow-up question. While I understand that answer, as a practical matter, let us suppose that in the

funding cycle RUS doesn't get around to really rejecting that application until fairly late in the cycle. Now, in theory, at least, it will have been reviewed in your office already, but by then you will have made your prioritization of the applications you intend to fund. So would that application with the rejection from RUS coming so late in the process potentially mean that that application still as a practical matter would be considered on equal footing with the applications that were primarily directed to you?

Mr. STRICKLING. Yes, sir, I think we will be able to handle that. We will obviously be in coordination and in contact with RUS through the review process, so I would hope to avoid the situation where there is a last-minute rejection on their part of a grant that we would like to fund if we know they are not going to fund it, and I think that through the coordination we expect to have, we should be able to avoid that problem.

Mr. BOUCHER. So as I interpret your answer, you would be prioritizing all of the applications you receive whether they are directed solely to you or directed both to you and RUS at the same time and you would not be preparing one priority list just of the applications directed to you. Any application you receive, whether only to you or to you and RUS, would be eligible for that initial priority list so that if the rejection comes late, that application would in fact still be on equal footing with those directed just to you. Is that correct?

Mr. STRICKLING. Yes, sir.

Mr. BOUCHER. All right. Thank you, Mr. Strickling.

My time is expired. The gentleman from Florida, Mr. Stearns, is recognized for 5 minutes.

Mr. STEARNS. Thank you, Mr. Chairman. Just to review, the stimulus package had \$7.2 billion of which \$4.7 the NTIA is going to spend and the RUS is going to spend \$2.5 billion. Now, it is my understanding that the bill indicates that you have to spend all of this by September of next year. Is that roughly your understanding, both of you?

Mr. STRICKLING. Yes.

Mr. ADELSTEIN. Yes, sir.

Mr. STEARNS. Now, when you set the criteria to determine who is going to get awarded this, are you going to also put this on the webpage so that the applicants have an understanding when they compete with others what is the criteria, what is the minimum acceptable requirements for proposed projects? Mr. Strickling, you start first.

Mr. STRICKLING. Congressman Stearns, I would suggest that that has already been provided to the applicants in—

Mr. STEARNS. Is that on the Web site?

Mr. STRICKLING. On the Notice of Funds Availability issued in July, which is on the Web site, as well as guidance to applicants, which was a separate set of materials, as well as through our workshops. We have taken folks through all of the criteria for the project, most of which are drawn directly from the legislation, so folks should have a clear understanding of that. We also expect that as awards are made later this fall, that they will also provide a lot of guidance to applicants in terms of seeing what it takes to

be a successful applicant and people will be able to match up against the winning grants.

Mr. STEARNS. So they will know if they didn't get awarded and someone else did, they will be able to determine the reason why they didn't get awarded?

Mr. STRICKLING. That is right, and they will have the examples of the ones that did get awards to see, because those applications will be posted. A lot of information will be made available on those so people can learn from those if they want to come back in the second round and reapply.

Mr. STEARNS. Mr. Adelstein?

Mr. ADELSTEIN. Yes, that is right. I agree with that analysis, and we are going to post information about the winning applicants and how they scored on—

Mr. STEARNS. And that will be on the web page, of your web page?

Mr. ADELSTEIN. We will put that on the web page. The applications are up now so people can see a project description but we are going to put much more data up as we go through the process.

Mr. STEARNS. Let me ask each of you, will the actual score that you come up with be on the web page so the person can see how they are scored and how the people who won are scored?

Mr. STRICKLING. We will not post the scores. In our view, this first round is to determine a finalist pool, all of whom we would say would be worthy projects of funding.

Mr. STEARNS. Do you agree with that too, that you are not going to post the scores?

Mr. ADELSTEIN. We haven't determined that yet.

Mr. STEARNS. Because I think as much transparency that you have here, the better, so we don't look into, you know, people complaining that it is either politically or it is done for reasons they are not clear about.

Now, is it possible that a lot of people who apply will be subpar? I mean, are you under the obligation that you have to spend all this money by next September? Is it possible you could say by golly, you know, 20 or 30 percent of these applicants are not qualified; if we give them the money, they can't make the project go, or two, they are going to need to come back for more money.

Mr. STRICKLING. The measure of success of this program in my mind is how many of these projects are still operating 5 years from now.

Mr. STEARNS. That is good.

Mr. STRICKLING. They need to be sustainable. We will not fund a project unless we have a high confidence level that it is a sustainable project that will deliver lasting benefits.

Mr. STEARNS. Would you agree then this morning that if you don't find qualified people you won't spend the money and you will give it back to the taxpayers?

Mr. STRICKLING. As a theoretical matter, I agree with that, but I would also say we have received \$28 billion in requests. I am reasonably confident without having looked at a single application we have got a lot of high-quality applicants in front of us.

Mr. STEARNS. Mr. Adelstein, is that how you feel too, that you will give the money back if there are subpar applicants?

Mr. ADELSTEIN. Absolutely. If we don't get qualified applicants for all of the funds, we will not use those funds and we will return those to the Treasury. I think we have long experience in carefully evaluating these projects to ensure they are feasible, and one of the scoring criteria we have is the feasibility of it, and we have spent years with a less than 1 percent default rate in our telecommunications programs—

Mr. STEARNS. That is a good point.

Mr. ADELSTEIN [continuing]. Ensuring that we do not—

Mr. STEARNS. Now, Mr. Adelstein, you had indicated when I talked to you yesterday that you have a leverage of 14 to one for \$500 million that you are going to take off the top. Do you have also a plan of any leverage here that you are using?

Mr. ADELSTEIN. No, sir. Under the legislation, RUS has a pre-existing ability to make loans. All of our projects will be funded as full grants.

Mr. STEARNS. Mr. Boucher talked about and showed this map here, and you heard from my opening statement a concern that the fact that the mapping is not done. I think only 10 States have completed it and 10 more in the process and that the FCC has in place a broadband policy and none of this will be made available to you before, Mr. Strickling you talked about in early December that you will have already spent \$1.6 billion, I think you said. Is that correct?

Mr. STRICKLING. By the end of the year, we—

Mr. STEARNS. So does that concern you at all that, you know, the actual mapping of this for the underserved and the people that have never been served is not even available so that you can make a decision?

Mr. STRICKLING. I am not sure that is fully accurate, Congressman.

Mr. STEARNS. OK. I would appreciate if you would tell me.

Mr. STRICKLING [continuing]. Be to award a grant in an area if I didn't know it was unserved or—

Mr. STEARNS. Well, how will you know if it has not been mapped for you?

Mr. STRICKLING. Well, one way we will know if there is credible information from a previous State mapping effort, and as a practical matter, if such a map does exist and if the information on it is good, those applications will get additional consideration simply by that fact. However, we have asked all the applicants to provide that information for their areas as well and we will be evaluating that for its credibility and veracity, and if there is good information coming from the applicants which will be subject to a public review, then we feel we can rely on that information in determining whether an area is unserved or not.

Mr. STEARNS. Would it be safe to say that those States that have mapped that to use those as a priority? Will you take into account that some maps have already been made for 10 States and use that as a priority in your decision process?

Mr. STRICKLING. It receives additional consideration. I don't know enough to say it is a priority.

Mr. STEARNS. Mr. Adelstein, what would you say?

Mr. ADELSTEIN. I think it is very valuable information. I know that Commissioner Chong testified before your committee that it was very helpful in California to have the map first, and I think it would be helpful here. Of course, the purpose of this project being stimulus in some sense, we are moving ahead, but the mapping that we are putting up on the Web as soon as today or tomorrow is going to allow anybody in the public to take a look at the service areas being proposed for our project and challenge that, say that in fact there is service in an area where somebody says there isn't and that will be a great way for us to evaluate that particular application in terms of whether that area is served or underserved.

Mr. STEARNS. Mr. Chairman, I just have one last question, and this is for Mr. Strickling. Your latest report indicates that you have roughly about \$318 million in DTV money left over as of August 19. Now, if you take and extrapolate the redemption rate, 55 percent redemption rate in the remaining months of this program, you could have as much as \$380 million left over. My question to you is, are you intending and will you return this, and this is ironical in the fact that Mr. Barton and I had a DTV fix bill which would have avoided the need for this costly delay, knowing that you are giving almost \$380 million back. So the question is, do you plan to give this money back?

Mr. STRICKLING. As I understand it, Congressman, the money goes back. We don't have the option under the current legislation to keep the money.

Mr. STEARNS. And when will that come back?

Mr. STRICKLING. As you know, there are still coupons outstanding. I think folks have until November to use those coupons if they haven't already used them. Following that, we will be closing out the program so I can't give you a direct date today as to when that program will be closed out and all the accounting will be done but I would hope it would be early next year.

Mr. STEARNS. All right. Thank you, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Stearns.

The gentleman from Michigan, Mr. Stupak, is recognized for 5 minutes.

Mr. STUPAK. Thank you, Mr. Chairman.

Mr. Adelstein, if I can ask you a few questions, and I want to know a little bit more about the funding because I think there is some confusion on how the RUS is releasing a total of \$2.4 billion in its first round of funding but still has adequate resources available for the next round. It is my understanding that this is due to the loan-grant combination that you have authority over. Can you provide some clarification on that?

Mr. ADELSTEIN. I would be happy to. Congress gave us the authority to provide loans and grant combination and loans so that allowed us to leverage our \$2.5 billion in budget authority to \$7 billion to \$9 billion in loan-grant combinations or loans and grants. Many rural communities can be served this way. We can stretch the dollars that we have. Because of our sound track record at USDA, we have a 7.24 percent subsidy rate which means that we can take \$72,000 and get \$1 million worth of loans out of that amount of taxpayer dollars, which means that we can take \$500 million from the top of the \$2.5 billion, have \$2 billion left over for

grants and do \$7 billion in loans with that amount. So even though we are taking \$2.4 billion in this case, the \$2.4 billion is of that total \$7 to \$9 billion. It is not of the \$2.5 billion. This includes the loan amount, which is highly leveraged because of our good track record in getting repaid.

Mr. STUPAK. Let me ask you this then, then underneath the stimulus package where you received this money, the \$2.5 billion, how much more in loans is the RUS issuing than the agency would normally do under normal fiscal year under the RUS program?

Mr. ADELSTEIN. This is a much greater amount of loans than we have ever done in a single year by a large factor. I mean, we can do—in total we do quite a few. We can do \$1 billion in telecommunications loans but not broadband loans. We have never done that. We have done \$1.1 billion in broadband loans since 2002 and now we are going to be doing \$7 billion in one year, so it is a huge ramp-up of what we have done in the past.

Mr. STUPAK. Well, you mentioned ramp-up, and putting on my oversight and investigations hat, with that much more money then, are you going to have to be bringing on more staff? And I heard some concerns from Mr. Stearns and others about the quality of the loans. In order to make sure you can monitor these grants and loans in this program, obviously you are going to have to bring on more staff.

Mr. ADELSTEIN. We are in fact. We have 114 people now that do telecommunications projects but we are going to add 50 temporary employees under funding from the stimulus act. We also have 470 field offices across the country and we are drafting people from all those field offices to help us including expert, what we call general field representatives. We have hired an outside contractor to assist in reviewing the first round of applications according to objective scoring criteria. Working closely with them, we are ultimately going to make the decisions based on their assistance. In addition, we have 60 years of experience in doing electric and water and telecom, so we are an experienced agency. We are just doing a large volume in short order.

Mr. STUPAK. Well, let me ask you this. Stimulus funding basically runs out about September of 2010, but the loans in that won't be repaid, so you are still going to need staff and monitoring of these loans to make sure they are repaid well after the stimulus package is basically over, correct?

Mr. ADELSTEIN. We absolutely will. It is very important that we continue to monitor these loans to ensure—and the grants to ensure that they are achieving the purpose for which they were intended. We do a very good job now with our field offices of following up on the loans that we have with the larger portfolio that we are going to rapidly develop through this. We are exploring our options for ensuring continued oversight after the funding expires.

Mr. STUPAK. Mr. Strickling, same with your agency. Are you going to be having more people on to monitor and even after 2010 to still look at your loans and portfolios?

Mr. STRICKLING. That is correct, and we are in I think a slightly different situation perhaps than RUS because they have an existing program. Our program was created by the Recovery Act and the authorization for it ends September of 2010, so yes, we will

need both authorization and hopefully some appropriations to be able to carry out our oversight responsibilities after all these grants are awarded next summer.

Mr. STUPAK. Well, Mr. Strickling, let me ask you this. It is also my understanding the Broadband Technology Opportunities Program gives weight to projects that can commence immediately upon receiving these funds. One of the concerns that I have, being from northern Michigan, if we are not going to make our grants until about November, November where I am at, the snow is flying by then. It would be hard for us to immediately start. It would probably be about April or May before we can really get in there because if you try to do this in the winter, it will just increase your costs tremendously. Will that be weighed somehow so we are not having problems with getting this November round because we can't start the actual infrastructure until the spring?

