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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Broadband Initiatives Program

RIN: 0572-ZA01

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Broadband Technology Opportunities Program

RIN: 0660-ZA28

AGENCIES: Rural Utilities Service (RUS), Department of Agriculture, and National Telecommunications and Information Administration (NTIA), Department of Commerce.

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

SUMMARY: RUS and NTIA announce general policy and application procedures for broadband initiatives established pursuant to the American Recovery and Reinvestment Act of 2009 (Recovery Act). RUS is establishing the Broadband Initiatives Program (BIP) which may

28 extend loans, grants, and loan/grant combinations to facilitate broadband deployment in rural
29 areas. NTIA is establishing the Broadband Technology Opportunities Program (BTOP) which
30 makes available grants for deploying broadband infrastructure in unserved and underserved areas
31 in the United States, enhancing broadband capacity at public computer centers, and promoting
32 sustainable broadband adoption projects. In facilitating the expansion of broadband
33 communications services and infrastructure, both programs will advance the objectives of the
34 Recovery Act to spur job creation and stimulate long-term economic growth and opportunity.

35 **DATES:** Applications will be accepted between July 14, 2009 at 8:00 a.m. Eastern Time (ET)
36 until August 14, 2009 at 5:00 p.m. ET.

37 **APPLICATION SUBMISSION:** The application packages for electronic and paper
38 submissions will be available at <http://www.broadbandusa.gov>.

39 Electronic submissions: Electronic submissions of applications will allow for the expeditious
40 review of an applicant's proposal consistent with the goals of the Recovery Act. As a result, all
41 applicants requesting more than \$1 million in assistance (in the form of grants, loans, or a
42 combination of grants and loans) must file their application electronically. Applicants whose
43 authorized representatives are individuals with disabilities, however, may submit a paper
44 application irrespective of the funding size of their request.¹ In addition, applicants who are
45 requesting less than \$1 million in assistance may forego the electronic filing requirement if filing
46 electronically would impose a hardship on the applicant. Electronic applications must be
47 submitted by 5:00 p.m. ET on August 14, 2009. The government electronic application system
48 will provide a date and time stamped confirmation number that will serve as proof of submission.

¹ See Rehabilitation Act of 1973 § 508, 29 U.S.C. § 794d.

49 Paper submissions: Applicants requesting less than \$1 million in assistance (in the form of
50 grants, loans, or a combination of grants and loans) may file their applications in a paper format
51 if filing electronically would impose a hardship on the applicants. Applicants whose authorized
52 representatives are individuals with disabilities may file their applications in a paper format
53 irrespective of the funding size of their request. To the extent that applicants use electronic word
54 processing software to create paper submissions, they should include in their filing, to the extent
55 possible, an electronic copy of the paper application on an appropriate media such as a CD. This
56 will assist the agencies in processing paper applications. Paper submissions must be postmarked
57 no later than August 14, 2009, or hand-delivered no later than 5:00 p.m. ET on August 14, 2009,
58 to the addresses listed in the Supplementary Information in this NOFA.

59 **CONTACT INFORMATION:** For general inquiries regarding BIP, contact David J. Villano,
60 Assistant Administrator Telecommunications Program, Rural Utilities Service, U.S. Department
61 of Agriculture (USDA), email: bip@wdc.usda.gov telephone: (202) 690-0525. For general
62 inquiries regarding BTOP, contact Anthony Wilhelm, Deputy Associate Administrator,
63 Infrastructure Division, Office of Telecommunications and Information Applications, National
64 Telecommunications and Information Administration, U.S. Department of Commerce (DOC),
65 email: bttop@ntia.doc.gov, telephone: (202) 482-2048. For inquiries regarding BIP and BTOP
66 compliance requirements, including applicable federal rules and regulations protecting against
67 fraud, waste and abuse, contact bipcompliance@wdc.usda.gov for BIP and
68 bttopcompliance@ntia.doc.gov for BTOP. You may obtain additional information regarding
69 applications for BIP via the Internet at <http://www.usda.gov/rus/telecom/> and for BTOP at
70 <http://www.ntia.doc.gov/broadbandgrants/>.

71 **AUTHORITY:** This notice is issued pursuant to the American Recovery and Reinvestment Act
72 of 2009, Pub. L. 111-5, 123 Stat. 115 (2009) and the Rural Electrification Act of 1936, 7 U.S.C.
73 § 901 *et seq.*

74 **SUPPLEMENTARY INFORMATION:**

75 Catalog of Federal Domestic Assistance (CFDA) Number: Broadband Initiatives Program (BIP)
76 – 10.787; Broadband Technology Opportunities Program (BTOP) – 11.557.

77 Additional Items in Supplementary Information

78 I. Overview: Describes the purposes of the Recovery Act, the broadband goals of the Recovery
79 Act, and the establishment of BIP and BTOP.

80 II. Funding Opportunity Description: Provides a more thorough description of BIP and BTOP.

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

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

84 V. Eligibility Information for BIP and BTOP: Establishes eligibility criteria, eligibility factors,
85 eligible and ineligible costs, and other eligibility requirements.

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

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

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

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

94 X. Other Information: Sets forth guidance on funding, compliance with various laws,
95 confidentiality, discretionary awards, and authorized signatures.

96 **I. Overview**

97 On February 17, 2009, President Obama signed the American Recovery and
98 Reinvestment Act of 2009 (Recovery Act) into law.² The essential goal of the Recovery Act is to
99 provide a “direct fiscal boost to help lift our Nation from the greatest economic crisis in our
100 lifetimes and lay the foundation for future growth.”³ Accordingly, the Recovery Act identifies
101 five overall purposes: A. to preserve and create jobs and promote economic recovery; B. to
102 assist those most impacted by the recession; C. to provide investments needed to increase
103 economic efficiency by spurring technological advances in science and health; D. to invest in
104 transportation, environmental protection, and other infrastructure that will provide long-term
105 economic benefits; and E. to stabilize state and local government budgets.⁴ The Recovery Act
106 further instructs the President and the heads of federal departments and agencies to manage and
107 expend Recovery Act funds to achieve these five purposes, “commencing expenditures and
108 activities as quickly as possible consistent with prudent management.”⁵

109 Consistent with the purposes described above, the Recovery Act provides RUS and NTIA
110 with \$7.2 billion to expand access to broadband services in the United States. In so doing, it
111 recognizes the growing importance of access to broadband services to economic development
112 and to the quality of life of all Americans. Specifically, the Recovery Act tasks RUS, NTIA, and
113 the Federal Communications Commission (FCC) with leading the federal government’s efforts
114 to begin the process of significantly expanding the reach and quality of broadband services.

² American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, 123 Stat. 115 (2009).

³ President Obama, Statement on Signing the American Recovery and Reinvestment Act of 2009 (Feb. 17, 2009).

⁴ Recovery Act § 3(a), 123 Stat. at 115–16.

⁵ *See id.* § 3(b), 123 Stat. at 116.

115 RUS, NTIA, and the FCC have worked closely to leverage the authorities and resources
116 provided in the Recovery Act to develop a coordinated federal government approach to
117 addressing the challenge of rapidly expanding the access and quality of broadband services
118 across the country. Each agency brings unique skills and resources to this effort. RUS has been
119 the federal government leader in bringing telecommunications to rural America for decades.
120 NTIA has experience in awarding technology-related grants through the Technology
121 Opportunities Program and serves as the President’s principal advisor on telecommunications
122 and information policies.⁶ And NTIA and the FCC together are responsible for the development
123 of federal telecommunications policy.

124 Additionally, to aid in achieving Recovery Act objectives, on March 10, 2009, RUS,
125 NTIA, and the FCC co-sponsored a public meeting to initiate public outreach about the current
126 availability of broadband service in the United States and ways in which the availability of
127 broadband services could be expanded.⁷ The March 10 meeting was followed by the release of a
128 Request for Information (RFI) and six days of additional public meetings and field hearings
129 during March.⁸ The meetings and hearings included nearly 120 panelists—including
130 representatives from consumer and public interest groups, state and local governments, tribal
131 governments, minority and vulnerable populations, industry, academia, and other institutions—
132 who provided comment on how to make RUS’s and NTIA’s broadband initiatives effective,
133 equitable, and efficient.⁹

⁶ See Technology Opportunities Program, <http://www.ntia.doc.gov/otiahome/top/index.html>; NTIA Organization Act of 1992, 47 U.S.C. § 901 *et seq.*

⁷ See Joint Notice of Public Meeting, 74 Fed. Reg. 8914 (Feb. 27, 2009).

⁸ See Joint Request for Information and Notice of Public Meetings, 74 Fed. Reg. 10716 (Mar. 12, 2009).

⁹ Agendas, transcripts, and presentations from each meeting are available on NTIA’s website at: <http://www.ntia.doc.gov/broadbandgrants/meetings.html>.

134 In response to the RFI and the public meetings, RUS and NTIA received over 1,000
135 comments from institutions and individuals.¹⁰ RUS and NTIA received comments on multiple
136 issues surrounding BIP and BTOP, including how the terms “broadband,” “unserved area,” and
137 “underserved area” should be defined, resulting in the definitions and program requirements
138 announced in this NOFA. These comments played a crucial role in formulating the structure of
139 the RUS and NTIA broadband programs. For further discussion and explanation of the agencies’
140 reliance on the public comments in the policy decisions involved in BIP and BTOP, see the
141 attached Policy Justification found in the Appendix at the end of this NOFA.

142 RUS and NTIA Recovery Act programs implement new authorities. Specifically, the
143 Recovery Act expands RUS’s existing authority to make loans and provides new authority to
144 make grants to facilitate broadband deployment in rural areas. The Recovery Act appropriates
145 \$2.5 billion of budget authority for RUS to extend loans, loan/grant combinations, and grants to
146 projects where at least 75 percent of an RUS-funded area is in a rural area that lacks sufficient
147 access to high speed broadband service to facilitate rural economic development. RUS has
148 developed BIP to fund broadband infrastructure in qualifying areas.¹¹

149 The Recovery Act also appropriates \$4.7 billion to NTIA to provide grants for
150 broadband initiatives throughout the United States, including unserved and underserved areas.¹²
151 NTIA is tasked to spur job creation, stimulate long-term economic growth and opportunity, and
152 narrow gaps in broadband deployment and adoption. The NTIA program is titled BTOP.
153 Consistent with its appropriation, BTOP is divided into three categories of projects: Broadband
154 Infrastructure, Public Computer Centers, and Sustainable Broadband Adoption.

¹⁰ Comments may be viewed on NTIA’s website at: <http://www.ntia.doc.gov/broadbandgrants/comments>.

¹¹ See Recovery Act div. A, tit. I, 123 Stat. at 118.

¹² See *id.* div. A, tit. II, 123 Stat. at 128.

155 Applications to fund broadband infrastructure projects in areas which are at least 75
156 percent rural are required to be submitted to RUS for consideration under BIP. If such applicants
157 intending to serve rural areas also choose to be considered for BTOP funding, then they must
158 complete the additional elements required of BTOP infrastructure applicants. NTIA may make
159 awards to such applications NTIA determines to be meritorious after RUS has reviewed the
160 application and determined not to fund it. All other applications for Broadband Infrastructure
161 projects, as well as applications for Public Computer Centers or Sustainable Broadband
162 Adoption projects, must be submitted to NTIA for consideration under BTOP.

163 The purpose of this NOFA is to describe the availability of the BIP and BTOP funds and
164 set forth the application requirements for those entities wishing to participate in one or more of
165 the Recovery Act's broadband programs. Applicants may submit projects that fit within one or
166 more categories. Each application will be compared against objective criteria to determine
167 whether an award is warranted.

168 In order to balance the burdens on applicants versus the needs of the agencies to
169 efficiently evaluate applications, RUS and NTIA have developed a two-step application process.
170 In step one, the goal is to create a pool of viable and potentially fundable applications. Step two
171 is to fully validate the submissions in step one and identify the most highly qualified applications
172 for funding.

173 Rapid disbursement of the funds available under this program is important because of the
174 short time frames imposed by the Recovery Act. Additionally, a commitment to transparency in
175 the award process and rigorous reporting requirements will help ensure accountability.

176 Approximately \$4 billion of program level funding has been allocated to this NOFA by
177 RUS and NTIA. The remaining funds will be made available under subsequent NOFAs. The

178 requirements for subsequent NOFAs may differ from this NOFA to better achieve the agencies’
179 priorities.

180 **II. Funding Opportunity Description**

181 **A. BIP**

182 **1. BIP Objectives**

183 The Recovery Act expands RUS’s existing authority to make loans and provides new
184 authority to make grants for the purpose of facilitating broadband deployment in rural
185 communities. Specifically, the Recovery Act requires that 75 percent of a funded area be in a
186 rural area that lacks sufficient access to high speed broadband service to facilitate economic
187 development. Because of the short time frames imposed by the Recovery Act, the requirements
188 outlined in this NOFA will be used to govern program implementation.

189 Under BIP, RUS will award grants, loans, and loan/grant combinations for broadband
190 infrastructure. Grants under BIP are to be used to fund applications proposing to exclusively
191 serve remote, unserved, rural areas. BIP loan and loan/grant combination funds are to be used to
192 provide funding to applications proposing to serve non-remote and underserved rural areas.
193 Projects which include non-remote and remote areas will be funded by loans or loan/grant
194 combinations. The size of the grant portion of any loan/grant combination award is determined
195 by the applicant, but cannot exceed the amount of the loan portion of the award. RUS will favor
196 applications that propose a higher percentage of loan funds. Applicants may request 100 percent
197 loan funding. RUS will seek to make the extension of broadband infrastructure into difficult-to-
198 serve areas affordable—a key objective of BIP funding—through substantial grant funds and
199 attractive loan terms with reasonable security requirements.

200 The Recovery Act establishes the rapid disbursement of the funds as an important priority
201 for the BIP program. However, the program also must be administered judiciously to ensure
202 responsible use of public funds. To balance these two objectives, RUS will favor funding
203 projects that can commence construction promptly and demonstrate technical and financial
204 feasibility, organizational capacity, and compliance with other Administration priorities. A
205 commitment to transparency in the award process and rigorous reporting requirements will help
206 ensure accountability.

207 **2. BIP Priorities**

208 The Recovery Act requires that 75 percent of a BIP-funded area be in a rural area that
209 “lacks sufficient access to high speed broadband service to facilitate rural economic
210 development.”¹³ Additionally, the Recovery Act mandates that priority be given to projects
211 which: a. give end users a choice of providers; b. serve the highest proportion of rural
212 residents that lack access to broadband service; c. are projects of current or former RUS
213 borrowers (Title II borrowers); and d. are fully funded and ready to start once Recovery Act
214 funding is received. BIP application scoring criteria awards projects that implement these
215 priorities.¹⁴

216 **3. BIP Application and Selection Process**

217 RUS has adopted a two-phase application process. Step one of the application process
218 requires the submission of the information described in section VI.D.1.a. This information will
219 be evaluated by RUS for completeness and eligibility. Ineligible and incomplete applications
220 will be rejected. Eligible applications will be evaluated and ranked based on the applicable
221 scoring criteria described in section VII. The highest scoring applications will be invited to

¹³ *Id.* div. A, tit. I, 123 Stat. at 118.

¹⁴ *Id.* at 118–19.

222 participate in step two of the application process by submitting the additional documentation
223 described in section VI.D.1.b. to further support the applicants’ representations made in step one
224 of the application process. If the additional documentation does not adequately verify the first
225 submission, then the application will be rejected.

226 **B. BTOP**

227 **1. BTOP Objectives**

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

230 a. To provide access to broadband service to consumers residing in unserved areas of the
231 country;

232 b. To provide improved access to broadband service to consumers residing in
233 underserved areas of the country;

234 c. To provide broadband access, education, awareness, training, equipment, and support
235 to community anchor institutions (*e.g.*, schools, libraries, medical facilities), or organizations and
236 agencies serving vulnerable populations (*e.g.*, low-income, unemployed, aged), or job-creating
237 strategic facilities located in state- or federally-designated economic development areas;

238 d. To improve access to, and use of, broadband service by public safety agencies; and

239 e. To stimulate the demand for broadband, economic growth, and job creation.¹⁵

240 The Recovery Act provides \$4.7 billion to NTIA for BTOP, to be awarded by September
241 30, 2010, which represents a significant investment to advance President Obama’s national
242 broadband strategy.¹⁶ Of this amount, at least \$200 million will be made available for
243 competitive grants for expanding public computer center capacity. In addition, at least \$250

¹⁵ See *id.* § 6001(b), 123 Stat. at 512–13.

¹⁶ See *id.* div. A, tit. II, 123 Stat. at 128.

244 million will be available for competitive grants for innovative programs to encourage sustainable
245 adoption of broadband services. Up to \$350 million is available from the Recovery Act to fund
246 the State Broadband Data and Development Grant Program authorized by the Broadband Data
247 Improvement Act¹⁷ and to support the development and maintenance of a nationwide broadband
248 map for use by policymakers and consumers. A forthcoming NOFA will outline policies and
249 procedures for the State Broadband Data and Development Grant Program.

250 BTOP funds are available through three categories of eligible projects: Broadband
251 Infrastructure, Public Computer Centers, and Sustainable Broadband Adoption.¹⁸ The Broadband
252 Infrastructure category consists of two components—Last Mile and Middle Mile—and will fund
253 projects to deliver broadband access to unserved and underserved areas. The Public Computer
254 Center category will fund projects that expand public access to broadband service and enhance
255 broadband capacity at entities, such as community colleges and public libraries, that permit the
256 public to use these computing centers.¹⁹ The Sustainable Broadband Adoption category will
257 fund innovative projects that promote broadband demand, including projects focused on
258 providing broadband education, awareness, training, access, equipment or support, particularly
259 among vulnerable population groups where broadband technology has traditionally been
260 underutilized.²⁰

261 The Recovery Act also recognizes the valuable role that the states and territories can play
262 in implementing BTOP, and permits NTIA to consult with them in identifying unserved and
263 underserved areas within their borders and in allocating grant funds for projects in or affecting

¹⁷ Pub. L. 110-385, 122 Stat. 4096 (to be codified at 47 U.S.C. § 1301 *et seq.*).

¹⁸ See Recovery Act div. A, tit. II, 123 Stat. at 128.

