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H.R. 1343, A BILL TO CLARIFY NTIA AND RUS AUTHORITY TO RETURN RECLAIMED STIMULUS FUNDS TO THE U.S. TREASURY

HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

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H.R. 1343, A BILL TO CLARIFY NTIA AND RUS AUTHORITY TO RETURN RECLAIMED STIMULUS FUNDS TO THE U.S. TREASURY

FRIDAY, APRIL 1, 2011

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

The subcommittee met, pursuant to call, at 10:32 a.m., in room 2322 of the Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Members present: Representatives Walden, Terry, Blackburn, Bass, Latta, Guthrie, Eshoo, Doyle, Matsui, Christensen, Barrow, Towns and Waxman (ex officio).

Staff present: Neil Fried, Chief Counsel, Communications and Technology; Brian McCullough, Senior Professional Staff Member, Commerce, Manufacturing, and Trade; Ray Baum, Senior Policy Advisor/Director of Coalitions; Paul Cancienne, Policy Coordinator, Commerce, Manufacturing, and Trade; Peter Kielty, Senior Legislative Analyst; Debbee Keller, Press Secretary; Katie Novaria, Legislative Clerk; David Redl, Counsel, Communications and Technology; Jim Barnette, General Counsel; Mike Bloomquist, Deputy General Counsel; Phil Barnett, Democrat Staff Director; Shawn Chang, Democratic Counsel; Jeff Cohen, FCC Detailee; Sarah Fisher, Democratic Policy Analyst; and Roger Sherman, Democratic Chief Counsel, Communications and Technology.

Mr. WALDEN. Good morning. The Subcommittee on Communications and Technology will come to order.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Welcome. Today is the subcommittee's second hearing concerning the broadband stimulus programs administered by NTIA and the Rural Utilities Service. We will be discussing oversight of the programs and legislation to address risks and ambiguities highlighted by the Inspectors General at our last hearing. We are pleased to have Assistant Secretary Strickling here and Administrator Adelstein, and I want to thank both of you and your staffs for working with us on this legislation, and we appreciate your testimony, your comments and your counsel.

The NTIA and RUS have awarded $7 billion covering 553 awards in a very short period of time as required by the law. The dust is still settling, but as we heard during the February hearing, it is

logical to expect that issues of fraud, waste and abuse will start popping up now that the money is beginning to flow.

So far, award recipients have spent nearly 5 percent of the funds. Approximately a dozen recipients have decided not to pursue their projects and returned their awards worth $70 million. Some have cited the economy and their inability to fulfill their obligations if they moved forward. With 95 percent of the funding yet to be disbursed, the question is how many programs will run into hiccups down the road.

As stewards of the taxpayers' money, I know we all want to prevent misspent funds and fraud. So when the Inspectors General, Comptroller General or Administrators identify issues, it is important they are able to quickly determine whether there is a problem and take appropriate action. It is also important that Congress be apprised of such developments in a timely fashion and be made aware of the decisions the Administrators make.

While we are not seeking to change the programs, we will continue to ask the important questions, including what criteria are used to determine when it is time to terminate an award. Out of fairness to the applicants who were denied stimulus money, the successful applicants that are abiding by the terms of their awards, and most importantly, the American taxpayers, if an award recipient does not comply with the terms of the award, it should be terminated.

I believe the legislation we are considering accomplishes these goals. Working with the minority and stakeholders, we have improved the language and addressed a number of concerns. I am sure if it needs further refinement, and we are aware of some of those suggestions, we plan to work with the minority and all of you to get it right and fix those things as we get up to the full committee.

The legislation clarifies the Administrators' responsibility to deobligate funds when there is cause to terminate the award. Additionally, it institutes a new reporting requirement that will keep Congress apprised of relevant developments regarding awards.

I thank Mr. Bass for taking leadership on this effort, of this modest but necessary legislation. I know this is not earth shattering, OK? We are going to move on to earth shattering in the future. This is a housekeeping effort we are trying to get done.

And on that note, I would also like to suggest that given the schedule today and a number of votes that are going to occur on the floor, we probably only have about 40, 45 minutes to work through this. My goal would be, with the support of the subcommittee, is to move through the testimony as rapidly as possible, and if we can get into the markup on the subcommittee, recognizing I think there are only a few minor things we need to work out between here and full committee, which we could do, so that we pass this on to the full committee.

[The prepared statement of Mr. Walden follows:]

PREPARED STATEMENT OF HON. GREG WALDEN

Welcome. Today is the Subcommittee's second hearing concerning the broadband stimulus programs administered by NTIA and the Rural Utility Service. We will be discussing oversight of the programs and legislation to address risks and ambigu-

ities highlighted by the Inspectors General at our last hearing. We are pleased to have Assistant Secretary Stickling and Administrator Adelstein with us here today, and I want to thank them and their staffs for their help with the bill.

The NTIA and RUS have awarded $7 billion covering 533 awards in a very short time. The dust is still settling, but as we heard during the February hearing, it is logical to expect that issues of fraud, waste and abuse will start popping up now that the money is beginning to flow.

So far, award recipients have spent approximately 5 percent of the funds. Approximately a dozen recipients have decided not to pursue their projects and returned their awards worth approximately $70 million. Some have cited the economy and their inability to fulfill their obligations if they moved forward. With 95 percent of the funding yet to be disbursed, the question is how many programs will run into hiccups down the road.

As stewards of the taxpayers' money, I know we all want to prevent misspent funds and fraud. So when the Inspectors General, Comptroller General, or Administrators identify issues, it is important they are able to quickly determine whether there is a problem and take appropriate action. It is also important Congress be apprised of such developments in a timely fashion and be made aware of the decisions the Administrators make.

While we are not seeking to change the programs, we will continue to ask the important questions, including what criteria is used to determine when it's time to terminate an award. Out of fairness to the applicants who were denied stimulus money, the successful applicants that are abiding by the terms of their awards, and most importantly the taxpayer, if an award recipient doesn't comply with the terms of the award, it should be terminated.

I believe the legislation we are considering accomplishes these goals. Working with the minority and all stakeholders, we have improved the language and addressed a number of concerns. I am sure if it needs further refinement we can address any remaining concerns before Full Committee consideration.

The legislation clarifies the Administrators' responsibility to deobligate funds when there is cause to terminate the award. Additionally, it institutes a new reporting requirement that will keep Congress apprised of relevant developments regarding awards.

I thank Mr. Bass for taking leadership of this modest but necessary legislation. I hope we can work expeditiously in a bipartisan manner to move this out of Committee and turn to a number of legislative issues that will consume more of our time and resources.

Mr. WALDEN. With that, I would recognize my friend, the ranking member from California, Ms. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman, and good morning to you, to all the members of the committee and to our guests. I want to extend a warm welcome to Assistant Secretary Strickling and to Administrator Adelstein, whom we have the pleasure of working together for a number of years where he served with distinction at the FCC.

I am going to ask that my——

Mr. WALDEN. Without objection.

Ms. ESHOO (continuing). Magnificent opening statement be——

Mr. WALDEN. Extraordinary.

Ms. ESHOO (continuing). Inserted into the record in the interest of time, and we want to work with you, Mr. Chairman, because I think that what I raised earlier about tweaking the legislation because there is a sensitivity about the OIG and DOJ. We do not want to pour cold water over cases that have the potential for being prosecuted relative to fraud or abuse.

I just want to say that this will be the second time that I am voting on the same thing, and so you are right, this is not earth-shattering. In fact, I really do with all due respect think it is a waste of time. Effective oversight is very important in terms of the program and I welcome that.

So with that, I am going to place my comments in the record, and also ask that the letter from the NATOA, the National Association of Telecommunications Officers and Advisors, be placed in the record. Thank you.

[The prepared statement of Ms. Eshoo follows:]

OFFICE OF REPRESENTATIVE ANNA G. ESHOO (CA-14)

For Immediate Release
Friday, April 01, 2011
http://eshoo.house.gov

Contact: Ben Bradford
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Statement of Representative Anna G. Eshoo
Subcommittee on Communications and Technology
House Committee on Energy and Commerce
"Re: H.R. ___, a Bill to Clarify NTIA and RUS Authority to Return
Reclaimed Stimulus Funds to the U.S. Treasury"

Remarks as Prepared

Good morning Mr. Chairman and thank you Assistant Secretary Strickling and Administrator Adelstein for being with us today.

Our Subcommittee has the responsibility to ensure the BTOP and BIP programs run efficiently and meet the goals set out in the Recovery Act. While it's essential for us to conduct effective oversight, we will once again waste time discussing legislation that effectively does nothing.

Under current law, unused or reclaimed broadband stimulus funds are returned to the Treasury in a timely manner. This was stipulated in the Dodd-Frank Wall Street Reform and Consumer Protection Act, and in practice has occurred on several recent occasions when grantees determined they could no longer carry out their project as originally intended.

More than two years ago, many of my colleagues and I fought for Recovery Act funding to expand broadband deployment. We did so because the Internet is a powerful economic engine that has and will continue to create millions of new jobs, while benefitting all aspects of the U.S. economy, from small business owners to schools, libraries and public health facilities across America.

Today, we're seeing that goal realized as grant and loan recipients break ground on infrastructure projects, computer centers and hundreds of other projects that expand broadband deployment and adoption. In Steele, North Dakota, for example, BIP funding for BEK Communications is helping to reach more than 600 unserved or underserved households and 2 anchor institutions.

This support, provided through a grant/loan/cash combination, will bring fiber-based broadband to rural communities that have traditionally had limited or no access to high-speed Internet. In just a few months, BEK has already seen an impressive customer take rate of 80 percent for its Internet service among homes passed.

Similar stories of success can be found across the country as consumers and businesses begin taking advantage of their newly found access to broadband. Strong oversight from NTIA and RUS ensures projects like these remain on track and are in compliance with all program requirements and rules. When a project fails to meet these basic tests or is engaged in wasteful

or fraudulent spending, both Agencies must act expeditiously and they can already do so under existing law.

I hope today's testimony will shed light on whether any additional measures are necessary to ensure the $7.2 billion in broadband stimulus is distributed in a timely manner and is meeting its intended purpose: job creation and economic growth for all Americans.

Mr. WALDEN. Without objection.
[The information follows:]

March 31, 2011

The Honorable Greg Walden
Chair
House Subcommittee on Communications and Technology
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Anna Eshoo
Ranking Member
House Subcommittee on Communications and Technology
2125 Rayburn House Office Building
Washington, DC 20515

Re: HR ___, a Bill to Clarify NTIA and RUS Authority to Return Reclaimed Stimulus Funds to the U.S. Treasury

Dear Chairman Walden and Ranking Member Eshoo:

The National Association of Telecommunications Officers and Advisors ("NATOA") promotes community interests in communications. A national trade association based in Alexandria, Virginia, NATOA's membership includes local government officials and staff members from across the country whose responsibility is to promote and serve the communications needs and interests of the nation's local governments. NATOA often works in partnership with the National Association of Counties ("NACo"), the National League of Cities ("NLC"), and the United States Conference of Mayors ("USCM") to encourage broadband deployment and adoption in all parts of our country.

NATOA is particularly pleased to support the Broadband Technology Opportunities Program ("BTOP"). Indeed, many BTOP grant recipients are NATOA members. Administered by the National Telecommunications and Information Administration ("NTIA"), the $3.9 billion BTOP project will, among other things, support the deployment of broadband infrastructure in unserved and underserved areas and encourage sustainable adoption of broadband service.

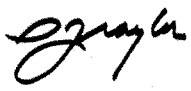
For example, in Clackamas County, OR, the Clackamas Broadband Innovation Initiative will bring affordable high-speed broadband to 156 community anchor institutions, such as schools and libraries, countywide. The 180-mile network of new fiber optic cable will connect at least 90 schools and two community colleges directly to the project's middle mile network, which will enable distance learning and other educational services they are not currently able to utilize. In addition, the network will make available to the private sector "dark fiber" for leasing to lower the barriers to entry and enable private companies to affordably provide broadband service to unserved and underserved Americans.

The One Maryland Broadband Network, a public-private consortium, will bring affordable middle-mile broadband to each of Maryland's 24 counties. Hundreds of miles of new fiber will connect over 1,000 community anchor institutions, provide connections to approximately 260 public safety facilities, and improve the delivery of government, healthcare, and educational services. As in Clackamas County, the One Maryland network will enable private Internet Service Providers to affordably reach unserved and underserved areas of the state such that they can invest in "last mile" connections to homes and businesses that are not currently served by broadband.

These are only two of the many BTOP projects that will be built over a three-year period across the country that will bring economic growth, improved educational opportunities, and more effective and efficient government services for all our citizens. But because these projects are funded through taxpayer dollars, proper oversight is a must to ensure the projects remain on schedule and steps must be implemented to prevent waste, fraud, and abuse. As the level of government closest to the people they serve, local governments well understand the need to be transparent and accountable and to ensure that taxpayer dollars are spent responsibly, especially during these tough economic times.