Mr. STRICKLING. That is correct. Shovel-ready is our evaluation of the project. It is not whether you are shovel-ready in the winter. In fact, you may have a shovel-ready project in the general scheme of things but we are certainly not going to penalize applicants because we are happening to be awarding the money in November and someone might say well, we can't actually turn when it is under 6 feet of snow.

Mr. STUPAK. Let me ask you this. With my law enforcement background and all that, and in the stimulus—I am sorry, Mr. Chairman. I will follow up in writing. I have questions on public safety and a reluctant feeling that they don't have the expertise to apply. How do we make sure law enforcement and the value broadband can provide to them. I will follow up later. Thanks.

Mr. BOUCHER. Thank you very much, Mr. Stupak.

The gentleman from Texas, Mr. Barton, is recognized for 5 minutes.

Mr. BARTON. Thank you, Mr. Chairman. I just have three questions. I will try to be very quick because I see we have some votes.

My first one is tongue in cheek, but there is a program for people like me who didn't get a coupon? Have we just missed the boat or is there some—you know, if you are really, really stupid and really, really lazy we will give you one more chance program?

Mr. STRICKLING. No, sir.

Mr. BARTON. It is gone, huh?

Mr. STRICKLING. You are out of luck.

Mr. BARTON. All right. Well, I was afraid that was going to be the answer. That is the right answer, by the way. It should be that way.

Next question is about the Universal Service Fund. I don't think it is any secret to you two gentlemen that I am not a big fan of that program, and I am working with Mr. Boucher and others, Mr. Markey, to come up with a reform program for it. But in terms of this program that you two gentlemen are implementing, can we be assured that you are only going to award funds to projects that will be sustainable without additional federal funds in the future?

Mr. STRICKLING. Yes, sir. I think our philosophy will be that there will not be any additional federal dollars available for these projects beyond what is in front of us in the \$4.7 billion we have been given, so we will be evaluating each project for its sustain-

ability past the grant period and we are not going to assume oh, yes, they will get Universal Service money or that some other grant program will rescue this project. It is got to be sustainable once our monies end.

Mr. BARTON. Mr. Adelstein, do you share that view?

Mr. ADELSTEIN. Absolutely. Our scoring criteria count project sustainability and project viability among the highest categories for awarding funds. We generally look very closely at the balance sheets and at the financial spreadsheets of these companies with our experience as basically a lender. With a \$54 billion loan portfolio, we are very experienced at evaluating the financial capability of companies and their sustainability. Particularly when it comes to the loan component, we want to make sure we get paid back.

Mr. BARTON. Last question. I see some conflicts or potential conflicts of interest in the administration of the grant program that Mr. Strickling is implementing. The statute directs that the NTIA consult with the States about which applications to grant but the States themselves are eligible for these grants. Secondly, you are going to be soliciting volunteers to evaluate the grants but your volunteers might also be involved with the industries that would benefit from receiving the grants. Mr. Secretary, what mechanisms are you putting in place to try to prevent such conflicts of interest in these two areas?

Mr. STRICKLING. Yes, sir. With respect to the States, the statute specifies that the States should have this role, so I think if it is a conflict, it is a conflict everybody can see, everybody can evaluate, and we will act accordingly. With respect to the reviewers, we have very strict conflict-of-interest policies, and in fact we have already rejected about 10 percent of the experts who have come forward to offer their services on either lack of expertise or because they have a conflict due to their employer, but basically if you work for a company that is making a grant application of its own, you will not be allowed to review any application in any State in which your employer's application might apply and certainly you won't be able to review your employer's application. If you work for a broadband service provider, you will not—whether or not that company has filed an application, you will not be allowed to review an application in any State in which your employer offers service. So we feel that we can still take advantage of the expertise of folks but we are going to sequester them away from any application where they would be any actual or apparent conflict of interest.

Mr. BARTON. Thank you, Mr. Chairman.

Mr. BOUCHER. Thank you very much, Mr. Barton.

We now have three votes pending on the floor of the House, and that will probably require at least a half-hour in order to accomplish so I am going to recess the subcommittee and we will return to continue our questions with you as soon as this roll call is finished.

[Recess.]

Mr. BOUCHER. We will reconvene, and I want to thank Mr. Strickling and Mr. Adelstein for their patience as we finished our business on the floor of the House for the day.

The gentlelady from California is next to propound her questions, and she is recognized for 5 minutes, Ms. Matsui.

Ms. MATSUI. Thank you, Mr. Chairman.

To ensure that more Americans will have access to broadband Internet service, we have to address not only the populations who don't have access to broadband but those who have access but are not able to afford such services. In California, an estimated 96 percent of California residences have access to broadband but the problem is adoption since barely more than half of Californians have adopted broadband at home. In most cases, adoption rates are associated with income as seen in the recent data from the Public Policy Institute of California. We show that only 58 percent of Californians earning under \$40,000 a year subscribe to broadband at home but 97 percent of those earning \$80,000 or more subscribe to this. And so it is clear that millions of Americans cannot afford either a computer or Internet services. In April, I along with six of my colleagues who serve on this subcommittee wrote urging the FCC, NTIA and RUS to consider low-income populations to be part of the definition of underserved as it applied to broadband grant programs. To fully close the digital divide, we must address the affordability of broadband for lower income families. Although these families may have different options for broadband access, in my opinion, they are underserved if none of these options are affordable.

Mr. Strickling, during your rulemaking process, how much of a factor did you consider income and affordability in the definition of underserved?

Mr. STRICKLING. As you know, the definition we ultimately adopted did not include that as a test but we absolutely were thinking about it, and our final judgment was that using an adoption rate really got at the issue and might be explained—in other words, we have a rate that says if an area is showing less than 40 percent adoption, it is underserved. We feel there may be any number of explanations for that including the factors you described but we chose to go right to the heart of the issue which was the adoption rate and make that the standard in the definition, and I will point out that among the 2,200 applications we received, we do have a separate part of our program that is focused on sustainable adoption projects. We received over 320 applications from entities that want to perform these sorts of sustainable adoption projects and they have asked for about \$2.5 billion, so it is an area that we view very seriously. We absolutely agree with you that looking at the demand side of this equation is just as important as looking at the supply side, and we need to understand why folks aren't able to adopt these services and we are going to have an opportunity now with the monies available in the Recovery Act to fund a number of different approaches to increasing those adoption rates.

Ms. MATSUI. I certainly do appreciate that because that is going to be a very important factor in moving forward.

I would like to also say that many households in underserved urban communities either don't have a computer or cannot afford Internet service, and now they rely on local schools and libraries for their broadband services, and especially in these tough economic times, more and more people are relying on the computers at their libraries for a job, employment services, managing their finances even because they can't afford Internet service, so I think

it is critically important that the schools and libraries serving underserved communities be properly considered during the grant process. So Mr. Strickling, how are you handling applications for schools and libraries in urban underserved areas?

Mr. STRICKLING. Again, we are very interested in receiving those applications because, as you have just pointed out, if folks don't have a computer in their own home, the ability to go to a local library or go to a local school after hours to get access to the Internet on a broadband service offered in those institutions is perhaps their only ability to go online. So we understand the importance of it. In our scoring criteria, the presence in a project application of—

Ms. MATSUI. Mr. Strickling, do you have standards that apply to this?

Mr. STRICKLING. I was about to say that we will be giving additional consideration to those projects that come to us that are able to incorporate working with these community anchor institutions as part of the overall project design.

Ms. MATSUI. I would like to follow up with that later on too if that is possible.

Mr. STRICKLING. Absolutely.

Ms. MATSUI. I see I am running out of time, so thank you very much.

Mr. BOUCHER. Thank you very much, Ms. Matsui.

The gentleman from Oregon, Mr. Walden, is recognized for 5 minutes.

Mr. WALDEN. Thank you, Mr. Chairman, and I am sorry I couldn't be with you earlier this morning. I had conflicting duties that I had to attend to.

First, I would like to ask that my opening statement be inserted into the record at the correct place.

[The prepared statement of Mr. Walden appears at the conclusion of the hearing.]

Mr. BOUCHER. Without objection.

Mr. WALDEN. I have questions for both of our witnesses. I am troubled that out in the State of Oregon that the two largest providers of telecommunications in my district cover about 80 percent of the territory, Qwest and Century Link. Both have chosen not to apply for grants and they cited uncertainty of the consequences of accepting grant money, issues about ill-defined network, non-discrimination requirements, prohibition of sales of facilities, how all that works, the cumbersome application process. How will constituents in a district that is vast and underserved as mine benefit from the broadband stimulus grant program if the rules and regulations of the program scare away the big providers, the big folks who can participate and frankly the only ones that are poised to participate in a district like mine? Are you finding this elsewhere around the country?

Mr. STRICKLING. Well, the first comment I would make is, 2,200 applications were filed seeking \$28 billion of funding. When we issued our Notice of Funds Availability, we heard from all manner of folks that the criteria were too strict, that the rules were too confusing, yet 2,200 people were able to submit applications who navigated their way through the process.

Mr. WALDEN. Do you have a breakout by State or district?

Mr. ADELSTEIN. I do. Your district has 14 applications in it, so there were 14 applicants in your district, two in Oregon that were able to—

Mr. WALDEN. Right. I know Bend Broadband, I believe, is one.

Mr. ADELSTEIN. And that is just for our program. There may be some additional ones for BTOP as well.

Mr. WALDEN. Could I get that list at some point?

Mr. ADELSTEIN. Absolutely. I will get to that you immediately.

Mr. WALDEN. One of the issues I raised when this was going through is how the process, the timing would work. I had concerns that, you know, and I know are going to have three tranches of money that goes out, because the mapping in Oregon, rough maps will be available in November. The complete won't be ready until February so in the first round you don't really know, you don't have the mapping done.

Mr. STRICKLING. The national broadband map has a deadline of February 2011.

Mr. WALDEN. Right. But in the State of Oregon, for example, the first round—we will be done with our mapping by February of 2010, so that will work in the second round, correct?

Mr. STRICKLING. Yes, but again, I don't think the presence of a State map is a magic bullet here. We want to be awarding grants, the infrastructure grants in the unserved and underserved areas, we want to be confident that they are that. A map helps us make that judgment if it has credible data that went into it but there are other ways to get that information as well. Each applicant was required to supply that sort of information, and if they have given us credible data we will rely on that in making grants.

Mr. WALDEN. So how was the definition of remote and rural that is used in the application developed? My understanding is the only remote rural areas are eligible for 100 percent funding from RUS. RUS defines an unserved area as remote rural if it is at least 50 miles from a non-rural area, and yet I am hearing from some that the projects may not be able to meet this criteria, that few, if any, will meet this criteria.

Mr. ADELSTEIN. We actually set aside \$400 million under that category and we received \$3.8 billion in loan requests for that \$400 million, so we are well oversubscribed 10 to one so a number of applicants did find that they were in areas that were remote. Now, we haven't verified that in fact they were in remote areas but we have an overwhelming demand for that category. The RUS really wants to serve the hardest to reach, more rural areas of the United States and that was our goal. The previous Administration was criticized for moving some RUS into areas that were too suburban or too close to urban areas and we tried to push it out, but I certainly understand concerns about that and we are looking at that, but there is a lot of interest in those as well as people applying for the loan-grant combinations.

Mr. WALDEN. So help me on this definition. If you define an unserved area as remote rural if it is at least 50 miles from a non-rural area, how are those terms defined? What is a non-rural area?

Mr. ADELSTEIN. A non-rural area is defined as not being urban, and an urban area is defined as an area that is either 20,000 peo-

ple or an urbanized area contiguous to a city or town of 50,000 or more, so you have to be 50 miles from the limit of those two areas.

Mr. WALDEN. I have just one other question that I wanted to ask. I believe that the stimulus funding should of course go first to those that aren't served, and you were here as a commissioner. I mean, you understand that debate, that sometimes this money goes out and has in the past to areas that have multiple services. And I think it ought to go to individuals, businesses, institutions that don't have access to broadband at all rather than better service to those who do. Is that the prioritization NTIA is going to use?

Mr. STRICKLING. Well, under the statute we are going to focus on unserved and underserved areas, and bear in mind, an underserved area is an area that may only have 50 percent or fewer of their residents available to sign up for service. So there is a large body of people in an underserved area that they themselves individually are unserved, so I think that in making our grants we are going to be cognizant of both of those sets of issues, both the unserved and the underserved, which will contain many unserved people.

Mr. WALDEN. All right. Well, let me be the one that weighs in on, for the limited amount of government resource we have, it ought to go to those who don't have access to any service first. That is my own opinion, and I know my time has expired.

Mr. Chairman, a unanimous consent request that the written statement of Mr. Blunt be included in the hearing.

[The information was unavailable at the time of printing.]

Mr. BOUCHER. Without objection. Thank you very much, Mr. Walden.