¹⁹ *Id.* div. A, tit. II & § 6001(b)(3), 123 Stat. at 128, 512–13.

²⁰ *Id.* div. A, tit. II & 6001(b)(5), 123 Stat. at 128, 513.

264 their jurisdictions.²¹ Consistent with the Recovery Act, NTIA has consulted with the FCC on this
265 NOFA.

266 **2. BTOP Priorities**

267 All projects funded under BTOP must advance one or more of the five statutory purposes
268 outlined above. The program is designed to extend broadband access to unserved areas, improve
269 access to underserved areas, and expand broadband access to a wide range of institutions and
270 individuals, including vulnerable populations. It will seek to serve the highest priority needs for
271 federal investment—particularly projects that offer the potential for economic growth and job
272 creation, and provide benefits to education, health care, and public safety. The program will
273 support viable, sustainable, and scalable projects. NTIA will favor proposals that satisfy the
274 public-interest objectives specified in the statute and detailed in this NOFA. These projects can
275 serve as models for future investors once economic conditions improve.

276 NTIA expects to distribute grants across geographic areas addressing these various public
277 purposes. It will issue awards on a technologically neutral basis, and expects to support projects
278 employing a range of technologies (*e.g.*, fixed and mobile wireless, fiber, satellite). In making
279 these awards, NTIA will also take into consideration whether an applicant is a socially and
280 economically disadvantaged small business concern as defined under section 8(a) of the Small
281 Business Act (SBA) (15 U.S.C. § 637(a)(4)).²² Finally, it is also important to highlight the desire
282 of the Recovery Act to extend non-discrimination and network interconnection obligations on
283 awardees. In particular, the Recovery Act directs NTIA to impose contractual conditions on

²¹ *Id.* § 6001(c), 123 Stat. at 513.

²² *See id.* § 6001(h)(3), 123 Stat. at 514–15.

284 BTOP grants that would, at a minimum, adhere to the principles contained in the FCC’s
285 broadband policy statement.²³

286 **3. BTOP Application and Selection Process**

287 NTIA will employ a two-step application review process. First, however, NTIA will
288 conduct an initial screen of applications to determine whether an application meets the
289 mandatory threshold requirements, such as application completeness, set forth in section V.C. of
290 this NOFA. These are mandatory threshold requirements that qualify an application for further
291 review. Applicants that fail to meet any of the eligibility factors will be notified in writing of the
292 reason for the rejection. Subsequent to this initial screening, applications will proceed to the step
293 one review process. The applications will receive at least three independent reviews (by a three
294 member review panel) against the eligibility factors as well as against the evaluation criteria
295 provided in this NOFA. This review panel will be comprised of at least three peer/expert
296 reviewers who have demonstrated subject-matter expertise. No consensus advice will be given
297 by the reviewers. Each reviewer will independently score the application, and reviewer scores
298 will be averaged. Based on these scores, applications that are considered the most highly
299 qualified will advance to the step two, “due diligence,” review for further consideration. All
300 other applications will be rejected, and the applicants will be notified in writing of the reason for
301 the rejection.

302 In step two of the review process, the remaining applicants will be asked to submit
303 additional information, as appropriate, such as more detailed plans or supporting documents²⁴ to
304 further substantiate the representations made in their application.

²³ *Id.* § 6001(j), 123 Stat. at 515.

²⁴ *See infra* section VI.D.1.b. for more details regarding the required additional information.

305 The supplemental information will be reviewed and analyzed by NTIA staff with the
306 support of external engineering, business, and subject-matter experts to evaluate the consistency
307 of the applications with the supporting documents and ensure applications merit awards.
308 Applicants whose supporting documents do not adequately substantiate the representations in
309 their application may be rejected, and the applicants will be notified in writing of the reason for
310 the rejection. Upon completion of its due diligence, NTIA program staff will complete its
311 analysis of each application by assigning a rating based on its consistency with the
312 representations made in the application. This rating will be based on a five-point scale (1-5),
313 with a five representing the highest consistency and conformity with the information already
314 provided, especially on technical and budget considerations.

315 All states will be provided an opportunity to make recommendations concerning the
316 allocation of funds for qualifying projects in or affecting the individual states during step two of
317 the BTOP application process, regardless of their participation in the State Broadband Data and
318 Development Grant Program. During step two of the BTOP application process, the Governor's
319 office of each state will receive a list of the applications under consideration. States may provide
320 a list and prioritization of recommended projects, along with an explanation of why the selected
321 proposals meet the greatest needs of the state. States are strongly encouraged to provide
322 mapping and planning data to support their recommendations. States participating in the State
323 Broadband Data and Development Grant Program may rely on their submission under that
324 program to fulfill this request. All states will have 20 calendar days from the date of notification
325 to submit to NTIA their recommendations.

326 Upon completion of the step two review, NTIA reserves the right to discuss with the
327 applicant specific modifications to the application to resolve any differences that may exist

328 between the applicant’s original request and what NTIA is willing to fund. Not all applicants
329 contacted will necessarily receive a BTOP award. The Director of BTOP (BTOP Director) will
330 then prepare and present a package of recommended grant awards to the Associate Administrator
331 for the Office of Telecommunications and Information Applications (OTIA Associate
332 Administrator) for review and approval. The BTOP Director’s recommendations and the OTIA
333 Associate Administrator’s review and approval will take into account the following selection
334 factors:

- 335 a. The Evaluation Criteria Review score of the peer/expert reviewers;
- 336 b. The Due Diligence Review rating of the federal reviewers and the analysis of NTIA
337 program staff;
- 338 c. Satisfaction of the program’s purpose and priorities as described in the section entitled
339 “Program Description” (*e.g.*, considering whether the applicant is a socially and economically
340 disadvantaged small business concern; ensuring that service for health care delivery, education,
341 and children is enhanced to the greatest population of users; improve access to and use by public
342 safety; ensuring that the greatest broadband speed is provided to the greatest population of users
343 as set forth in the Recovery Act; providing broadband access to consumers in unserved areas;
344 improving broadband service in underserved areas);
- 345 d. The geographic distribution of the proposed grant awards and diversity of populations
346 served (*e.g.*, ensuring that, to the extent practical, NTIA award not less than one grant in each
347 state as set forth in the Recovery Act);
- 348 e. The range of technologies and uses of the technologies employed by the proposed
349 grant awards;

350 f. Avoidance of redundancy, conflicts with the initiatives of other federal agencies,
351 including Department of Agriculture loan and grant programs for broadband services, and, to the
352 extent practical, avoidance of unjust enrichment;²⁵

353 g. The availability of funds; and

354 h. If applicable, the recommendations of states, including, but not limited to, such
355 recommendations as described in their application for the State Broadband Data and
356 Development Grant Program or as subsequently provided to NTIA either on its own or along
357 with the submission of state-level broadband maps.²⁶

358 Upon approval by the OTIA Associate Administrator, the BTOP Director's
359 recommendation will then be presented to the Selecting Official, the Assistant Secretary of
360 NTIA. The Assistant Secretary selects the applications for grant awards, taking into
361 consideration the BTOP Director's recommendations and the degree to which the application
362 package, taken as a whole, satisfies the selection factors described above and the program's
363 stated purposes and priorities as set forth in section II.B of this NOFA. Awards will be made on a
364 rolling basis subject to the availability of funds.

365 **III. Definitions**

366 The terms and conditions provided in this NOFA are applicable to and for purposes of
367 this NOFA only. These terms, conditions, and definitions may change in subsequent NOFAs
368 issued regarding BIP and BTOP.

369 Administrator means the RUS Administrator, or the Administrator's designee.

²⁵ Recovery Act § 6001(h)(2)(D), 123 Stat. at 515.

²⁶ Consistent with Recovery Act, the application for the State Broadband Data and Development Grant Program will provide participating states the opportunity to identify unserved and underserved areas in their state. In their Mapping Grant application, states may also make recommendations concerning the allocation of funds for projects in or affecting the individual states at the time the state submits its Mapping Grant application.

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

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

374 Award documents mean, collectively, grant agreement, loan documents and/or loan/grant
375 combination documents.

376 Award means a grant, loan, or loan/grant combination made under this NOFA by either
377 RUS or NTIA.

378 Awardee means a grantee, borrower, or borrower/grantee.

379 BIP means the Broadband Initiatives Program, administered by the RUS, under the
380 Recovery Act.

381 Borrower means the recipient of a RUS loan under this NOFA.

382 Borrower/grantee means the recipient of a RUS loan/grant combination under this
383 NOFA.

384 Broadband means providing two-way data transmission with advertised speeds of at least
385 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to end users, or
386 providing sufficient capacity in a middle mile project to support the provision of broadband
387 service to end users.

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

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

392 Composite economic life means the weighted (by dollar amount of each class of facility
393 in the loan) average economic life of all classes of facilities financed by a BIP loan.

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

399 Critical community facilities means public facilities that provide community services
400 essential for supporting the safety, health, and well-being of residents, including, but not limited
401 to, emergency response and other public safety activities, hospitals and clinics, libraries and
402 schools.

403 Current ratio means the BIP applicant's current assets divided by the current liabilities;
404 all financial terms are defined by GAAP.

405 Economic life means the estimated useful service life of an asset as determined by RUS
406 in connection with awards made under BIP.

407 Forecast period means the time period used by RUS and NTIA to determine if an
408 application is financially feasible. Financial feasibility of an application is based on five-year
409 projections.

410 GAAP means generally accepted accounting principles.

411 Grant agreement means the agreement between RUS or NTIA and the grantee for grants
412 awarded under this NOFA, including any amendments thereto, available for review at
413 <http://www.broadbandusa.gov>.

414 Grant funds mean federal funds provided pursuant to a grant made under this NOFA.

415 Grantee means the recipient of a grant under this NOFA.

416 Last Mile project means any infrastructure project the predominant purpose of which is to
417 provide broadband service to end users or end-user devices (including households, businesses,
418 community anchor institutions, public safety entities, and critical community facilities).

419 Last Mile Non-Remote project means any broadband infrastructure project
420 (or group of projects) that is not exclusively a last mile remote area project, and that provides
421 broadband service to the end user or end-user devices in a service area eligible for BIP funding.

422 Last Mile Remote Area project means any broadband infrastructure project that provides
423 broadband service to the end user or to end-user devices only in a remote area(s) eligible for BIP
424 funding.

425 Loan means any loan made under this NOFA by RUS.

426 Loan contract means the loan agreement between RUS and the borrower, including all
427 amendments thereto, available for review at <http://www.broadbandusa.gov>.

428 Loan documents mean the loan contract, note(s), and security instrument between the
429 borrower and RUS and any associated documents pertaining to the loan.

430 Loan/grant means any loan/grant combination made under this NOFA by RUS.

431 Loan/grant contract means the loan/grant contract between RUS and the
432 borrower/grantee, including all amendments thereto available at <http://www.broadbandusa.gov>.

433 Loan/grant documents mean the loan/grant contract, note(s), and security instrument
434 between the borrower/grantee and RUS and any associated documents pertaining to the
435 loan/grant.

436 Middle Mile project means a broadband infrastructure project that does not
437 predominantly provide broadband service to end users or to end-user devices, and may include
438 interoffice transport, backhaul, Internet connectivity, or special access.

439 Pre-application expense means any reasonable expense incurred after the release of this
440 NOFA to prepare an application, including engineering costs and accountant/consultant fees.

441 Proposed funded service area means the area (either in all or part of an existing service
442 area or a new service area) where the applicant is requesting BIP or BTOP funds to provide
443 broadband service pursuant to this NOFA.

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

450 RE Act means the “Rural Electrification Act of 1936,” as amended (7 U.S.C. § 901 *et*
451 *seq.*).

452 Recovery Act means the American Recovery and Reinvestment Act of 2009, Pub. L. No.
453 111-5, 123 Stat. 115 (2009).

454 Remote area means an unserved, rural area 50 miles from the limits of a non-rural area.

455 Rural area means any area, as confirmed by the latest decennial census of the Bureau of
456 the Census, which is not located within: 1. a city, town, or incorporated area that has a
457 population of greater than 20,000 inhabitants; or 2. an urbanized area contiguous and adjacent to
458 a city or town that has a population of greater than 50,000 inhabitants. For purposes of the

459 definition of rural area, an urbanized area means a densely populated territory as defined in the
460 latest decennial census of the U.S. Census Bureau.

461 Security document means any mortgage, deed of trust, security agreement, financing
462 statement, or other document that RUS determines is necessary to perfect its interest in the
463 security for a loan or loan/grant.

464 Service area means the entire area within which a service provider either offers or intends
465 to offer broadband service and may include the proposed funded service area.

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

468 TIER means times interest earned ratio. TIER is the ratio of a BIP applicant's net income
469 (after taxes) plus (adding back) interest expense, all divided by interest expense (existing and any
470 new interest expense including the interest expense associated with the proposed loan); all
471 financial terms are defined by GAAP.

472 Underserved area means a proposed funded service area, composed of one or more
473 contiguous census blocks²⁷ meeting certain criteria that measure the availability of broadband
474 service and the level of advertised broadband speeds. These criteria conform to the two distinct
475 components of the Broadband Infrastructure category of eligible projects—Last Mile and Middle
476 Mile. Specifically, a proposed funded service area may qualify as underserved for last mile
477 projects if at least one of the following factors is met, though the presumption will be that more
478 than one factor is present: 1. no more than 50 percent of the households in the proposed funded
479 service area have access to facilities-based, terrestrial broadband service at greater than the

²⁷ Census blocks are the smallest geographic areas for which the U.S. Bureau of the Census collects and tabulates decennial census data. Census blocks are formed by streets, roads, railroads, streams and other bodies of water, other visible physical and cultural features, and the legal boundaries shown on Census Bureau maps. Census data at this level serve as a valuable source for small-area geographic studies. See the Census Bureau's website at <http://www.census.gov> for more detailed information on its data gathering methodology.

480 minimum broadband transmission speed (set forth in the definition of broadband above); 2. no
481 fixed or mobile broadband service provider advertises broadband transmission speeds of at least
482 three megabits per second (“mbps”) downstream in the proposed funded service area; or 3. the
483 rate of broadband subscribership for the proposed funded service area is 40 percent of
484 households or less. A proposed funded service area may qualify as underserved for Middle Mile
485 projects if one interconnection point terminates in a proposed funded service area that qualifies
486 as unserved or underserved for Last Mile projects.

487 Unserved area means a proposed funded service area, composed of one or more
488 contiguous census blocks, where at least 90 percent of households in the proposed funded service
489 area lack access to facilities-based, terrestrial broadband service, either fixed or mobile, at the
490 minimum broadband transmission speed (set forth in the definition of broadband above). A
491 household has access to broadband service if the household can readily subscribe to that service
492 upon request.

493 **IV. Award Information**

494 **A. Available Funds for BIP**

495 **1. General**

496 Approximately, \$2,400,000,000 in program level funding has been set aside for funding
497 opportunities under this NOFA.

498 **2. Funding Limits**

499 Award amounts under this NOFA will be limited as follows:

500 **a. Last Mile Projects**

501 Up to \$1,200,000,000 is available for Last Mile projects. These projects may consist of
502 Remote Area projects or Non-Remote projects. Up to \$400,000,000 is available for grants for

503 Remote Area projects. Up to \$800,000,000 is available for loans or loan/grant combinations for
504 Non-Remote projects.

505 **b. Middle Mile Projects**

506 Up to \$800,000,000 is available for loans or loan/grant combinations for Middle Mile
507 projects.

508 **3. Repooling**

509 For categories that do not receive applications that request the full amount of allocated
510 funds, excess funds may be directed to another category at RUS's discretion. Additionally, if
511 RUS does not make awards in the full amount allocated to a category, RUS may, at its discretion,
512 direct such excess funds to another category.

513 **4. National Reserve**

514 Up to \$325,000,000 is available for a national reserve. These funds may be used to
515 augment the BIP funding categories established above, or remain unused for subsequent NOFAs.
516 In any event, all funds will be awarded no later than September 30, 2010.

517 **5. Unused Funds**

518 Funds made available but not used for this NOFA may be directed to subsequent NOFAs.

519 **6. Award Period**

520 All awards under BIP must be made no later than September 30, 2010. While the
521 completion time will vary depending on the complexity of the project, award recipients must
522 substantially complete projects supported by this program no later than two years, and projects
523 must be fully completed no later than three years, following the date of issuance of the award.

524 **7. Type of Funding Instrument**

525 The funding instruments for BIP will be a grant, loan, and loan/grant combination.

526 **B. Available Funds for BTOP**

527 **1. General**

528 Up to \$1,600,000,000 in budget authority has been set aside for funding opportunities
529 under this NOFA. Publication of this NOFA does not obligate NTIA to award any specific
530 project or obligate all or any parts of any available funds, although the Recovery Act indicates
531 that the Assistant Secretary shall award at least one grant in each state to the extent practical by
532 September 30, 2010.²⁸

533 **2. Funding Limits.**

534 Up to \$1.4 billion is available to be awarded under this NOFA and will be allocated in the
535 following categories:

- 536 a. Broadband Infrastructure projects will be awarded no greater than \$1.2 billion;
537 b. Public Computer Center projects will be awarded no greater than \$50 million; and
538 c. Sustainable Broadband Adoption projects will be awarded no more than \$150 million.

539 **3. Repooling**

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

542 **4. National Reserve**

543 Up to \$200 million is available for a national reserve. These funds may be used to
544 augment the BTOP funding categories established above, or remain unused for subsequent
545 NOFAs. In any event, all funds will be awarded no later than September 30, 2010.

546 **5. Unused Funds**

547 Funds not awarded under this NOFA may be used to fund subsequent NOFAs.

²⁸ Recovery Act § 6001(h)(1), 123 Stat. at 514.

548 **6. Award Period**

549 All awards under BTOP must be made no later than September 30, 2010.²⁹ While the
550 completion time will vary depending on the complexity of the project, grant recipients must
551 substantially complete projects supported by this program no later than two years, and projects
552 must be fully completed no later than three years, following the date of issuance of the grant
553 award.³⁰

554 **7. Type of Funding Instrument**

555 The funding instrument for BTOP will be a grant.

556 **V. Eligibility Information for BIP and BTOP**

557 **A. In General**

558 Applicants must satisfy the following eligibility requirements to qualify for funding.

559 **B. Eligible Entities**

560 **1. Applicant Organization**

561 The following entities are eligible to apply for assistance:

- 562 a. States, local governments, or any agency, subdivision, instrumentality, or political
563 subdivision thereof;
- 564 b. The District of Columbia;
- 565 c. A territory or possession of the United States;
- 566 d. An Indian tribe (as defined in section 4 of the Indian Self-Determination and
567 Education Assistance Act (25 U.S.C. § 450b);
- 568 e. A native Hawaiian organization;

²⁹ *Id.* § 6001(d)(2), 123 Stat. at 513.