While not taking a formal position on the legislation being drafted by this Subcommittee, NATOA supports all efforts to ensure that the BTOP projects are successfully completed. With appropriate oversight, and requisite funding, NATOA is confident the BTOP program will be a resounding success and a shining example of how smart government funding can enable expanded broadband services and private sector investment.

Sincerely,



Steve Traylor
Executive Director/General Counsel
NATOA
straylor@natoa.org

Mr. WALDEN. Thank you. Does anyone else want to make opening comments? Mr. Waxman.

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

Mr. WAXMAN. Thank you very much, for holding this hearing. It is an important area for us to look at, and I want to welcome Assistant Secretary Strickling and Administrator Adelstein back to the committee. We appreciate the extraordinary efforts that you and your colleagues have put into establishing these programs and I look forward to your testimony.

When Congress passed the landmark Recovery Act, we built oversight into the very structure of these programs. We knew it was imperative to provide the Departments of Commerce and Agriculture with the tools necessary to conduct vigorous oversight of approximately $7 billion in broadband spending, and the Commerce Department Inspector General was allocated $16 million and the Agriculture Department Inspector General $22.5 million to oversee and audit it. With billions of dollars invested in hundreds of broadband projects throughout the nation, Congress must not skimp on oversight funding.

The agencies tell us that they have adequate resources to conduct effective oversight. However, Congress still needs to be vigilant, and if unanticipated oversight challenges emerge, we have to be ready to ensure that agencies and their independent IGs have adequate resources to oversee these projects.

It is inevitable in a program of this size and scope that some of the projects funded will not work out as anticipated. In fact, a handful of grant recipients have already withdrawn from the programs. This money was promptly deposited in the U.S. Treasury, as it should be.

Today we will consider a legislative proposal that directs NTIA and RUS to do what they are already doing: returning these deobligated funds to the Treasury. I don't understand why we are enacting this duplicative legislation, but I am not opposed to the legislation. What I like most about the legislation before us today is not the substance, which I think is probably unnecessary, but the process. Chairman Walden has reached out to the Democrats to reach a bipartisan consensus on the bill. Republican staff has included Democratic staff in discussions about this measure and has sought our input and suggestions, and I appreciate this effort and hope it is a harbinger of how we will approach future proposals.

As we consider this bill, we must be careful not to adopt legislation that inadvertently complicates the ability of the agencies to oversee these programs effectively and make sure we do not encourage defunding projects without good cause, especially now that obligated money has been translated into real projects with real jobs in every State.

I want to yield the balance of my time to Mr. Doyle from Pennsylvania, and I am looking forward to the testimony.

Mr. DOYLE. Good morning. Thank you, Mr. Chairman, for holding this hearing, and thank you, Mr. Waxman for yielding. Happy April Fool's Day to you both.

I agree with the need for today's hearing, and I believe we should continue our oversight of the parts of the Recovery Act that will help countless people throughout the country get online. But that being said, remember the TV show "Seinfeld"? If "Seinfeld" was a show about nothing, today's markup is about very little.

While the Senate is about to mark up spectrum legislation, we are marking up a bill that is already law. I don't oppose the bill, but it seems to me that it is the legislative version of the J. Peterman catalog. It is pages of language about things we don't really need. After all, the Administration is already returning canceled grants to the Treasury for deficit reduction. So we really don't need this bill, but as Jerry would say, not that there is anything wrong with that.

I yield back.

Mr. WAXMAN. Thank you, Mr. Doyle, and Mr. Chairman, we look forward to working with you even though we hear some criticism, but I think that is important that we continue to see where we can be together.

Mr. WALDEN. The gentleman returns the balance of his time, and we love you too.

Ms. ESHOO. Let us not get carried away.

Mr. WALDEN. All right. I withdraw that statement.

Now we would like to turn to Mr. Strickling. Before I do that, though, for our members who just came in, just so you kind of know the lay of the land here, we probably only have until about 11:15 and then we are going to have a series of votes. I would prefer to go ahead and see if we can't get in and out of the markup before we have to go vote. Otherwise we may have to come back after the votes, which could be in the afternoon. So with that, Mr. Strickling, thank you for being here, thanks for your testimony.

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

STATEMENT OF LAWRENCE E. STRICKLING

Mr. STRICKLING. Thank you, Chairman Walden, and Ranking Member Eshoo, Vice Chairman Terry, members of the subcommittee, thanks to all of you for the opportunity to testify today on behalf of NTIA concerning the administration of our grant programs.

I also would like to take this opportunity to acknowledge and commend our Secretary, Secretary Locke who, as you know, hopefully will be moving on to China but he has played a very important role in the oversight of this program, and I want to recognize my colleague, Administrator Adelstein. I guess this starts our 2011 broadband tour. It was quite a successful tour back in 2010 as we went to I think seven different committees to testify about this program.

I welcome the opportunity to comment on the draft legislation that is the topic of today's hearing. Before I speak to the draft bill,

I would like to provide a quick update on the status of our programs.

Since we completed our grant awards on time last September, NTIA has been focused on providing vigorous oversight and high-quality technical assistance to grantees to ensure that they complete their projects on schedule, on budget and that they deliver the promised benefits to the communities that they serve, and I am pleased to report that our projects have already made significant progress in achieving those goals. In the last quarter of 2010, our grant recipients reporting funding approximately 1,000 jobs. To date, they have installed more than 4,000 computers for public use. They have provided over 150,000 hours of broadband training to date to over 65,000 people. In Michigan, North Carolina, Maine and elsewhere, our infrastructure projects have broken ground and have begun building fiber and wireless facilities.

Consistent with our philosophy to focus on middle-middle projects to prime the pump for private investment to serve homes and businesses, I am also quite pleased to report that our grantees have already entered into about 90 interconnection agreements which will allow the existing incumbents and new entrants to serve last-mile customers.

I would also like to let you know that on February 17th of this year, we in collaboration with the FCC unveiled the National Broadband Map. This is the first public searchable nationwide map of consumer broadband Internet availability in the United States. The map is the most granular and transparent data set of broadband availability that has ever been published, and while we can draw many conclusions from the map, there are two I want to emphasize this morning.

First, that our data shows that 5 to 10 percent of Americans do not have access to a level of broadband service necessary to perform a basic set of Internet applications as defined by the FCC, and second, the map proves what we knew during our grant review process, which is that anchor institutions are greatly underserved across our country. Two-thirds of the schools that were surveyed subscribe to services slower than 25 megabits per second and 96 percent of libraries that were surveyed subscribe at speeds slower than 25 megabits per second.

Now, protecting the federal funds we are spending is of paramount importance to us. As the members of the subcommittee are well aware, achieving these objectives is challenging and requires us to perform diligent oversight and provide technical assistance to our awardees. Our large and complex grant program continues to raise novel issues, some of which have potential to impact the progress of our projects, and let me just give you one example. Before our infrastructure grantees can begin construction, most of them have to complete and submit an environmental and historic preservation study in compliance with the National Environmental Policy Act, the National Historic Preservation Act and the Endangered Species Act. These processes can take significant time and resources, and we have worked very hard to find win-win solutions to enable our projects to move forward in full compliance with these important laws, and we are committed to working with our

grantees to complete these environmental requirements as rapidly and as thoroughly as possible.

To solve these and other issues yet maintain the rigorous implementation schedule demanded of these projects, we have put into action a program-wide oversight strategy to mitigate waste, fraud and abuse, to ensure compliance with award conditions and to monitor the progress of each project toward its timely completion. The technical assistance that we have conducted to date includes holding multi-day grantee conferences on key implementation topics. We have hosted over 40 webinars and drop-in conference calls to provide guidance on key topics, and by the end of June we will have performed site inspections for 72 of our projects, representing about half of the total grant pool. The goal of our program is to identify issues early in the process and to resolve them as promptly as we can.

Earlier this week, I notified Congress that we have had two grantees terminate their awards recently, and while I am disappointed that these two projects, one in Indiana, the other in Wisconsin, will not be built, I do believe that our diligent oversight led to the termination of these projects early on with only a minimal expenditure of federal taxpayer dollars. As required by law, we have already returned the full $14 million of the Indiana grant to the Treasury, and we will promptly nearly all of the $23 million Wisconsin grant upon completion of an accounting with the State.

So given that experience, let me turn to the draft legislation. We support the ultimate goals of the bill, which are to protect against waste, fraud and abuse and to ensure that unused or reclaimed funds are promptly returned to the Treasury, and while we do not believe that the additional steps are needed to ensure adequate protection of taxpayer funds, and I think our action in response to the Wisconsin and Indiana terminations prove that, we have no objection if Congress believes that the reporting requirements contained in the bill, in addition to the other mechanisms already in place, would further protect taxpayers. We do have some concerns, however, about the specific wording of the requirement to deobligate and return funds to the Treasury, and we look forward to working with the subcommittee to clarify this language.

And allow me to close with some comments about our relationship with the Inspector General. I am extremely grateful for the ongoing efforts of the IG in helping to oversee our grant programs. Throughout the life of the program, the IG has identified additional steps we can take to oversee our programs more effectively, and we have worked hard to implement their recommendations as thoroughly as possible. Now that we are in the oversight phase of our program, we have had discussions with our IG as to how we should handle complaints we receive about our projects. We haven't received many, and in many respects the complaints simply reflect policy disagreements and do not raise serious allegations of waste, fraud and abuse, but nonetheless, the Inspector General has told me we can do better, particularly in developing a more structured process to review these complaints, and to that end, we will be working with the IG to improve our performance in this area just as we have with every other recommendation the IG has made to us over the course of the program.

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

[The prepared statement of Mr. Strickling follows:]

Testimony of
The Honorable Lawrence E. Strickling
Assistant Secretary for Communications and Information
National Telecommunications and Information Administration
United States Department of Commerce

Before the
Committee on Energy and Commerce
Subcommittee on Communications and Technology
United States House of Representatives

H.R. _____, a Bill to Clarify NTIA and RUS Authority to Return Reclaimed Stimulus Funds to the U.S. Treasury

April 1, 2011

I. Introduction

Chairman Walden, Ranking Member Eshoo, Vice Chairman Terry, and Members of the Subcommittee, thank you for your invitation to testify on behalf of the National Telecommunications and Information Administration (NTIA) regarding the implementation of the Broadband Technology Opportunities Program (BTOP) and State Broadband Data and Development (SBDD) Program. I am very pleased to highlight NTIA's progress in achieving President Obama's vision of a nationwide, 21st century communications infrastructure, our efforts to expand broadband access and adoption in the United States, and our success in launching the National Broadband Map. I would like to commend Secretary Locke for his strong leadership and support in advancing this important program, and also recognize our colleagues at the U.S. Department of Agriculture, particularly Administrator Jonathan Adelstein, for their collaboration as we have worked to fulfill the President's broadband vision.

As the President made clear in his State of the Union address, broadband is a key component of the Administration's plan for winning the future, and NTIA plays an important role in that mission. Broadband serves as a key engine of economic growth and opportunity. In

the near-term, investments in broadband infrastructure will create jobs by supporting the installation and upgrade of fiber-optic networks and other high-tech components. Public computer centers will offer critical job and educational training as well as Internet access for those who lack access or cannot afford this technology at home. Sustainable broadband adoption efforts will help low-income and other vulnerable populations learn about the benefits of broadband technologies and become proficient in computer-related skills. In the long-term, expanding broadband access and adoption will facilitate small business growth and innovation, enhance health care delivery, promote energy independence, improve public safety, and lay a foundation for long-term economic development in communities throughout the United States.

In awarding grants, NTIA sought to fulfill all of the purposes of the Recovery Act by addressing unmet broadband needs in unserved and underserved areas of the nation as well as improving access for critical anchor institutions – schools, libraries, hospitals – and public safety agencies. NTIA found that the strongest, most sustainable proposals were those where communities took a comprehensive approach in defining their critical broadband needs. These projects proposed to invest primarily in "middle mile" broadband infrastructure – the vital link between the national Internet backbone and the local broadband connections to homes and small businesses – as well as to provide community anchor institutions with new or improved Internet connections at significantly higher speeds. Community anchor institutions—such as schools, libraries, hospitals, and public safety facilities—generally demand much faster speeds than typical household consumers. In many communities, however, such capabilities were previously unattainable.

Adequate middle mile infrastructure is not only essential for anchor institutions to fulfill their missions, but is also a critical enabler of "last mile" broadband service to homes and local

businesses. Investments in middle mile facilities have the potential to catalyze millions of dollars in additional private sector investment, as local broadband providers utilize the new BTOP-funded infrastructure to expand or enhance their own Internet service for households and businesses throughout America. The potential of the infrastructure projects we funded to expand the nation's broadband capabilities significantly is on its way to becoming a reality.