The gentlelady from California, Ms. Eshoo, is recognized for 5 minutes.

Ms. ESHOO. Thank you, Mr. Chairman, and thank you to our witnesses again and for your patience in waiting for us while we completed our work on the floor for today.

I have some questions and I just want to put my questions out and then have you respond to them. I want to go back to my opening statement and just reemphasize—it is not a question, just to set it down again, that when this charge of the Congress to you to implement has been completed, that when not only look at the map and see the work you have done in underserved and unserved areas, that the broadband will be really at the highest level in terms of speed, and that is really a top priority for me and I think that those communities deserve that and it is going to be in your hands to help to see that that happens.

Now, you are in the first round, and whether you are just going to do a second round and not have to do a third, I mean, obviously that is going to be up to you, but in the first round of applications, how many included requests for waivers of information? The reason that I ask that is, because it is my understanding that there were applicants who claimed that they were unable to apply due to software issues and problems, you know, not being resolved before the deadline. So I would like to know, my first question is, what steps you are taking to ensure that the process runs smoother in the next round? And I would also like to know more about the process whereby incumbents can challenge applications that seek to serve

underserved areas. Now, in the BTOP and the BIP, the notice of available funding, it provides for existing service providers an opportunity to challenge and demonstrate that a project is not unserved or underserved. What I want to make sure of is that there is competition, and if the incumbents can just knock out people because they don't want any competition to come in, I don't really think that is the way for us to go. So does this mean that an applicant will have to provide proprietary information? That is why I was asking the question about requests for waivers. That I think would undercut their ability to compete, and other than the most obvious cases where there is competition, what is the criteria for deciding? How do you weigh in on this and what is the administrative process in place for challenges and counterchallenges and fact finding?

So you can tell what my questions are, and I also would like to add a comment to reinforce what Congresswoman Matsui raised about anchor institutions. I think it is a very important one, and the two of us are going to follow up with you with some more questions in writing, but I think that these anchor institutions bear that designation in our communities because they really are anchors. That is where people go when they don't have these tools at home or can't afford them. So anyway, those are my questions. I don't know who wants to take them on.

Mr. STRICKLING. Let me take each of your issues up. First, the speed question. The eligibility requirements to apply set the 768 kilobits per second as a threshold to make you eligible to apply. I would be very surprised—most of these applications are proposing substantially faster speeds, and if one has proposed a faster speed, and if one has proposed a faster speed, you get additional consideration in the scoring of your application.

Ms. ESHOO. Oh, good. So the scoring is weighted for the higher speeds?

Mr. STRICKLING. That is correct.

Ms. ESHOO. That is great.

Mr. STRICKLING. What we didn't want to do at the front end of the process was basically—there may be areas of this country where the only practical technology to be used is at roughly 768-kilobit-per-second speed. We didn't want to basically determine at the front end of this that nobody could apply from those sorts of areas. We wanted to at least be able to consider them. And in fact 3G wireless is the only option for a given area, we would like to at least be able to consider whether or not to fund it. But again, higher speeds get more votes and greater scores and should rise to the top of the review.

In terms of the application processing, the 2 weeks when folks were rushing to put their applications through, it is correct that certain applicants experienced difficulties. But what I would urge you to consider is that during that period both of our agencies were in constant contact with each other and we were taking remedial measures to fix the problems as they arose, so in the first week it became apparent that because of the size of the attachments we were getting from many applicants, we didn't have enough server capacity. The result was, we, I think, doubled or tripled the number of servers that were available to receive the information. It

later turned out that there was some sort of browser incompatibility. Some people using certain older browsers were running into some compatibility issues. We identified that as a problem, alerted the applicant pool that they ought to use a particular browser as a way to avoid that problem, and again we think that was fixed. We extended the deadline so anybody who had started an application by the original application date was given an extra, I think, 6 days to get their full application in. During that 6 days, we had many days where people weren't coming on the system, that there was plenty of capacity, plenty of opportunity yet we still ran into the natural human tendency to wait until the last minute, and people did that even though every day we were e-mailing the applicant pool saying there is nobody online, now is the time to get on and put your application in. At the last minute on the last day, there were still some people who apparently had some problems getting attachments uploaded, and on the last day we alerted those people and gave them the option of sending those attachments on a thumb drive or on a disc so that we could add them to the application. So I think the responses of RUS and NTIA during those 2 weeks showed a very strong emphasis on supporting the applicants as they were trying to get their way through the system. Both of our organizations are committed to doing an evaluation of our systems before we do the second round, and if there are improvements above and beyond the ones we made, we absolutely intend to make them.

On your third point, because I want to give Jonathan a chance to weigh in as well, the incumbents do not have a veto here. As we have been discussing—

Ms. ESHOO. Can you describe the way it works?

Mr. STRICKLING. I am sorry?

Ms. ESHOO. Can you describe the way it works?

Mr. STRICKLING. Yes. The applicants have indicated the areas that they believe are unserved or underserved as part of their application. That information will be going up on our database, and anyone, but in particular, service providers in those areas, will have an ability to say well, wait a second, we disagree with that, but if they are going to do that, they are going to have to provide a lot of information to us in order to overcome the presumption that will have been established by the applicant. Beyond that, that will then become an issue that if necessary we will have to evaluate, either at RUS or at NTIA, before we make a grant award, if something has been thrown in dispute, but we will have that decision. It won't be made by any incumbent. They will not have the ability to veto another applicant from being able to offer service in their area. Jonathan, I don't know if you want to add anything.

Mr. ADELSTEIN. Well, as usual, since we are so coordinated, we agree with everything Mr. Strickling had to say. I would just say for purpose at RUS, speed does matter for us as well. We have additional points for higher speeds. The 768 is a floor. That was the FCC definition that Mr. Copps and I spent years trying to get up from 200.

Ms. ESHOO. I know you did. You devoted several years of your life to that.

Mr. ADELSTEIN. We sure did, and we got it moved up, but we don't want that to be the—that is the floor. We build from there, so there is rewards for higher speeds. In terms of the challenge process, Mr. Strickling is exactly right. We are going to demand real substantiation, but we also want to ensure that what the applicants are asserting is correct. This is an unprecedented transparency that we are going to conduct. We are going to put all those maps up on the web so anybody can look at them. The entire public is our other IG to make sure that people are being accurate about they are representing whether or not an area is unserved or underserved but the final determination is by RUS and NTIA. We are going to make that determination. All claims and challenges have to be verified and substantiated. We have field offices in every State in the country, many of them in California, 470 offices across the country, and we are planning on sending our general field representatives out to substantiate these things to actually find out what is happening in the communities. Our State directors have volunteered to help us as well to make sure that we really get an accurate picture of what is happening in those communities, and this can be a useful building block also of course for NTIA's map that they are working on to give us real data about what is happening in those communities, but we are not going to let incumbents just knock people out willy-nilly. They are going to have to prove their case. But on the other hand, we welcome them to challenge and to get to the bottom-line truth as to what is happening in those areas to make sure that we are targeting our funds at areas that are truly underserved.

Ms. ESHOO. Do you have the capacity to make those determinations with your staff?

Mr. STRICKLING. It is going to be a challenge. I mean, we are having to basically take people that are normally doing other work and put them on to this job. But given what challenge Congress has put before us, we think that is a valuable re-prioritization of our staff and we are working with all of our staff to get them ready for that process.

Mr. BOUCHER. Thank you, Ms. Eshoo. Your time has expired.

Ms. ESHOO. Thank you, Mr. Chairman, and I thank our witnesses and I thank you for your patience.

Mr. BOUCHER. The gentleman from Vermont, Mr. Welch, is recognized for 5 minutes.

Mr. WELCH. Thank you, Mr. Chairman. One of the concerns I had, I think, Mr. Chairman, you brought up in your opening remarks, and that is, Vermont is a very rural State that sometimes under the standards isn't considered rural, so I hope that the concerns expressed by the chairman I know having been expressed by the chairman will be taken quite seriously by you. Thank you for your testimony.

Just a couple of questions. Broadband obviously is big everywhere including in Vermont but simply building the infrastructure doesn't guarantee that people will use it, and one way to help increase the success rate of rural broadband projects is to improve the business case by increasing take rates, and there was a way, as I understand it, in the first round for someone to propose a combination of sustainable adoption and the infrastructure project, and

I am wondering whether the NTIA will consider this in the next rounds.

Mr. STRICKLING. That is not entirely true.

Mr. WELCH. Inform me. Thank you.

Mr. STRICKLING. We actually encourage people to combine project purposes. Our systems require that they in effect submit two separate applications, and we are going to look for the second round, is there a way to solve the administrative issue but we absolutely encourage people to combine adoption thinking with an infrastructure project, and those projects will be considered in tandem as they go through the process.

Mr. WELCH. Great. Thank you. In the second round, States like Vermont are going to be focused on filling out our remaining broadband service gaps. Those are likely to be found of course in smaller and more discontinuous pieces, and I am wondering what will NTIA do to help applicants qualify who are trying to turn what is essentially a Swiss cheese pattern of coverage into blocks of consistent, 100 percent coverage.

Mr. STRICKLING. To the extent that we identify that as a problem after see the applications we have seen, because it may well be that folks have figured out ways to do that as we go through these applications and certainly if we get those sorts of learnings from the application pool we have, we will find a way to make those learnings available to the general pool, but if it is a continuing issue, we are going to look at how to continue to tweak and refine our outreach efforts for the second round to provide whatever guidance we can to people to help them navigate their way through those issues.

Mr. WELCH. Last question. One problem we see in Vermont is that clusters of served households tend to be distributed among a number of different neighboring census blocks that also in those census blocks contain unserved households, and it is making it harder to define the unserved areas using census blocks as a measurement, and I am wondering whether NTIA will allow applicants a little bit more flexibility to define their service areas to better conform to essentially relate to the facts on the ground the boundaries of served and underserved areas.

Mr. STRICKLING. I frankly would be surprised if that is really a problem for folks who understood the process because they could define their service area by linking together whatever census blocks they wanted to, and in terms of meeting our test, all they had to do was either meet the unserved test for the entire set of blocks or the underserved test, either one, and I would expect that folks who understood their neighborhoods and their service areas could create those sorts of service areas for the purposes of our projects that would have qualified as underserved or unserved. There was a misconception early on that you had to demonstrate that each census block in your application was either unserved or underserved and that is not correct. You had to define a service area as a grouping of census blocks and then we looked at that in the aggregate to say does that satisfy the unserved definition or does it satisfy the underserved definition, and again, I think, folks, again, gauging from the 2,200 applications we received found ways to define their services in a way to qualify.

Mr. WELCH. Thank you very much. I thank the witnesses and I thank the chairman, and Mr. Chairman, I yield back the balance of my time.

Mr. BOUCHER. Thank you very much, Mr. Welch.

The gentleman from Washington State, Mr. Inslee, is recognized for 5 minutes.

Mr. INSLEE. Thank you, and I want to thank the chairman for holding this hearing and I look forward to discussing with the committee and Mr. Strickling our Spectrum Relocation Improvement Act, which we hope to move forward on that Mr. Upton and I have introduced and Ranking Member Stearns.

I have a couple questions for Mr. Strickling. We heard from Washington State that the NTIA's application review process has changed so that it would put the first round on the States, and could you confirm for us that it has not changed and that NTIA is still going to retain the original review process?

Mr. STRICKLING. Yes, Congressman. I can confirm that that determination, I am not sure how it arose but it is not accurate in terms of what the role of the States will be. As we discussed earlier in the hearing, the States are being asked to provide us prioritizations if they wish to. They are not being asked to review applications. No decisions have been handed over to them. We retain the ultimate decision-making authority on those grants. The States will provide input to the process just as the legislation expects.

Mr. INSLEE. I welcome your statement in that regard, and that would obviate the problems if we had 50 different sets of prioritization rules that could end up, so you don't see that as being a problem?

Mr. STRICKLING. No, sir.

Mr. INSLEE. Thank you very much.

Mr. BOUCHER. Thank you, Mr. Inslee.

I am going to raise one additional concern with each of you that has come to my attention since my round of questions ended some time ago.

Mr. STRICKLING. Breaking news.

Mr. BOUCHER. And I want to come back to the fact that if you are a rural applicant, you basically have to apply through RUS. You can apply jointly to be considered by both agencies but your application has to be reviewed and acted on by RUS before NTIA has an opportunity to act on it. And the concern is this: that RUS could review the application and decide that it is not eligible for the 80 percent to 100 percent grant because, for example, it is a non-remote area, maybe one of these little pockets that is fairly close to a city, even if it is isolated, and would be deemed non-remote under that definition, which we hope to see changed, and if that were to happen, RUS might still find that that application could be eligible for a 50 percent grant or for some grant-loan combination whereas if NTIA had been looking at that application standing on its own, it could have been qualified for a grant of between 80 and 100 percent. So there is a barrier here that many applicants may face where under NTIA's standard a grant of 80 percent to 100 percent could be provided but where under RUS the maximum grant is only 50 percent, and I would hope that at a

minimum as you consider modifying these standards for your next round, that you would enable applications to be acted upon based upon the higher level of funding that could be provided by either agency so that the barrier I have just identified would be removed. So I guess first let me ask you if I have properly interpreted the standards as they have been put forth, and secondly, if you would consider some change that would address the circumstances, assuming I have properly interpreted them.