³⁰ *Id.* § 6001(d)(3), 123 Stat. at 513.

- 569 f. A non-profit foundation, a non-profit corporation, a non-profit institution, or a non-
570 profit association;
- 571 g. Other non-profit entities;
- 572 h. For-profit corporations;
- 573 i. Limited liability companies; and
- 574 j. Cooperative or mutual organizations.

575 **2. BTOP Public Interest Finding**

576 Section 6001(e)(1)(C) of the Recovery Act authorizes the Assistant Secretary to find by
577 rule that it is in the public interest for any entity not otherwise encompassed by section
578 6001(e)(1) to be eligible for a BTOP grant to the extent that such finding will promote the
579 purposes of BTOP in a technologically neutral manner. Through this NOFA, the Assistant
580 Secretary has found it to be in the public interest to permit for-profit corporations and non-profit
581 entities (not otherwise encompassed by section 6001(e)(1)(B)) that are willing to promote the
582 goals of the Recovery Act and comply with the statutory requirements of BTOP to be eligible
583 for a grant. By adopting this broad approach, the Assistant Secretary intends to invite a diverse
584 group of applicants to participate in BTOP and to expand broadband capabilities in a
585 technologically neutral manner.³¹

586 **C. Application Eligibility Factors**

587 The following eligibility factors establish basic requirements that all applicants must
588 comply with in order to be eligible for an award. Applicants failing to comply with these
589 requirements will not have their applications considered. This section lists eligibility factors a)
590 shared by BIP and all three BTOP project categories; b) shared by BIP and BTOP Broadband

³¹ *Id.* § 6001(e)(1)(C), 123 Stat. at 513.

591 Infrastructure projects; c) that apply only to BIP projects; and d) that apply only to the three
592 BTOP project categories.

593 **1. Eligibility Factors Common to All BIP and BTOP Applicants**

594 **a. Fully Completed Application**

595 Applicants must submit a complete application and provide all supporting documentation
596 required for the application.

597 **b. Timely Completion**

598 A project is eligible only if the application demonstrates that the project can be
599 substantially completed within two years of the date of issuance of the grant, loan, or loan/grant
600 award and finished within three years of the date of the award. For BIP, a project is considered
601 “substantially complete” when an awardee has received 67 percent of its award funds. For
602 BTOP, a project is considered “substantially complete” when the awardee has met 67 percent of
603 the project milestones and received 67 percent of its award funds.

604 **2. Additional Factors Applicable to BIP and BTOP Broadband Infrastructure**
605 **Applicants**

606 **a. Broadband Service**

607 All Broadband Infrastructure applicants must propose to offer service meeting the
608 definition of Broadband as defined herein.

609 **b. Technical Feasibility**

610 Only projects that RUS and NTIA determine to be technically feasible will be eligible for
611 an award under this NOFA. At minimum, applicants will be required to submit a system design
612 and project timeline, certified by a professional engineer, for any project requesting funds over
613 \$1 million.

614 **c. Nondiscrimination and Interconnection**

615 All Broadband Infrastructure (both BIP and BTOP) applicants, must commit to the
616 following Nondiscrimination and Interconnection Obligations: i. adhere to the principles
617 contained in the FCC’s Internet Policy Statement (FCC 05-151, adopted August 5, 2005); ii. not
618 favor any lawful Internet applications and content over others; iii. display any network
619 management policies in a prominent location on the service provider's web page and provide
620 notice to customers of changes to these policies (awardees must describe any business practices
621 or technical mechanisms they employ, other than standard best efforts Internet delivery, to
622 allocate capacity; differentiate among applications, providers, or sources; limit usage; and
623 manage illegal or harmful content); iv. connect to the public Internet directly or indirectly, such
624 that the project is not an entirely private closed network; and v. offer interconnection, where
625 technically feasible without exceeding current or reasonably anticipated capacity limitations, on
626 reasonable rates and terms to be negotiated with requesting parties. This includes both the ability
627 to connect to the public Internet and physical interconnection for the exchange of traffic.
628 Applicants must disclose their proposed interconnection, nondiscrimination and network
629 management practices with the application.

630 All these requirements shall be subject to the needs of law enforcement and reasonable
631 network management. Thus, awardees may employ generally accepted technical measures to
632 provide acceptable service levels to all customers, such as caching and application-neutral
633 bandwidth allocation, as well as measures to address spam, denial of service attacks, illegal
634 content, and other harmful activities. In addition to providing the required connection to the
635 Internet, awardees may offer managed services, such as telemedicine, public safety

636 communications, and distance learning, which use private network connections for enhanced
637 quality of service, rather than traversing the public Internet.

638 An awardee may satisfy the requirement for interconnection by negotiating in good faith
639 with all parties making a bona fide request. The awardee and requesting party may negotiate
640 terms such as business arrangements, capacity limits, financial terms, and technical conditions
641 for interconnection. If the awardee and requesting party cannot reach agreement, they may
642 voluntarily seek an interpretation by the FCC of any FCC rules implicated in the dispute. If an
643 agreement cannot be reached within 90 days, the party requesting interconnection may notify
644 RUS or NTIA in writing of the failure to reach satisfactory terms with the awardee. The 90-day
645 limit is to encourage the parties to resolve differences through negotiation.

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

650 Entities that successfully reach an agreement to interconnect with a system funded under
651 BIP may not use that interconnection agreement to provide services that duplicate services
652 provided by projects funded by outstanding telecommunications loans made under the RE Act.
653 Further, interconnection may not result in a BIP-funded facility being used for ineligible
654 purposes under the Recovery Act.

655 These conditions will apply for the life of the awardee's facilities used in the project and
656 not to any existing network arrangements. The conditions apply to any contractors or
657 subcontractors of such awardees employed to deploy or operate the network facilities for the
658 infrastructure project. Recipients that fail to accept or comply with the terms listed above may

659 be considered in default or breach of their loan or grant agreements. RUS and NTIA may
660 exercise all available remedies to cure the default.

661 **d. Last Mile Coverage Obligation**

662 An applicant for a Last Mile Broadband Infrastructure project must identify the census
663 block(s) selected for the project and provide documentation supporting the applicant's
664 determination that the proposed funded service area is either unserved or underserved. There is a
665 presumption that the applicant will provide service to the entire territory of each census block
666 included in the proposed funded service area, unless the applicant files a waiver and provides a
667 reasoned explanation as to why providing coverage for an entire census block is infeasible.
668 Applicants may be permitted to serve less than an entire census block under certain conditions.
669 For example, an applicant might request to be relieved of this requirement if the census block
670 exceeds 100 square miles or more or is larger than the applicant's authorized operating territory,
671 *e.g.*, it splits a rural incumbent local exchange carrier's (ILEC's) study area or exceeds the
672 boundaries of a wireless carrier's licensed territory.

673 **3. Additional Factors for BIP**

674 **a. Eligible Service Area**

675 A project is eligible only if the applicant demonstrates that at least 75 percent of the
676 proposed funded service area qualifies as a rural area without sufficient access to broadband
677 service to facilitate rural economic development.³² For the purposes of this NOFA, RUS has
678 determined that "without sufficient broadband access" shall mean without access to broadband,
679 as defined herein. Furthermore, RUS has determined that only rural areas which are unserved or
680 underserved, as defined herein, shall qualify as "areas without sufficient access to broadband

³² See *id.* div. A, tit. I, 123 Stat. at 118.

681 service.” Therefore, to qualify for BIP funding, projects must serve at least 75 percent unserved
682 or underserved rural areas.

683 **b. Overlapping Service Areas**

684 RUS will not fund more than one project to serve any given geographic area. If more
685 than one application would serve any overlapping geographic area, the application with the
686 highest score will be funded; other applications for the same area will be rejected in their entirety
687 unless RUS, in its discretion, determines that the extent of the overlap is *de minimis*.

688 **c. Fully Funded**

689 A project is eligible only if, after approval of the grant, loan, or loan/grant combination,
690 all project costs can be fully funded. To demonstrate this, applicants must include with the
691 application evidence of all funding, other than the RUS award, necessary to support the project,
692 such as bank account statements or firm letters of commitment from equity participants or other
693 lenders documenting the timely availability of funds.

694 **d. Financial Feasibility and Sustainability**

695 Only projects that RUS determines to be financially feasible and/or sustainable will be
696 eligible for an award under this NOFA.

697 *Loans:* A project funded by a loan or loan/grant combination is financially feasible when
698 the applicant is able to generate sufficient revenues to cover its expenses, has sufficient cash flow
699 to service its debts and obligations as they come due, and meet the minimum Times Interest
700 Earned Ratio (TIER) requirement of one by the end of the forecast period, as determined by
701 RUS.

702 *Grants:* A project funded by a grant is financially sustainable when the applicant is able
703 to generate a minimum current ratio of one by the end of the forecast period and can demonstrate
704 a positive cash balance for each year of the forecast period.

705 **4. Additional Factors for BTOP**

706 **a. Conformity with Statutory Purposes**

707 A project is eligible only if it advances at least one of the statutory purposes for BTOP.³³

708 **b. Cost Sharing/Matching**

709 Awardees under BTOP will be required to provide matching funds of at least 20 percent
710 toward the total eligible project cost. Applicants must document their capacity to provide
711 matching funds. NTIA will provide up to 80 percent of total eligible project costs, unless the
712 applicant petitions the Assistant Secretary for a waiver of the matching requirement and that
713 waiver is granted by the Assistant Secretary based on the applicant’s demonstration of financial
714 need.³⁴ In requesting such a waiver, an applicant should fully explain and document its inability
715 to provide the required 20 percent share of the cost of its proposed project. An applicant should
716 submit complete financial documentation supporting its need for a waiver of the matching
717 requirement. These documents should include the applicant’s assets, liabilities, operating
718 expenses and revenues from any existing operations, and any other documents that will
719 demonstrate financial need and sustainability, including such items as a denial of funding from a
720 public or private lending institution. The Assistant Secretary will evaluate the information
721 provided in support of the petition and may increase the federal share if financial need is
722 demonstrated.

³³ See *id.* § 6001(b), 123 Stat. at 512–13.

³⁴ See *id.* § 6001(f), 123 Stat. at 514.

723 Generally, federal funds may not be used as matching funds except as provided by
724 federal statute.³⁵ In-kind contributions, including third party in-kind contributions, are non-cash
725 donations to a project that may count toward satisfying the non-federal matching requirement of
726 a project's total budget. In-kind contributions must be allowable project expenses. Such
727 contributions may be accepted as part of an applicant's matching when such contributions meet
728 certain criteria.³⁶

729 Applications that propose to provide matching funds of greater than 20 percent and that
730 are all cash will be given additional favorable consideration in step one of the application review
731 process.

732 **c. Demonstration that Project Could not be Implemented But For Federal Grant**
733 **Assistance**

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

741 **d. Reasonableness of Project Budget**

742 A project will only be eligible if it demonstrates that its budget is appropriate to the
743 proposed technical and programmatic solutions, its costs are reasonable and eligible consistent

³⁵ See Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-profit, and Commercial Organizations, 15 CFR § 14.23(a)(5); *see also* Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 24 CFR § 24.24(b)(1).

³⁶ See 15 CFR §§ 14.23(a), 24.24(a).

744 with the principles outlined in section V.D below, and that the allocation of funds will be
745 sufficient to complete the tasks outlined in the project plan.

746 **D. Eligible Cost Purposes**

747 **1. General**

748 Award funds must be used only to pay for eligible costs. Eligible costs are consistent
749 with the cost principles identified in the applicable OMB circulars³⁷ and in the grant or the
750 loan/grant program’s authorizing legislation. In addition, costs must be reasonable, allocable,
751 necessary to the project, and comply with the funding statute requirements. Any application that
752 proposes to use any portion of the award funds for any ineligible cost will be rejected.

753 **2. Eligible and Ineligible Costs for BIP and BTOP Infrastructure Projects**

754 **a. Eligible Infrastructure Award Expenses**

755 Award funds may be used to pay for the following expenses:

756 i. To fund the construction or improvement of all facilities required to provide broadband
757 service, and **for BIP only**, including facilities required for providing other services over the same
758 facilities;

759 ii. To fund the cost of leasing facilities required to provide broadband service if such
760 lease qualifies as a capital lease under GAAP. Award funds may be used to fund the cost of the

³⁷ For example there is a set of federal principles for determining eligible or allowable costs. Allowability of costs will be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by state, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A-87, “Cost Principles for State, Local and Indian Tribal Governments.” The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A-122, “Cost Principles for Non-Profit Organizations.” The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A-21, “Cost Principles for Educational Institutions.” The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR pt. 74, “Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals.” The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A-122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR pt. 31. See 15 CFR §§ 14.27, 24.22 (governing the Department of Commerce’s implementation of OMB requirements).

761 capital lease for no more than the first five years after the date of the first advance of award
762 funds;

763 iii. To fund reasonable pre-application expenses in an amount not to exceed five percent
764 of the award. Pre-application expenses may be reimbursed if they are incurred after the
765 publication date of this NOFA and prior to the date on which the application is submitted to RUS
766 or NTIA; and

767 iv. **For BTOP only** undertaking such other projects and activities as the Assistant
768 Secretary finds to be consistent with the purposes for which the program is established.

769 **b. Ineligible Award Expenses**

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

771 i. To fund operating expenses of the project, including fixed and recurring costs of a
772 project;

773 ii. To fund costs incurred prior to the date on which the application is submitted, with the
774 exception of eligible pre-application expenses;

775 iii. To fund an acquisition, including the acquisition of the stock of an affiliate, or the
776 purchase or acquisition of any facilities or equipment of an affiliate;

777 iv. To fund the purchase or lease of any vehicle other than those used primarily in
778 construction or system improvements;

779 v. To fund broadband facilities leased under the terms of an operating lease;

780 vi. To fund merger or consolidation of entities; and

781 vii. To fund costs incurred in acquiring spectrum as part of an FCC auction or in a
782 secondary market acquisition

783 .

784 **3. Eligible and Ineligible Costs for Public Computer Centers and Sustainable**
785 **Broadband Adoption**

786 **a. General**

787 Grantees for BTOP funds under these two project categories are required to show how
788 such funding serves the stated purposes of: i. providing broadband education, awareness,
789 training, access, equipment, and support to community anchor institutions (*e.g.*, schools,
790 libraries, medical and healthcare providers, community colleges and other institutions of higher
791 education, and other community support organizations), or organizations and agencies serving
792 vulnerable populations (*e.g.*, low-income, unemployed, aged), or job-creating strategic facilities
793 located in state- or federally-designated economic development areas; ii. improving access to,
794 and use of, broadband service by public safety agencies; and iii. stimulating the demand for
795 broadband, economic growth, and job creation.

796 **b. Eligible Costs for Public Computer Centers**

797 Grantees may use BTOP funding under this project category to expand computer center
798 capacity by:

799 i. Acquiring broadband-related equipment, instrumentation, networking capability,
800 hardware and software, and digital network technology for broadband services;

801 ii. Developing and providing training, education, support and awareness programs or
802 web-based resources;

803 iii. Facilitating access to broadband services, including, but not limited to, making
804 public computer centers accessible to the disabled; and

805 iv. Undertaking such other projects and activities as the Assistant Secretary finds to be
806 consistent with the purposes for which the program is established.

807 **c. Eligible Costs for Sustainable Broadband Adoption**

808 Grantees may use BTOP funding under this project category to encourage sustainable
809 adoption of broadband services by:

810 i. Acquiring broadband-related equipment, hardware and software, and digital network
811 technology for broadband services;

812 ii. Developing and providing training, education, support and awareness programs or
813 web-based content;

814 iii. Conducting broadband-related public education, outreach, support and awareness
815 campaigns;

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

818 v. Undertaking such other projects and activities as the Assistant Secretary finds to be
819 consistent with the purposes for which the program is established.

820 **d. Ineligible Costs for Public Computer Centers and Sustainable Broadband**
821 **Adoption**

822 BTOP grant funds may not be used to fund purchases that are not used predominantly for
823 the provision of broadband education, awareness, training, access, equipment and support.

824 **E. Use of Program Income**

825 Grantees are required to account for any program income directly generated by projects
826 financed in whole or in part with federal funds. Given the Recovery Act's objectives to spur job
827 creation and stimulate long-term economic growth and opportunity, projects funded by BIP and
828 BTOP grants are expected to convincingly demonstrate the ability to be sustained beyond the
829 funding period. While grant funds are intended to cover the capital costs of a project as part of

830 the Recovery Act’s effort to stimulate the economy, grant recipients for all grant programs are
831 expected to present projects that will sustain long-term growth and viability.

832 For purposes of BIP and BTOP, any program income generated by a proposed project
833 during the grant period shall be retained by the grant recipient and shall be added to the funds
834 committed to the project by RUS or NTIA and the recipient. The grant recipient should use
835 program income to further eligible project objectives, including reinvestment in project facilities.
836 Program income means gross income earned by the recipient that is either directly generated by a
837 supported activity, or earned as a result of the award during the funding period. Grant recipients
838 shall have no obligation to the federal government regarding program income earned after the
839 end of the project period. However, the federal government retains an interest in property in the
840 event that it is sold, consistent with the guidance outlined in section IX of this NOFA.³⁸

841 **VI. Application and Submission Information**

842 **A. Request for Application Package**

843 Complete application packages, including required federal forms and instructions, will be
844 available at <http://www.broadbandusa.gov>. Additional information for BIP and BTOP can be
845 found in the Application Guidelines at <http://www.broadbandusa.gov>. This website will be
846 updated regularly.

847 **B. Registration**

848 **1. DUNS Number**

849 All applicants must supply a Dun and Bradstreet Data Universal Numbering System
850 (DUNS) number. Applicants can receive a DUNS number at no cost by calling the dedicated

³⁸ 2 CFR § 215.24; 15 CFR §§ 14.24, 24.25.