After a rigorous and highly-competitive application process, NTIA selected over 230 significant investments from the 2,800 BTOP applications we received that requested over $36 billion in funding. Under the SBDD program, NTIA also funded 56 states and territories to collect broadband map information through 2015 and to build their own broadband capabilities such as state and local task forces to address specific challenges to broadband deployment and availability, technical assistance to help anchor institutions and small businesses use broadband more effectively, and research to identify barriers to adoption. I am extremely pleased with our strong portfolio of projects. They will bring critical benefits to the American people, including fostering economic growth and job creation, and increasing broadband access and adoption.[1]

II. Progress in Achieving Program Objectives

Since completing the grant awards last September, NTIA has been focused on providing vigorous oversight and high-quality technical assistance to grantees to ensure they complete their projects on schedule, within budget, and deliver the promised benefits to the communities they serve. I am pleased to report that BTOP projects have already made significant progress in achieving these goals. For example:

- In Michigan, Merit Network has broken ground on its project that will deploy 2,287 miles of open-access, advanced fiber-optic network through rural and underserved communities

[1] More detailed information regarding BTOP-funded projects can be found in the BTOP Grant Overview Report available at http://www.ntia.doc.gov/reports/2010/NTIA_Report_on_BTOP_12142010.pdf and at http://www2.ntia.doc.gov/.

in Michigan's Lower and Upper Peninsulas. The $130 million REACH-3MC project intends to provide access for 105 community anchor institutions and spur deployment of affordable broadband to households and businesses that lack adequate service options in 52 counties. Currently, the grantee is able to provide 1 gigabit per second (Gbps) service in only 30 counties in Michigan (36 percent). With its BTOP grants, Merit predicts it will be able to offer 1 Gbps or greater service to 77 of 83 counties, or 93 percent of the state.

- The OneCommunity "Connect Your Community" project has provided computer training to more than 3,000 citizens across Cleveland and Akron, Ohio; Detroit, Michigan; Lexington, Kentucky; and Bradenton, Florida. Aimed at expanding broadband adoption in low-income communities, the program teaches participants computer basics, Internet fundamentals, online safety and privacy tips, and software use. BTOP funds have also allowed OneCommunity and its partners in eight communities to hire 105 full-time employees to administer the project and provide training to users.
- In Nevada, the Las Vegas-Clark County Urban League's Public Computer Center project serves 2,500 to 3,000 users per week at its 15 new and 14 refurbished computer centers. Instructors provide computer and Internet training, and help low-income and vulnerable residents such as seniors and those in public housing find employment. With the help of BTOP funds, the project has hired 24 full-time and six part-time personnel as instructors and supervisors, and for information technology support.
- In North Carolina, MCNC broke ground on a project that it anticipates will create more than 1,000 temporary engineering and construction jobs as well as 10 permanent jobs to manage the expansion of almost 1,800 miles of fiber-optic infrastructure to connect approximately 100 community anchor institutions in the state. Currently, MCNC is able

to provide 1 Gbps service to 12 counties (12 percent of the state). With its BTOP grant investments, MCNC predicts it will be able to serve 83 of 100 counties. This nearly 600 percent increase represents a substantial improvement in statewide broadband capabilities.

- The Maine Fiber Company has begun construction of a 1,100-mile rural high-speed Internet network in the state of Maine. The project has already improved access for the Maine Medical Center in Portland with high-capacity broadband services, facilitating the use of telemedicine and improving healthcare delivery for Maine residents.

Numerous other projects are well underway and delivering on their promised benefits for the American public. Last quarter, grant recipients reported funding approximately 1,000 jobs, and, to date, grantees have installed more than 4,000 computers for public use, with many of our grantees reporting higher than expected use at computer centers. Over 150,000 hours of broadband training has been provided to over 65,000 people. Additionally, even though most of their projects are in the early stages of construction, BTOP infrastructure awardees have entered into approximately 90 interconnection agreements with third-party providers to leverage or interconnect with their networks and are currently in negotiations with 200 more.

In all, BTOP and SBDD awardees have drawn down approximately $300 million in federal funds, or over seven percent of obligated funds. I am confident that our projects are making significant progress in achieving the goals established by Congress in the Recovery Act, and that we are taking all appropriate steps to ensure that projects are on track to deliver timely and important benefits to the American people.

III. Monitoring, Oversight, and Technical Assistance

Protecting the federal funds we are spending and the investments we are making is of paramount importance to NTIA. As the members of the Subcommittee are well aware, achieving these objectives is challenging and requires NTIA to perform diligent oversight and provide technical assistance to our awardees. We are very appreciative of the bipartisan support shown by this Subcommittee's leadership for NTIA's ongoing broadband grant administration and management funding needs. As a large and complex program that chose innovative projects to meet real needs in America, BTOP continues to raise novel issues, some of which have the potential to impact the progress of BTOP projects. For example:

- NTIA funded projects ranging from approximately $175,000 to more than $150 million to a wide variety of recipient types, many of which are first-time Federal grant recipients. Projects of such varying size, scope, and structure must follow numerous Federal grant rules, which require our staff to work closely with each recipient to ensure oversight and assistance are appropriately tailored to awardees' unique circumstances and needs, and that recipients follow all proper procedures.
- Before they can begin construction, the majority of BTOP infrastructure awardees must complete and submit environmental and historic preservation documentation in compliance with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), and the Endangered Species Act (ESA). These processes can take significant time and resources, and we have worked hard to find win-win solutions to enable much-needed projects to move forward in full compliance with these important laws. NTIA has cleared 47 of 118 projects to proceed to construction and 46 others are in the final stages of review.

- To fulfill the broadband needs of their communities in the most comprehensive manner possible, grant recipients often incorporate multiple partners in the implementation of their projects. Federal grant rules impose a uniform framework on the classification of these partnerships, the obligations of various project collaborators, and the federal security interests required for property acquired or improved with federal funds. NTIA works closely with recipients to help ensure their compliance.
- To meet the matching funds requirements of BTOP grants, recipients employed a variety of resources, including cash and third-party in-kind contributions, which NTIA must ensure are properly valued. In some cases, this activity requires substantial time and resources on the part of recipients and the government.

To solve each issue that arises, yet maintain the rigorous implementation schedule demanded of BTOP projects, NTIA has put into action a program-wide oversight strategy to mitigate waste, fraud, and abuse, to ensure compliance with award conditions, and to monitor each project's progress toward its timely completion. This rigorous framework includes a set of integrated activities, including individual grant monitoring, portfolio management, and program support.

NTIA is directly and frequently engaged with award recipients via regularly scheduled conference calls, email exchanges, drop-in calls on specific administrative or programmatic topics, and in-person conferences. These contacts serve as both a monitoring tool and a means to reinforce the terms and conditions associated with each award, and helps ensure that NTIA quickly addresses challenges that arise during implementation. As part of this monitoring approach, NTIA has instituted a robust process for identifying and escalating issues that require intervention in order to keep projects on track. We assign monitoring levels to recipients based

on a risk analysis incorporating multiple factors, such as grantee past performance, experience, and project scope, and adjust oversight levels accordingly.

The technical assistance, oversight, and outreach activities that we have conducted to date include the following:

- holding two multi-day grantee conferences on key project implementation topics;[2]
- creating more than 15 relevant fact sheets;[3]
- hosting over 40 webinars and drop-in conference calls to provide guidance on key compliance topics;[4]
- conducting at least bi-weekly conference calls with each grant recipient;
- publishing Recipient Handbooks;[5]
- providing an online workspace and collaboration tool for grantees;
- delivering monthly recipient newsletters and as-needed emails regarding training, lessons learned, and answers to frequently asked questions;
- publishing a comprehensive monitoring plan and site visit checklist online;[6] and
- visiting 72 projects totaling $2.2 billion in federal awards by the end of June to safeguard taxpayer investments.

A goal of NTIA's rigorous outreach, oversight, and monitoring is to identify issues early in the process and resolve them promptly. In two cases, our oversight has led to grantee's deciding to terminate their awards. In both of these cases, NTIA worked with the awardees proactively to identify and address issues that could have jeopardized the ultimate success of the

[2] Presentations from these conferences can be found at http://www2.ntia.doc.gov/Workshops.
[3] Fact Sheets can be found at http://www2.ntia.doc.gov/ManagementResources.
[4] Some of the webinars are available online at http://www2.ntia.doc.gov/management.
[5] The Recipient Handbook can be found at http://www2.ntia.doc.gov/ManagementResources.
[6] BTOP's Monitoring Plan and Site Visit Checklist are available at http://www2.ntia.doc.gov/reporting.

projects and wasted taxpayer dollars. While I am disappointed that these particular projects in Indiana and Wisconsin will not realize their intended benefits, I do believe that these experiences underscore the importance, and essential value, of NTIA's strong federal oversight and monitoring of its BTOP projects, and highlight its commitment to working closely and proactively with all awardees to ensure the success of the program as a whole.

The Fiscal Year 2012 President's Budget includes $32.3 million to support the administration of broadband programs. This level of funding, and the staffing it supports, is critical to ensure that NTIA can continue its oversight and administration of grants, to ensure continued adequate levels of performance by awardees, and to prevent waste, fraud, or abuse of federal funds.

IV. State Broadband Data and Development (SBDD) Program

In addition to Recovery Act grants for broadband infrastructure, public computer centers, and sustainable broadband adoption, NTIA awarded $293 million in grants to every state, territory, and the District of Columbia or their designees for broadband data collection, planning, and capacity building initiatives. As a result of these grants, on February 17, 2011 NTIA, in collaboration with Federal Communications Commission (FCC), unveiled the National Broadband Map – the first public, searchable nationwide map of consumer broadband Internet availability in the United States. The National Broadband Map, available at www.broadbandmap.gov, is an unprecedented searchable database of information on high-speed Internet access using data collected from 1,650 unique broadband providers and other data sources. To make the website as accessible and transparent as possible, users can view the data in a variety of ways, from address searches to national and state rankings to maps that display broadband speeds and number of providers.

The website resulting from this Federal-state partnership includes more than 25 million searchable records showing where broadband Internet service is available, the technology used to provide the service, the maximum advertised speeds, and the names of the service providers. The website also contains information about the broadband speeds utilized by community anchor institutions across the county. It is the most granular and transparent dataset of broadband availability that has ever been published. Among the results of this tool, the map shows that between 5 - 10 percent of Americans lack access to broadband at speeds that support a basic set of today's broadband-rich applications and services while retaining sufficient capacity for web browsing and e-mail. It also demonstrates that community anchor institutions appear to be largely underserved. For example, based on studies by state education technology directors, most schools need a connection of 50 to 100 Mbps per 1,000 students. The National Broadband Map data show, however, that two-thirds of surveyed schools subscribe to speeds lower than 25 Mbps. In addition, 96 percent of libraries reported subscribing to speeds lower than 25 Mbps. The map also shows that approximately 36 percent of Americans have access to wireless Internet service at maximum advertised download speeds of 6 Mbps or greater, which some consider the minimum speed associated with "4G" wireless broadband service.

Already, nearly a half a million unique users have utilized the site, which can serve a range of interests. For example, Federal, state, and local policymakers can compare broadband availability among geographic areas and across demographic groups, which can inform policies to support private sector investments in deploying broadband. The data can assist broadband providers in assessing new business opportunities and economic developers as they work to attract businesses to, or address barriers to investment in, their communities. The map will also help consumers and small businesses learn about the broadband service options in their

neighborhoods or where they may relocate. Private sector companies can integrate the data into their own online offerings or applications – for example, a website that lists homes on the market could include a description of broadband availability by using our broadband data. And various stakeholders have downloaded all of the public data more than 500 times already, allowing additional and more granular analysis than what is already on the website. We look forward to the public – including researchers and industry – using this data in a variety of innovative ways and helping us refine and improve it by, among other things, using the map's crowdsourcing tools to provide feedback about this granular data.

In addition to the development and ongoing maintenance of the National Broadband Map, which we will update every six months, the SBDD grants are playing a critical role by providing support to states and territories as they identify and address obstacles to broadband deployment and adoption. Our State Broadband Initiative has empowered states to fashion solutions tailored to their unique broadband needs, has supported state and local task forces and planning teams to expand broadband awareness and adoption, and has enabled new efforts to make government more responsive to citizens in this new digital economy. By providing coordination to this new network of state broadband activity, the State Broadband Initiative is facilitating collaboration among the states, enabling the exchange of best practices and lessons learned. This is yet another way that we intend to leverage our grants to help share best practices and win the future.

V. Collaboration with the Office of Inspector General

I am grateful for the ongoing efforts of the Department of Commerce's Office of Inspector General (OIG) in helping to oversee NTIA's broadband programs and to prevent waste, fraud, and abuse of taxpayer dollars. NTIA and the OIG have worked closely and

collaboratively to implement BTOP in the most responsible and efficient manner possible. Last November, the OIG issued a report finding that NTIA had made significant progress in establishing systems to administer and manage grants, but suggested additional steps to strengthen post-award oversight, such as clarifying roles and responsibilities among Department of Commerce agencies, enhancing information technology systems, documenting policies and procedures, bolstering internal controls over professional development, and improving the timeliness and efficiency of some monitoring activities.[7] In response, NTIA has taken all appropriate actions to satisfy the OIG's recommendations and continues to identify ways to further strengthen the program.