Mr. ADELSTEIN. That could be an issue. However, I would respond that if they can qualify for a grant-loan combination, that would be a wiser use of taxpayer dollars. We want to minimize the amount of grant so that we can maximize the amount of rural broadband infrastructure that we can leverage to get out to the consumers. So if in fact there is an application that would be viable that would be able to repay that 50 percent, we actually designed the system to encourage that. That is one of the reasons the system is designed the way it is with the RUS getting that first look at it so that we could try to stretch those taxpayer dollars as far as we possibly could. Obviously the point isn't to maximize the amount of grant that a particular applicant gets but rather to give them the minimum amount they need in order to provide broadband and have a viable, sustainable business.

Mr. BOUCHER. And let me just say, I don't disagree with that. I think you are exactly right. To the extent that a full project as it is anticipated by the applicant and applied for can be built with something less than full grant, obviously it is optimal to do so. But in those instances where that can't happen and you deem the project ineligible for the full grant but offer a 50 percent grant and a grant of a higher level could be provided by your sister agency, that might enable the full project to be built and built more rapidly or in a better way. It seems to me that that potential should be preserved, and under the existing regulation I think it is not.

Mr. ADELSTEIN. It could be because a joint application, they could apply to us for 50 percent and apply to NTIA for 100 percent the way we designed the application system. So they would apply to us at 50 percent. If it wasn't viable, and we are very good at doing the business analysis to determine whether or not that would be viable at that rate, we would then kick that to NTIA and say these people aren't going to be able to repay that loan, this business case can't be made but it is a very good project. That would then automatically be kicked over to NTIA which had simultaneously been reviewing the process, been reviewing that application—

Mr. BOUCHER. So you are saying that if your analysis determines that the full project for which the application is made can't be built with something less than the higher level of grant, then that would be what the applicant receives, but it would be your determination that the full project can be built for that amount?

Mr. ADELSTEIN. Right. If we determine that the full project can't be sustained—

Mr. BOUCHER. And if you determine it cannot be, that the full project cannot be built for that amount, for the maximum amount for which under the application they are qualified, then NTIA could take it from there and potentially fund it at the higher level to fund the full project. Is that accurate?

Mr. ADELSTEIN. Exactly.

Mr. STRICKLING. Yes, sir.

Mr. BOUCHER. All right. Thank you. I appreciate your indulgence. Let me just quickly ask my staff a question. She says yes. All right.

I want to thank you. You have been very patient today including sitting through a lengthy recess while we finished our business on the floor of the House, and I appreciate the thorough answers you have provided to all of our questions. As you could hear expressions on a bipartisan basis today, there is concern by members about the definition of remote, and I very much hope that you will address that before you put the NOFA out for the second round of funding. You have heard our other concerns and to the extent that you can consider and make modifications to accommodate those, that would be much appreciated as well.

We will be having, as Mr. Stearns recommended, at least another hearing to oversee this program at some appropriate time yet to be determined, and we will welcome you back when that hearing occurs. Thank you for your testimony and your participation today, and this hearing stands adjourned.

[Whereupon, at 1:00 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

Statement of
Representative John D. Dingell
Committee on Energy and Commerce
Subcommittee on Communications, Technology, and the Internet
Hearing on "Oversight of the American Recovery and Reinvestment Act: Broadband,
Part 2"
September 10, 2009

Thank you, Mr. Chairman, for convening today's hearing. As I mentioned during the Committee's April 2, 2009, oversight hearing on the broadband portions of the American Recovery and Reinvestment Act (ARRA), we must encourage development of U.S. communications infrastructure, although this must be done in a sensible fashion so as to prevent wasting taxpayer funds on what otherwise might be considered boondoggles.

I commend the National Telecommunications and Information Administration (NTIA) and the Rural Utility Service (RUS) for their work in implementing the broadband grant portions of ARRA. All the same, I have a number of questions, which I will submit for the record, concerning a range of issues related to implementation and subsequent oversight of the Broadband Technology Opportunities Program (BTOP) and the Broadband Initiatives Program (BIP). First, I would request that our witnesses discuss the rationale employed to define the terms "unserved" and "underserved." Specifically, I would be interested to learn why census blocks serve as benchmarks in those definitions, particularly as it is my understanding that communications networks and census blocks have little relationship to one another.

Second, I am concerned that NTIA and RUS may not have adequate resources with which to process the enormous number of grant applications submitted to this point. By analogy, the Department of Transportation underestimated consumer demand for the wildly successful "cash for clunkers" program, and as a result, retained too few staff to process reimbursement requests in a timely manner. I would request that NTIA and RUS provide their frank opinion as to whether they have the appropriate level of resources with which to administrate what constitutes the largest federal broadband infrastructure development grant program in U.S. history.

Finally, I wish to ascertain what steps, if any, NTIA and RUS have taken to prevent waste, fraud, and abuse in both of their grant programs. As I have repeatedly stated, we must ensure that robust oversight is a core component of these programs.

In closing, I wish to thank our witnesses for appearing before the Committee today. I look forward to a candid and productive dialogue with them.

Thank you for your courtesy, Mr. Chairman, and I yield back the balance of my time.

Thank you for holding this hearing. I am pleased that our subcommittee has gathered again to examine implementation of the broadband programs authorized by the stimulus bill. Responsibility falls on those in this room – on this side of the dais and at the witness table to prevent that \$7.2 billion from being wasted on another set of ineffective government programs. Our country literally cannot afford that.

Although I did not vote for the stimulus bill, I strongly believe that the programs it created should spend tax payer dollars in the most efficient, appropriate and cost-effective manner. All taxpayers deserve to get the biggest bang for those billions.

What a shame if \$7.2 billion go out the door and we cannot say with confidence that our nation is as close to 100% broadband

penetration as possible. Feedback I've received from broadband providers in my state – those that applied for grants and those that chose not to – suggest we might miss this mark.

Additionally, the B-TOP coordinator that my Governor designated for the state of Oregon told me that NTIA is “building the airplane as we're flying” on this.

I am concerned that some of the B-TOP and BIP program elements may prevent us from directing the broadband stimulus dollars to where the need is the greatest.

One of these concerns stems from the fact that the nationwide broadband map isn't due until February 2011 yet, all broadband stimulus dollars must be awarded by September 2010; 5 months prior to the map's completion.

This is a head scratcher – we are spending money before we really know where it needs to be spent. When all of us have ridden off into retirement, will members of this body look back on this and say “what were those guys thinking?!”

Fortunately, in Oregon a rough broadband map should be done by November (2009) and will be complete by February (2010). So applicants for future rounds of funding can use the map to guide their work.

Another concern I have is the difference in levels of support for grants from NTIA and RUS for service in rural areas. I hope our witnesses will help me understand why a grantee serving a rural area can get an 80% grant from NTIA but only a 50% grant from RUS. Shouldn't the program administered by the Rural Utilities Service be providing the greater support to rural areas?

Thanks again for calling a hearing on this important topic. I yield back the balance of my time.



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Communications
and Information
Washington, D.C. 20230

OCT 14 2009

The Honorable Henry A. Waxman
Chairman
Committee on Energy and Commerce
House of Representatives
Washington, DC 20515

Dear Chairman Waxman:

Thank you for your letter of September 25, 2009, forwarding questions for the record for the September 10, 2009, hearing of the Committee's Subcommittee on Communications, Technology and the Internet on the broadband stimulus provisions of the American Recovery and Reinvestment Act. I appreciated the opportunity to testify before the Subcommittee regarding the National Telecommunications and Information Administration's (NTIA) implementation of the Broadband Technology Opportunities Program, and welcome the opportunity to address these additional questions from Members.

My responses to the questions are enclosed. If you or your staff have any additional questions, please do not hesitate to contact me or James Wasilewski, NTIA's Director of Congressional Affairs, at (202) 482-1551.

Sincerely,

A handwritten signature in cursive script that reads "Lawrence E. Strickling".

Lawrence E. Strickling

Enclosure

cc: The Honorable Joe Barton, Ranking Republican Member
Committee on Energy and Commerce

The Honorable Rick Boucher, Chairman
Subcommittee on Communications, Technology and the Internet

The Honorable Cliff Stearns, Ranking Republican Member
Subcommittee on Communications, Technology and the Internet

The Honorable John D. Dingell

1. **I am advised of concern that BTOP's and BIP's reliance on "advertised" speeds to prove an area is underserved overstates the actual or guaranteed service speed available in many areas. How do NTIA and RUS plan to account for this discrepancy when determining eligibility based on the level of service available to a particular area?**

I recognize and appreciate your concern that advertised broadband speeds may differ from actual or guaranteed speeds in some areas. Please note that advertised speed is merely one of several ways that applicants can demonstrate that their proposed funded service area qualifies as underserved. As actual speeds typically vary depending on a variety of factors, such as the number of people using the broadband system, advertised speed is a more objective means of assessing speed availability and is how the FCC currently measures broadband availability. NTIA will carefully consider all comments that we receive concerning an applicant's proposed underserved area to ensure that sufficient information is presented to overcome any presumption set forth by the applicant.

2. **It is my understanding there are concerns that the definition of "underserved" prohibits projects where even minimal broadband is generally available, regardless of whether advertised speeds are actually delivered, service is affordable, and infrastructure or speed of service is adequate. For future rounds, will NTIA and RUS consider applicants qualified for funding if just one of the options within the definition of "underserved" is met?**

It is currently the case that applicants only need to meet one of the criteria that define "underserved," though NTIA's presumption is that more than one criteria will be met for those areas most in need of assistance. A proposed funded service area may qualify as underserved for Last Mile projects if at least one of the following factors is met:

- (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 kbps downstream and 200 kbps upstream;
- (2) no fixed or mobile broadband service provider advertises broadband speeds of at least 3 mbps downstream in the proposed funded service area; or
- (3) the rate of broadband subscribership for the proposed funded service area is 40 percent of households or less.

A proposed funded service area may qualify as underserved for Middle Mile projects if at least one interconnection point terminates in a proposed funded service area that qualifies as unserved or underserved for Last Mile projects. Thus, under the current Notice of Funds Availability, NTIA may consider applicants for funding if just one of the underserved criteria is met.

- 3. It is my understanding that the program, as currently written, prioritizes the first two BTOP objectives (serving unserved and underserved areas) over the other three. Thus, community anchor institutions and public safety institutions in areas not considered unserved or underserved are not eligible. For future rounds, will NTIA consider treating all five objectives equally?**

Given the limited resources and the intent of Congress that BTOP support projects that will provide the greatest benefits to the greatest population of users, NTIA has opted to focus on areas that have no broadband or inadequate broadband rather than supporting projects located in areas with more substantial broadband services. This requirement helps ensure that BTOP funds support broadband expansion projects for areas with the greatest need. Applicants for BTOP Last Mile and Middle Mile Infrastructure grants must demonstrate that their proposed funded service areas meet the definition of unserved or underserved as outlined in the NOFA. However, an application for a Middle Mile Infrastructure project must only demonstrate that one interconnection point terminates in a proposed funded service area that qualifies as unserved or underserved for Last Mile projects. Therefore, it is possible that the majority of a middle mile project could be located in areas that are not unserved or underserved. Community anchor institutions such as libraries or community colleges could qualify for Last Mile Infrastructure funding if they plan to serve areas that meet the definition of unserved or underserved. Alternatively, they could qualify for Middle Mile Infrastructure funding if they are part of a proposed project (for example, a fiber ring serving a consortium of schools or libraries) in which one interconnection point terminates in a proposed funded service area that qualifies as unserved or underserved for Last Mile projects.

In addition to Broadband Infrastructure funding, community anchor institutions could qualify for the Public Computer Center or Sustainable Broadband Adoption categories of grants without demonstrating that their areas are unserved or underserved. The definition of Public Computer Center outlined in the NOFA specifically includes libraries, community colleges, and other entities that permit the public to utilize broadband technologies.

In advance of the second round of funding, NTIA will seek comment from all interested parties as to how the program can be improved and will take those comments into account to determine what changes, if any, are appropriate.