851 toll-free DUNS number request line at 1-866-705-5711 or via the Internet at
852 <http://www.dunandbradstreet.com>.

853 **2. Central Contractor Registration (CCR)**

854 All applicants must provide a CCR (CAGE) number evidencing current registration in the
855 Central Contractor Registration (CCR) database. If the applicant does not have a current CCR
856 (CAGE) number, the applicant must register in the CCR system available at
857 <http://www.ccr.gov/StartRegistration.aspx>.

858 **C. Choosing the Proper Agency and Category for an Application**

859 **1. Broadband Infrastructure**

860 **a. Choosing BIP or BTOP Broadband Infrastructure**

861 i. Applications for Rural Areas. All applications to fund broadband infrastructure in
862 proposed funded service areas which are at least 75 percent rural are required to be submitted to
863 RUS for consideration under BIP. If such applicants also choose to be considered for BTOP
864 funding, they must complete the additional elements required of BTOP infrastructure applicants.
865 RUS will consider all applications for projects in proposed funded service areas which are at
866 least 75 percent rural in accordance with the BIP procedures outlined in this NOFA. If the
867 applicant also chooses to be considered under BTOP, NTIA will review these applications using
868 its own objective evaluation criteria and in accordance with BTOP procedures outlined in this
869 NOFA. NTIA may make awards with respect to such applications NTIA determines to be
870 meritorious after RUS has reviewed the application and determined not to fund it. RUS and
871 NTIA have adopted these application procedures to reflect the fact that Congress, in the
872 Recovery Act, intended that RUS focus its activities on rural areas and mandated that NTIA
873 funding could not be applied in the same area funded by RUS under the Recovery Act.

874 ii. Applications for All Other Areas. All applications to fund broadband infrastructure
875 projects in proposed funded service areas that are less than 75 percent rural must be submitted to
876 NTIA for consideration under BTOP. Submissions to BIP of such applications will be rejected.

877 **b. BIP Broadband Infrastructure Categories**

878 **i. Last Mile Remote Area**

879 Applications for Last Mile Remote Area projects must predominantly provide broadband
880 directly to the premise or to end users within completely remote areas, as defined herein. The
881 BIP Program will consider applications for grant funds up to 100 percent. For grants receiving
882 greater than 80 percent of eligible costs, the Administrator must determine that the awardee has a
883 specific financial need that justifies funding greater than 80 percent.

884 **ii. Last Mile Non-Remote Projects**

885 Applications for Last Mile Non-Remote Area projects must predominantly provide
886 broadband directly to the premise or to end users that are not exclusively within remote areas, as
887 defined herein. Last Mile Non-Remote Area projects may encompass both remote and non-
888 remote areas, and will be awarded scoring points for remote areas within the application. Only
889 those applications for loans or loan/grant combinations whose total proposed funded service area
890 contains 75 percent or more unserved or underserved rural areas, as defined herein, will be
891 considered for BIP funding.

892 **iii. Broadband Infrastructure Middle Mile Projects**

893 Applications for Middle Mile projects must connect at least two points without
894 predominantly providing broadband service to the premise or end users, and must be capable of
895 bringing broadband service to eligible service areas. The BIP program will consider only those
896 applications for loans and loan/grant combinations whose total proposed funded service area
897 benefits at least 75 percent or more unserved or underserved rural areas, as defined herein.

898 **c. BTOP Broadband Infrastructure Categories**

899 **i. Last Mile**

900 For the purposes of BTOP grant funds, applications for Last Mile projects must be for
901 unserved or underserved areas and have the predominant purpose to provide broadband service
902 to end users or end-user devices (including homes, businesses, schools, libraries, medical and
903 health care providers, community support organizations, public safety entities, vulnerable
904 populations and other institutions and individuals). Highly responsive Last Mile projects should
905 be technically feasible, sustainable and scalable, and address BTOP’s priority needs, including
906 offering substantial economic, educational, health care, and public safety benefits relative to the
907 costs of providing service.

908 **iii. Middle Mile**

909 For the purposes of BTOP grant funds, applications for Middle Mile projects must be for
910 unserved or underserved areas and have a predominant purpose other than providing broadband
911 service to end users or to end-user devices and may include interoffice transport, backhaul,
912 Internet connectivity, or special access. Highly responsive Middle Mile projects should be
913 technically feasible, sustainable and scalable and offer substantial benefits to unserved and
914 underserved areas relative to the costs of providing service.

915 **2. BTOP – Public Computer Centers**

916 For the purposes of BTOP grant funds, applicants requesting a Public Computer Center
917 grant must have a project that provides broadband access to the general public or a specific
918 vulnerable population, such as low-income, unemployed, aged, children, minorities and people
919 with disabilities. Projects must create or expand a public computer center meeting a specific
920 public need for broadband service, including but not limited to education, employment,
921 economic development, and enhanced service for health-care delivery, children, and vulnerable

922 populations. As described below, NTIA will consider information related to the demographics,
923 size and scope of the populations to be served, as well as the capacity of the proposed centers.

924 **3. BTOP – Sustainable Broadband Adoption**

925 Applications for Sustainable Broadband Adoption projects should demonstrate a
926 sustainable increase in demand for and subscribership to broadband services. Projects should
927 meet a specific public need for broadband service, including, but not limited to, education,
928 employment, economic development, and enhanced service for health-care delivery, children,
929 and vulnerable populations. Projects should describe the barriers to adoption in a given area,
930 especially among vulnerable populations, and propose an innovative and persuasive solution to
931 encourage adoption. Applicants might show how variations on one or more proven demand
932 stimulation strategy—such as awareness-building, development of relevant content, and demand
933 aggregation—would promote sustainable adoption.

934 **D. Contents of the Application**

935 **1. BIP and BTOP Broadband Infrastructure Project Applications**

936 **a. Requirements for Step One of the Application Process**

937 A complete application will include the following:

938 i. The identity of the applicant and general applicant and project information including:

939 (1) A description of the project that will be made public consistent with the requirements
940 of the Recovery Act;

941 (2) The Congressional Districts affected by the project;

942 (3) The estimated dollar amount of the funding request;

943 ii. Verification that the application meets certain eligibility factors, including submission
944 of a complete application with all supplemental documentation, commitment to substantial

945 completion of the project within two years and project completion within three years of the
946 award date, demonstration that the project is technically feasible, that the applicant will provide
947 broadband service meeting the definition in this NOFA, that the applicant agrees to comply with
948 the nondiscrimination and interconnection obligations in this NOFA, and that the applicant
949 agrees to comply with the last mile coverage obligations in this NOFA; for BIP only, that at least
950 75% of the proposed funded service area is a rural area, that the project will be fully funded, and
951 that the project is financially feasible; and for BTOP only, demonstration that the project
952 advances at least one of BTOP's five statutory purposes, commitment to or a waiver for the cost
953 matching requirement, demonstration that a project could not be completed in the grant period
954 but for federal funding, and that the budget is reasonable and all costs are eligible;

955 iii. An executive summary of the project, including but not limited to the opportunity the
956 proposed system seeks to address; a description of the proposed funded service area; number of
957 households and businesses passed; number of community anchor institutions, public safety
958 entities and critical community organizations to be passed and/or involved in the project;
959 proposed service offerings; how non-discrimination and interconnection requirements will be
960 met; the type of broadband system to be deployed; qualifications of the applicant; overall
961 infrastructure cost of the broadband system; subscriber projections; and the number of jobs the
962 project is expected to create or save;

963 iv. A description of the proposed funded service area, including: (1) a map; (2) data
964 describing the geography and demographics of the proposed funded service area, including
965 information as to whether the proposed funded service area is unserved or underserved; (3)
966 names of the census designated communities and identification of areas not within a census
967 designated community within the proposed funded service area; (4) information as to whether

968 the communities and areas identified in clause (3) are rural or non-rural, remote and unserved,
969 underserved or served; (5) the methodology for making the above classifications; (6) whether
970 the applicant is seeking a waiver from providing less than 100% coverage of any Census block;
971 and; (7) for middle mile projects, identification of the last mile areas to be served;

972 v. A description of the proposed service offerings, and the associated pricing plan, that
973 the applicant proposes to offer, as well as the advertised prices of service offerings by
974 competitors in the same area; a description of the applicant's nondiscrimination, interconnection,
975 and network management plans; an explanation of why the proposed service offerings are
976 affordable; and for BTOP only, an estimate of the cost of the project per household;

977 vi. The technology type; a description of the system design used to deliver the broadband
978 service; a network diagram, which must be certified by a professional engineer if the funding
979 request exceeds \$1,000,000; whether the applicant is seeking a waiver of the Buy America
980 provision; and whether the project allows more than one provider to serve end users;

981 vii. A timeline including key milestones for implementation of the project, including a
982 construction schedule, certified by a professional engineer if the funding request exceeds
983 \$1,000,000, which identifies potential challenges and establishes the viability of the project
984 timeline and associated milestones for build-out to the census blocks, households, businesses,
985 community anchor institutions, and public safety entities identified in the proposal; a list of all
986 required licenses and regulatory approvals needed for the proposed project; and how much the
987 applicant will rely on contractors or vendors to deploy the network facilities;

988 viii. Resumes of key management personnel, a description of the organization's
989 readiness to manage a broadband services network, and an organizational chart showing any
990 parent organizations and/or subsidiaries and affiliates;

991 ix. A legal opinion (as set forth in the application) that: (1) addresses the applicant's
992 ability to enter into the award documents; (2) describes all pending litigation matters; and (3) for
993 loan and loan/grant combinations, addresses the applicant's ability to pledge security as required
994 by the award documents;

995 x. Partnerships with public, non-profit, and private sector groups and collaboration with
996 other state and federal development programs including other Recovery Act programs;

997 xi. An itemized budget of the infrastructure costs of the proposed project, including if
998 applicable, the ratio of loans to grants, and any other source of outside funding, especially any
999 other Recovery Act funds under other federal programs, and an explanation of the
1000 reasonableness of the unit price and total number of units required for the project;

1001 xii. Pro Forma financial analysis related to the sustainability of the project, including
1002 subscriber estimates and proposed service offerings in addition to broadband Internet access;
1003 annual financial projections including balance sheets, income statements, and cash flow
1004 statements and supporting assumptions for a five-year forecast period as applicable; and a list of
1005 committed sources of capital funding;

1006 xiii. Historical financial statements, Certified Public Accountant (CPA) audits if
1007 applicable, for the previous two calendar years;

1008 xiv. Certifications required in the application;

1009 xv. For BIP applicants only:

1010 (1) A self-scoring sheet, analyzing the objective scoring criteria set forth in this NOFA;

1011 (2) The pricing package being offered to critical community facilities, if any; and

1012 (3) Evidence that the applicant is a socially and economically disadvantaged small
1013 business concern (SDB) as defined under section 8(a) of the SBA.

- 1014 xvi. For BTOP applicants only:
- 1015 (1) A description of how the applicant will advance the objectives of the Recovery Act,
1016 as well as the specific objectives of BTOP, (a) to provide access to broadband service to
1017 consumers residing in unserved areas of the country; (b) to provide improved access to
1018 broadband service to consumers residing in underserved areas of the country; (c) to provide
1019 broadband access, education, awareness, training, equipment, and support to community anchor
1020 institutions (*e.g.*, schools, libraries, medical facilities), or organizations and agencies serving
1021 vulnerable populations (*e.g.*, low-income, unemployed, aged), or job-creating strategic facilities
1022 located in state- or federally-designated economic development areas; (d) to improve access to,
1023 and use of, broadband service by public safety agencies; and (e) to stimulate the demand for
1024 broadband, economic growth, and job creation;
- 1025 (2) A demonstration of need for grant funding, including documentation demonstrating
1026 that a project would be unfeasible but for federal assistance;
- 1027 (3) A description of how the applicant will enhance services for health care delivery,
1028 education, and children to the greatest population of users in the area;
- 1029 (4) Additional verification related to the non-discrimination and interconnection
1030 obligations set forth in this NOFA;
- 1031 (5) The percentage of matching funds the applicant will contribute to the project, and its
1032 percentage of the total cost, as well as the specific amounts that are in cash or in-kind;
- 1033 (6) Whether the applicant receives any federal support for non-recurring costs in the
1034 proposed funded service area; and
- 1035 (7) To the extent applicable, evidence of collaboration with any socially and
1036 economically disadvantaged small business concern (SDB) as defined under section 8(a) of the

1037 SBA, that may include a sub-awardee, contractor, subcontractor, or vendor, and the source and
1038 amount of any federal or state funding, including Universal Service Fund funds, that applicant
1039 has received, or requested, for the activities or projects to which the application relates.

1040 **b. Verification Filing Requirements for Step Two of the Application Process**

1041 As discussed above, those applications that are considered to be most highly qualified
1042 (*i.e.*, receiving the highest scores), will advance to the second step of the review process.

1043 Specifically, in the “due diligence” phase, applicants will be asked to submit additional
1044 information, as appropriate, to further substantiate the representations made in their application.

1045 Although this “due diligence” phase applies to all three categories of projects —Broadband
1046 Infrastructure, Public Computer Center, and Sustainable Adoption —it is most applicable to
1047 Broadband Infrastructure Projects. This phase will be announced no earlier than September 14,
1048 2009. The following information must then be submitted to the agencies online at
1049 <http://www.broadbandusa.gov> by October 15, 2009, or, alternatively, 30 days after the applicant
1050 has received a request from RUS or NTIA to provide such information, whichever is later.

1051 i. A list of all its outstanding and contingent obligations, including copies of existing
1052 notes, loan and security agreements, and guarantees;

1053 ii. A detailed description of working capital requirements and the source of these funds;

1054 iii. A detailed description of the proposed technology that will be used to provide
1055 service at the proposed broadband speed. This description must clearly demonstrate that all
1056 households and businesses in the proposed funded service area will be offered service at the
1057 proposed broadband speed;

- 1058 iv. A detailed construction build-out schedule that includes a description of the
1059 necessary work force, a timeline demonstrating project completion within the required
1060 timeframe, a depreciation schedule for the proposed facilities;
- 1061 v. A completed Environmental Questionnaire, other documentation requests, and
1062 required environmental authorizations and permits, including those required by the National
1063 Environmental Policy Act of 1969, as amended (42 U.S.C. § 4321 *et seq.*) (NEPA), the National
1064 Historic Preservation Act of 1966, as amended (16 U.S.C. § 470 *et seq.*) (NHPA), and the
1065 Endangered Species Act of 1973, as amended (16 U.S.C. § 1534 *et seq.*) (ESA) as applicable;
- 1066 vi. For purposes of the step two due diligence verification process, applicants will need
1067 to be prepared to provide any of the underlying documentation that is referenced in the
1068 application, as appropriate; and
- 1069 vii. **For BIP only**, a description of measurable service metrics and target service level
1070 objectives (SLOs) (*e.g.*, the speed with which new service will be established, service
1071 availability, and response time for reports of system failure at a residence) that will be provided
1072 to the customer, and a description of the approach and methodology for monitoring ongoing
1073 service delivery and service quality for the services being employed.

1074 **2. Public Computer Centers Applications**

1075 Applications for Public Computer Center projects must contain the following
1076 information:

- 1077 a. The identity of the applicant and general applicant and project information including:
- 1078 i. A descriptive title of the project that will be made public consistent with the
1079 requirements of the Recovery Act,
- 1080 ii. The Congressional Districts affected by the project,

- 1081 iii. The dollar amount of the funding request;
- 1082 b. Verification that the application meets certain eligibility factors, including submission
1083 of a complete application with all supplemental documentation, commitment to substantial
1084 completion of the project within two years and project completion within three years of the
1085 award date, demonstration that the project advances at least one of BTOP’s five statutory
1086 purposes, commitment to or a waiver for the cost matching requirement, demonstration that a
1087 project could not be completed in the grant period but for federal funding, demonstration that the
1088 project is technically feasible, and that the budget is reasonable and all costs are eligible;
- 1089 c. An executive summary of the project, including the problem or need the project
1090 addresses and the approach to addressing the need; the area to be served, population and
1091 demographics of the target area, and estimated number of potential users of the public computer
1092 center(s); qualifications of the applicant; jobs to be created or saved; and overall cost of the
1093 project;
- 1094 d. A description of the project purpose, including the significance of the problem to be
1095 addressed and the degree to which the proposed solution effectively addresses the problem and
1096 could be replicated by other organizations; the degree to which the problem and proposed
1097 solution advance at least one of BTOP’s five statutory purposes; and whether and how the
1098 project incorporates more than one BTOP program category or BTOP statutory purpose;
- 1099 e. A description of any collaboration with Recovery Act or other state or federal
1100 development programs that leverage the impact of the proposed project;
- 1101 f. A description of how the program would enhance service for health care delivery,
1102 education, or children;

1103 g. Evidence of collaboration with any SDB as defined by section 8(a) of the SBA, that
1104 may include a sub-awardee, contractor, subcontractor, or vendor;

1105 h. The capacity of the proposed public computer center(s) and areas and populations to
1106 be served, including whether the facility will be available to the general public or specific
1107 populations, whether the center(s) charges membership fees and if so how these charges are
1108 consistent with the public interest, any restrictions of the use of the center(s), how the center will
1109 be accessible to persons with disabilities, the locations and hours of the center(s), current and
1110 proposed number of broadband workstations, current and proposed speed of the center(s)
1111 broadband connection, the size and scope of the target population and the populations to be
1112 served by the center(s), the outreach strategy for the center(s), the equipment and software that
1113 will be provided, and the training and educational programs that will be offered;

1114 i. A summary as to the viability of the project, including the overall technology strategy
1115 to be deployed by the project; qualifications of the organization and management team, including
1116 a description of organizational readiness and an organizational chart; a list of community
1117 organizations, partners, vendors, or contributors of in-kind resources involved in the project and
1118 whether any of those involved entities are socially or economically disadvantaged partners; a
1119 project timeline that established key milestones for implementation of the project as well as
1120 potential challenges that could pose delays; a list of needed licensing and regulatory approvals;
1121 and a legal opinion addressing the applicant's ability to enter into the award agreement;

1122 j. Proposed budget and sustainability information from the applicant including a
1123 narrative explaining the project budget, an explanation of why the proposed costs are reasonable,
1124 demonstration that the project could not have been undertaken during the grant period but for
1125 federal assistance, organization financial statements for the last two years, explanation of how a

1126 project will become self-sustaining, description of the planned matching funds for the project or
1127 a waiver, as applicable, whether the project is receiving or has applied for federal support for
1128 non-recurring costs, disclosure of other federal or state funding, and whether the applicant is
1129 seeking a waiver of the Buy American provision; and

1130 k. Completion of an environmental checklist and applicable certifications.