The OIG's most recent report also warned that the uncertainty of future funding for BTOP administration raised significant concerns about the adequacy of future BTOP grant oversight and risked weakening NTIA's ability to combat waste, fraud, and abuse.[8] I greatly appreciate the Subcommittee's recognizing, as our Department's OIG and the U.S. Government Accountability Office (GAO) have urged, that effective oversight requires resources. I look forward to working with you to ensure sufficient funding for oversight of our broadband program and will continue working closely and cooperatively with the OIG toward our shared commitment to protecting the public funds and taxpayer investments that are at stake in these projects.

VI. A Bill to Clarify NTIA and RUS Authority to Return Reclaimed Stimulus Funds to the U.S. Treasury

Toward that goal, I welcome the opportunity to comment on the draft legislation that is the topic of this hearing. NTIA supports the ultimate goals of the bill, which are to protect

[7] *See Broadband Program Faces Uncertain Funding, and NTIA Needs to Strengthen its Post-Award Operations*, (Nov. 4, 2010) *available at* http://www.oig.doc.gov/oig/reports/2010/001609.html.
[8] *Id.*

against waste, fraud, and abuse and to ensure that unused or reclaimed BTOP funds are promptly returned to the Treasury. As described earlier, NTIA greatly values the work of our Inspector General and, in concert with the OIG, we have implemented a rigorous oversight program for our broadband projects. Accordingly, while we do not believe that additional steps are needed to ensure the adequate protection of taxpayer funds, NTIA has no objection if Congress believes that the reporting requirements contained in the bill – in addition to the other mechanisms already in place – would further its mission of combating waste, fraud, and abuse of federal funds. NTIA does have some concerns, however, about the specific wording of the requirement to deobligate and return funds to the Treasury and looks forward to working with the Subcommittee to clarify its intent.

I also want to take this opportunity to clear up any lingering confusion that there may be regarding whether NTIA has any ability to award additional grants. The answer is no. NTIA's authority to make new BTOP grant awards expired on September 30, 2010 and, to the extent there were any unobligated BTOP funds as of September 30, those funds expired and became unavailable at that time.[9] Moreover, should any funds be deobligated in the future, the Pay It Back Act, enacted in July 2010, requires NTIA to return withdrawn or recaptured BTOP or SBDD grant funds to the Treasury promptly and to return any remaining unobligated balances to the Treasury as of January 1, 2013.[10]

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[9] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, Div. B, Title VI, at § 6001(d)(2), 123 Stat. 115, 513 (Feb. 17, 2009) (The Assistant Secretary shall . . . ensure that all awards are made before the end of fiscal year 2010 . . . .").

[10] Pay It Back Act, Title XIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1306 (Repayment of Unobligated ARRA Funds), 124 Stat. 1376, 2135-2136 (July 21, 2010). To date, NTIA has returned almost $16 million to the Treasury pursuant to this Act.

VII. Conclusion

As demonstrated by the National Broadband Map, the overwhelming demand for BTOP funding, the level of unmet broadband needs identified by BTOP recipients, and the findings of NTIA's recent collaborations with the Census Department to identify broadband adoption trends,[11] there are still too many people and communities lacking the level of broadband service and skills needed to participate fully in the Internet economy. Addressing this challenge will be essential if we are to harness the power of broadband for economic development, innovation, and education, and lay a foundation for long-term economic opportunity in the United States. Through BTOP, the SBDD, and other initiatives, NTIA is working to address these challenges.

I want to thank and commend the bipartisan Subcommittee leadership for working to ensure that sufficient oversight funds are available to NTIA in Fiscal Year 2011 through completion of these projects. I look forward to continuing to work with the Subcommittee throughout our oversight of the broadband programs as we ensure that taxpayer dollars are spent wisely and deliver the promised benefits to the nation.

I am happy to answer your questions.

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[11] On February 17, 2011 NTIA released a report previewing data collected through the Internet Usage Survey of 54,000 households, commissioned by NTIA and conducted by the U.S. Census Bureau in October 2010. The data shows that approximately one-third of Americans remain cut off from the digital economy. The report is available at http://www.ntia.doc.gov/reports/2011/NTIA_Internet_Use_Report_February_2011.pdf.

Mr. WALDEN. Thank you, Mr. Strickling, and if you can keep the committee in the loop, I am sure we all have interest in that part of the process too as this rolls out, so your suggestions to the IG and back and forth, if you can keep us in that loop, that would be helpful as well.

Mr. STRICKLING. Absolutely.

Mr. WALDEN. Mr. Adelstein, thank you for being here. We are delighted to have you here and we look forward to the summary of your testimony as well, sir.

STATEMENT OF JONATHAN ADELSTEIN

Mr. ADELSTEIN. Thank you, Chairman Walden, Ranking Member Eshoo and members of the subcommittee. It is an honor to be here in front of you to talk about the Broadband Initiatives Program we call BIP and legislation to amend the Recovery Act. I am delighted to be here again with my friend, Larry Strickling, which we have done many times before including before this subcommittee. Our agencies worked very closely together to fulfill the President's vision of getting broadband out to every corner of this Nation, and the Assistant Secretary has been an invaluable partner throughout the process.

Our Secretary Tom Vilsack has made broadband a pillar of his strategy to revitalize rural economies, and the direct benefits of broadband to rural economies are immense. USDA's Economy Research Service has studied the effects of broadband in rural communities and concluded based on their statistical analysis that employment growth was higher and non-farm private earnings greater in counties with a longer history of broadband availability.

The Recovery Act provided RUS with the unique opportunity to jumpstart the rural economy, investing more than $3.5 billion in loans and grants to expand broadband networks in the hardest to serve rural parts of the United States. Demand for broadband financing under the Recovery Act was really tremendous. RUS received over 2,000 applications totaling $28 billion. We were able to make only 320 awards for that $3.5 billion, only 16 percent of the applications received. This amazing response and of course the NTIA's map that the Assistant Secretary referred to I think demonstrate the huge demand that remains in rural America for improved broadband service.

In September 2010, the RUS completed the awards phase of this program. Our selection process was extremely rigorous. Of the $3.5 billion in loans and grants, $3.25 billion went to 285 last-mile projects, $173 million was for middle-mile projects. We did $3.4 million for 19 regional technical assistance projects, and finally, $100 million went to satellite service to premises that were otherwise unserved by any of the other grants under this program.

Now, these investments are going to make a big difference. They connect nearly 7 million Americans, 360,000 businesses and more than 30,000 critical community institutions to new or improved broadband service. They span over 300,000 square miles, touch 31 tribal lands, serve 125 persistent poverty counties, about a third of the persistent poverty counties in the United States, and will create more than 25,000 immediate and direct jobs for workers. Once built, though, these networks will provide the platform for eco-

nomic growth and job creation for years to come. These projects are really extraordinary. I know in the interests of time, I had a lot of great examples here. I will just one example that is particularly important because it is in an important district in Oregon, the Confederated Tribes of Warm Springs Reservation in Oregon scheduled to break ground this month just in a couple of weeks. It will bring broadband to the entire 1,000-square-mile reservation, connecting 223 community institutions including government agencies, emergency facilities, 775 households and 22 businesses. It will be transformative for the Warm Springs Reservation. Our excitement for these projects is matched by our commitment to execute our duties very prudently and to be very careful with taxpayer dollars.

RUS shares the goals of your legislation, Mr. Chairman, to return unused or reclaimed funds to the U.S. Treasury and to aggressively combat waste, fraud and abuse. The bill's purpose is entirely consistent with the standard procedures already in place for RUS programs including BIP. The RUS has some concerns with the draft and we look forward to working with the subcommittee to address them, and we would be happy to provide any drafting assistance as needed if you should request it.

To ensure our continued success and prudent portfolio of management with regard to the Recovery Act, RUS has done a lot of work. We have held compliance workshops. We visited every award recipient and we have required quarterly reports and annual CPA audits. We have our own field accountants and we have sent our field accountants to each and every one of these recipients before any money is spent to ensure that their accounting system complies with all of our requirements and that it is set up as something we can really audit and be on top of.

Now, the USDA Inspector General, we work closely with them and we appreciate their good work. I understand that in the last month they were here before this committee raising concerns about the broadband loan program administered under a previous Administration, under a previous statute and under previous regulations, and I share these concerns. To be clear, none of the issues raised by the IG pertain to the Recovery Act broadband program or the Obama Administration's conduct of the RUS broadband loan program. The broadband loan program was actually suspended during the Recovery Act to allow the agency to address all of the concerns that were raised by the IG and to implement statutory changes that were made in 2008 and to integrate the lessons of the Recovery Act into these new rules.

On March 14th, just last month, the RUS issued new broadband regulations that open the program for applications for the first time under this Administration. The new regulation and other actions taken by the RUS have satisfactorily addressed all of the issues raised by the IG, so I am thrilled to report to the subcommittee that last week the Inspector General concluded and closed completely the RUS broadband loan audits, so the book is shut on that audit.

The new broadband loan program increases efficiencies, targets limited resources and builds on the momentum created by the Recovery Act BIP program to fill the gaps in rural broadband access that were identified in NTIA's map.

So it is an honor to work with you, with our Inspector General and with our federal partners including NTIA to make affordable broadband service widely available throughout rural America. Your continued support and guidance is deeply appreciated. I appreciate the opportunity to testify and look forward to any questions you may have.

[The prepared statement of Mr. Adelstein follows:]

Statement of Jonathan Adelstein
Administrator, Rural Utilities Service
United States Department of Agriculture
Subcommittee on Communications, Technology and the Internet, House Energy & Commerce

Chairman Walden, Ranking Member Eshoo, and members of this Subcommittee, thank you for the opportunity to testify on the U.S. Department of Agriculture's Broadband Initiatives Program (BIP) and legislation to amend the American Recovery and Reinvestment Act of 2009 (Recovery Act).

Under the Recovery Act, USDA has made great progress in delivering broadband to unserved and underserved areas. By providing grants and affordable financing for advanced rural telecommunications infrastructure, the Recovery Act is helping create and sustain jobs as new networks are built.

As the weather warms, broadband construction will increase. Once built, these broadband networks will facilitate job creation and economic development for years to come.

RUS worked closely with the Commerce Department's National Telecommunications and Information Administration (NTIA) and the Federal Communications Commission (FCC) in our efforts to fulfill the President's vision for expanding broadband access nationwide. Assistant Secretary for Communications and Information Laurence E. Strickling has been an invaluable partner throughout this process. The FCC, led by Chairman Julius Genachowski, has made significant contributions to the broadband program with the release of the National Broadband Plan and together with NTIA, the National Broadband Map. While these collaborative efforts mark a significant step forward, we recognize that much remains to be done.

The direct benefits of broadband to the rural economy are tangible and significant. Members of this Committee know that broadband is the communications infrastructure of the 21st century. Without broadband, rural areas will lag behind their metro counterparts. With it, rural areas have an unparalleled

means to overcome challenges presented by distance and better take advantage of new economic opportunities. Broadband has the power to diminish the geographic barriers of time and distance by delivering world-class health care, educational, and economic opportunities directly to rural residents. Broadband connections can help existing business owners increase efficiencies and expand their market reach. American farmers and ranchers can use broadband to monitor product prices, obtain weather forecasts, and find markets for their produce and livestock. The enhanced broadband access made possible by financing through USDA's Rural Utilities Service (RUS) allows rural Americans greater participation in the digital economy, which puts our Nation in a stronger position to out-innovate, out-educate, and out-build our global competitors.

It merits emphasis that the commitment to ensuring that the next generation of high-speed wireless connections reaches rural America—and at least 98% of the population—is a core part of President Obama's strategy to win the future. Notably, the President's Wireless Innovation and Infrastructure Innovation will enable a wide array of applications that will use high-speed wireless infrastructure, including medical applications and distance learning, and improve the quality of life and enhance economic growth in rural areas. This effort will also include the commitment to deploy a nationwide, interoperable network for our first responders, who will be able to use cutting edge technologies to perform their missions more effectively and will be more safe as they do their jobs aimed at keeping us safe.

A long history of broadband availability enhances prosperity for rural communities. USDA's Economic Research Service (ERS) studied the economic effects of having broadband access in rural communities. Its report, "Broadband Internet's Value for Rural America,"[1] ERS concluded that employment growth was higher and non-farm private earnings greater in counties with a longer history of broadband availability. According to the report, key benefits from rural broadband access included access to online course

[1] More detailed information can be found in the ERS report on "Broadband Internet's Value for Rural America" available at http://www.ers.usda.gov/publications/err78/err78_reportsummary.pdf.

offerings for students in remote areas and the access to telehealth services for rural patients in need of urgent and often specialized care. Agricultural producers and farm-based businesses rely on Internet access to conduct sales transactions, marketing and advertising, monitor real time changes in the commodities markets and track global trends that impact US crop prices to stay in business. The report also clearly notes that areas with low population density, or rugged terrain, generally have difficulty attracting broadband service providers. These characteristics can make the fixed cost of providing broadband service too high to make a business case for investment. That is where RUS's resources and financing expertise with a variety of technologies offers a distinct advantage.