- 4. Service is largely not measured to the granularity of census blocks making it almost impossible for applicants to satisfy the coverage requirements. How will NTIA and RUS address this data shortage when reviewing applications, and do the agencies plan to require providers to make data demonstrating the percentages of broadband accessibility and subscribership publicly available at the census block level?**

It is not necessary to show that each individual census block is unserved or underserved. The proposed funded service area, which consists of one or more contiguous census blocks, must, as a whole, meet the definition of unserved or underserved for BTOP. Applicants must explain the methodology for determining that the proposed funded service area as a whole meets the eligibility criteria. A number of states have already undertaken mapping and data collection that could be useful for applicants in identifying unserved and underserved areas. Additionally,

customer or market surveys, statistical sampling, or other valid methodologies could be employed. The exact methodology is up to the applicant, but the result should be to demonstrate that the proposed funded service area is eligible based on the appropriate definition.

Through the State Broadband Data and Development Grant Program, NTIA is currently awarding grants to states to collect broadband availability data at the census block-level for the development of the national broadband map as required by the Recovery Act. The national broadband map will publicly display the geographic areas where broadband service is available; the technology used to provide the service; the speeds of the service; and broadband service availability at public schools, libraries, hospitals, colleges, universities, and public buildings. The national map will also be searchable by address and show the broadband providers offering service in the corresponding census block or street segment. While the national broadband map is not due to Congress until February 17, 2011, NTIA anticipates that many states will make their state-specific information public in advance of that date.

- 5. The American Recovery and Reinvestment Act (ARRA) created the Broadband Technology Opportunities Program (BTOP), a program to award grants to promote broadband investment and adoption. In creating the program, the ARRA gave equal priority to five different goals. One of those five goals was to promote the construction of broadband networks to “schools, libraries, medical and healthcare providers, community colleges and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband by or through these organizations.” (See Section 6001(b)(3)) However the first set of rules in the Notice of Funds Availability that was issued in July give a much higher priority to serving rural residential users and did not give equal priority to addressing the broadband needs of community anchor institutions. Will you make sure that the needs of schools, libraries and health care providers are given greater priority in future rounds of funding?**

Expanding and enhancing broadband capabilities for community anchor institutions such as schools, libraries, and health care facilities is an important priority for NTIA and the BTOP. Such organizations are eligible entities for BTOP funding through the Broadband Infrastructure, Public Computer Centers, and Sustainable Broadband Adoption pools of funding. Moreover, the NOFA encourages and gives consideration to any applications that benefit community anchor institutions. Given the limited resources and the intent of Congress that BTOP support projects that will provide the greatest benefits to the greatest population of users, NTIA has opted to focus on areas that have no broadband or inadequate broadband rather than supporting projects located in areas with more substantial broadband services. This requirement helps ensure that BTOP funds support broadband expansion projects for areas with the greatest need. All applications for BTOP grants, whether they are for Broadband Infrastructure, Public Computer Centers, or Sustainable Broadband Adoption, will be evaluated in part on their ability to provide greater access to broadband service.

Before awarding grants, NTIA will take into consideration a number of factors, including the extent to which the project fulfills the Recovery Act purposes, which place a high priority on serving anchor institutions. NTIA is confident that BTOP funds will be used to enhance

broadband services for community anchor institutions consistent with Congressional directives in the Recovery Act.

- 6. The statutory language in the ARRA states the BTOP program should address the broadband needs of anchor institutions, such as schools, libraries and healthcare providers. The statutory language does NOT say that funding for these institutions should be limited to unserved or underserved areas. (The words “unserved” and “underserved” only apply to residential broadband networks). In drafting the ARRA, Congress decided that anchor institutions in ALL areas – urban, suburban and rural – should all be able to apply for funding because of the essential services they provide. But the NOFA rules link funding to anchor institutions to unserved/underserved areas, which prevented many libraries, health providers and schools from applying for broadband funding. Why did NTIA impose such a limitation on anchor institutions when the statutory language does not?**

Given the limited resources and the intent of Congress that BTOP support projects that will provide the greatest benefits to the greatest population of users, NTIA has opted to focus on areas that have no broadband or inadequate broadband rather than supporting projects located in areas with more substantial broadband services. This requirement helps ensure that BTOP funds support broadband expansion projects for areas with the greatest need. Applicants for BTOP Last Mile and Middle Mile Infrastructure grants must demonstrate that their proposed funded service area meets the definition of unserved or underserved as outlined in the NOFA. However, applications for Middle Mile Infrastructure projects must only demonstrate that one interconnection point terminates in a proposed funded service area that qualifies as unserved or underserved for Last Mile projects. Therefore, it is possible that the majority of a middle mile project could be located in areas that are not unserved or underserved. Community anchor institutions such as libraries or community colleges could qualify for Last Mile Infrastructure funding if they plan to serve areas that meet the definition of unserved or underserved. Alternatively, they could qualify for Middle Mile Infrastructure funding if they are part of a proposed project (for example, a fiber ring serving a consortium of schools or libraries) in which one interconnection point terminates in a proposed funded service areas that qualifies as a unserved or underserved for Last Mile projects.

In addition to Broadband Infrastructure funding, community anchor institutions could qualify for the Public Computer Center or Sustainable Adoption categories of grants without demonstrating that their areas are unserved or underserved. The definition of Public Computer Center outlined in the NOFA specifically includes libraries, community colleges, and other entities that permit the public to utilize broadband technologies.

- 7. The Notice of Funds Availability (NOFA) that set out the application rules for the BTOP created two categories of applicants – Last Mile and Middle Mile. (Last Mile providers serve residential consumers, while Middle Mile applicants provide high-capacity broadband pipes into the community but do not serve users directly). However, applicants proposing to build networks to schools, libraries and healthcare providers do not fit into either category. They do not serve residential users, (so they do not fit the Last Mile category) but they do provide service directly to institutional users (so they do not fit into the Middle Mile category). Have you considered creating a different category of rules that are better designed for these needs of these important community anchor institutions?**

The NOFA provides many opportunities for community anchor institutions to compete for BTOP grants and NTIA is making every effort to ensure that schools, libraries, and healthcare providers benefit from BTOP investments. Applicants for Last Mile Infrastructure projects are required to provide broadband service to the entire proposed funded service area. This includes residential households as well as community anchor institutions that provide important services to the community. In contrast, Middle Mile Infrastructure applicants are not required to provide service to the entire proposed funded service area. Anchor institutions may choose to apply for Middle Mile Infrastructure grants if they, for example, seek funding to support a fiber ring connecting a group of universities, hospitals, or libraries. Additionally, anchor institutions may be eligible to apply for Public Computer Center or Sustainable Broadband Adoption grants. Expanding and enhancing broadband capabilities for community anchor institutions such as schools, libraries, and health care facilities is an important priority for NTIA and the BTOP. In advance of the second round of funding, NTIA will seek comment from all interested parties as to how the program can be improved and will take those comments into account to determine what changes, if any, are appropriate.

- 8. Libraries, health clinics and schools have a great need for high-capacity broadband pipes. These community institutions aggregate large numbers of people and computers who are all using the Internet at the same time. They use the Internet for essential services – finding jobs, obtaining medical information, taking classes on-line. These community anchor institutions cannot serve their constituents with a bare bones minimum broadband connection; they need a large broadband pipe of 100 Megabits per second or higher. How can the BTOP rules encourage the construction of large, high-capacity broadband pipes so that BTOP can address the needs of these institutions for high-capacity broadband pipes?**

BTOP 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 minimum broadband speeds of at least 768 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. NTIA is confident that BTOP will fund projects that provide broadband at speeds significantly greater than the minimum requirement.

- 9. In the ARRA, Congress gave funding to RUS for rural areas and gave funding to NTIA to serve all of America. The NOFA rules, however, appear to skew ALL the funding to rural areas. Rural areas are certainly important, but inner city neighborhoods and economically depressed urban areas also need high-capacity broadband. Shouldn't the NTIA program provide funding to worthwhile projects to ALL areas of the U.S., not just in rural areas?**

In the Recovery Act, Congress directed NTIA to address the broadband needs of both “unserved” and “underserved” areas – without regard as to whether they are urban, suburban, rural, or frontier parts of the United States – to enhance broadband for institutions that provide important public benefits, and to stimulate demand for broadband services. NTIA developed its first round of BTOP funding with each of these priorities in mind and is taking all appropriate steps to ensure that BTOP funds will be used to support broadband services in unserved and underserved urban areas as well as rural ones.

- 10. The NOFA sets a very low definition of broadband at 768 kilobits per second. This low-speed definition does not encourage the deployment of the kind of high-capacity broadband pipes that America needs for the futures. Other nations are already deploying broadband technologies that bring 100 megabits per second, which is over 100 times faster than the NOFA definition of broadband. What can NTIA do in the next funding rounds to encourage America's broadband providers to build for the future and to enhance our economic competitiveness?**

BTOP 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. The commitment to provide a minimum downstream speed of 768 kbps is only an eligibility factor. There may be many rural or remote areas of the country where the only practical technology available delivers speeds of roughly 768 kbps. Accordingly, NTIA did not want to unfairly exclude such projects from being eligible for funding. However, greater consideration will be given to applications proposing faster speeds and NTIA is confident that BTOP will fund projects that provide broadband at speeds significantly greater than the minimum requirement.

The Honorable G.K. Butterfield

1. **How do you intend to measure success of the BTOP and BIP programs? To me, the most important measure is: "How many people will have broadband available to them who couldn't get it before."**

BTOP grant recipients will be required to comply with a number of reporting requirements as a condition of their award, each of which will help NTIA evaluate the success of the BTOP.

For example, awardees receiving BTOP infrastructure awards must, on a quarterly basis, report on the total number of households and businesses subscribing to broadband service; the number of households subscribing to new broadband service; and the number of households subscribing to broadband service that receive improved access. Infrastructure awardees will also be required to report on important benchmarks such as speeds, network management, availability, prices, and adoption resulting from BTOP funds. Recipients of Public Computer Center funding will be required to provide information on the uses of their facilities and benefits to their users; and Sustainable Broadband Adoption recipients will report information their success in stimulating demand and adoption. Finally, in addition to these BTOP-specific reporting requirements, grant recipients will be required to comply with Recovery Act reporting requirements that include detailed information regarding the use of funds and jobs created.

2. **While Round 1 of the NOFA process is still ongoing, can you share any lessons you've learned that can be applied to Round 2? Do you plan to consider any changes in the NOFA for Round 2? If so, can you talk about areas where you might be considering a new and improved approach based on what you've learned?**

One of the reasons the broadband stimulus program was initially designed with more than one funding round was to allow NTIA and RUS to learn from their experience and adjust in round two those aspects of the process that need to be improved. NTIA and RUS currently plan to issue a second Request for Information (RFI) in October 2009 seeking public comment on those aspects of the program that could be enhanced to better meet the goals of the Recovery Act. The public comment and our assessment of the first round will help NTIA and RUS develop the second Notice of Funds Availability (NOFA) which will be released late this year. We will use the comments received from all interested parties as to how the program can be improved to determine what changes, if any, are appropriate.

3. **From the applications you've received, do you have an idea how many applied to build infrastructure to unserved areas? For RUS applications, do you have an idea about how many applied to serve "rural remote" vs. "rural, non-remote" areas?**

In the first round of BTOP and BIP funding, NTIA and RUS received almost 2,200 applications requesting nearly \$28 billion in funding for proposed broadband projects reaching all 50 U.S. states and territories and the District of Columbia. More than 260 infrastructure applications were filed solely with NTIA's BTOP, requesting over \$5.4 billion in grants to fund broadband infrastructure projects in unserved and underserved areas. More than 830 infrastructure applications were filed with both NTIA's BTOP and RUS's BIP, requesting nearly \$12.8 billion

in infrastructure funding. Applications came in from a diverse range of parties including state, local, and tribal governments; nonprofits; industry; anchor institutions, such as libraries, universities, community colleges, and hospitals; public safety organizations; and other entities in rural, suburban, and urban areas. Applicants requested nearly seven times the amount of funding available, which demonstrates the substantial interest in expanding broadband across the Nation.

- 4. I'm concerned about the term "remote" in the RUS NOFA. The BTOP and BIP programs have a grant-funded approach to broadband infrastructure in areas that are: rural and "remote," or b. not rural at all.**

The remote and rural definitions apply to the RUS BIP awards. Therefore, NTIA defers to RUS for a response to this question.

- 5. But if an area is *rural and not "remote"* (meaning at least 50 miles from any town of 20,000 or more), the grant can only be 50%, and the applicant is required to apply for a loan. Under this definition, "not remote" describes virtually everything east of the Mississippi. Can you explain the reasoning behind this new definition?**

The remote and rural definitions apply to the RUS BIP awards. Therefore, NTIA defers to RUS for a response to this question. Under the NTIA program, only grants will be awarded.

- 6. The nondiscrimination and interconnection mandates in the BTOP and BIP programs appear to exceed what is required in the statute, and what is on the books under current regulations at the FCC.**

- a. To the extent the nondiscrimination mandates exceed current law, how will NTIA and RUS avoid becoming de facto regulatory agencies?**

The Recovery Act requires NTIA to establish non-discrimination and interconnection obligations as contractual terms of awards under BTOP that, at a minimum, adhere to the principles contained in the FCC's Internet 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 technologically neutral and appropriate for the widest possible range of applications. In addition, 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.