1131 **3. Sustainable Broadband Adoption Applications**

1132 Applications for Sustainable Broadband Adoption projects must contain the following
1133 information:

1134 a. The identity of the applicant and general applicant and project information including:

1135 i. A descriptive title of the project that will be made public consistent with the

1136 requirements of the Recovery Act,

1137 ii. The Congressional Districts affected by the project,

1138 iii. The dollar amount of the funding request;

1139 b. Verification that the application meets certain eligibility factors, including submission

1140 of a complete application with all supplemental documentation, commitment to substantial

1141 completion of the project within two years and project completion within three years of the

1142 award date, demonstration that the project advances at least one of BTOP's five statutory

1143 purposes, commitment to or a waiver for the cost matching requirement, demonstration that a

1144 project could not be completed in the grant period but for federal funding, demonstration that the

1145 project is technically feasible, and that the budget is reasonable and all costs are eligible;

1146 c. An executive summary of the project, including the problem or need the project

1147 addresses and the approach to addressing the need, and how that approach is innovative; the area

1148 to be served, population and demographics of the target area, and estimated number of potential

1149 broadband subscribers the project will reach; qualifications of the applicant; jobs to be created or
1150 saved; and overall cost of the project;

1151 d. A description of the project purpose, including the significance of the problem to be
1152 addressed and the degree to which the proposed solution effectively addresses the problem and
1153 could be replicated by other organizations; the degree to which the problem and proposed
1154 solution advance at least one of BTOP's five statutory purposes; and whether and how the
1155 project incorporates more than one BTOP program category or BTOP statutory purpose;

1156 e. A description of any collaboration with Recovery Act or other state or federal
1157 development programs that leverage the impact of the proposed project;

1158 f. A description of how the program would enhance service for health care delivery,
1159 education, or children;

1160 g. Evidence of collaboration with any SDB as defined under section 8(a) of the SBA,
1161 that may include a sub-awardee, contractor, subcontractor, or vendor;

1162 h. A description of the project benefits, including how the approach to solve the
1163 identified problem is innovative; the number of new home, business, and institutional broadband
1164 subscribers expected to be generated; the populations to be served by the project; the total cost of
1165 the project per new subscriber; if proposing a training or educational program, how many people
1166 it will reach, the hours of training per person, the number of instructors to be employed, and
1167 planned equipment purchases and overall cost of these devices; if proposing an equipment
1168 purchase or loan program, the number of households, businesses, and institutions that will be
1169 provided equipment and the total cost to the customer; if proposing an awareness campaign, the
1170 number of people expected to be reached, the strategies to be used in the campaign, how impact

1171 of the campaign will be measured, and the organization's previous experience with this type of
1172 campaign;

1173 i. A summary as to the viability of the project, including an explanation of the innovative
1174 operational solution proposed, how it will create sustainable adoption in the target population,
1175 and how it could be feasible in other situations; qualifications of the organization and
1176 management team, including a description of organizational readiness and an organizational
1177 chart; a list of community organizations, partners, vendors, or contributors of in-kind resources
1178 involved in the project and whether any of those involved entities are socially or economically
1179 disadvantaged partners; a project timeline that established key milestones for implementation of
1180 the project as well as potential challenges that could pose delays; a list of needed licensing and
1181 regulatory approvals; and a legal opinion addressing the applicant's ability to enter into the
1182 award agreement;

1183 j. Proposed budget and sustainability information from the applicant including a
1184 narrative explaining the project budget, an explanation of why the proposed costs are reasonable,
1185 demonstration that the project could not have been undertaken during the grant period but for
1186 federal assistance, organization financial statements for the last two years, explanation of how
1187 the project will create sustainable increases in subscribership and how the project itself could be
1188 sustained beyond the grant period, description of the planned matching funds for the project or a
1189 waiver, as applicable, whether the project is receiving or has applied for federal support for non-
1190 recurring costs, disclosure of other federal or state funding, and whether the applicant is seeking
1191 a waiver of the Buy American provision; and

1192 k. Completion of an environmental checklist and applicable certifications.

1193 **E. Filing Instructions**

1194 **1. Electronic Applications**

1195 Electronic submissions of applications will allow for the expeditious review of an
1196 applicant's proposal consistent with the goals of the Recovery Act. As a result, all applicants
1197 requesting more than \$1 million in assistance (in the form of grants, loans, or a combination of
1198 grants and loans) must file their application electronically. Applicants whose authorized
1199 representatives are individuals with disabilities, however, may submit a paper application
1200 irrespective of the funding size of their request. In addition, applicants who are requesting less
1201 than \$1 million in assistance may forego the electronic filing requirement if filing electronically
1202 would impose a hardship on the applicant.

1203 **2. Paper Applications**

1204 **a. Format**

1205 Applicants requesting less than \$1 million in assistance (in the form of grants, loans, or a
1206 combination of grants and loans) may file their applications in a paper format if filing
1207 electronically would impose a hardship on the applicants. Applicants whose authorized
1208 representatives are individuals with disabilities may file their applications in a paper format
1209 irrespective of the funding size of their request. To the extent that applicants use electronic word
1210 processing software to create paper submissions, they should include in their filing, to the extent
1211 possible, an electronic copy of the paper application on an appropriate media such as a CD.

1212 The application package for paper submissions must be completed in black or blue ink,
1213 signed and mailed to the addresses provided in the Mailing Addresses section of this document
1214 (section E.2.d.). The application must be typed, single-sided, single-spaced, on 8 ½" x 11"
1215 paper, excluding diagrams and charts. Use a font of no less than 12 points with margins of no

1216 less than one inch. Reviewers will be instructed to ignore any portion of the application that
1217 extends beyond the prescribed page limits provided in the application.

1218 **b. Number of Copies**

1219 Applicants filing paper copies should submit one original and one copy of the application
1220 for efficient processing.

1221 **c. Proof of Mailing**

1222 Applications must include proof of mailing consisting of one of the following:

1223 i. A legibly dated U.S. Postal Service postmark. Please note that the U.S. Postal Service
1224 does not uniformly provide a dated postmark. Before relying on this method, applicants should
1225 check with their local post office.

1226 ii. A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

1227 iii. A dated shipping label, invoice, or receipt from a commercial carrier.

1228 Neither of the following will be accepted as proof of mailing: a private metered
1229 postmark; nor a mail receipt that is not dated by the U.S. Postal Service.

1230 Applications with postmarked dates after August 14, 2009, will not be considered in the
1231 current grant round and will be returned to the applicant. Applications will NOT be accepted via
1232 facsimile machine transmission.

1233 **d. Mailing Addresses**

1234 Completed applications must be mailed, shipped, or sent overnight express to:

1235 **i. NTIA**

1236 Broadband Technology Opportunities Program
1237 National Telecommunications and Information Administration
1238 U.S. Department of Commerce
1239 1401 Constitution Avenue, NW
1240 HCHB, Room 4812
1241 Washington, DC 20230
1242

1243 or hand-delivered to:

1244 Broadband Technology Opportunities Program
1245 National Telecommunications and Information Administration
1246 U.S. Department of Commerce
1247 HCHB, Room 1874
1248 1401 Constitution Avenue, NW
1249 Washington, DC 20230
1250
1251 Room 1874 is located at entrance #10 on 15th Street NW, between Pennsylvania and
1252 Constitution Avenues.

1253 United States Postal Service Priority Mail, First Class Mail, and Parcel Post packages
1254 delivered to the Department of Commerce are irradiated. Irradiation could result in damage to
1255 the contents, or delay the delivery of an application to the BTOP Program Office. Thus,
1256 applicants are encouraged to consider the impact of these procedures in selecting their chosen
1257 method for application delivery.

1258 **ii. RUS**

1259 Broadband Initiatives Program
1260 Rural Utilities Service
1261 U.S. Department of Agriculture
1262 1400 Independence Avenue, SW, Stop 1599
1263 Washington, DC 20250
1264

1265 or hand-delivered to:

1266 Broadband Initiatives Program
1267 Rural Utilities Service
1268 U.S. Department of Agriculture
1269 1400 Independence Avenue, SW
1270 Room 2868
1271 Washington, DC 20250

1272

1273 **iii. Signatures**

1274 Applicants filing in a paper format must submit an original signed copy of their
1275 application and certifications. Applicants filing electronically may submit an electronic
1276 signature for their application by registering at <http://www.ccr.gov>.

1277 **F. Submission Dates and Times**

1278 Electronic applications must be submitted between July 14, 2009, at 8:00 a.m. ET and
1279 5:00 p.m. ET on August 14, 2009. The electronic application system at
1280 <http://www.broadbandusa.gov> will provide a date and time stamped confirmation number that
1281 will serve as proof of submission. Paper submissions must be postmarked no later than August
1282 14, 2009, or hand-delivered no later than 5:00 p.m. ET on August 14, 2009. Applications
1283 delivered by guaranteed carrier services will be considered postmarked on the date they are
1284 submitted to the carrier.

1285 No application will be accepted after the submission date unless: 1, there was a carrier
1286 error and the carrier accepted the application for delivery prior to the submission deadline; or 2.
1287 there were significant weather delays or natural disasters as declared by federal or state
1288 authorities and the applicant submits proper documentation explaining the delay.

1289 **G. Material Representations**

1290 The application, including certifications, and all forms submitted as part of the
1291 application will be treated as a material representation of fact upon which RUS and NTIA will
1292 rely in awarding grants.

1293 **H. Material Revisions**

1294 No material revision will be permitted for any application after the submission deadline,
1295 unless such revision is requested by RUS and NTIA. RUS and NTIA, however, may request
1296 clarifications or submissions for completeness that are non-material.

1297 **VII. Application Review Information**

1298 **A. Evaluation Criteria**

1299 The scoring criteria used to review and analyze BIP and BTOP applications are grouped
1300 into four categories: 1. Project Purpose; 2. Project Benefits; 3. Project Viability; and 4. Project
1301 Budget and Sustainability. Each application will be scored against the following objective
1302 criteria, and not against other applications. This section describes the evaluation criteria first for
1303 BIP Broadband Infrastructure projects, then for the three BTOP project categories.

1304 **1. BIP Broadband Infrastructure Projects**

1305 **a. General**

1306 In accordance with the Recovery Act, the priority for BIP is to provide and improve
1307 broadband service to the highest proportion of rural residents who do not have adequate access to
1308 broadband service for rural development, which RUS defines to mean rural residents who reside
1309 in unserved and underserved rural areas. Additionally, the Recovery Act mandates that priority
1310 be given to projects which: i. give end users a choice of providers; ii. serve the highest
1311 proportion of rural residents that lack access to broadband service; iii. are projects of current or
1312 former RUS borrowers (Title II borrowers); and iv. are fully funded and ready to start once
1313 Recovery Act funding is received. Lastly, coordination with other federal, state, and local
1314 programs, including Recovery Act programs, is highly encouraged as a way to more efficiently
1315 and effectively achieve program objectives.

1316 **b. Project Purpose (25 points)**

1317 i. Proportion of Rural Residents Served in Unserved Areas (5 points). Points will be
1318 awarded for serving rural residents located in unserved areas. For every 10,000 unserved
1319 households that will receive broadband service, one point will be awarded up to a maximum of
1320 five points.

1321 ii. Rural Area Targeting (5 points). Points will be awarded for exceeding the 75 percent
1322 rural area service requirement. For every five percent increase in the rural service area above the
1323 75 percent rural area service requirement, one point will be awarded up to a maximum of five
1324 points.

1325 iii. Remote Area Targeting (5 points). Up to five points will be awarded for proposed
1326 funded service areas that are at least 50 miles from a non-rural area. If at least one proposed
1327 funded service area is a minimum of 50 miles from a non-rural area, one point will be awarded.
1328 For each additional 50 miles that at least one proposed funded service area is located away from
1329 a non-rural area, one additional point will be awarded up to a total of five points.

1330 iv. Title II Borrowers (5 points). Five points will be awarded to applications which are
1331 submitted by entities which have borrowed under Title II of the RE Act.

1332 v. Recovery Act and other governmental collaboration (5 points). Points will be
1333 awarded for cooperation with other governmental development programs as well as coordination
1334 with Recovery Act construction projects. Examples include the Department of Energy's Smart
1335 Grid, Investment Program, the Department of Housing and Urban Development's Public Housing
1336 Capital Fund, the Department of Transportation's Capital Assistance for High Speed Rail
1337 Corridors and Intercity Passenger Service program, and other investments where collaboration
1338 would lead to greater project efficiencies. In each case, the applicant must convincingly

1339 demonstrate that these leveraging efforts are substantive and meaningful. One point will be
1340 awarded for each partnered governmental or Recovery Act program that has demonstrated such a
1341 partnership is substantive and meaningful up to a maximum of five points.

1342 **c. Project Benefits (25 points)**

1343 i. Performance of the offered service (10 points). **For Last Mile Projects:** For
1344 wireline projects that are constructed to deliver a minimum of 20 megabit per second service to
1345 the household (upstream plus downstream), ten points will be awarded. For wireless projects
1346 that are constructed to deliver a minimum of two megabits per second service to the end user
1347 (upstream plus downstream), ten points will be awarded. For projects that are a combination of
1348 wireline and wireless projects, both of the above standards must be met for the corresponding
1349 parts of the network in order to receive the ten points. **For Middle Mile Projects:** For middle
1350 mile projects that are constructed to deliver 100 megabits per second service to all end points in
1351 their network, ten points will be awarded.

1352 ii. Affordability of services offered (5 points). RUS will evaluate the level of support
1353 that is provided and award up to five points for applications that demonstrate that the proposed
1354 rates for the broadband service are affordable for the targeted audience. The stronger the level of
1355 support that is provided, the higher the number of points that will be awarded.

1356 iii. Choice of provider (5 points). Five points will be awarded to applications that
1357 propose to construct infrastructure and implement a business plan which would allow more than
1358 one provider to serve end users in the proposed funded service area.

1359 iv. Critical community facilities (5 points). For applications that are proposing to offer
1360 discounted rate packages at least 25 percent lower than the advertised rate packages to all critical
1361 community facilities in the proposed funded service area, five points will be awarded.

1362 **d. Project Viability (25 points)**

1363 i. Applicant's organizational capability (12 points). Up to twelve points will be awarded
1364 based on the strength of the project's management team. RUS will evaluate past performance
1365 and accomplishments and award points accordingly.

1366 ii. Community support (2 points). Up to two points will be awarded if letters of support
1367 are received from all communities in the proposed funded service area from the designated
1368 community leader.

1369 iii. Ability to promptly start project (10 points). Ten points will be awarded if the
1370 applicant can provide evidence that the following conditions have been satisfied:

1371 (1) All licenses, franchises and regulatory approvals required to operate the system and
1372 provide the proposed services have been received;

1373 (2) That the required contractors and vendors necessary to implement the project are
1374 prepared to enter into contracts as soon as funds are made available;

1375 (3) That all required equity contributions have been transferred into the applicant's
1376 accounts; and

1377 (4) That the project timeline and milestones are reasonable.

1378 iv. Disadvantaged small businesses (1 point). One point will be awarded to applicants
1379 that meet the definition of a socially and economically disadvantaged small business concern
1380 under section 8(a) of the SBA.

1381 **e. Project Budget and Sustainability (25 points)**

1382 i. Reasonableness of the budget (5 points). Up to five points will be awarded based on
1383 the clarity and reasonableness of the proposed budget.

1384 ii. Leverage of outside resources (10 points). Up to ten points will be awarded based on
1385 the amount of outside resources contributed to the total financing provided under BIP:

1386 (1) 10 points if this ratio is greater than 100%

1387 (2) 7 points if this ratio is between 100% and 75%

1388 (3) 5 points if this ratio is between 75% and 50%

1389 (4) 3 points if this ratio is between 50% and 25%

1390 (5) 1 points if this ratio is lower than 25%.

1391 iii. Extent of grant funding (10 points). Up to ten points will be awarded based on the
1392 amount of grants funds requested in relation to the amount of loan funds requested (grant
1393 funds/loan funds):

1394 (1) 0 points if grant funds are 100%

1395 (2) 1 points if this ratio is between 100% and 75%

1396 (3) 3 points if this ratio is between 75% and 50%

1397 (4) 5 points if this ratio is lower than 50%

1398 (5) 10 points if this ratio is zero.

1399 **2. BTOP Broadband Infrastructure, Public Computer Center, and Sustainable**
1400 **Broadband Adoption Projects**

1401 **a. General**

1402 The evaluation criteria for BTOP projects will be the same across the BTOP project
1403 categories except: i. under the Project Benefits section, different evaluation criteria and scoring
1404 methodologies are applied to each project category; ii. the Technical Feasibility criterion under
1405 the Project Viability heading is subdivided between Sustainable Broadband Adoption projects
1406 and all other BTOP project categories; and iii. the Sustainability criterion under the Budget and

1407 Sustainability heading is similarly subdivided between Sustainable Broadband Adoption projects
1408 and all other BTOP project categories. These variations are detailed in the descriptions of the
1409 evaluation criteria below.

1410 **b. Project Purpose (30 points)**

1411 i. Fit with statutory purposes. Applications will be evaluated with respect to each of
1412 BTOP's statutory purposes.³⁹ Reviewers will consider, relative to each purpose, whether the
1413 applicant is addressing a compelling problem of the sort that the statute is intended to resolve,
1414 whether the applicant has offered an effective solution to that problem, and whether the proposed
1415 solution is of broad significance and includes developments that can be replicated to improve
1416 future projects. Additional consideration will be given to projects located partially or wholly
1417 unserved or underserved areas of a state as described by the state submission in the State
1418 Broadband Data and Development Grant Program or as otherwise determined by NTIA.
1419 Additional consideration will also be given to applicants that address more than one statutory
1420 purpose and project category (*e.g.*, Broadband Infrastructure, Public Computer Centers, or
1421 Sustainable Broadband Adoption) in a convincing manner.