Improving access to affordable broadband is a pillar of USDA Secretary Tom Vilsack's strategy to rebuild and revitalize rural communities. It is a centerpiece of USDA Rural Development's effort to boost our rural economy. The programs Secretary Vilsack, the Administration, and Congress have put into place—infrastructure investment, renewable energy innovation, local and regional food system expansion, regional collaboration and building out broadband—are key components of USDA's efforts to spur economic growth in rural America. We use the term "investment", because the major loan component of this funding is repaid. The RUS portfolio is over $56 billion and the current delinquency rate is .22 percent. We are very proud of our borrowers' repayment history.

The Recovery Act

The American Recovery and Reinvestment Act of 2009 provided RUS with a unique opportunity to jumpstart rural economic development efforts by investing more than $3.5 billion in loans and grants to expand broadband networks in hard-to-serve rural areas across the country. Through Recovery Act funding, RUS also invested $3.27 billion in rural water and waste disposal systems to further bolster rural infrastructure.

Under the Recovery Act, RUS received applications totaling $28 billion to provide broadband services in rural areas. RUS was unable to fund over 1700 remaining applications totaling $24.5 billion, demonstrating a large unmet demand for assistance from across the country in building out rural broadband networks. While not all of those applications were meritorious, a large number could be modified and submitted for one of our existing broadband loan or grant programs.

In September, 2010, RUS completed the awards phase of the Broadband Initiatives Program (BIP). For both the first and second funding phases combined, obligations totaled $3.53 billion, representing $2.42 billion in budget authority. In total, 320 awards were obligated. Approximately 89 percent of the awards and 92 percent of the total dollars awarded are for 285 last-mile projects ($3.25 billion), which will provide broadband service to households and other end users. Four percent of the awards and five percent of the total dollars awarded are for 12 middle-mile projects ($173 million) that will provide necessary backbone services such as interoffice transport, backhaul, Internet connectivity, or special access to rural areas. RUS also made four satellite awards to reach totally unserved premises and 19 technical assistance grants.

These broadband investments will connect nearly 7 million rural Americans, along with more than 360,000 businesses and more than 30,000 critical community institutions like schools, healthcare facilities, and public safety agencies, to new or improved service. The projects funded will bring broadband service to 2.8 million households, spanning across more than 300,000 square miles in 45 states and 1 U.S. territory. These projects also overlap with 31 tribal lands and 125 persistent poverty counties, and they are estimated to create more than 25,000 immediate and direct jobs for rural workers.

While the full economic impact is not yet quantifiable, these Recovery Act broadband projects will generate long-term economic development opportunities in each rural community where a project is launched. Improved connectivity to community anchor institutions will ripple throughout the nation.

Data provided by the U.S. Department of Education show that more than one million K-12 students attend school within areas served by BIP awards. More than 100 colleges and technical schools are located in areas served by BIP awards. Data provided by the U.S. Department of Health and Human Services show that nearly 600 rural healthcare facilities are located in areas served by BIP awards. While approximately 65 (11%) of these facilities will receive broadband for the first time as a result of BIP, all of these healthcare facilities will gain access to substantially enhanced broadband services, which can expand the use of telemedicine and electronic medical records initiatives.

In addition, the Recovery Act enabled RUS to provide $3.4 million in technical assistance grant funding to 19 projects for the creation of regional broadband development plans in 13 states. Many of the projects include Native American tribal areas. The Technical Assistance Grant Program provided funding of up to $200,000 to infrastructure award recipients and Indian tribes. These grants will support planning efforts that will lay the groundwork for the future development of broadband infrastructure and increased broadband access in rural areas.

Several Recovery Act projects have already broken ground, including Audeamus in Fresno County, California. This "fiber-to-the-home" project will provide broadband access to 5,000 residents, businesses, schools and community facilities. The first phase of the project is scheduled to be completed in June. Eventually, this last-mile project will provide broadband service to 1,352 households, 125 local businesses and 24 anchor institutions.

The Confederated Tribes of Warm Springs Reservation Broadband Network in Oregon will bring broadband to the entire 1,000 square mile reservation, connecting government agencies, emergency facilities, homes and businesses. When complete, this project will make service available to 755 households, 22 businesses and 233 anchor institutions. It is expected to break ground this month.

In Michigan, Air Advantage applied for Community Connect funding to provide two small communities in the "Thumb Area" with 10 computers and wireless internet service. As their business grew, Air Advantage used loans to expand Internet service to other parts of Michigan's Great Lakes region. Recent Recovery Act funding will allow Air Advantage to deliver service to an additional 5,000 customers in a 3,500 square mile service area, including six hospitals and 18 school districts. For their efforts, Air Advantage received the US Chamber of Commerce's Blue Ribbon Small Business award.

Program Integrity

RUS shares your goals of ensuring that our program delivers broadband as effectively and efficiently as possible. Congressman Walden's draft legislation to return unused or reclaimed funds under the Recovery Act to the U.S. Treasury is consistent with the standard process in place to recover and return funds awarded under all RUS programs including the Broadband Initiatives Program. We share similar concerns as raised by the Department of Commerce and we look forward to working with the Subcommittee on this draft bill.

The agency, as part of its standard operating procedures, vigorously monitors and evaluates its loan and grant portfolio. It has a long standing track record of monitoring struggling borrowers and grantees and assessing how it can mitigate risk and protect taxpayer investments. Funding is rescinded and de-obligated for projects that cannot meet program requirements. In instances where the agency has discovered inappropriate uses of government funds, remedies have been employed, including demand for restoration of funds or, in some instances, requests for criminal investigations.

In the BIP program, to ensure our continued success in prudent portfolio management and to mitigate risk of fraud, waste, and abuse, the agency took several preemptive actions. First, regional workshops were

conducted for all recipients that addressed in detail all program requirements regarding the use of government funds. Second, before one penny was advanced, the agency then assigned field personnel and accounting staff to personally visit every awardee to ensure that they understood the requirements and had adequate resources and accounting systems in place to track project expenditures.. In addition, our rules require quarterly financial reporting as well as annual independent CPA audits. Finally, in addition to routine site visits throughout the duration of the project, the agency performs loan and grant fund audits using a highly skilled and trained field accounting staff.

As noted earlier, RUS has a low delinquency rate. We have a solid record of oversight of funding, and have not hesitated to rescind funding in cases where the project no longer meets terms of the loan agreement. We will continue to work with you to help ensure that funding for broadband service will provide that service as intended.

Building on Recovery Act Investments

RUS has a history of funding rural infrastructure, dating back to the Rural Electrification Act of 1936. In 1949, RUS began funding telecommunications services, and since 1995, RUS has required that all telecommunications networks we finance be broadband capable. The 2002 Farm Bill established the first official broadband program in Title VI of the Rural Electrification Act. Congress enacted changes to the broadband loan program in 2008. This program, which was the subject of concerns recently expressed in this Committee by the USDA Inspector General, has been in hiatus throughout 2009 and 2010 as the RUS administered the BIP program and worked to develop new regulations to implement the 2008 Congressional changes to the Rural Electrification Act.

Over the past two years, RUS gleaned many lessons from the implementation of the Recovery Act program and from the history of the broadband loan program. These lessons, combined with comments on an earlier proposed rule change, and the recommendations of the Office of the Inspector General (OIG) informed the development of an interim final rule implementing the program changes enacted as part of the 2008 Farm Bill.

RUS published new regulations for the broadband loan program on March 14, 2011. This regulation and other measures taken by the agency have addressed all the concerns raised by the OIG. I am pleased to report that on March 24, 2011, the OIG notified RUS that it has closed its audits of the RUS broadband loan program.

The new broadband loan regulation incorporates "lessons learned" under the Recovery Act, along with revisions intended to strengthen the program, increase efficiencies, and better target limited resources to unserved and underserved areas. The new regulations will allow us to build on the momentum created by the Recovery Act's BIP program and fill the gaps that persist in rural broadband access. This can provide BIP applicants that were not approved for $24.5 billion they requested another avenue to obtain financing assistance they need to provide broadband in high-cost rural areas.

The Recovery Act program is proof that leadership, policy support, resources, and community support overcome barriers to broadband expansion. Rural communities are stronger today because of the partnership forged with USDA's Rural Development. Our ability to facilitate rural economic development through rural infrastructure investments is a result of the support of Congress. It is an honor and privilege to work with you and our federal partners throughout the Obama Administration to make affordable broadband service widely available throughout rural America. As we continue to implement

the build-out phase of this critical infrastructure investment program, your continued support and guidance is deeply appreciated. We fully share your goal of continuing to improve access to affordable broadband service while combating waste, fraud and abuse.

Thank you again for inviting me here to testify and I will be glad to address any questions you have.

Mr. WALDEN. I appreciate the testimony of both the gentlemen, and I want to congratulate you on fulfilling the recommendations of that audit. I don't care who is in charge where, I am glad you got it done because that one goes back to 2005, I think, so thank you for doing that.

Again, for our committee members, given the schedule we face, I am going to try to limit my questions. I think I am just going to go with one if we could get into the markup but I don't want to rush anybody. If we could get into the markup before they call votes on the floor, that would solve having to come back after the votes, say, at 2:00 or something, 2:30.

So Mr. Strickling, doesn't section 6001(i)(4) of the ARRA state you may deobligate funds? I can tell you it does.

Mr. STRICKLING. You are correct.

Mr. WALDEN. Yes, "may," not "shall," and that is really the issue. It isn't whether you deposit in the Treasury, and not you personally. It could be somebody down the road different has the flexibility whether you will or won't deobligate. This legislation says you shall, and while you have said and I trust that you will deobligate funds in such cases as fraud, waste and insufficient performance, doesn't this change provide you with that added legal protection in that it reduces the ability of a failing awardee to quibble over what would otherwise be your discretionary decision?

Mr. STRICKLING. I can't debate the change in the words. What I can tell you is, under Department of Commerce guidance, it is less discretionary in the sense that we are directed under DOC provisions that we will take these actions. In any case, again, we don't have any issues with your legislating in this area but I don't expect it to change our day-to-day to practice.

Mr. WALDEN. But this does put certainty in the statute because the guidance out of the department could change in another Administration or even in this one, could it not?

Mr. STRICKLING. I would agree with that.

Mr. WALDEN. So we are just trying to get some certainty there.

I will yield now to anyone else on our side that may want to ask a question. Mr. Bass?

Mr. BASS. Mr. Chairman, I just have two very quick questions.

Secretary Strickling, what is the current requirement to report to Congress regarding awards that show material noncompliance, and do you think that the passage of this legislation would increase the transparency of the Recovery Act?

Mr. STRICKLING. I can't speak to there being a—I can't identify a particular legislative directive to us to do that, but I think as reflected in the letter I sent earlier this week, it is certainly our practice to do so.

Mr. BASS. Both of you mentioned the number of awards that you have made, amount of money spent to date. I think you identified three that have been discontinued. Have you learned anything from these returned awards that would be beneficial to you in your oversight on the existing projects?

Mr. STRICKLING. We have actually had two projects that went to award and we actually went through the process, started the process with the applicant and then they have since terminated. There is a third award that the applicant never actually accepted the

award, a small award up in Minnesota to Leach Lake for about $1.7 million. But of the two projects, I think each of them presented a unique set of circumstances. In Indiana, quite frankly, it was a situation where other things were going on economically in the State. It was a project designed to serve schools. Indiana is going through a school consolidation, and our grantee along with our folks at NTIA realized that their business case was deteriorating as a result of this other set of governmental actions and the project just didn't seem viable any longer and so the applicant decided to withdraw because they couldn't see that they would have an ongoing project after the completion of the grant period.

We have been very focused on giving awards to projects that we think are sustainable and will continue on even after the grant period. In the Indiana case, I think again through our oversight and discussions with the applicant, we learned early on that the project really wasn't viable in the way we thought it was when we had reviewed it during the review process. Wisconsin again, totally separate set of facts there that I would be happy to discuss with you separately.

Mr. BASS. Administrator Adelstein, do you have any comments on that?

Mr. ADELSTEIN. If there is anything we draw from that, it is that we need to very aggressively work with and oversee every aspect of each one of our awardees' programs and the progress they are making on the projects. With each of those 10 that we decided mutually not to move forward on, there were a lot of issues that we worked hand in hand with them. We sent our field accountants to visit them. We sent our general field representatives to visit them. I personally worked with a number of them. We met with them. We determined whether or not changes they were proposing were consistent with their original application. In some cases, they weren't and we weren't able to work it out and so we went our separate ways. Not one dime of taxpayer money was spent in any of those projects so we were able to save the taxpayer by up front making sure that they understood what we expected and that they were meeting all of the concerns that we had, and if they weren't, we didn't hesitate to rescind the projects.

Mr. BASS. Thank you very much, Mr. Chairman.

Mr. WALDEN. Do any other members on our side have questions they feel compelled to ask? If not, I will yield 5 minutes to the gentlewoman from California.