Those who believe an awardee has failed to meet the non-discrimination obligations should first seek action at the FCC of any FCC rules implicated in the dispute. If the FCC chooses to take no action, those seeking recourse may notify RUS or NTIA in writing about the alleged failure to adhere to commitments of the award. Award recipients that fail to accept or comply with the any award terms, such as nondiscrimination obligations, may be considered in default or breach of their loan or grant agreements. RUS and NTIA may exercise all available remedies to cure the

default. These requirements are limited to BTOP/BIP Infrastructure awardees and are not industry-wide regulations.

- b. Is there a way to cordon off the more restrictive ARRA-related mandates from the rest of a provider's network? Or will ARRA participation amount to a company-wide mandate for all practical purposes?**

The nondiscrimination and interconnection requirements do not apply to the portions of the applicant's network that are not funded by BIP or BTOP.

The Honorable Joe Barton

- 1. The ARRA contemplated awarding grants to schools, libraries, and hospitals— either directly or in partnership with third parties. Some of these institutions are saying that you are applying to them conditions that are better suited to the grants for provision of commercial residential and business services, and that this is hindering their participation in the program. Do you plan to address this concern in subsequent rounds and, if so, how?**

Expanding and enhancing broadband capabilities for community anchor institutions such as schools, libraries, and health care facilities is an important priority for NTIA and the BTOP. Such organizations are eligible entities for BTOP funding through the Broadband Infrastructure, Public Computer Centers, and Sustainable Broadband Adoption pools of funding. Moreover, the NOFA encourages and gives consideration to any applications that benefit community anchor institutions. The requirement that Last Mile and Middle Mile Broadband Infrastructure projects serve unserved or underserved areas reflects NTIA policy, based on the intent of Congress, that projects provide the greatest benefits to the greatest population of users. Thus, NTIA has opted to focus on areas that have no broadband or inadequate broadband rather than supporting projects located in areas with more substantial broadband services. This requirement helps ensure that BTOP funds support broadband expansion projects for areas with the greatest need. All applications for BTOP grants, whether they are for Broadband Infrastructure, Public Computer Centers, or Sustainable Broadband Adoption, will be evaluated in part on their ability to provide greater access to broadband service. Before awarding grants, NTIA will take into consideration a number of factors, including the extent to which the project fulfills the Recovery Act purposes, and the Recovery Act places a high priority on serving anchor institutions. NTIA is confident that BTOP funds will be used to enhance broadband services for community anchor institutions consistent with Congressional directives in the Recovery Act.

The Honorable Cliff Stearns

- 1. You have received 2,200 applications. How many do you anticipate rejecting for being incomplete or ineligible?**

At this time, NTIA has not determined the number of applications that will be rejected for being incomplete or ineligible nor do we have an estimate of such rejections.

- 2. Many potential applicants have complained that the application process was too complicated, too inflexible, too time consuming, and too costly. How do you plan to fix that for the second round?**

Our goal is to ensure that the application process is as user-friendly as possible. We are well aware of some of the difficulties that applicants experienced and are working to ensure that improvements are made in the next round of funding. One of the reasons we initially designed the program with more than one funding round was so NTIA and RUS could learn from their experience and adjust those aspects of the process that need to be improved. NTIA and RUS currently plan to issue a second Request for Information (RFI) in October 2009 seeking public comment on those aspects of the program that could be enhanced to better meet the goals of the Recovery Act. The public comment and our assessments of the first round of applications will help NTIA and RUS develop the second Notice of Funds Availability (NOFA). NTIA will use the comments received from all interested parties as to how the program can be improved to determine what changes, if any, are appropriate.

- 3. It's important that we get as much "bang" for each stimulus "buck" as possible. This is, after all, taxpayer money. Will you commit to ranking applications based on how much they increase broadband availability per dollar spent and include on your web site the scores as well as progress reports on how each approved project is meeting those performance measures?**

As described in greater detail in the NOFA, BTOP applications will be evaluated based upon established criteria in four categories: Project Purpose; Project Benefits; Project Viability; and Project Budget and Sustainability. Within each category, there are additional criteria on which projects will be evaluated depending on the type of application. Among the Project Benefits that reviewers will evaluate for Last Mile BTOP Infrastructure projects is cost-effectiveness based on the ratio of the total cost of the project to households passed. Individual scores for each application will not be posted publicly in order to protect the integrity of the process. Additionally, BTOP grant recipients will be required to comply with a number of reporting requirements as a condition of their award. For example, awardees receiving BTOP infrastructure awards must report, on a quarterly basis, on the total number of households and businesses subscribing to broadband service; the number of households subscribing to new broadband service; and the number of households subscribing to broadband service that receive improved access. Infrastructure awardees will also be required to report on important benchmarks such as speeds, network management, availability, prices, and adoption resulting from BTOP funds. Recipients of Public Computer Center funding will be required to provide information on the uses of their facilities and benefits to their users; and Sustainable Broadband

Adoption recipients will report information their success in stimulating demand and adoption. Finally, in addition to these BTOP-specific reporting requirements, grant recipients will be required to comply with Recovery Act reporting requirements that include detailed information regarding the use of funds and jobs created.

- 4. Many well-established phone companies, such as Qwest and Windstream, say they chose not to participate in the program because of the cumbersome restrictions you created. This is particularly troubling because companies with existing networks and subscriber bases are likely to be more efficient in expanding broadband access, especially since they have existing networks, subscriber bases, and revenue streams upon which to expand. How do you plan to address this in the second round?**

Given that NTIA and RUS received almost 2,200 first round applications requesting nearly \$28 billion in funding for broadband projects, it does not appear that the application requirements were unduly cumbersome. In advance of the second round of funding, NTIA will seek comment from all interested parties as to how the program can be improved and will take those comments into account to determine what changes, if any, are appropriate.

- 5. The statute requires you to create a fully searchable database accessible free over the Internet that tracks all funding requests. Will it enable the public and industry to scrutinize precisely the service coverage of proposed projects, the claimed increase in broadband availability, the proposed fees assessed by the grant recipient for provision of the resulting service, and the viability of the business model? Will it allow such public scrutiny before the application is granted? Will it enable someone to follow the project's progress after a grant has been awarded?**

Section 6001(i)(5) of the Recovery Act directs NTIA to create a fully searchable database that contains at least a list of each entity that has applied for a grant, a description of each application, the status of each application, the name of each entity receiving funds, the purpose for which such entity is receiving such funds, each quarterly report submitted by the entity, and such other information sufficient to allow the public to understand and monitor grants awarded under the program. On September 9, 2009, RUS and NTIA posted a searchable database of all applications received during the first round. Members of the public are able to search the database for specific applications or select from a number of menu options to search the database by organization, keyword, project type, program, state, or by proposed project area. The database generates key information about a specific application, including the applicant name, contact information, project title, program selected (BIP or BTOP), proposed project area, project type (Last Mile, Middle Mile, Public Computer Center, Sustainable Broadband Adoption), the amount of the grant request, the status of the application, a brief description, and the executive summary if the applicant gave NTIA permission to post it. The public will be able to determine the service coverage area of the proposed project from the searchable database and it may be able to determine other important details about the project from the online description and the executive summary. The public will be able to track the progress of a project after a grant has been awarded through the quarterly reports that grant awardees are required to submit, which will be posted online.

- 6. Under the existing broadband loan program created in the Farm Bill, RUS does not typically disclose the assertions made by an applicant about existing broadband service in the community proposed to be served. Therefore, there has been no effective way to evaluate an applicant's claim that existing service in an area is inadequate. This can result in scarce resources going to areas that already have broadband. You appear to be addressing this inadequacy when it comes to the stimulus funding by promising to post information on-line and allowing challenges. How is the challenge process going to work?**

RUS and NTIA posted Public Notice Filings of the proposed funded service area(s) of each BIP and BTOP Infrastructure application at www.broadbandusa.gov on Monday, September 28, 2009. The Public Notice Filings provide existing service providers with a 30-day window to voluntarily submit information to RUS and NTIA regarding their existing service offerings to help inform the application review process. In filing a response to a Public Notice Filing, existing service providers will be required to submit specific information about their existing service offerings, including the number of households and businesses that have access to broadband service in the proposed funded service area and the price, speed, and number of subscribers for the broadband services offered. Information submitted will be treated as proprietary and confidential to the extent permitted under applicable law, except the name of each service provider submitting information and a summary of their response, which will be posted on www.broadbandusa.gov at the close of the 30-day comment period on October 28, 2009.

- 7. I understand you are soliciting volunteers to review grant applications. How many do you need? How many have you found? How are you selecting and training them? How are you ensuring that evaluations are objective and consistent across volunteers?**

NTIA has been working expeditiously to recruit and select highly qualified BTOP application reviewers. To date, over 1,300 individuals have submitted resumes. Reviewers are required to submit their current resume and sign a Conflict of Interest and Confidentiality Certification in order to be considered. Over 100 have been rejected due to a conflict of interest or lack of qualifications. Federal staff review and categorize the resumes to screen and document the level of expertise in over 30 skill sets, such as telecommunications/broadband technical knowledge, engineering experience, communications network budgeting and financial expertise, grants management, non-profit management, experience with anchor institutions (libraries, schools, health, public safety), and experience working with minority and vulnerable populations (Native American, unemployed, senior citizens, non-English speaking). Once reviewers are validated and categorized, they undergo training and are provided a comprehensive Reviewer Guidance manual as well as access to a help desk to answer email and phone inquiries. Reviewer panels are then assigned based on the expertise of the reviewer and the characteristics of the application (e.g., type of project) to ensure that each application is evaluated by reviewers with the most relevant expertise possible. Reviewers score applications based upon established criteria using the Reviewer Guidance materials. After they input their initial scores, they participate in a teleconference to discuss their analysis and reconcile any significant differences. NTIA observes and monitors panels to help ensure consistency to the greatest extent possible.

- 8. I can understand why we may not want applicants to know who the volunteers are reviewing their applications. On the other hand, industry has a right to know who is involved in deciding their fate and the public has a right to know who is involved in spending their money, especially since these people are making significant governmental decisions without having been elected or appointed. How do you plan to address this?**

Like most other grant programs, BTOP does not plan to publish a list of grant reviewers because we want to preserve the integrity of the process and not put reviewers in a position where they are contacted by third parties seeking to influence the selection process or gain non-public information. The practice of using independent expert reviewers is common in the federal grant making process, and we have used it with success at NTIA and the Commerce Department in the past. We take the integrity of our grant programs extremely seriously and reviewers must abide by strict conflict of interest and confidentiality requirements. This practice is especially valuable when grants applications of a scientific or technical nature are reviewed, due to the specialized expertise needed to carefully evaluate these applications. In addition, subjecting each grant application to review by multiple independent experts makes the selection process more rigorous and helps ensure that the projects with the most merit are funded. In any event, the reviewer scores are but one piece of information that NTIA will consider in making an award. In all cases, NTIA will conduct its own thorough reviews of the applications and retain the final authority to decide which applications to fund.

- 9. The stimulus legislation allows you to transfer to the FCC some of the \$4.7 billion that has been allocated to you. How much have you transferred or do you plan to transfer, and for what purposes?**

NTIA has transferred \$20,055,000 to the FCC to fund the costs of the National Broadband Plan. NTIA also anticipates entering into an agreement with the FCC to perform certain tasks necessary to the development of the national broadband map.

- 10. The stimulus legislation prohibits you from awarding grants for projects that would have otherwise been implemented without federal assistance. How will you determine whether a project would have been implemented without federal assistance?**

BTOP applicants must provide documentation that the project would not have been implemented during the grant period without federal grant assistance. As described in the NOFA, this documentation may consist of, but is not limited to, such items as a denial of funding from a public or private lending institution, denial of a funding request from RUS for a loan or loan/grant combination, a current fiscal year budget that shows the lack of available revenue options for funding the project, or a business case that demonstrates that the project would not be economically feasible without grant financing.

11. Applicants must provide at least 20 percent of the funding for their projects unless you determine that they have demonstrated financial need. What will applicants have to show for you to waive the 20 percent matching requirement?

BTOP awardees are required to provide matching funds of at least 20 percent toward the total eligible project cost. NTIA will provide up to 80 percent of total eligible project costs unless the applicant petitions NTIA for a waiver of the matching requirement and that waiver is granted. As described in the NOFA, in order to be considered for a waiver, an applicant should fully explain and document its inability to provide the required 20 percent share of the cost of its proposed project. It should submit complete financial documentation supporting its need for a waiver, including the applicant's assets, liabilities, operating expenses and revenues from any existing operations, and any other documents that will demonstrate financial need and sustainability, including such items as a denial of funding from a public or private lending institution. NTIA will evaluate the information provided in support of the petition and may increase the federal share if financial need is demonstrated.