1422 ii. Recovery Act and other governmental collaboration. Applicants will be evaluated on
1423 their collaboration with Recovery Act or other state or federal development programs that
1424 leverage the impact of the proposed project. Examples include the Department of Energy's
1425 Smart Grid Investment Program, the Department of Housing and Urban Development's Public
1426 Housing Capital Fund, the Department of Transportation's Capital Assistance for High Speed

³⁹ See Recovery Act § 6001(b), 123 Stat. at 512–13 (to provide broadband access to unserved areas; to provide improved broadband access to underserved areas; to provide broadband access, education, and support to community anchor institutions, or organizations and agencies serving vulnerable populations, or job-creating strategic facilities located in state- or federally-designated economic development areas; to improve access to, and use of, broadband service by public safety agencies; and to stimulate the demand for broadband, economic growth, and job creation).

1427 Rail Corridors and Intercity Passenger Service program, and other investments where
1428 collaboration would lead to greater project efficiencies. In each case, the applicant must
1429 convincingly demonstrate that these leveraging efforts are substantive and meaningful.

1430 iii. Enhanced service for health care delivery, education, and children. Reviewers will
1431 assess the depth and breadth of the project's ability to enhance broadband service for health care
1432 delivery, education, and children as contemplated by the Recovery Act.⁴⁰ Projects would need to
1433 demonstrate that they go beyond providing access to broadband to include more robust
1434 educational, health care, or related broadband service delivery.

1435 iv. Socially and economically disadvantaged small businesses. Reviewers will grant
1436 consideration to applicants that certify they meet the statutory definition of a socially and
1437 economically disadvantaged small business concern, or that have established agreements in
1438 principle to contract with socially and economically disadvantaged businesses that meet that
1439 definition.

1440 **c. Project Benefits (25 points)**

1441 Reviewers will evaluate the various benefits that the proposed project will provide. This
1442 criterion will be focused primarily on measuring the benefits of the proposed project. Due to the
1443 broad scope of the three project categories and the expected diversity of proposed projects, the
1444 specific elements to be evaluated under this heading vary from one project category to another,
1445 as described below.

1446 **i. BTOP Broadband Infrastructure Last Mile Projects**

1447 (1) Cost-effectiveness. Applications will be scored on the project's cost-efficiency based
1448 on the ratio of the total cost of the project to households passed.

⁴⁰ See *id.* § 6001(h)(2)(C), 123 Stat. at 515.

1449 (2) Performance of the offered service. Applications will be scored for the extent to
1450 which the advertised speed for the network's highest offered speed tier exceeds the minimum
1451 speed requirement for broadband service (768 kbps downstream and 200 kbps upstream).
1452 Networks will be graded on a sliding scale with higher end-user speeds receiving a higher score.
1453 Proposed networks with high latency will be viewed unfavorably. Applicants may gain
1454 additional consideration if the applicant can demonstrate a clear and affordable upgrade path for
1455 the network.

1456 (3) Affordability of services offered. Projects will be evaluated on the pricing of the
1457 services offered compared to existing broadband services in the proposed funded service area. If
1458 there are no existing broadband services in the proposed funded service area, projects will be
1459 evaluated on the ability of the applicant to convincingly demonstrate that their proposed pricing
1460 is appropriate for the service area.

1461 (4) Nondiscrimination, interconnection, and choice of provider. Applications will be
1462 scored on the extent to which the applicant commits to exceeding the minimum requirements for
1463 interconnection and nondiscrimination established in section V.C.2.b. of this NOFA. Additional
1464 consideration will be given for displaying the network's nondiscrimination and interconnection
1465 policies in a prominent location on the service provider's web page, and providing notice to
1466 customers of changes to these policies. Additional consideration will be given to applicants that
1467 commit to offering wholesale access to the project facilities at reasonable rates and terms.
1468 Additional consideration will also be given to applicants that commit to binding private
1469 arbitration of disputes concerning the awardees' interconnection obligations as explained above
1470 in section V.C.2.b of this NOFA. Reviewers will also consider whether the application proposes

1471 to construct infrastructure and implement a business plan which would allow more than one
1472 provider to serve end users in the proposed funded service area.

1473 **ii. BTOP Broadband Infrastructure Middle Mile Projects**

1474 For purposes of evaluating BTOP Middle Mile projects, applicants should define the area
1475 that will directly benefit from the project, including the community anchor institutions and end
1476 users that may received broadband service through the proposed middle mile network.

1477 (1) Impact on the area. Applications will be scored on how great an impact they would
1478 have on the area. Reviewers will consider the number of end-points and points of
1479 interconnection the network will offer and the proposed connections to last mile networks,
1480 community anchor institutions, or public safety entities, as well as the projected number of new
1481 end users served by those proposed connections.

1482 (2) Level of need in the area. Applications will be scored on the level of need for a
1483 middle mile network in the area. Reviewers will consider whether there are middle mile
1484 providers already present in all or part of the area, as well as the pricing and available capacity of
1485 those providers. Reviewers will also consider what proportion of the network's end-points,
1486 points of interconnection, and projected end users are located in unserved or underserved areas.
1487 In addition, reviewers will also consider applicants' explanation of why their proposed project is
1488 well-suited to address the needs of the area.

1489 (3) Network capacity. Applicants will be evaluated on the capacity of the network. The
1490 network should provide capacity sufficient to serve the anticipated last mile networks,
1491 community anchor institutions, and public safety entities, and the number of end users served by
1492 them, as projected by the applicant, taking into consideration the nature of the services that these

1493 institutions and end users are likely to seek to utilize the network for. Reviewers will give
1494 additional consideration to projects that will be scalable to meet the future needs of the area.

1495 (4) Affordability of services offered. Projects will be evaluated on the pricing of the
1496 services offered compared to existing broadband services in the proposed funded service area.
1497 If there are no existing broadband services in the proposed funded service area, projects will be
1498 evaluated on the ability of the applicant to convincingly demonstrate that their proposed pricing
1499 for middle mile services is appropriate for the proposed funded service area.

1500 (5) Nondiscrimination, interconnection, and choice of provider. Applications will be
1501 scored on the extent to which the applicant commits to exceeding the minimum requirements for
1502 interconnection and nondiscrimination established in section V.C.2.b. of this NOFA. Additional
1503 consideration will be given for displaying the network's nondiscrimination and interconnection
1504 policies in a prominent location on the service provider's web page, and providing notice to
1505 customers of changes to these policies. Additional consideration will be given to applicants that
1506 commit to offering wholesale access to network components and services such as wavelength or
1507 fibers at reasonable rates and terms. Additional consideration will also be given to applicants that
1508 commit to binding private arbitration of disputes concerning the awardees' interconnection
1509 obligations as explained above in section V.C.2.b of this NOFA. Reviewers will also consider
1510 whether the application proposes to construct infrastructure and implement a business plan which
1511 would allow more than one provider to serve end users in the proposed funded service area.

1512

1513 **iii. BTOP Public Computer Center Projects**

1514 (1) Availability to the public. Applications will be scored on the availability of the
1515 computer center to the public. Reviewers will consider the capacity of the computer center, its

1516 hours of availability, any membership or usage fees charged, restrictions on usage, the
1517 proportionality of the computer center's capacity and hours of availability to the population the
1518 applicant proposes to serve, public outreach, and the computer center's accessibility to persons
1519 with disabilities, accounting for both the physical accessibility of the facility and the accessibility
1520 of the computer equipment and software.

1521 (2) Training and educational programs offered. Applicants will be scored on the
1522 availability, accessibility, and quality of training and educational programs offered through the
1523 computer center. Reviewers will consider the degree to which the programs meet the relevant
1524 needs of the community.

1525 (3) Availability and qualifications of consulting and teaching staff. Applications will be
1526 evaluated on the strength of the consulting and teaching staff at the computer center. Reviewers
1527 will consider the qualifications and training required of such staff as well as whether the number
1528 of available staff is sufficient for the capacity of the computer center.

1529 **iv. BTOP Sustainable Broadband Adoption**

1530 (1) Number of new users. Applications will be scored on the number of new broadband
1531 subscribers and other regular users the project will generate. Reviewers will take into
1532 consideration both the overall number of new subscribers and users and the proportion that these
1533 new subscribers and users represent of the number of non-subscribers and non-users in the
1534 relevant area.

1535 (2) Cost per new user. Applications will be evaluated on the cost-effectiveness of the
1536 program. Reviewers will consider cost per projected new subscriber or other regular user, taking
1537 into account the applicant's explanation of why the approach selected is a cost-effective
1538 approach given the particular circumstances of the project.

1539 (3) Innovation. Applications will be evaluated on the degree to which the project
1540 demonstrates replicable new ideas, approaches, and methods to encourage sustainable broadband
1541 adoption.

1542 **d. Project Viability (25 points)**

1543 i. The technical feasibility of the proposed project. **For BTOP Broadband**
1544 **Infrastructure and Public Computer Center projects:** applications will be scored on the
1545 comprehensiveness and appropriateness of the technical solution and the clarity, level of detail,
1546 and coherence of the system designs. In order to receive a full score, applicants must
1547 demonstrate that the project includes developments that will be feasible in other situations. **For**
1548 **Sustainable Broadband Adoption projects:** reviewers will assess the mechanics and
1549 operational details of the project. Applicants will be scored on the clarity and detail of their
1550 project plan, how convincing the rationale behind the plan is, and whether they can demonstrate
1551 that the plan includes innovative solutions that would be feasible in other situations.

1552 ii. Applicant's organizational capability. Reviewers will assess whether the applicant
1553 has the organizational capability necessary to undertake and complete the project. Reviewers
1554 will consider the years of experience and expertise of the project management team, and the past
1555 track record of the organization with projects of a similar size and scope, as well as the
1556 organization's capacity and readiness.

1557 iii. The level of community involvement in the project. Reviewers will evaluate
1558 linkages to unaffiliated organizations in the project area (from the public, non-profit, and private
1559 sectors), particularly community anchor institutions and public safety organizations, as an
1560 ongoing and integral part of the project planning and operation. In order to receive the full score
1561 for this criterion, at least one partner should meet the definition of a socially and economically

1562 disadvantaged small business concern under section 8(a) of the SBA—these partners must be
1563 distinct from any contractor or related entity specified for the purposes of the socially
1564 disadvantaged small businesses criterion in Project Purpose. Applicants should demonstrate that
1565 each linkage is substantial and meaningful.

1566 iv. Ability to promptly start project. Projects will be evaluated on whether they will be
1567 able to start promptly and be completed in an appropriate timeframe for the size and scope of the
1568 project. Reviewers will consider the planned start date of the project, the reasonableness of the
1569 project timeline and associated milestones, whether the applicant has secured all licenses,
1570 franchises, and regulatory approvals required to complete the project, and whether the required
1571 contractors and vendors necessary to implement the project are prepared to enter into contracts as
1572 soon as the funds are made available.

1573 **e. Project Budget and Sustainability (20 points)**

1574 i. Reasonableness of the budget. Reviewers will evaluate the reasonableness of the
1575 budget based on its clarity, level of detail, comprehensiveness, appropriateness to the proposed
1576 technical and programmatic solutions, the reasonableness of its costs, and whether the allocation
1577 of funds is sufficient to complete the tasks outlined in the project plan.

1578 ii. Sustainability of the project. **For BTOP Broadband Infrastructure and Public**
1579 **Computer Center projects:** Applicants must convincingly demonstrate the ability of the
1580 project to be sustained beyond the funding period. Reviewers will consider business plans,
1581 market projections, third-party funding commitments, and other data as may be appropriate to
1582 the nature of the applicant and the proposed project. **For Sustainable Broadband Adoption**
1583 **projects:** Reviewers will consider both whether the project will be sustained beyond the funding

1584 period and whether the increases in broadband adoption rates in the project area caused by the
1585 project will be sustained beyond the conclusion of the project.

1586 iii. Leverage of outside resources. The applicant must demonstrate the ability to provide,
1587 from non-federal sources, funds required to meet or exceed the 20 percent matching funds
1588 requirement unless a waiver of that requirement has been requested. Reviewers will give
1589 additional consideration to proposals that exceed the minimum matching requirement, provide
1590 cash matches, or receive matching funds from acceptable federal sources as described in section
1591 V.C.4.b of this NOFA. For purposes of this evaluation, applicants that have received a full or
1592 partial waiver of the cost-matching requirement will be treated as having provided a 20 percent
1593 non-cash match.

1594 **B. Notice of Proposed Funded Service Areas**

1595 RUS and NTIA will post a Public Notice of the proposed funded service areas of each
1596 Broadband Infrastructure application at <http://www.broadbandusa.gov> for a 30 day period. The
1597 Public Notice will provide existing service providers an opportunity to submit to the agencies
1598 information regarding their service offerings. If an existing service provider submits a response
1599 outside the timeframe specified in this NOFA, it will not be considered an existing service
1600 provider for determining whether the applicant's service area is eligible, but will still be
1601 considered with respect to the agencies' other applicable eligibility requirements. The
1602 information submitted by an existing service provider will be treated as proprietary and
1603 confidential to the extent permitted under applicable law.

1604 If the information submitted by an existing service provider demonstrates that the
1605 applicant's proposed funded service area is not unserved, both RUS and NTIA reserve the right
1606 to reclassify the application and consider the proposed area as underserved if the application

1607 meets the criteria in the underserved definition. If the information submitted by an existing
1608 service provider establishes that the applicant's proposed funded service area is not underserved,
1609 both RUS and NTIA may reject the application.

1610 **VIII. Anticipated Announcement and Award Dates**

1611 **A. Announcement Date**

1612 RUS and NTIA intend to announce the awards starting on or about November 7, 2009.

1613 **B. RUS Loan and Grant Document Distribution Date**

1614 RUS intends to make grant, loan, and loan/grant combination documents available to
1615 successful applicants within 30 days of the award announcement. RUS expects compliance with
1616 all documentation requirements from successful applicants, and intends to schedule the closings
1617 within 60 days of award announcement.

1618 **C. BTOP Grants**

1619 NTIA intends to make award documents available to successful applicants within 30 days
1620 of the award announcement. NTIA expects compliance with all documentation requirements
1621 from successful applicants within 60 days of award announcement.

1622 **IX. Award Administration Information**

1623 **A. Award Notices**

1624 **1. BIP**

1625 Successful applicants will receive award documents from RUS following award
1626 notification. Applicants may view sample documents on BIP at <http://www.broadbandusa.gov>.

1627 **2. BTOP**

1628 Applicants will be notified in writing by the DOC's Grants Officer if their applications
1629 are selected for an award. If the application is selected for funding, the DOC's Grants Officer

1630 will issue the grant award (Form CD-450), which is the authorizing financial assistance award
1631 document. By signing the Form CD-450, the awardee agrees to comply with all award
1632 provisions. NTIA will provide the Form CD-450 by mail or overnight delivery to the
1633 appropriate business office of the recipient's organization. The awardee must sign and return the
1634 Form CD-450 without modification within 30 days of receipt.

1635 If an applicant is awarded funding, neither the DOC nor NTIA is under any obligation to
1636 provide any additional future funding in connection with that award or to make any future
1637 award(s). Amendment or renewal of an award to increase funding or to extend the period of
1638 performance is at the discretion of the DOC and of NTIA.

1639 **B. Administrative Requirements**

1640 **1. BIP**

1641 a. Pre-award conditions. No funds will be disbursed under this program until all other
1642 sources of funding have been obtained and any other pre-award conditions have been met.
1643 Failure to obtain one or more sources of funding committed to in the application or to fulfill any
1644 other pre-award condition within 30 days of award announcement will result in withdrawal of the
1645 award.

1646 b. Failure to Comply With Award Requirements. If an awardee fails to comply with the
1647 terms of the award as specified in the award documents, RUS may exercise rights and remedies.

1648 c. Advance Procedures. RUS loan and grant advances are made at the request of the
1649 awardee according to the procedures stipulated in the award documents. Loan/grant combination
1650 funds are advanced in proportion to the amount of the award made in the form of loans and
1651 grants. Remote areas project grant funds are advanced independent of the loan/grant
1652 combination funds.

1653 d. Contracting. Contracting is to be done at the awardee's discretion, using private
1654 contracts or RUS's form contracts, however equal employment opportunity, civil rights, etc.
1655 requirements must still be met.

1656 e. Accounting, Monitoring, and Reporting Requirements. Awardees must follow RUS's
1657 accounting, monitoring, and reporting requirements. These requirements, which are specified in
1658 the award documents, include, but are not limited to, the following:

1659 i. Awardees must adopt a GAAP system of accounts acceptable to RUS;

1660 ii. Awardees must submit annual audited financial statements along with a report on
1661 compliance and on internal control over financial reporting, and a management letter in
1662 accordance with the requirements of 7 CFR 1773. The CPA conducting the annual audit is
1663 selected by the awardee and must be approved by RUS as set forth in 7 CFR § 1773.4;

1664 iii. Awardees must submit to RUS the information as specified in section IX.D.2;

1665 iv. Awardees must comply with all reasonable RUS requests to support ongoing
1666 monitoring efforts. The awardee shall afford RUS, through its representatives and
1667 representatives of the USDA Office of Inspector General reasonable opportunity, at all times
1668 during business hours and upon prior notice, to have access to and the right to inspect the
1669 broadband system, and any other property encumbered by the mortgage or security agreement,
1670 and any or all books, records, accounts, invoices, contracts, leases, payrolls, timesheets,
1671 cancelled checks, statements, and other documents, electronic or paper of every kind belonging
1672 to or in the possession of the awardee or in any way pertaining to its property or business,
1673 including its subsidiaries, if any, and to make copies or extracts therefrom.