Ms. ESHOO. Thank you, Mr. Chairman. And again, thank you to both of you for not only being here today but for the work that you have done, which really speaks for itself.

I am going to go as quickly as possible because we are under time constraints here. My question is, how does the bill that is going to be marked up that you have obviously reviewed, how does it differ in any way from your existing mandate or practice to terminate grant or loan awards for cause? Is the legislative language different from current practices relative to the deobligations of funds? When an award is deobligated, how does your agency work with the awardee to account for the funds? I think that you have touched on that. And how long does it take on average for a deobligated fund to be returned to the U.S. Treasury, which you al-

ready have a responsibility to do. And the last thing I want to touch on, which is what both the majority and the minority need to work through is this issue of the IG, the OIG and where they may identify potential fraud and the language of the bill—I mean, we don't want to throw ice water on a case that has real potential to it. That is not the intent of any member on the committee. So if you want to comment on that, it is something that we need to work out, and I think that is the intention from both sides of the aisle.

Mr. STRICKLING. Yes.

Ms. ESHOO. In other words, what we are taking up today, how different is it from what we have already passed?

Mr. STRICKLING. I think on the first part of your question related to our practices with respect to deobligating dollars and what happens to the dollars and that, I don't think it really changes the existing law. In terms of how long that takes, in the case of the Indiana project, since there had been no expenditures of federal dollars, we were able to very quickly return that full amount. In the case of Wisconsin, we will do an accounting with the State because we think they have spent a nominal amount of dollars. We think it is less than $100,000 of allowable costs, which would they be allowed to recover, and then the remainder will go to the Treasury, but we do have to carry out that accounting.

Ms. ESHOO. But the legislation doesn't change any of that?

Mr. STRICKLING. Fundamentally, no. On the issue of—I mean, the second part of the legislation does impose some time limits on us in terms of taking actions and reporting to Congress, and I think Administrator Adelstein——

Ms. ESHOO. From what to what?

Mr. STRICKLING (continuing). May have had a little more experience with the implications of that.

Ms. ESHOO. From what to what? What is the time frame on it?

Mr. ADELSTEIN. The time frame is, as the chairman knows, 30 days we have after we are given any information that pertains to potential misuse of funds to make a determination as to whether to terminate the project or not, and then we are given 3 days subsequent to report to Congress what our determination was, which is a new requirement. As the Secretary said, all the other requirements are basically consistent with existing law.

Ms. ESHOO. And what is the nexus between that and this issue of a possible fraud and the effect that it would have on that potential case? Is there a nexus between the two?

Mr. ADELSTEIN. There could be in some cases. In the case of serious fraud, which of course this legislation is designed to combat, RUS is generally given an indication by OIG. We get a confidential little folder that says confidential, do not report, and generally the OIG requests us not to take action to rescind a loan or grant if they refer it to the Department of Justice for criminal prosecution. So we are asked basically to stay out of the way of a criminal prosecution. Under this requirement, however, we would be required—we would be at a loss, because on the one hand, we are being told not to do it, and there is potential obstruction of justice——

Ms. ESHOO. Mr. Chairman, I think this is the area we need to work on.

Mr. WALDEN. That is the part we are going to work on. Would the gentlewoman yield to me?

Ms. ESHOO. I would be glad to.

Mr. WALDEN. Because I want to just clarify something Mr. Adelstein said. You said if you got any information you would have to notify us, and actually I think if you look at the language in the bill, such information that pertains to material noncompliance. That is different than just saying any information. We tried to set a fairly high standard.

Mr. ADELSTEIN. I did say information pertaining to misuse of funds, but you are exactly right. That is what the legislation says, and it would have to be significant information.

Mr. WALDEN. Yes, it is not just information.

Mr. ADELSTEIN. So to your question, I mean, if there was a serious one, these are the most serious cases where they actually would be referred to DOJ for prosecution. We would be sort of in a conflict between the requirement of this law——

Ms. ESHOO. Well, we need to repair that.

Mr. WALDEN. We will work that out.

Ms. ESHOO. We are going to work that out, but I appreciate this being raised because I think it is important, and I think that my time is up, Mr. Chairman.

Thank you again, gentlemen. I think that you have confirmed what we already know and have voted on. But thank you. I do think that the oversight of the committee is what is really key here. Thank you.

Mr. WALDEN. I thank the gentlewoman, and I would just say that is why we are doing the hearing today is to flesh out these sorts of issues and get it right.

Mr. Doyle.

Mr. DOYLE. Thank you, Mr. Chairman.

Mr. Strickling, Mr. Adelstein, welcome. Thanks for your good work.

As our last hearing, many of my Republican colleagues expressed a belief that overbuilding is a persistent and ongoing problem with these BTOP and BIP awards, and now that you are finally both here to represent your respective agencies, would you once and for all dispel these concerns?

Mr. STRICKLING. Sure. I do think it is a misconception with our program in particular since we focused on middle-mile projects, which are open network projects and available to anybody to take advantage of, including the incumbents as well as new entrants, and as I pointed out in my opening remarks, we have already seen 90 interconnection agreements that have been executed between our infrastructure grant recipients and carriers who want to take advantage of these facilities to improve the level of service that they are offering to their end-user customers. So in that light, what we see our role is doing is priming the pump. We are putting these middle-mile facilities out there through these organizations like Merit in Michigan and MCNC in North Carolina that are going to be able to provide much middle-mile capacity throughout their States of Michigan and North Carolina, just to give two examples, and then other parties including incumbents like AT&T in Michigan and North Carolina can actually lease capacity on those sys-

tems to improve the service that they offer to their end-user customers.

So what we did in evaluating our projects was to ensure that we would be bringing substantial benefits to the area in which the projects would be built, and we think our projects pass that test.

Mr. DOYLE. Thank you.

Mr. Adelstein?

Mr. ADELSTEIN. Yes, we made a major effort in both rounds of funding to prioritize the most remote rural areas. In fact, we gave extra points priority for going to rural areas. We gave extra points for the number of customers that were totally unserved, extra points for being the most remote in eligibility standards and trying to get people 50 miles away from an urban area, which was actually too extreme for some, so we ended up really making every effort I think we could to avoid overlap, to make sure that there was service to those who didn't have it, and in fact we did get service out to the most rural areas, and we are going to serve many, many millions of customers that don't have access to broadband today.

Mr. DOYLE. Thank you. Mr. Chairman, I will yield back.

Mr. WALDEN. I recognize the gentlewoman from California. Just know we have about 5 minutes before we go vote. Otherwise we will have to come back after votes.

Ms. MATSUI. I will keep that in mind.

I want to thank both of you for being here, and I applaud your efforts in administering the BTOP and the process. I believe Americans will have greater access to broadband because of these programs, particularly in my home State of California.

With that said, the GAO report noted that the uncertainty of continued funding for oversight presents a risk that both NTIA and RUS will have insufficient staff and resources to actively monitor BTOP and BIP projects. I have a question for both of you. Do both of you believe you have sufficient funding to devote the resources necessary to oversee compliance?

Mr. STRICKLING. As of now, yes, and I want to thank the leadership of this committee for its help on a bipartisan basis to ensuring that we got the resources we needed in this fiscal year to provide appropriate oversight, but at the level we are currently funded at in the existing C.R., assuming that continues through the rest of this fiscal year, we are in fine shape, and again, it is through the efforts of the leadership of this committee that we got to that point, and I want to thank everyone for that.

Mr. ADELSTEIN. RUS requested no additional funds in order to oversee this program so we are basically dealing with it out of our existing budget, which was already very tight. So the President's full budget really is required in order for us to do, I think, the level of oversight that we need to do.

Ms. MATSUI. So what you are saying is that the budget currently is fine with you if you don't anticipate any cuts in the budget moving forward?

Mr. STRICKLING. That is right.

Ms. MATSUI. OK. Fine. And that is all my questions. Thank you.

Mr. WALDEN. Thank you. I recognize the gentlewoman from Tennessee.

Mrs. BLACKBURN. Thank you, Mr. Chairman.

I have a question for Mr. Adelstein, and I will be happy to submit it, but I want to refer to the letter that you wrote the chairman regarding the recipients of RUS loans using USF money to make payments on those loans. And Mr. Chairman, I would love for us to have a copy of that letter for the record, the letter you sent to the FCC chairman.

And then my question to you specifically about this, some of these loans are for 30 years, and does that mean that we shouldn't reform USF until that point in time and are we really advocating the use of a ratepayer subsidy to pay off a government subsidy? And in light of your letter and your conversation in that letter, those would be the two questions. We will submit these, and then I would ask for it to be included in the record. Yield back.

Mr. WALDEN. Without objection.

Anyone else seeking recognition? If not—if you want to, yes.

Mrs. CHRISTENSEN. I will just ask one.

Mr. WALDEN. The gentlelady from the Virgin Islands is recognized.

Mrs. CHRISTENSEN. Thank you.

The bill calls for termination for insufficient performance, and while I am sure some fall in that category may need termination, we are trying to expand to places that are rural and don't have a lot of experience, and don't you think that maybe some of those should get technical assistance and support rather than just be terminated? That is my question. And I just wanted to say I have evidence of really tight oversight in a letter to my government that I received a copy of. Thanks.

Mr. STRICKLING. Just very, very briefly, I think in terms of insufficient performance from our perspective, we do intend to provide technical assistance where we can to work with our grantees to help them over the bumps that they may run to. I think an example of insufficient performance could be where the entire project management staff resigns and leave a program and there doesn't seem to be a plan in place to bring leadership to the project. In that kind of situation, we take a hard look at it and wonder whether it is worth continuing on.

Mr. ADELSTEIN. And we perform similarly. We make every effort to work with our rural awardees because some of them are really struggling sometimes, and each one of the 10, we tried to work to save the ones we could. Sometimes they couldn't be done. But we will give them every opportunity to comply and to make it work.

Mr. TOWNS. I recognize time constraints, so I have some questions and I would like to place in the record.

Mr. WALDEN. Absolutely. Yes, all members have that privilege to submit questions for the record. Thank you, and I appreciate your courtesy in trying to help us move this along.

With that, the hearing is adjourned.

[Whereupon, at 11:12 a.m., the subcommittee proceeded to other business.]

[Material submitted for inclusion in the record follows:]

Statement of Fred Upton
Committee on Energy and Commerce
Communications and Technology Subcommittee Hearing
On "H.R. __, a Bill to Clarify NTIA and RUS Authority
to Return Reclaimed Stimulus Funds to the U.S. Treasury."

I'd like to welcome Assistant Secretary Strickling and Administrator Adelstein to our second hearing on oversight of the broadband provisions in the American Recovery and Reinvestment Act.

In the current economic environment, oversight of this $7 billion program becomes even more important, especially since 95 percent of the country already has access to broadband, according to the FCC's National Broadband Plan.

When we first considered draft legislation at our February hearing, the Commerce and Agriculture Department Inspectors General had some suggestions on how to improve oversight and clarify ambiguities in the law about what happens to reclaimed or unspent award money. Mr. Strickling and Mr. Adelstein, I thank you and your staff for your ongoing assistance in improving this bill.

I will also be interested to hear what is working well in the program, and what could be working better. All together, the agencies have made 553 awards valued at $7 billion--approximately $400 million of which has been spent. Thirteen awards have been returned, worth approximately $80 million. I appreciate this opportunity to learn lessons for the future from the awards that are coming back and the program experience as a whole.

Thank you. I look forward to the testimony.

Opening Statement of the Honorable Joe Barton

Chairman Emeritus, Committee on Energy and Commerce

Subcommittee on Communications, Technology, and the Internet

"H.R. _____, a Bill to Clarify NTIA and RUS Authority to Return Reclaimed Stimulus Funds to the U.S. Treasury"

April 01, 2011

Thank you Mr. Chairman for holding today's hearing. I am happy to know that we will be discussing the importance of greater oversight of taxpayer dollars, and I look forward to hearing from our two witnesses: The Honorable Lawrence Strickling and the Honorable Jonathan Adelstein.

Mr. Chairman, I stand in support of the legislation being discussed today to make certain that taxpayer dollars are indeed being used in the manner in which the law mandates. Our witnesses at the February 10 hearing, about Recovery Act spending, made it very clear that legislation was the proper action to ensure taxpayer funds are allocated to both the Broadband Technology Opportunities Program and the Broadband Initiatives Program. In our current efforts to reduce our national debt, the legislation before us, falls in line with the goal of increased fiscal responsibility.

The taxpayers deserve to know how their money is being spent. The $7.2 billion allocated for implementation of the broadband award programs established by the Recovery Act has not been handled efficiently by the National Telecommunications and Information Administration or the Rural Utilities Service. I am in full agreement with Chairmen Upton and Walden that we should de-obligate terminated awards and return the funds to the treasury.

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

MAY 5 2011

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Thank you for the opportunity to testify on April 1, 2011 before the Subcommittee on Communications and Technology at the hearing entitled "H.R. __, a Bill to Clarify NTIA and RUS Authority to Return Reclaimed Stimulus Funds to the U.S. Treasury." In response to the additional questions for the record sent to me on April 20, 2011, I enclose the following answers.