12. If an applicant receives universal service funding, how will that factor into your decision whether to award the applicant a grant? What does it say about the sustainability of a project, the applicant's business model, and its ability to deliver a reliable and cost-effective expansion of broadband availability?

Section II.B.3 of the NOFA establishes the selection factors that NTIA staff will consider prior to making its grant recommendations to the Assistant Secretary. While universal service funding is not explicitly identified as a selection factor, NTIA staff must consider, among other things, whether a particular grant application is for a project that is sustainable, whether it would conflict with initiatives of other federal agencies, and to the extent practical, whether it avoids unjust enrichment.

13. A grant recipient must "substantially complete" its project within two years. What does it mean to "substantially complete" a project?

For BTOP, a project is considered "substantially complete" when the awardee has met 67 percent of the project milestones and received 67 percent of its award funds.

The Honorable John Shimkus

- 1. Under the 1st NOFA, the infrastructure projects received the majority of the funding, but at the same time, the rules were constructed such that public safety agencies and organizations were effectively precluded from being able to provision Next Generation 911. This is true even though the public interest rule clearly allows for commercial entity applications and, presumably, the promotion of competitive markets. Given sec 6001(b)(4) of ARRA, which states one of the purposes of BTOP was “to improve access to, and use of, broadband service by public safety agencies,” was that really your intent?**

Expanding and enhancing broadband capabilities for public safety entities and community anchor institutions is an important priority for NTIA and the BTOP. Such organizations are eligible entities for BTOP funding through the Broadband Infrastructure, Public Computer Centers, and Sustainable Broadband Adoption pools of funding. Moreover, the NOFA encourages and gives consideration to any applications that benefit public safety organizations. Before awarding grants, NTIA will take into consideration a number of factors, including the extent to which the project fulfills the Recovery Act purposes, which place a high priority on serving public safety needs. In advance of the second round of funding, NTIA will seek comment from all interested parties as to how the program can be improved and will take those comments into account to determine what changes, if any, are appropriate.

The Honorable Bart Stupak

1. **Given the limited funds available for the broadband infrastructure grants and loans, it's important that we invest in areas most in need of broadband, and do not overbuild in areas that do not qualify as "unserved" or "underserved." The witnesses have testified at the hearing that additional information about the applications will be posted online, and that this posting will trigger a public comment period. What specific additional information about the applications will be posted online? Will other members of the public also be able to comment? On what date will NTIA and RUS post the public notice describing how to submit information about whether a proposed funding service area is served, unserved or underserved?**

RUS and NTIA posted Public Notice Filings of the proposed funded service area(s) of each BIP and BTOP Infrastructure application at www.broadbandusa.gov on Monday, September 28, 2009. The Public Notice Filings show the applicant name and contact information; a map of the proposed funded service area; a list of the states covered by the proposed funded service area; and a breakdown of the communities served by population, households, and census blocks. The Public Notice Filings provide existing service providers with a 30-day window to submit information to RUS and NTIA regarding their existing service offerings, if they so choose.

2. **Will you reject an application if it is determined that an area is neither "unserved," "underserved," or is not a "rural area without sufficient access to broadband service to facilitate rural economic development?"**

The Notice of Funds Availability (NOFA) gives RUS and NTIA discretion to reject an application if it is determined that a proposed funded service area identified by an applicant does not meet the unserved or underserved definitions or does not qualify as a "rural" area without sufficient access to broadband service.

3. **How do you intend to verify conflicting data received from the applicant and from those who submit comments, including existing providers and the states?**

NTIA will review the submissions made by an existing service provider and compare them against the applicant's proposed funded service area designations and the methodology the applicant used to evaluate the unserved or underserved status of the area. In conducting this examination, NTIA will take necessary steps to verify the broadband service availability claims made by both the applicant and the existing service provider. This may include, but is not limited to, examining available data sources or talking directly to the existing service provider and applicant. NTIA will determine whether the existing service provider has overcome the presumption established by the applicant by taking into account several factors, including the granularity of the data provided by both the applicant and the existing service provider as measured against the unserved/underserved criteria. If the existing service provider fails to demonstrate with credible data that the proposed funded service area is actually served, then the applicant will be deemed to have satisfied its evidentiary showing.

September 25, 2009

The Honorable Jonathan S. Adelstein
Administrator, Rural Utilities Service
U.S. Department of Agriculture
Room 5135
1400 Independence Ave, SW
Washington, DC 20250

Dear Mr. Adelstein:

Thank you for appearing before the Subcommittee on Communications, Technology, and the Internet, on September 10, 2009, at the hearing entitled "Oversight of the American Recovery and Reinvestment Act: Broadband, Part 2".

Pursuant to the Committee's Rules, attached are written questions for the record directed to you from certain Members of the Committee. In preparing your answers, please address your response to the Member who submitted the questions and include the text of the question with your response, using separate pages for responses to each Member.

Please provide your responses by October 9, 2009, to Earley Green, Chief Clerk, in Room 2125 of the Rayburn House Office Building and via e-mail to Earley.Green@mail.house.gov. Please contact Earley Green or Jennifer Berenholz at (202) 225-2927 if you have any questions.

Sincerely,

Henry A. Waxman
Chairman

Attachment

The Honorable John D. Dingell

- 1. I am advised of concern that BTOP's and BIP's reliance on "advertised" speeds to prove an area is underserved overstates the actual or guaranteed service speed available in many areas. How do NTIA and RUS plan to account for this discrepancy when determining eligibility based on the level of service available to a particular area?**

RUS Response: All BIP and BTOP applicants are required to submit documentation to support that their proposed service territories are "unserved" or "underserved." To meet the definition of "underserved," the Notice of Funding Availability (NOFA) allows the applicant to use one of three definitional requirements. As you indicated, one of those requirements relies upon the "advertised speed" of broadband service in a given area. This requirement was established to ensure that limited financial resources are targeted to areas in greatest need of broadband service.

To validate this information, incumbent service providers will be given an opportunity to submit comments on an applicant's proposed service territory at www.broadbandusa.gov for 30 days. We believe these steps, including the government analysis of the data provided by all parties, will ensure limited federal resources reach areas of the greatest need.

- 2. It is my understanding there are concerns that the definition of "underserved" prohibits projects where even minimal broadband is generally available, regardless of whether advertised speeds are actually delivered, service is affordable, and infrastructure or speed of service is adequate. For future rounds, will NTIA and RUS consider applicants qualified for funding if just one of the options within the definition of "underserved" is met?**

RUS Response: To meet the definition of "underserved," the NOFA allows the applicant to use one of three definitional requirements. An applicant may indicate its eligibility based on more than one requirement, but is only required to meet one. The Agencies will be seeking comments on our second NOFA, which would include potential changes to our definitions, sometime in October.

- 3. It is my understanding that the program, as currently written, prioritizes the first two BTOP objectives (serving unserved and underserved areas) over the other three. Thus, community anchor and public safety institutions in areas not considered unserved or underserved are not eligible. For future rounds, will NTIA consider treating all five objectives equally?**

N/A for RUS

- 4. Service is largely not measured to the granularity of census blocks making it almost impossible for applicants to satisfy the coverage requirements. How will NTIA and RUS address this data shortage when reviewing applications, and do**

the agencies plan to require providers to make data demonstrating the percentages of broadband accessibility and subscribership publicly available at the census block level?

RUS Response: It was the intention of the agencies to require detailed information on broadband service at the granular level to aid in the national mapping of broadband service. While information is requested at the census blocks level, it is not the basis of eligibility. The applicant's proposed service area, on the other hand, is the basis for eligibility, which is to be evaluated against information submitted by existing service providers. The agency has no intention of requiring existing service providers to provide information at the census block level, and believes such a requirement would deter them from providing any information to the agencies regarding their service. We will, however, be seeking comments on potential changes to our second NOFA soon.

- 5. The American Recovery and Reinvestment Act (ARRA) created the Broadband Technology Opportunity Program (BTOP), a program to award grants to promote broadband investment and adoption. In creating the program, the ARRA gave equal priority to five different goals. One of those five goals was to promote the construction of broadband networks to "schools, libraries, medical and healthcare providers, community colleges and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband service by or through these organizations." (See Section 6001(b)(3)) However the first set of rules in the Notice of Funds Availability that was issued in July give a much higher priority to serving rural residential users and did not give equal priority to addressing the broadband needs of community anchor institutions. Will you make sure that the needs of schools, libraries and health care providers are given greater priority in future rounds of funding?**

N/A for RUS

- 6. The statutory language in the ARRA states the BTOP program should address the broadband needs of anchor institutions, such as schools, libraries and healthcare providers. The statutory language does NOT say that funding for these institutions should be limited to unserved or underserved areas. (The words "unserved" and "underserved" only apply to residential broadband networks). In drafting the ARRA, Congress decided that anchor institutions in ALL areas – urban, suburban and rural – should all be able to apply for funding because of the essential services they provide. But the NOFA rules link funding to anchor institutions to unserved/underserved areas, which prevented many libraries, health providers and schools from applying for broadband funding. Why did NTIA impose such a limitation on anchor institutions when the statutory language does not?**

N/A for RUS

7. **The Notice of Funds Availability (NOFA) that set out the application rules for the BTOP created two categories of applicants – Last Mile and Middle Mile. (Last Mile providers serve residential consumers, while Middle Mile applicants provide high-capacity broadband pipes into the community but do not serve users directly). However, applicants proposing to build networks to schools, libraries and healthcare providers do not fit into either category. They do not serve residential users, (so they do not fit the Last Mile category) but they do provide service to directly to institutional users (so they do not fit into the Middle Mile category). Have you considered creating a different category of rules that are better designed for these needs of these important community anchor institutions?**

N/A for RUS

8. **Libraries, health clinics and schools have a great need for high-capacity broadband pipes. These community institutions aggregate large numbers of people and computers who are all using the Internet at the same time. They use the Internet for essential services – finding jobs, obtaining medical information, taking classes on-line. These community anchor institutions cannot serve their constituents with a bare bones minimum broadband connection; they need a large broadband pipe of 100 Megabits per second or higher. How can the BTOP rules encourage the construction of large, high-capacity broadband pipes so that BTOP can address the needs of these institutions for high-capacity broadband pipes?**

N/A for RUS

9. **In the ARRA, Congress gave funding to RUS for rural areas and gave funding to NTIA to serve all of America. The NOFA rules, however, appear to skew ALL the funding to rural areas. Rural areas are certainly important, but inner city neighborhoods and economically depressed urban areas also need high-capacity broadband. Shouldn't the NTIA program provide funding to worthwhile projects to ALL areas of the U.S., not just in rural areas?**

N/A for RUS

10. **The NOFA sets a very low definition of broadband at 768 kilobits per second. This low-speed definition does not encourage the deployment of the kind of high-capacity broadband pipes that America needs for the future. Other nations are already deploying broadband technologies that bring 100 megabits per second, which is over 100 times faster than the NOFA definition of broadband. What can NTIA do in the next funding rounds to encourage America's broadband providers to build for the future and to enhance our economic competitiveness?**

RUS Response: The definition of broadband sets a base level of 768 kilobits per second for consideration through the BIP and BTOP programs. This definition is also consistent with the FCC. However, both USDA and Commerce fully support high speed broadband service to promote the economic development envisioned by the Recovery Act. To do so, both BIP and BTOP encourage higher broadband speeds through the scoring and evaluation process. This has proven successful in our initial review of applications. And while higher speeds are encouraged, the base level helps to ensure that remote, high-cost and unserved areas have an opportunity to compete for funds which will enhance America's ranking in broadband deployment.

The Honorable G.K. Butterfield

- 1. Mr. Adelstein, what are you doing to ensure that rural broadband funds actually go to rural areas?**

RUS Response: The ARRA requires that at least 75 percent of the proposed service area must be rural to receive BIP financing. This statutory requirement helps target funds to rural communities. In addition, the "point system" by which all applications are rated and ranked provides incentives to reach the most rural, unserved areas.

- 2. What specific steps are you taking to avoid the problems with the rural broadband program identified repeatedly by the USDA Inspector General, in particular that the program had "not maintained its focus on rural communities without preexisting service" and was instead being used to subsidize competition in suburban areas and in communities already served by one or more existing broadband providers?**

RUS Response: We appreciate and respect OIG's concerns with our existing Farm Bill broadband loan program. The Rural Utilities Service (RUS) published proposed regulation changes in 2007 to address concerns identified by the Agency, the Hill, our OIG and customers. Shortly thereafter, debate ensued on the 2008 Farm Bill, which codified several of the changes proposed by RUS. RUS has rewritten its proposed regulations based upon the statutory changes included in the Farm Bill. We expect to publish an interim final rule, with a request for comments, in the near future.