- 1674 f. Assistance Instruments.
- 1675 i. Terms and conditions of loan/grant combinations are set forth in the non-negotiable
1676 standard loan/grant contract, note, and/or mortgage found at <http://www.broadbandusa.gov>.
- 1677 ii. Terms and conditions of loans are set forth in the non-negotiable standard loan
1678 contract, note, and/or mortgage found at <http://www.broadbandusa.gov>.
- 1679 iii. Terms of the remote area end-user grant are set forth in a nonnegotiable grant
1680 agreement found at <http://www.broadbandusa.gov>.
- 1681 iv. Loan and grant documents appropriate to the project must be executed prior to any
1682 advance of funds.
- 1683 v. Sample loan documents and grant agreements can be found at
1684 <http://www.broadbandusa.gov>.
- 1685 g. Loan Terms and Conditions. For loan/grant combinations, applicants must indicate
1686 the amount of the award to be requested in the form of a loan, and the amount to be requested in
1687 the form of a grant. The grant component must not exceed the loan component. The scoring
1688 criteria reward those applicants that reduce the percentage of the funds requested in the form of a
1689 grant. Applicants may request a 100 percent loan. The following terms shall apply to the loans,
1690 as well as other terms that are specified in the loan documents:
- 1691 i. Interest rate. Loans shall bear interest at a rate equal to the cost of borrowing to the
1692 Department of Treasury for obligations of comparable maturity. The applicable interest rate will
1693 be set at the time of each advance.
- 1694 ii. Repayment period. Unless the applicant requests a shorter repayment period,
1695 broadband loans must be repaid with interest within a period that, rounded to the nearest whole

1696 year, is equal to the expected Composite Economic Life of the assets to be financed, as
1697 determined by RUS based upon acceptable depreciation rates.

1698 iii. Amortization period. Interest begins accruing on the date of each loan advance and
1699 interest payments are due monthly. Upon completion of the build-out, or a date certain that is
1700 determined at closing, whichever occurs first, monthly principal payments will be established in
1701 an amount that amortizes the outstanding balance over the remaining term of the loan.

1702 iv. Fidelity bonding. Applicants must agree to obtain a fidelity bond for 15 percent of
1703 the loan amount. The fidelity bond must be obtained as a condition of loan closing. RUS may
1704 reduce the percentage required if it determines that 15 percent is not commensurate with the risk
1705 involved.

1706 v. Security. The loan portion of the award must be adequately secured, as determined
1707 by RUS.

1708 (1) The loan and loan/grant combination must be secured by the assets purchased with
1709 the loan or loan/grant funds, as well as all other assets of the applicant and any other signer of the
1710 loan documents that are available to be pledged to RUS.

1711 (2) RUS must be given an exclusive first lien, in form and substance satisfactory to RUS,
1712 on all of the assets purchased with the loan or loan/grant funds. RUS may share its first lien
1713 position with one or more lenders on a *pari passu* basis if security arrangements are acceptable to
1714 RUS.

1715 (3) Unless otherwise approved by the RUS, all property purchased with award funds
1716 must be owned by the awardee.

1717 (4) In the case of awards that include financing of facilities that do not constitute self-
1718 contained operating systems, the applicant shall furnish assurance, satisfactory to RUS, that
1719 continuous and efficient service at the broadband funding speed will be rendered.

1720 **2. BTOP**

1721 Administrative and national policy requirements for BTOP grant funding, inter alia, are
1722 contained in the Pre-Award Notification Requirements for Grants and Cooperative Agreements
1723 (DOC Pre-Award Notification), published in the Federal Register on February 11, 2008 (73 Fed.
1724 Reg. 7696), as amended. All BTOP applicants are required to comply with all applicable
1725 provisions set forth in the DOC Pre-Award Notification.

1726 **C. Award Terms and Conditions**

1727 **1. Scope**

1728 Awardees, including all contractors and subcontractors, are required to comply with the
1729 obligations set forth in the Recovery Act and the requirements established herein. Any
1730 obligation that applies to the awardee shall extend for the life of the awarded-funded facilities.

1731 **2. Sale or Lease of Project Assets**

1732 The sale or lease of any portion of the award-funded broadband facilities during their life
1733 is prohibited, except as provided herein. The agencies may approve a sale or lease if it is a. for
1734 adequate consideration; b. the purchaser or lessee agrees to fulfill the terms and conditions
1735 relating to the project after such sale or lease and c. either i. the sale or lease is set forth in the
1736 original application and is part of the applicant's proposal for funds; or ii. the agencies waive this
1737 provision for any sale or lease occurring after the tenth year from the date of issuance of the
1738 grant, loan or loan/grant award. Awardees are required to notify the agencies in the event of a
1739 proposed transfer of award-funded facilities. Nothing in this section is meant to limit Broadband

1740 Infrastructure awardees from leasing facilities to another service provider for the provision of
1741 broadband services.

1742 **3. For BTOP Only, Access to Records for Audits, Site Visits, Monitoring and Law**
1743 **Enforcement Purposes**

1744 The Inspector General of the DOC, or any of his or her duly authorized representatives,
1745 and NTIA representatives, or any of their duly authorized representatives, shall have access to
1746 and the right to inspect the broadband system and any other property funded by the grant, any
1747 and all books, records, accounts, invoices, contracts, leases, payrolls, time sheets, canceled
1748 checks, statements, and other documents, papers and records of the parties to a grant, including
1749 their subsidiaries, if any, whether written, printed, recorded, produced, or reproduced by any
1750 electronic, mechanical, magnetic or other process or medium, in order to make audits,
1751 inspections, site visits, excerpts, transcripts, copies, or other examinations as authorized by law.
1752 An audit of an award may be conducted at any time.⁴¹

1753 **4. Broadband Data Collection**

1754
1755 All BTOP Broadband Infrastructure awardees that offer Internet access service to the
1756 public for a fee must agree to participate in the State Broadband Data and Development Grant
1757 Program pursuant to the BDIA and section 6001(l) of the Recovery Act. With respect to BIP
1758 awardees, RUS will provide to NTIA data supplied by awardees to support the development of
1759 the broadband mapping project conducted pursuant to section 6001(l) of the Recovery Act. This
1760 data would include :

⁴¹ Note that section 1515 of the Recovery Act also authorizes the Inspector General to examine records and interview officers and employees of the grantee and other entities regarding the award of funds. See Recovery Act § 1515, 123 Stat. at 289.

1761 a. The availability of broadband service within service area. For wireline based
1762 systems, the form of the broadband (e.g., DSL) and the advertised speeds up and down available
1763 within the service area and the number of residents, small businesses, large businesses, and
1764 public facilities. For wireless based systems, the advertised and typical speeds up and down
1765 within the wireless' license area, and the spectrum on which its provided.

1766 b. The residential average revenue per user.

1767 c. The first point of aggregation for last mile connection points (e.g., remote terminals or
1768 cable headends).

1769 d. Middle mile/backbone interconnection points.

1770 e. A list of anchor institutions to which service is provided.

1771 **5. Certifications**

1772 a. The applicant must certify that he or she is authorized to submit the application on
1773 behalf of the eligible entity(ies) listed on the application, that the applicant has examined the
1774 application, that all of the information in the application, including certifications and forms
1775 submitted, all of which are part of the application, are material representations of fact and true
1776 and correct to the best of his or her knowledge, that the entity(ies) that is requesting funding
1777 pursuant to the application and any subawardees will comply with the terms, conditions,
1778 purposes, and federal requirements of the program; that no kickbacks were paid to anyone; and
1779 that a false, fictitious, or fraudulent statements or claims on this application is grounds for denial
1780 or termination of an award, and/or possible punishment by a fine or imprisonment as provided in
1781 18 U.S.C. § 1001 and civil violations of the False Claims Act (31 U.S.C. § 3729 *et seq.*);

1782 b. The applicant certifies that the entity(ies) he or she represents have and will comply
1783 with all applicable Federal, state, and local laws, rules, regulations, ordinances, codes, orders,

1784 and programmatic rules and requirements relating to the project.⁴² The applicant acknowledges
1785 that failure to do so may result in rejection or deobligation of the award. The applicant
1786 acknowledges that failure to comply with all federal and program rules could result in civil or
1787 criminal prosecution by the appropriate law enforcement authorities;

1788 c. If requesting BTOP funding, the applicant certifies that the entity(ies) he or she
1789 represents has and will comply with all applicable administrative and federal statutory,
1790 regulatory, and policy requirements set forth in the DOC Pre-Award Notification; DOC
1791 Financial Assistance Standard Terms and Conditions (Mar. 8, 2009); DOC American Recovery
1792 and Reinvestment Act Award Terms (Apr. 9, 2009); and any Special Award Terms and
1793 Conditions that are included by the Grants Officer in the award.

1794 **D. Reporting Requirements**

1795 **1. General Recovery Act Requirements**

1796 **a. OMB Reporting Requirements Implementing the Recovery Act**

1797 Any grant, loan, or loan/grant combination awarded under this NOFA shall be subject to
1798 the applicable statutes and regulations regarding reporting on Recovery Act funds.³⁷ If Recovery
1799 Act funds are combined with other funds to fund or complete projects and activities, Recovery
1800 Act funds must be accounted for separately from other funds and reported to RUS or NTIA or
1801 any federal web site established for Recovery Act reporting purposes. Moreover, recipients of
1802 funds under this NOFA must also comply with the accounting requirements as established or
1803 referred to in this NOFA.

1804 **b. Required Data Elements**

⁴² See Recovery Act § 6001(e)(4), 123 Stat. at 514.

⁴³ See, e.g., 2 CFR pt. 176; OMB, Interim Final Guidance for Federal Financial Assistance, 74 Fed. Reg. 18449 (Apr. 23, 2009); Implementing Guidance for Reports on Use of Funds Pursuant to the American Recovery and Reinvestment Act of 2009 (OMB M-09-21 June 22, 2009).

1805 The awardee and each contractor engaged by the awardee must submit the following
1806 information to the relevant agency:

1807 i. The total amount of Recovery Act funds received;

1808 ii. The amount of Recovery Act funds received that were expended or obligated to
1809 projects or activities;

1810 iii. A detailed list of all projects or activities for which Recovery Act funds were
1811 expended or obligated, including (1) the name of the project or activity; 2) a description of the
1812 project or activity; (3) an evaluation of the completion status of the project or activity; 4) an
1813 estimate of the number of jobs created and the number of jobs retained by the project or activity;
1814 and 5) for infrastructure investments made by state and local governments, the purpose, total
1815 cost, and rationale of the agency for funding the infrastructure investment with Recovery Act
1816 funds, and name of the person to contact at the agency if there are concerns with the
1817 infrastructure investment; and

1818 iv. Detailed information on any subcontracts or subgrants awarded by the awardee to
1819 include the data elements required to comply with the Federal Funding Accountability and
1820 Transparency Act of 2006 (Pub. L. 109-282, 120 Stat. 1186 (to be codified at 31 U.S.C. § 6101
1821 note), allowing aggregate reporting on awards below \$25,000 or to individuals.⁴⁴

1822 Awardees that must report information according to paragraph (iv) above (re:
1823 subcontracts or subgrants) must register with the CCR database (<http://www.ccr.gov/>) or
1824 complete other registration requirements as determined by the Director of OMB.

1825 **c. Reporting Deadlines**

⁴⁴ Recovery Act § 1512(c), 123 Stat. at 287.

1826 Recovery Act reports are due to the agencies ten days after the quarter in which the award
1827 was issued ends and, unless otherwise noted, each quarter thereafter until a final report is made at
1828 the end of three years. The final report should summarize the awardee's quarterly filings and
1829 state whether the project's goals have been satisfied. Pursuant to OMB Guidelines, reports
1830 should be submitted electronically to <http://www.federalreporting.gov>. If the awardee fails to
1831 submit an acceptable quarterly report or audited financial statement within the timeframe
1832 designated in the grant or loan award, the agencies may suspend further payments until the
1833 awardee complies with the reporting requirements. Additional information regarding reporting
1834 requirements will be specified at the time the award is issued.

1835 **2. BIP-Specific Reporting Requirements**

1836 In addition to the general Recovery Act reporting requirements, BIP awardees shall also
1837 report on the information requested below.

1838 a. Awardees must submit to RUS 30 calendar days after the end of each calendar year
1839 quarter, balance sheets, income statements, statements of cash flow, rate package summaries, and
1840 the number of customers taking broadband service on a per community basis utilizing RUS's
1841 Broadband Collection and Analysis System (BCAS). BCAS is electronic reporting system that
1842 is accessed through the Internet.

1843 b. Annually on January 31, starting the first January 31 after completion of the project,
1844 awardees must submit to RUS, using the electronic reporting system provided by RUS:

1845 i. Number of households and businesses subscribing to broadband service;

1846 ii. Number of households and businesses subscribing to broadband service that receive
1847 improved access; and

1848 iii. Number of educational, library, health care, and public safety providers receiving
1849 either new or improved access to broadband service.

1850 c. Awardee shall specifically state in the applicable quarter when they have received 67
1851 percent of the award funds. Reaching this threshold will indicate that the awardee has
1852 substantially completed its project.

1853 **3. BTOP-Specific Reporting Requirements**

1854 In addition to the general Recovery Act reporting requirements, BTOP awardees must
1855 also report quarterly on the information requested below.⁴⁵ The information requested will vary
1856 depending on the type of project being funded.

1857 **a. All BTOP Awardees**

1858 All BTOP awardees must report on:

1859 i. Their progress in achieving the project goals, objectives, and milestones as set forth in
1860 its application;

1861 ii. Expenditure of grant funds and how much of the award remains;

1862 iii. How much non-federal investment is being added to complete the project;

1863 iv. Whether the awardee is on schedule to substantially complete its projects within two
1864 years of the award and complete its project within three years of the award;

1865 v. The number and type of entities (as set forth in section 6001(b)(3) and (4) of the
1866 Recovery Act) receiving new access to broadband services; and

1867 vi. The number and type of entities (as set forth in section 6001(b)(3) and (4) of the
1868 Recovery Act) receiving improved access to broadband services.

⁴⁵ See *id.* § 6001(i)(2), 123 Stat. at 515.

1869 Awardees shall specifically state in the applicable quarter when they have met 67 percent
1870 of their milestones and received 67 percent of their award funds. Reaching these thresholds will
1871 indicate that the awardees have “substantially completed” their projects consistent with the
1872 Recovery Act.⁴⁶

1873 **b. BTOP Broadband Infrastructure Awardees**

1874 Awardees receiving Last Mile or Middle Mile Broadband Infrastructure grants must
1875 report, for each specific BTOP project, on the following:

- 1876 i. The terms of any interconnection agreements entered into during the reporting period;
- 1877 ii. Traffic exchange relationships (*e.g.*, peering) and terms;
- 1878 iii. Broadband equipment purchases;
- 1879 iv. Total and peak utilization of access links;
- 1880 v. Total and peak utilization on interconnection links to other networks;
- 1881 vi. Internet protocol address utilization and IPv6 implementation;
- 1882 vii. . Any changes or updates to their network management practices;
- 1883 viii. Average end-user and middle mile megabit per second increase;
- 1884 ix. Availability of their broadband offering (including the technology used, location of
1885 infrastructure, area served, and the number of households passed);
- 1886 x. The total number of households and businesses subscribing to broadband service;
- 1887 xi. The number of households and businesses subscribing to new broadband service;
- 1888 xii. The number of households and businesses subscribing to broadband service that
1889 receive improved access;
- 1890 xiii. Advertised and averaged broadband speeds; and

⁴⁶ *Id.* § 6001(d)(3), 123 Stat. at 513.

1891 xiv. The price of the broadband services.

1892 **c. Public Computer Center Awardees**

1893 Awardees receiving Public Computer Center grants must report on:

1894 i. The number of work stations available to the public;

1895 ii. The total hours of operation per week that the public computer center is open;

1896 iii. The speed of broadband to the public computer center;

1897 iv. The primary uses of the public computer center;

1898 v. The average number of users per day in the public computer center;

1899 vi. The total hours per week of training provided at the public computer center; and

1900 viii. the number and cost of any broadband equipment deployed.

1901 **d. Sustainable Broadband Adoption Awardees**

1902 Awardees receiving Sustainable Broadband Adoption grants must report on:

1903 i. The technology being fostered;

1904 ii. Efforts to aggregate demand for each location, including the role of the local
1905 community;

1906 iii. The increase in the number of households, businesses, and community anchor
1907 institutions subscribing to broadband service;

1908 iv. The number and type of awareness campaigns provided, including the total number
1909 individuals reached; and

1910 v. The number and cost of any broadband customer premises equipment or end-user
1911 devices deployed.

1912 **X. Other Information**

1913 **A. Funding Rounds**

1914 Both agencies envision this as the first of three funding rounds. Subsequent rounds will
1915 be developed in part based on each agency's experience with this NOFA. While the fundamental
1916 nature of subsequent NOFAs is expected to remain similar, some additional targeting is
1917 anticipated. Potential applicants are urged to begin planning now in anticipation of future
1918 funding availability.

1919 **B. Discretionary Awards**

1920 The government is not obligated to make any award as a result of this announcement, and
1921 will fund only projects that are deemed likely to achieve the program's goals and for which funds
1922 are available.

1923 **C. Third Party Beneficiaries**

1924 The BTOP is a discretionary grant program that is not intended to and does not create any
1925 rights enforceable by third party beneficiaries.

1926 **D. Limitation on Expenditures**

1927 The Recovery Act imposes an additional limitation on the use of funds expended or
1928 obligated from appropriations made pursuant to its provisions. Specifically, for purposes of this
1929 NOFA, none of the funds appropriated or otherwise made available under the Recovery Act may
1930 be used by any state or local government, or any private entity, for any casino or other gambling
1931 establishment, aquarium, zoo, golf course, or swimming pool.⁴⁷

⁴⁷ *Id.* § 1604, 123 Stat. at 303.

1932 **E. Recovery Act Logo**

1933 All projects that are funded by the Recovery Act shall display signage that features the
1934 Primary Emblem throughout the construction phase. The signage should be displayed in a
1935 prominent location on site. Some exclusions may apply. The Primary Emblem should not be
1936 displayed at a size less than six inches in diameter.

1937 **F. Environmental and National Historic Preservation Requirements**

1938 Awarding agencies are required to analyze the potential environmental impacts, as
1939 required by the NEPA and the NHPA for applicant projects or proposals seeking Recovery Act
1940 funding. All applicants are required to complete the Environmental Questionnaire under the
1941 description of program activities and to submit all other required environmental documentation
1942 during step two of the application process.

1943 It is the applicant’s responsibility to obtain all necessary federal, state, and local
1944 governmental permits and approvals necessary for the proposed work to be conducted.
1945 Applicants are expected to design their projects so that they minimize the potential for adverse
1946 impacts to the environment. Applicants also will be required to cooperate with the granting
1947 agencies in identifying feasible measures to reduce or avoid any identified adverse
1948 environmental impacts of their proposed projects. The failure to do so may be grounds for not
1949 making an award.