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,

Lawrence E. Strickling

Lawrence E. Strickling

Enclosure

cc (with enclosure):

The Honorable Anna Eshoo, Ranking Member
Subcommittee on Communications and Technology

Responses to Questions from Chairman Walden

1. **What do the program's rules allow for modifications of projects? Do you have a process in place to notify the public of significant modifications of project plans? Is there a challenge period before modifications are adopted? What happens to the obligated money if a modification is not approved?**

Chapter 6 of the BTOP Recipient Handbook provides an overview of BTOP project modification policies.[1] While NTIA will consider modification requests on a case-by-case basis, we discourage applicants from seeking approval for significant project modifications for two reasons. First, we approved the project based on representations that the grantee would deliver a set of benefits to its community. Allowing major modifications post-award could significantly change or diminish the proposed benefits. Second, the Recovery Act requires that projects be substantially complete within two years of award. Allowing a grantee to make major modifications could jeopardize its ability to meet this statutory requirement. Accordingly, while NTIA will review and may approve relatively minor modifications to a project, we will not approve modifications that will fundamentally change the project's scope, increase the approved project budget or delay timely completion of the project.

If a BTOP recipient wishes to modify its project, it must submit a written Award Action Request (AAR) to NTIA and the Grants Office. There is no challenge period or public comment process before we consider the request.

If NTIA denies a modification request, the recipient can choose to continue its project without modification. If the recipient determines that the project cannot move forward absent the modification, the project would be terminated and NTIA would return the unexpended funds to the U.S. Treasury.

2. **In your testimony you state that NTIA has been focusing on rigorous oversight and high quality technical assistance to ensure grantees complete their projects on schedule, within budget, and that they deliver the promised benefits to the communities they serve. What specific types of reporting requirements are now in place to help ensure grantees meet these goals? How often is information collected?**

BTOP grant recipients submit formal reports 13 times each year. These reports include the following:

- Quarterly Recovery Act Reports, which detail project progress, expenditures, and jobs information.
- Quarterly Financial Reports, which monitor the financial performance of the awards, including ensuring the expenditure of BTOP funds is consistent with the recipient's progress and that all costs are allowable. These reports also analyze and review the

[1] The BTOP Recipient Handbook is available at http://www2.ntia.doc.gov/files/Recipient_Handbook_v1.1_122110.pdf#Chapter6.

current financial trends of each BTOP recipient to allow for more informed decisions on monitoring and technical assistance needs. Further, we compare draw-down receipts with the submitted reports to determine the reasonableness of the grantee's spending. This review helps prevent awardees from having excess cash on hand and ensures that drawdowns are based on need.

- Quarterly and annual BTOP-specific performance progress reports that capture key accomplishments, progress to date, and upcoming quarterly progress expectations about each recipient's project, including budgeted and actual amounts expended and anticipated for the following quarter. NTIA uses these reports to monitor the completion and achievement of key milestones of each recipient's project.

In addition to these scheduled reports, NTIA interacts regularly with awardees via recipient conference calls, day-to-day emails and phone conversations, and project site visits that provide substantial information and updates to help ensure that recipients achieve their established goals.

All awardee reports are available online at www.ntia.doc.gov/broadbandusa, and additional information regarding recipient reporting requirements can be found in Chapter 5 of the BTOP Recipient Handbook.

3. **If a recipient fails to get matching funds, would that constitute a failure to meet the terms and conditions of the award? Would you have to deobligate the award under the current discretionary standard? Would H.R. 1343, reported by the Committee, require you to deobligate the award?**

If a recipient's anticipated matching funds sources become unavailable, BTOP staff's first option would be to work with the recipient to identify alternative match sources to allow the project to continue and the project's benefits to be realized. If the recipient cannot identify alternative match sources, NTIA could take any of the following actions: (1) terminate the award, deobligate the funds, and return unused funds to the U.S. Treasury; (2) waive, in whole or in part, the matching funds requirement if an awardee demonstrates financial need in accordance with Section 6001(f) of the Recovery Act and Section X.N. of both of the BTOP *Notices of Funds Availability* (NOFAs),[2] thus permitting the project to proceed; or (3) accept a reduction in match provided that the available match still exceeds the Recovery Act's 20 percent matching funds threshold, also permitting the project to proceed.

H.R. 1343, as reported by the Committee, would not require NTIA automatically to deobligate an award based solely on the recipient's potential inability to obtain matching funds if the awardee can find alternative matching fund sources or NTIA finds good cause to waive the matching requirement.

[2] The BTOP NOFAs are available at http://www2.ntia.doc.gov/rules.

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ONE HUNDRED TWELFTH CONGRESS

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WASHINGTON, DC 20515–6115

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Minority (202) 225–3641

April 20, 2011

The Honorable Jonathan Adelstein
Administrator
Rural Utility Service
U.S. Department of Agriculture
1400 Independence Avenue, S.W., Room 5135
Washington, D.C. 20250-1535

Dear Administrator Adelstein:

Thank you for appearing before the Subcommittee on Communications and Technology on Friday, April 1, 2011, to testify at the hearing entitled "H.R. __, a Bill to Clarify NTIA and RUS Authority to Return Reclaimed Stimulus Funds to the U.S. Treasury."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions to witnesses, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and then (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by close of business on Wednesday, May 4, 2011. Your responses may be e-mailed to the Legislative Clerk, in Word of PDF format at katie.novaria@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna Eshoo, Ranking Member,
Subcommittee on Communications and Technology

The Honorable Greg Walden

1. RUS issued new regulations on March 14 regarding terms of insufficient performance. The guidance states that if construction is not begun within six months of the loan funds being made available, the loan MAY be cancelled.

    a. Does the guidance only apply to loans, but not to grants or loan guarantees? Why? What is the standard for grants and loan guarantees?

    b. If the recipient does not begin construction within 6 months, but the loan is not cancelled, how much additional time does the recipient have to begin work?

    c. If a loan is cancelled as part of a package award that includes a grant, should the grant be cancelled too? What is the likelihood the recipient can fulfill its obligation without the loan or loan guarantee?

2. If information about an award comes to light now and indicates that its successful performance is based on metrics that are highly doubtful–such as the need to win a majority of existing customers from incumbent providers and getting the customers to pay a higher rate for service than the customers currently pay–will you reevaluate the award? Will you terminate the award if it is determined it cannot succeed or likely will not meet the performance milestones? At what threshold or metric will you determine an award is not likely to succeed? Should taxpayers be on the hook for projects that only have a 50-50 chance of success?

3. Are municipal governments on the hook for loans if they default? If a local governmental unit defaults on a RUS loan and RUS sells the system short at a foreclosure sale, will RUS enforce its right to collect the remaining unpaid debt from the local governmental unit?

    a. Has RUS published a formal policy position that it will seek repayment of all of the debt owed to the federal taxpayers?

    b. What steps will RUS take to ensure that all awardees know that RUS will vigorously and completely enforce collection of all amounts owed under defaulted loans?

    c. If BIP rules and available funding required RUS to award funds in the form of a loan, not a grant, would that essentially be the same as converting the loan to a grant if RUS does not seek repayment of a defaulted loan? If yes, how would that be different from providing the same grant that would have been prohibited in the first place?

4. The GAO testified these were both high risk programs. You testify of your low default rate for your entire portfolio of loans. While that is commendable, what is the default rate for the broadband loan portfolio? Are loans to broadband providers for project in areas with existing service riskier loans?

5. GAO testified that although the Recovery Act appropriated $2.4 billion to RUS, because of it budget authority to extend loans, RUS used $87 million in budget authority for loans to support $1.2 billion in total loans. Is that a standard leverage ratio RUS uses? Does that mean the actual total cost to taxpayers of the BIP could be $3.5 billion if the loans go bad?

6. If the assumptions about a project were overly optimistic and near impossible to meet, would that change your evaluation of the award? What remedies exist if you find an award will not be able to succeed?

    a. How do you evaluate metrics for penetration rates and vacancy rates?

    b. How did you evaluate projected revenue assumptions? Did RUS measure revenue assumptions against national averages or whether the assumptions could be supported by the average disposable income in the area to be served? If the integrity of the assumption indicates it has been compromised, can you suspend funding until the issue is resolved?

The Honorable Marsha Blackburn

1. There is a letter being circulated to the FCC that says we should not reform USF because numerous companies use USF money to pay RUS loans. In essence, they are using one government subsidy to pay for another, and both are used to overbuild private investment. You recently sent a letter to FCC Chairman Genachowski asking him to be aware that recipients of RUS loans use USF Money to make payments on these loans. Some of these loans are for 30 years. Does this mean we should not reform USF until then? Are we really advocating we use a rate payer subsidy to pay off a government subsidy?

Questions for the Record
H.R. a Bill to Clarify NTIA and RUS Authority to Return Reclaimed Stimulus Funds to the U.S. Treasury Hearing
before Subcommittee on Communication and Technology

April, 1, 2011

The Honorable Greg Walden

1. RUS issued new regulations on March 14 regarding terms of insufficient performance. The guidance states that if construction is not begun within six months of the loan funds being made available, the loan MAY be cancelled.

   a. Does the guidance only apply to loans, but not to grants or loan guarantees? Why? What is the standard for grants and loan guarantees?

   b. If the recipient does not begin construction within 6 months, but the loan is not cancelled, how much additional time does the recipient have to begin work?

   c. If a loan is cancelled as part of a package award that includes a grant, should the grant be cancelled too? What is the likelihood the recipient can fulfill its obligation without the loan or loan guarantee?

   Response: The new regulations issued by the Rural Utilities Service (RUS) on March 14th implemented changes required by the 2008 Farm Bill to our existing broadband loan program. These regulations do not govern grants, including awards made under the Recovery Act's Broadband Initiatives Program (BIP), since this is a loan-only program. In response to your specific questions, we offer the following:

(a) As mentioned, the subject regulations implemented changes required by the 2008 Farm Bill to RUS's existing loan program, and not the Recovery Act's Broadband Initiatives Program (BIP). As there is no grant component under the 2008 Farm Bill broadband loan program and funds have not been appropriated for loan guarantees, there was no reason to include provisions related to these purposes in this particular regulation.
(b) Loans made under the 2008 Farm Bill broadband program may be cancelled if construction does not begin within six months. An actual timeframe is not prescribed by regulation which provides both the borrower and Agency the flexibility to ensure the project is completed within scope of the loan agreement. The Government always has the ability to cancel the award at any time for cause. To best protect the taxpayer's investment in these projects, our experience has proven that flexibility is needed. For example, cancelling a loan on the 181st day when the project was delayed for environmental or weather-related issues may not be prudent. On the other hand, if it is clear that a project cannot proceed on the 95th day, the regulation and our loan security documents provide the flexibility for the Government to cancel a loan sooner and return the funds more quickly to the Treasury. As evidenced in my testimony of April 1st, for example, RUS has rescinded 10 BIP awards to date and 100% of the funds were returned to the U.S. Treasury. In many of these cases, both the government and awardee determined that the awardee could not reasonably proceed based upon new information that was not available at the time the award was made. RUS has, and continues to be, a good steward of the taxpayer's resources and is proceeding judiciously with all awards.
(c) Since there is no grant component to the 2008 Farm Bill broadband loan program, this question is not applicable. However, in general terms, RUS-funded projects which contain both a loan and grant component are viewed in their entirety for compliance with the terms of the underlying regulations and loan and grant agreements. Servicing and portfolio management decisions generally apply equally to both the loan and grant components of a loan/grant combination.

2. If information about an award comes to light now and indicates that its successful performance is based on metrics that are highly doubtful--such as the need to win a majority of existing

customers from incumbent providers and getting the customers to pay a higher rate for service than the customers currently pay--will you reevaluate the award? Will you terminate the award if it is determined it cannot succeed or likely will not meet the performance milestones? At what threshold or metric will you determine an award is not likely to succeed? Should taxpayers be on the hook for projects that only have a 50-50 chance of success?

Response: RUS is confident in the repayment ability of all the loan and grant underwriting decisions made for awards under Broadband Initiatives Program (BIP). With over 60 years history in providing loans and grants for advanced telecommunications networks, RUS was uniquely qualified to responsibly implement the requirements of the Recovery Act. That said, conditions in any marketplace can change and require that both the customer and Agency need to reevaluate a project. This is a normal course of business throughout the build-out of any RUS-funded infrastructure project – be it a water or electric system or a broadband deployment. RUS's impressive track record in all of its loan programs is testament to the commitment of experienced National Office and Field Staff that monitor these projects. This process began the day each award was made and will continue throughout the build-out process and until the loan is paid in full. RUS has always, and will continue, to work closely with all awardees to ensure that the taxpayer's investment is protected and that the project fulfills its statutory mission of bringing high-speed broadband to foster rural economic development. Each project performance is evaluated on an individual case-basis. The government should not restrict itself to one set of rules or conditions upon which to terminate an award. Flexibility is fundamental for prudent portfolio management. As evidenced in my testimony of April 1st, RUS has rescinded 10 BIP awards to date and 100% of the funds were returned to the U.S. Treasury. In many of these cases, both the government and customer determined that the Awardee could not reasonably proceed based upon new information that was not available at the time the award was made. RUS has, and continues to be, a good steward of the taxpayer's resources and is proceeding judiciously with all awards.