These regulations will contain a new definition of "rural" as defined by the Farm Bill. RUS has already included that definition into the ARRA program. It is also important to note that ARRA requires that only 75% of area proposed by an applicant must be "rural" to qualify for the BIP program. This will ensure that the BIP program primarily serves rural communities but does not discourage middle-mile projects that may be more economical if they need pass through a non-rural community or a project where underserved non-rural communities could also benefit from RUS financing.

With regard to the ARRA program, the definitions of "unserved" and "underserved" are intended to preclude both RUS and NTIA from overbuilding in areas that already have adequate broadband service. We believe these definitions, the requirements of the NOFA and our point scoring process will help to ensure that funds reach the neediest communities.

- 3. How do you intend to measure success of the BTOP and BIP programs? To me, the most important measure is: "How many people will have broadband available to them who couldn't get it before."**

RUS Response: There are many factors that will be used to determine the success of the BTOP and BIP programs. Certainly, the priority of connecting the unconnected is

a key measureable benefit. In addition, success is also measured short-term through jobs created in building these projects and long-term through economic and social benefits that will result. Our websites, www.broadbandusa.gov, and www.recovery.gov lay out the performance measures for BIP and BTOP and will track the success of these projects.

- 4. While Round 1 of the NOFA process is still ongoing, can you share any lessons you've learned that can be applied to Round 2? Do you plan to consider any changes in the NOFA for Round 2? If so, can you talk about areas where you might be considering a new and improved approach based on what you've learned?**

RUS Response: Both NTIA and RUS are still in the learning process as we review the 2200 applications received for Round 1. Our plan is to publish a Request For Information (RFI) seeking comments from the public on how we may improve the process for NOFA 2. As indicated at our Hearing, both Agencies are considering publishing only one more NOFA as opposed to the two additional NOFAs that had been previously discussed. This will allow for the obligation of funds more quickly and will permit us to provide a longer application window for applicants.

RUS will take what we learned in this first round to heart in developing our next round of funding. We are aware of concerns that have been raised regarding a wide range of issues. These include the definition of rural and remote areas; eligibility standards for unserved and underserved areas; scoring weights for various factors; and concerns regarding satellite service. Without speculating about specific changes, we will be guided by an evaluation of the experience and feedback from the first round of projects. We are prepared to make changes accordingly in a thoroughly collaborative effort with our partners at NTIA.

- 5. From the applications you've received, do you have an idea how many applied to build infrastructure to unserved areas? For RUS applications, do you have an idea about how many applied to serve "rural remote" vs. "rural, non-remote" areas?**

RUS Response: Over 1400 applications were received by NTIA and RUS for infrastructure projects. Applicants were provided the opportunity to draw their proposed service territory which could include unserved areas, underserved areas, or a combination of both.

For RUS's BIP program, a total of 383 electronic applications were filed for "rural remote" projects which includes 214 that sought only RUS's BIP program and an additional 169 projects which sought funding under RUS's BIP program funding or NTIA's BTOP program. For last mile "rural, non-remote," a total of 633 electronic applications were filed. This included 131 that only sought funding under RUS's BIP program and an additional 502 which sought funding under RUS's BIP or NTIA's

BTOP program.

- 6. I'm concerned about the term "remote" in the RUS NOFA. The BTOP and BIP programs have a grant-funded approach to broadband infrastructure in areas that are: rural and "remote," or b. not rural at all.**

RUS Response: RUS appreciates your comments and those shared by other Members of the Committee with regard to the definition of "remote." As you are aware, RUS currently administers several loan and grant programs for broadband deployment in rural areas. RUS has found that applicants for assistance to serve the most remote and unserved areas often cannot make a business case to support a loan product due to low population densities, low incomes, or particularly difficult terrain. For this reason, these remote unserved areas are eligible for full grant amounts, while non-remote applicants can apply for a 50-50 grant and loan combination or explain why they cannot support a loan component. This strategy allows us to serve remote areas while fulfilling our obligation to stretch taxpayer dollars as far as possible.

- 7. But if an area is rural and not "remote" (meaning at least 50 miles from any town of 20,000 or more), the grant can only be 50%, and the applicant is required to apply for a loan. Under this definition, "not remote" describes virtually everything east of the Mississippi. Can you explain the reasoning behind this new definition?**

RUS Response: RUS has the ability to make loans, grants, and loan/grant combinations under ARRA. NTIA's BTOP program has grant authority and can provide a grant only if the applicant can document that "but for" the NTIA grant, the project could not be built.

To best leverage taxpayer resources, the Agencies decided that all applications for a rural area should first seek BIP funds to determine whether they could afford a loan product. At the same time, applicants could elect to apply concurrently for the BTOP program in the event that they did not qualify for BIP funding or provided evidence of being unable to support a loan.

Once again, this approach is intended to identify whether a rural applicant could afford a loan product, which would reduce the cost of the program and target grants only to the neediest areas. If rural applicants cannot afford loan products, they can automatically be considered by the BTOP program for grants. Through this policy, the Agencies will be able to leverage resources, maximize the number of communities that can be assisted, help applicants and NTIA document compliance with the "but for" test, ensure that grant funds are used judiciously, and provide rural applicants with two funding opportunities.

- 8. The nondiscrimination and interconnection mandates in the BTOP and BIP programs appear to exceed what is required in the statute, and what is on the books under current regulations at the FCC.**

- a. **To the extent the nondiscrimination mandates exceed current law, how will NTIA and RUS avoid becoming de facto regulatory agencies?**
- b. **Is there a way to cordon off the more restrictive ARRA-related mandates from the rest of a provider's network? Or will ARRA participation amount to a company-wide mandate for all practical purposes?**

RUS Response: NTIA and RUS worked in consultation with the Federal Communications Commission (FCC) to establish non-discrimination and interconnection obligations as contractual terms of BTOP and BIP awards that, at a minimum, adhere to the principles contained in the FCC's 2005 broadband policy statement. The standards outlined in the NOFA allow for flexibility when network management requires differential treatment, such as in cases of illegal or harmful activities, or exclusivity for the provision of managed services such as telemedicine or public safety communications. NTIA and RUS believe these conditions will help facilitate widespread participation in the program by eligible entities while also ensuring that public funds support the goal of open and nondiscriminatory broadband networks. With regard to your specific questions:

- (a) The FCC is the regulatory agency for non-discrimination and interconnection obligations. These requirements will be part of the loan and/or grant agreement executed by the applicant to obtain funds. Both RUS and NTIA can enforce compliance with the terms of the loan and/or grant agreement; however, both Agencies fully intend to see the FCC continue to regulate these matters.
- (b) The ARRA-related requirements only apply to the loan and/or grant provided under the Recovery Act. These requirements do not apply to the rest of the provider's network.

The Honorable Cliff Stearns

- 1. You have received 2,200 applications. How many do you anticipate rejecting for being incomplete or ineligible?**

RUS Response: RUS and NTIA are currently reviewing applications. At this time, we do not yet have projections on how many applications may be rejected because they are incomplete or ineligible.

- 2. Many potential applicants have complained that the application process was too complicated, too inflexible, too time consuming, and too costly. How do you plan to fix that for the second round?**

RUS Response: The Agencies implemented a two-step application process under NOFA 1 to make the process less burdensome to the public. With that said, there are always ways to improve the process and both RUS and NTIA are currently evaluating alternatives for NOFA 2. We also plan to publish a Request for Information (RFI) seeking comments from the public.

- 3. It's important that we get as much "bang" for each stimulus "buck" as possible. This is, after all, taxpayer money. Will you commit to ranking applications based on how much they increase broadband availability per dollar spent and include on your web site the scores as well as progress reports on how each approved project is meeting those performance measures?**

RUS Response: The Agencies are committed to transparency and have demonstrated this through our broadbandusa.gov website. The website includes our NOFA, Frequently Asked Questions (FAQs), summaries of all 2,200 applications and maps of the proposed service areas of all applicants. We plan to continually update our website with progress reports on the BIP and BTOP programs. In addition, as required by ARRA, awardees must report quarterly on a host of performance measures on recovery.gov.

- 4. Many well-established phone companies, such as Qwest and Windstream, say they chose not to participate in the program because of cumbersome restrictions you created. This is particularly troubling because companies with existing networks and subscriber bases are likely to be more efficient in expanding broadband access, especially since they have existing networks, subscriber bases, and revenue streams upon which to expand. How do you plan to address this in the second round?**

RUS Response: We believe the overwhelming response of 2,200 applications seeking \$28 billion in funds clearly demonstrates that the NOFA was not excessively cumbersome. We regret that some established phone companies chose not to participate in this NOFA, and welcome the participation of the widest possible

number of applicants in the next round. All companies with concerns are encouraged to comment on the upcoming Request for Information.

- 5. The statute requires you to create a fully searchable database accessible free over the Internet that tracks all funding requests. Will it enable the public and industry to scrutinize precisely the service coverage of proposed projects, the claimed increase in broadband availability, the proposed fees assessed by the grant recipient for provision of the resulting service, and the viability of the business model? Will it allow such public scrutiny before the application is granted? Will it enable someone to follow the project's progress after a grant has been awarded?**

RUS Response: We fully support the transparency goals of President Obama and the enabling statute for the ARRA programs. Shortly after the closing date for applications, RUS and NTIA posted on our joint website (www.broadbandusa.gov) a searchable database of all applications filed under NOFA 1. On September 28, 2009, both Agencies posted the proposed service territories of all electronic application applications and provided a 30-day comment period for incumbent providers to comment on whether these proposed service areas are served, underserved or underserved. The Agencies will continue to update www.broadbandusa.gov with its progress in delivering broadband ARRA funds. In addition, successful loan, grant and loan/grant combination awardees will be submitting quarterly progress report through www.recovery.gov so that the public and Agencies can track a project's progress.

- 6. Under the existing broadband loan program created in the Farm Bill, RUS does not typically disclose the assertions made by an applicant about existing broadband service in the community proposed to be served. Therefore, there has been no effective way to evaluate an applicant's claim that existing service in an area is inadequate. This can result in scarce resources going to areas that already have broadband. You appear to be addressing this inadequacy when it comes to the stimulus funding by promising to post information on-line and allowing challenges. How is the challenge process going to work? Administrator Adelstein, are you going to extend this type of transparency and challenge process to the broadband loan program created under the Farm Bill?**

RUS Response: Prior to the 2008 Farm Bill, RUS did not disclose an applicant's assertion about existing broadband service in a proposed community; however, the applicant has always been required to post public notice of intended service (and provide evidence that such notice was given) requesting any existing service providers to provide information to RUS regarding their service. Moreover, the agency has used field representatives to check the applicant's assertions on service, in the proposed communities. With the 2008 Farm Bill, RUS began building an on-line mapping tool so that the Agency could post the proposed service territories of applicants and allow both the public and incumbent service providers to comment on whether these areas are

served, unserved or underserved. RUS and NTIA were fortunate that USDA's mapping tool was already near completion when the ARRA was enacted. This tool is being used by both Agencies for the ARRA broadband program and will continue to be used by RUS for its existing Farm Bill broadband program. Instructions on the comment process are located on the www.broadbandusa.gov website. The ultimate decision of whether to proceed with funding of a project will continue to rest with RUS for the Farm Bill program and both RUS and NTIA for the ARRA broadband program.

The Honorable Bart Stupak

1. **Given the limited funds available for the broadband infrastructure grants and loans, it's important that we invest in areas most in need of broadband, and do not overbuild in areas that do not qualify as "unserved" or "underserved." The witnesses have testified at the hearing that additional information about the applications will be posted online, and that this posting will trigger a public comment period. What specific additional information about the applications will be posted online? Will other members of the public also be able to comment? On what date will NTIA and RUS post the public notice describing how to submit information about whether a proposed funding service area is served, unserved or underserved?**

RUS Response: The proposed service areas maps for electronically submitted BIP and BTOP infrastructure applications were posted to www.broadbandusa.gov on September 28, 2009. Instructions on how the public and incumbent service providers can comment on the maps was also posted on our joint website. Comments are due within 30 days of posting of the map.

2. **Will you reject an application if it is determined that an area is neither "unserved," "underserved," or is not a "rural area without sufficient access to broadband service to facilitate rural economic development?"**

RUS Response: All applications for BIP infrastructure loans must be in an area that is at least 75 percent rural. Within the 75 percent rural area, the applicant must serve an area that is unserved or underserved. The definitions of "rural," "unserved," and "underserved" and the process by which RUS will determine whether the applicant meets these requirements are contained in the Notice of Funding Availability (NOFA) published in the [Federal Register](http://www.federalregister.gov) on July 9, 2009 and in our joint www.broadbandusa.gov website.

3. **How do you intend to verify conflicting data received from the applicant and from those who submit comments, including existing providers and the states?**

RUS Response: Agency staff will review all public comments affecting BIP and BTOP applications. In cases where the commenter's documentation does not adequately address whether a proposed service territory is unserved or underserved, the Agencies will make the final determination. For the BIP program, USDA will

have its Field Staff provide findings to headquarters in Washington, D.C. to assist with a final resolution.