3. Are municipal governments on the hook for loans if they default? If a local governmental unit defaults on a RUS loan and RUS sells the system short at a foreclosure sale, will RUS enforce its right to collect the remaining unpaid debt from the local governmental unit?

Response: Each award was properly secured to ensure that both the Government and taxpayer would recover their investment. If a municipal government received a BIP award, it would be responsible for its debt to the Federal government. RUS makes every effort to ensure that the awardees are successful, but in those cases that are not, RUS is under a statutory duty to collect the debt under the Federal Debt Collection Act. Experienced RUS staff works closely with our Office of General Counsel and the Department of Justice to seek the best recovery for the Government and taxpayer.

a. Has RUS published a formal policy position that it will seek repayment of all of the debt owed to the federal taxpayers?

Response: Federal debt collection policies are guided by the United States Treasury and the Department of Justice, who maintain strict regulations regarding the repayment of all federal debts. See the Federal Claims Collection Standards at 31 CFR parts 900-904. RUS follows these guidelines and is supported through the Notices of Funding Availability (NOFAs) under which any award was made and the loan and grant documents executed to secure the debt. Those NOFA's and security instruments were published in the Federal Register and posted on the Agency's website. Government wide debt collection regulations are available on Treasury's website (www.fms.treas.gov/debt).

b. What steps will RUS take to ensure that all awardees know that RUS will vigorously and completely enforce collection of all amounts owed under defaulted loans?

Response: RUS has a default rate which would be envied in the private sector. We have over 75 years experience making electric loans and 60 years experience in making

telecommunication and water loans. RUS has conducted Awardee Workshops which included both our General Field Representatives (GFRs) and Field Accountants, and every Awardee has been personally visited by RUS Field Staff to ensure they are fully prepared to proceed with their projects. RUS and Rural Development staff continue to monitor performance throughout the build-out process with on-site visits, evaluation of required recovery.gov and RUS reports, construction oversight, and monitoring of construction advances and requisitions. RUS and Rural Development have a team of skilled staff that will monitor these projects throughout the life of their loan and grant.

d. If BIP rules and available funding required RUS to award funds in the form of a loan, not a grant, would that essentially be the same as converting the loan to a grant if RUS does not seek repayment of a defaulted loan? If yes, how would that be different from providing the same grant that would have been prohibited in the first place?

Response: RUS was provided the authority to make loans under the Recovery Act and as good stewards of the taxpayer's investment, provided loans instead of grants, where a prudent underwriting decision could be made. As previously mentioned, RUS has a proven track record with over 75 years experience in financing rural utilities with a default rate envious in the private sector. RUS will always rigorously seek repayment of any defaulted loan. Further, our practice of making loans demonstrates that a loan product, often in combination with a grant, is a viable tool for bringing broadband to unserved and underserved communities.

4. The GAO testified these were both high risk programs. You testify of your low default rate for your entire portfolio of loans. While that is commendable, what is the default rate for the broadband loan portfolio? Are loans to broadband providers for project in areas with existing service riskier loans?

Response: We appreciate the guidance and recommendations of the GAO and consider GAO a partner to the ultimate success of these programs. GAO was concerned with both RUS and NTIA's ability to stand-up such a program in the short timeframe allowed in the Recovery Act. The results of both programs now stand for themselves and are testament to the dedicated USDA and Commerce staff that made these programs successful. Long term, these projects will bring economic benefits and recovery to unserved and underserved areas. Short term, jobs are being created and the foundation has been set for the economic, health, educational and social benefits of broadband. The default rate for all RUS programs – including broadband loans - is low. For broadband programs, the current default rate is 4 percent, which represents loans in default, rather than losses, as the agency continues to both work with borrowers and seek a recovery of debt The original subsidy rate for both the Farm Bill broadband loan program and Broadband Initiatives Program (BIP) were set at 7.24%. We have no data to support that loans in areas with existing service providers are riskier. Areas that are completely unserved generally remain unserved because a business case cannot be made to support a loan in these areas. In other words, if unserved areas were of low risk and profitable, major carriers would flock to those areas to provide service. As a result, loans to build-out broadband networks in completely unserved areas would generally be considered a higher risk to any lender. This is why the Farm Bill, enacted in 2008, recognized that providing loans in both unserved and underserved areas may be necessary to bring broadband to the truly unserved.

5. GAO testified that although the Recovery Act appropriated $2.4 billion to RUS, because of it budget authority to extend loans, RUS used $87 million in budget authority for loans to support $1.2 billion in total loans. Is that a standard leverage ratio RUS uses? Does that mean the actual total cost to taxpayers of the BIP could be $3.5 billion if the loans go bad?

Response: Under the Recovery Act, RUS was awarded $2.5 billion in budget authority to provide loans, grants and loan/grant combinations for broadband infrastructure necessary to facilitate economic development in rural America. Rather than providing all grants, RUS was able to use its 60-year history of prudent loan-making to "leverage" these invaluable Recovery Act funds into loans, grants, and loan/grant combinations. The leverage rate for RUS broadband loans is approximately 14 to 1, meaning that for every dollar in budget authority, RUS could provide a one dollar in grant funds or 14 dollars in loan funds. In total, RUS provided $3.5 billion in loans, grants and loan/grant combinations. We believe this was prudent use of the taxpayer's resources and proved that a business case could be made for both loans and grants in unserved and underserved areas. Based upon 60-years of loan underwriting experience, both the RUS and the Office of Management and Budget anticipate the exposure to the taxpayers will not exceed $2.5 billion. It is theoretically possible that none of the loans will be repaid, but highly unlikely. RUS assumes, as indicated above, an original subsidy of 7.24 percent, which takes into account the loss rate and is why limited budget authority was already applied to cover the cost of these loans.

6. If the assumptions about a project were overly optimistic and near impossible to meet, would that change your evaluation of the award? What remedies exist if you find an award will not be able to succeed?

Response: If the assumptions regarding an award "were overly optimistic and near impossible to meet," RUS would not have made the award. Further, with over $28 billion in competing applications, only those that best met the requirements of the Notice of Funding Availability (NOFA) were awarded. RUS has many tools at its disposal in the event that an Awardee will not be able to proceed, including rescission of funds which has been used on ten occasions to date. RUS and Rural Development have experienced portfolio management professionals on staff that work with customers every day to ensure that projects are moving in the right direction. RUS's goal is to ensure that every Awardee is successful and has the staff and resources both here in DC and the Field to accomplish this goal.

a. How do you evaluate metrics for penetration rates and vacancy rates?

Response: Experienced RUS staff thoroughly reviewed the market survey and competitive information provided by each BIP applicant. In addition, RUS posted the proposed service territory map of all BIP applicants on a public website and invited comments for 30 days. To validate the information provided by both the applicant and those received through the public comment process, RUS staff conducted its own analysis of the data which included on-site field inspections. These efforts helped us determine the actual competition in the area and ensure the projected penetration rates were reasonable given any competition.

e. How did you evaluate projected revenue assumptions? Did RUS measure revenue assumptions against national averages or whether the assumptions could be supported by the average disposable income in the area to be served?

Response: Again, experienced RUS staff completed a thorough analysis of the projected revenue assumptions provided by the applicant. We reviewed a wide array of information in order to confirm that the penetration rates and associated revenue projections were reasonable, including looking at RUS's 60-year experience in financing telecommunications, the market survey/competitive information and income levels in the service area.

The Honorable Marsha Blackburn

1. There is a letter being circulated to the FCC that says we should not reform USF because numerous companies use USF money to pay RUS loans. In essence, they are using one government subsidy to pay for another, and both are used to overbuild private investment. You recently sent a letter

to FCC Chairman Genachowski asking him to be aware that recipients of RUS loans use USF Money to make payments on these loans. Some of these loans are for 30 years. Does this mean we should not reform USF until then? Are we really advocating we use a rate payer subsidy to pay off a government subsidy?

Response: The concept of universal service is a principle dating back to the early 1900s. The Universal Service Support system can trace its statutory basis to the Communications Act of 1934. The first line of that statute states that its purpose is to "make available, so far as possible, to all the people of the United States…a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges…."

Over time, a complex array of rules evolved to advance universal service relating to service quality, service territories, cost allocations, rate making, jurisdictional separations and payments among and between carriers to pay for network deployment and to pay each other for originating and completing each others' calls. During the era of monopoly regulation, differential rates between rural and urban, local and long distance, inter-state and intra-state combined with exclusive service territories where significant tools to ensure universal service. Carriers also compensated each other for originating and terminating calls through the settlements process.

When the Congress enacted the Telecommunications Act of 1996, and the regulated monopoly paradigm gave way to the competitive markets we know today, it strengthened the legislative basis for the universal service support system, opened all markets to competition and introduced a process of transforming implicit support mechanisms (differential rates) into explicit support (Universal Service Fund (USF) payments and assessments). That process continues today and is at the heart of the FCC's USF reform efforts.

Section 254 of the Telecommunications Act of 1996 ('96 Act) established the key universal service principles for the FCC to implement in a newly competitive telecommunications market. Those include, --

- the availability of quality service at just, reasonable and affordable rates;
- the provision of access to advanced telecommunications in all regions of the country, reasonably comparable services and comparable rates for consumer including those in rural, insular, low income and high cost areas;
- increased access to advanced services for schools, libraries and rural health care facilities;
- equitable and non-discriminatory contributions from all providers of telecommunications services to the preservation and advancement of universal service; and
- specific, predictable and sufficient Federal and State mechanisms to preserve and advance universal service.

Today, the USF provides support for telecommunications services to high cost areas (typically rural areas), low income consumers, rural health care providers and schools and libraries. The USF is funded by assessments pursuant to FCC rules on interstate and international carrier revenues. The funds never touch the US Treasury, but under budget rules are considered in the calculation of the federal deficit. Inter-carrier Compensation (ICC) rates, the charges carriers make to each other to originate and complete calls historically has been another mechanism to support universal service. Since the passage of the '96 Act, the FCC and states have reduced those rates and in some cases replaced those revenue streams with additional support payments from the USF or state universal service funds.

Federal and State USF and ICC payments are significant sources of revenues for many rural carriers serving high cost areas. USF and ICC rules are under review by the FCC. In broad terms, the FCC has proposed to transition the USF system from one built on the premises of circuit switched voice technology to a 21st century USF premised on modern broadband networks where voice is one application of many video, data and communications applications. The FCC has proposed creating new funds, known as the Connect America Fund (CAF) and the Mobility Fund (MF) which would be introduced and perhaps eventually replace existing USF support mechanisms. They have also proposed reforms which could reduce the existing USF.

The RUS Telecommunications and broadband loan programs are based on statutes enacted in 1949 and 2002 (amended in 2008) respectively to provide reliable low cost loans to entities serving rural areas. The agency also administers a modest broadband grant program targeted to very rural, sparsely populated, lower income areas with no broadband known as the "Community Connect Program."

The RUS loan programs, including the broadband loan program offer low interest financing as an incentive for service providers to bring advanced telecommunications services to rural areas. The RUS only finances infrastructure and does not extend credit for operations. RUS loans are paid back by the borrower. With few exceptions that may permit pari passu liens for existing broadband providers, RUS maintains a first lien on all after acquired property of the borrower. The loans are expected to be and are in fact repaid. RUS is an incentive lender, not a lender of last resort. It therefore, looks for good credit risks.

In making a credit decision, RUS, like all lenders, considers all sources of revenues to determine whether an applicant can repay its loans. USF and ICC revenues are among the considerations in our underwriting process. Our telecommunications loan portfolio is predominately made up of rural local exchange carriers (RLECs). 476 of the 480 telecommunications program borrowers receive USF support. Approximately 10% of our broadband program borrowers receive USF support and about 60% of our 297 BIP infrastructure awardees received USF support.

Changes in revenue streams from any source will certainly affect future lending decisions – not just of RUS, but of all lenders - and a loss of revenues, from any source could also affect the security of the existing portfolio.

FCC broadband proposals are part of an overall reform of USF support. The RUS broadband loan program is a lending program which considers all sources of revenue to make lending decisions.

The RUS and FCC programs are not duplicative. They operate independently, but both the FCC and the RUS work to understand each other's work. The programs are related in that RUS considers USF and ICC payments as a part of our underwriting and the low interest rates RUS is able to offer service, helps control rural cost of service.

Because the RUS has expertise in the actual cost of rural infrastructure, I wrote to the Chairman of the FCC last year to offer to make aggregated loan data available to the FCC for analysis to assist the FCC understand rural cost factors. RUS recognizes the need for reform of these rules and is not advocating any delay in the FCC moving forward.

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