1950 Applications will be reviewed to ensure that they contain sufficient information to allow
1951 agency staff to conduct a NEPA analysis so that appropriate NEPA documentation can be
1952 submitted to the agencies, along with the recommendation for funding of the selected
1953 applications. Applicants proposing activities that cannot be covered by existing environmental
1954 compliance procedures will be informed after the technical review stage whether NEPA

1955 compliance and other environmental requirements can otherwise be expeditiously met so that a
1956 project can proceed within the timeframes anticipated under the Recovery Act.

1957 If additional information is required after an application is accepted for funding, funds can
1958 be withheld by the agencies under a special award condition requiring the awardee to submit
1959 additional environmental compliance information sufficient for the agency to make an
1960 assessment of any impacts that a project may have on the environment.

1961 **G. Davis-Bacon Wage Requirements**

1962 Pursuant to section 1606 of the Recovery Act, any project using Recovery Act funds
1963 requires the payment of not less than the prevailing wages for “all laborers and mechanics
1964 employed by contractors and subcontractors on projects funded directly by or assisted in whole
1965 or in part by and through the Federal Government.”⁴⁸

1966 **H. Financial and Audit Requirements**

1967 To maximize the transparency and accountability of funds authorized under the Recovery
1968 Act, all applicants are required to comply with the applicable regulations set forth in OMB’s
1969 Interim Final Guidance for Federal Financial Assistance.⁴⁹

1970 Recipients that expend \$500,000 or more of federal funds during their fiscal year are
1971 required to submit an organization-wide financial and compliance audit report. The audit must
1972 be performed in accordance with the U.S. General Accountability Office, Government Auditing
1973 Standards, located at <http://www.gao.gov/govaud/ybk01.htm>, and OMB Circular A-133, Audits
1974 of States, Local Governments, and Non-Profit Organizations, located at
1975 <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. Awardees are responsible for
1976 ensuring that sub-recipient audit reports are received and for resolving any audit findings.

⁴⁸ *Id.* § 1606, 123 Stat. at 303.

⁴⁹ *See* OMB, Interim Final Guidance for Federal Financial Assistance, 74 Fed. Reg. 18449 (Apr. 23, 2009).

1977 **I. Deobligation**

1978 The RUS and NTIA reserve the right to deobligate awards to recipients under this NOFA
1979 that demonstrate an insufficient level of performance, or wasteful or fraudulent spending, and
1980 award these funds competitively to new or existing applicants.

1981 **J. Confidentiality of Applicant Information.**

1982 Applicants are encouraged to identify and label any confidential and proprietary
1983 information contained in their applications. The agencies will protect confidential and
1984 proprietary information from public disclosure to the fullest extent authorized by applicable law,
1985 including the Freedom of Information Act, as amended (5 U.S.C. § 552), the Trade Secrets Act,
1986 as amended (18 U.S.C. § 1905), and the Economic Espionage Act of 1996 (18 U.S.C. § 1831 *et*
1987 *seq.*). Applicants should be aware, however, that the Recovery Act requires substantial
1988 transparency. For example, RUS and NTIA are required to make publicly available on the
1989 Internet a list of each entity that has applied for a grant, a description of each application, the
1990 status of each application, the name of each entity receiving funds, the purpose for which the
1991 entity is receiving the funds, each quarterly report, and other information.⁵⁰

1992 **K. Policy on Sectarian Activities**

1993 NTIA encourages applications from faith-based organizations. On December 22, 1995,
1994 NTIA issued a Notice in the Federal Register on its policy with regard to sectarian activities.
1995 Under NTIA's policy, while religious activities cannot be the essential thrust of a grant, an
1996 application will be eligible for a grant under this program where sectarian activities are only
1997 incidental or attenuated to the overall project purpose for which funding is requested. Applicants

⁵⁰ See Recovery Act § 6001(i)(5), 123 Stat. at 515.

1998 for whom this policy may be relevant can access it through the Federal Register at 60 Fed. Reg.
1999 66491 (Dec 22, 1995).

2000 **L. Disposition of Unsuccessful Applications**

2001 Applications accepted for review for the Fiscal Year 2009 BIP and BTOP programs will
2002 be retained for two years, after which they will be destroyed.

2003 **M. State Certifications**

2004 With respect to funds made available under Recovery Act to state or local governments
2005 for infrastructure investments, the governor, mayor, or other chief executive, as appropriate,
2006 must certify that the infrastructure investment has received the full review and vetting required
2007 by law and that the chief executive accepts responsibility that the infrastructure investment is an
2008 appropriate use of taxpayer dollars. This certification must include a description of the
2009 investment, the estimated total cost, and the amount of funds to be used, and must be posted on
2010 the recipient's website and linked to <http://www.recovery.gov>. A state or local agency may not
2011 receive infrastructure investment funding from funds made available under the Recovery Act
2012 unless this certification is made and posted.⁵¹

2013 **N. Waiver Authority**

2014 It is the general intent of NTIA not to waive any of the provisions set forth in this NOFA.
2015 However, under extraordinary circumstances and when it is in the best interest of the Federal
2016 government, NTIA, upon its own initiative or when requested, may waive the provisions in this
2017 NOFA. Waivers may only be granted for requirements that are discretionary and not mandated
2018 by statute or other applicable law. Any request for a waiver must set forth the extraordinary

⁵¹ See *id.* §§ 1511, 1526, 123 Stat. at 287, 293.

2019 circumstances for the request and be included in the application or sent to the address provided in
2020 section VI.E.

2021 **O. Compliance with Applicable Laws**

2022 Any recipient of funds under this NOFA shall be required to comply with all applicable
2023 federal and state laws, including but not limited to: i. The nondiscrimination and equal
2024 employment opportunity requirements of Title VI of the Civil Rights Act of 1964, as amended
2025 (42 U.S.C. § 2000e *et seq.*, 7 CFR pt. 15); ii. section 504 of the Rehabilitation Act (29 U.S.C. §
2026 794 *et seq.*; 7 CFR pt. 15b); iii. The Age Discrimination Act of 1975, as amended (42 U.S.C. §
2027 6101 *et seq.*; 45 CFR pt. 90); iv. Executive Order 11375, amending Executive Order 11246,
2028 Relating to Equal Employment Opportunity (3 CFR pt. 102). *See* 7 CFR pts. 15 and 15b and 45
2029 CFR pt. 90, RUS Bulletin 1790-1 (“Nondiscrimination among Beneficiaries of RUS Programs”),
2030 and RUS Bulletin 20-15:320-15 (“Equal Employment Opportunity in Construction Financed
2031 with RUS Loans”). The RUS Bulletins are available at <http://www.broadbandusa.gov>; v. The
2032 Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 *et seq.*); vi. The Uniform
2033 Federal Accessibility Standards (UFAS) (Appendix A to 41 CFR subpart 101-19.6); and vii. The
2034 Council on Environmental Quality Regulations for Implementing the Procedural Provisions of
2035 NEPA and certain related federal environmental laws, statutes, regulations, and Executive Orders
2036 found in 7 CFR1794. A more complete list of such requirements can be found in the applicable
2037 grant agreement or loan contract.

2038 **P. Communications Laws**

2039 Awardees, and in particular, Broadband Infrastructure awardees, will be required to
2040 comply with all applicable federal and state communications laws and regulation as applicable,
2041 including, for example, the Communications Act of 1934, as amended, (47 U.S.C. § 151 *et seq.*)

2042 the Telecommunications Act of 1996, as amended (Pub. L. 104-104, 110 Stat. 56 (1996), and the
2043 Communications Assistance for Law Enforcement Act (47 U.S.C. § 1001 *et seq.*) (CALEA). For
2044 further information, *see* <http://www.fcc.gov>.

2045 **Q. Buy American Notice**

2046 **1. General Prohibition and Waiver**

2047 None of the funds appropriated or otherwise made available by the Recovery Act may be
2048 used for the construction, alteration, maintenance, or repair of a public building or public work
2049 (as such terms are defined in 2 CFR § 176.140) unless all of the iron, steel, and manufacturing
2050 goods used in the project are produced in the United States.⁵² On July 1, 2009, the Department
2051 of Agriculture and the Department of Commerce published notices in the Federal Register
2052 stating that the Secretary of Agriculture and Secretary of Commerce have separately reached
2053 conclusions that applying the Buy American provision for the use of certain broadband
2054 equipment in public BIP and BTOP projects would be inconsistent with the public interest.
2055 As explained below, to the extent that an applicant wishes to use broadband equipment or goods
2056 that are not covered by the Secretaries' waivers, it may seek an additional waiver on a case-by-
2057 case basis as part of its application for Recovery Act funds.

2058 **2. OMB Buy American Notice Requirement**

2059 Pursuant to OMB guidance on the Recovery Act,^{53 4} RUS and NTIA are required to
2060 provide the following notice:

2061 **§ 176.170 Notice of Required Use of American Iron, Steel, and Manufactured Goods**
2062 **(covered under International Agreements)—Section 1605 of the American Recovery**
2063 **and Reinvestment Act of 2009.**

⁵² *Id.* § 1605, 123 Stat. at 303.

⁵³ *See* 2 CFR pt. 176.

2064 When requesting applications or proposals for Recovery Act programs or activities that
2065 may involve construction, alteration, maintenance, or repair of a public building or public
2066 work, and involve iron, steel, and/or manufactured goods covered under international
2067 agreements, the agency shall use the notice described in the following paragraphs in the
2068 solicitation:

2069 (a) *Definitions. Designated country iron, steel, and/or manufactured goods, foreign iron,*
2070 *steel, and/or manufactured good, manufactured good, public building and public work,*
2071 *and steel, as used in this provision, are defined in 2 CFR 176.160(a).*

2072 (b) *Requests for determinations of inapplicability.* A prospective applicant requesting a
2073 determination regarding the inapplicability of section 1605 of the American Recovery
2074 and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) should submit the request
2075 to the award official in time to allow a determination before submission of applications or
2076 proposals. The prospective applicant shall include the information and applicable
2077 supporting data required by 2 CFR 176.160 (c) and (d) in the request. If an applicant has
2078 not requested a determination regarding the inapplicability of section 1605 of the
2079 Recovery Act before submitting its application or proposal, or has not received a
2080 response to a previous request, the applicant shall include the information and supporting
2081 data in the application or proposal.

2082 (c) *Evaluation of project proposals.* If the Federal Government determines that an
2083 exception based on unreasonable cost of domestic iron, steel, and/or manufactured goods
2084 applies, the Federal Government will evaluate a project requesting exception to the
2085 requirements of section 1605 of the Recovery Act by adding to the estimated total cost of
2086 the project 25 percent of the project cost if foreign iron, steel, or manufactured goods are

2087 used based on unreasonable cost of comparable domestic iron, steel, or manufactured
2088 goods.

2089 *(d) Alternate project proposals.*

2090 (1) When a project proposal includes foreign iron, steel, and/or manufactured goods,
2091 other than designated country iron, steel, and/or manufactured goods, that are not listed
2092 by the Federal Government in this Buy American notice in the request for applications or
2093 proposals, the applicant may submit an alternate proposal based on use of equivalent
2094 domestic or designated country iron, steel, and/or manufactured goods.

2095 (2) If an alternate proposal is submitted, the applicant shall submit a separate cost
2096 comparison table prepared in accordance with paragraphs 2 CFR 176.160(c) and (d) for
2097 the proposal that is based on the use of any foreign iron, steel, and/or manufactured goods
2098 for which the Federal Government has not yet determined an exception applies.

2099 (3) If the Federal Government determines that a particular exception requested in
2100 accordance with 2 CFR 176.160(b) does not apply, the Federal Government will evaluate
2101 only those proposals based on use of the equivalent domestic or designated country iron,
2102 steel, and/or manufactured goods, and the applicant shall be required to furnish such
2103 domestic or designated country items.

2104 **R. Executive Order 12866**

2105 This notice has been determined to be “economically significant” under Executive Order
2106 12866. The Recovery Act appropriates \$4.7 billion to NTIA for broadband grants and other
2107 purposes. The Recovery Act also appropriates \$2.5 billion to RUS for broadband grants and
2108 loans. Awards must be made no later than September 30, 2010. In accordance with Executive
2109 Order 12866, an economic analysis was completed outlining the costs and benefits of

2110 implementing each of these programs. The complete analyses are available from RUS and
2111 NTIA, respectively, upon request.

2112 **S. Executive Order 13132**

2113 It has been determined that this notice does not contain policies with federalism
2114 implications as that term is defined in Executive Order 13132.

2115 **T. Administrative Procedure Act Statement**

2116 This NOFA is being issued without advance rulemaking or public comment. The
2117 Administrative Procedure Act of 1946, as amended (5 U.S.C. § 553) (APA), has several
2118 exemptions to rulemaking requirements. Among them is an exemption for “good cause” found
2119 at 5 U.S.C. § 553(b)(B), which allows effective government action without rulemaking
2120 procedures where withholding the action would be “impracticable, unnecessary, or contrary to
2121 the public interest.”

2122 USDA and the DOC have determined, consistent with the APA that making these funds
2123 available under this NOFA for broadband development, as mandated by the Recovery Act, is in
2124 the public interest. Given the emergency nature of the Recovery Act and the extremely short
2125 time period within which all funds must be obligated, withholding this NOFA to provide for
2126 public notice and comment would unduly delay the provision of benefits associated with these
2127 broadband initiatives and be contrary to the public interest.

2128 For the same reasons, the agencies find good cause under 5 U.S.C. § 553(d)(3) to waive
2129 the 30-day delay in effectiveness for this action. Because notice and opportunity for comment
2130 are not required pursuant to 5 U.S.C. § 553(d)(3) or any other law, the analytical requirements of
2131 the Regulatory Flexibility Act of 1980, as amended (5 U.S.C. 601 *et seq.*) are inapplicable.
2132 Therefore, a regulatory flexibility analysis is not required and has not been prepared.

2133 **U. Congressional Review Act**

2134 NTIA has submitted this NOFA to the Congress and the Government Accountability
2135 Office under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. § 801 *et seq.* It
2136 has been determined that this NOFA is a “major action” within the meaning of the Act because it
2137 will result in an annual effect on the economy of \$100,000,000 or more. This NOFA sets out the
2138 administrative procedures for making grants, loans, and loan/grant combinations totaling \$3
2139 billion to implement a nationwide broadband initiative to expand the reach and quality of
2140 broadband services in the United States.

2141 With funds made available through the Recovery Act, BIP will provide \$2.5 billion of
2142 budget authority for RUS to extend grants, loans, and loan/grant combinations to facilitate
2143 broadband deployment in rural areas. At the same time, BTOP will provide \$4.7 billion through
2144 NTIA to provide broadband grants throughout the United States for unserved and underserved
2145 communities, to increase public computer center capacity, and to encourage sustainable adoption
2146 of broadband services. The Recovery Act provides that BTOP awards must be made no later
2147 than September 30, 2010. Moreover, projects funded under these programs must be substantially
2148 completed no later than two years following the date of issuance of the award. A 60-day delay in
2149 implementing this NOFA would hamper RUS and NTIA’s missions to expeditiously provide
2150 assistance to eligible entities to begin and complete projects within the statutory requirements of
2151 the Recovery Act.

2152 Thus, RUS and NTIA find good cause under 5 U.S.C. § 808(2) that prior notice and
2153 public procedure are impracticable, unnecessary, and contrary to the public interest. To the
2154 extent that RUS and NTIA provided a 60-day delay in effectiveness pursuant to the
2155 Congressional Review Act, the agencies would not be able to execute the statutory duties

2156 required by the Recovery Act in a timely manner. This finding is consistent with the objectives
2157 of the Recovery Act, which specifically provides clear preferences for rapid agency action and
2158 quick-start activities designed to spur job creation and economic benefit. Accordingly, this
2159 NOFA shall take effect upon publication in the Federal Register.

2160 **V. Paperwork Reduction Act**

2161 **1. Reporting and Registration Requirement under Section 1512 of the Recovery Act**

2162 a. This award requires the recipient to complete projects or activities which are funded
2163 under the Recovery Act and to report on use of Recovery Act funds provided through this award.
2164 Information from these reports will be made available to the public.

2165 b. The first report is due no later than ten calendar days after the initial calendar quarter
2166 in which the recipient receives the assistance award funded in whole or in part by the Recovery
2167 Act, or by October 10, 2009. Thereafter, reports shall be submitted no later than the tenth day
2168 after the end of each calendar quarter.

2169 c. Recipients and their first-tier recipients must maintain current registrations in the
2170 CCR (<http://www.ccr.gov>.) at all times during which they have active federal awards funded
2171 with Recovery Act funds. A DUNS number is one of the requirements for registration in the
2172 CCR.

2173 d. The recipient shall report the information described in section 1512(c) using the
2174 reporting instructions and data elements that will be provided online at
2175 <http://www.FederalReporting.gov>, unless the information is pre-populated.

2176 **2. Agencies' Additional Paperwork Reduction Act Analysis**

2177 Copies of all forms, regulations, and instructions referenced in this NOFA may be
2178 obtained from RUS or NTIA. Data furnished by the applicants will be used to determine

2179 eligibility for program benefits. Furnishing the data is voluntary; however, the failure to provide
2180 data could result in program benefits being withheld or denied.

2181 The collection of information is vital to RUS and NTIA to ensure compliance with the
2182 provisions of this Notice and to fulfill the requirements of the Recovery Act. In summary, the
2183 collection of information is necessary in order to implement this program.

2184 The following estimates are based on the average over the first three years the program is
2185 in place.

2186 BIP Infrastructure:

2187 Estimate of Burden: Public reporting burden for this collection of information is
2188 estimated to average 116 hours per response.

2189 Respondents: Business or other for profits; Not-for-profit institutions; and State, local,
2190 and Tribal.

2191 Estimated Number of Respondents: 500

2192 Estimated Number of Responses per Respondent: 3.28

2193 Estimated Number of Responses: 1,639

2194 Estimated Total Annual Burden (hours) on Respondents: 189,837

2195 BTOP Infrastructure:

2196 Estimate of Burden: Public reporting burden for this collection of information is
2197 estimated to average 117 hours per response.

2198 Respondents: 1,500

2199 Estimated Number of Respondents: 1,500

2200 Estimated Number of Responses per Respondent: 2.11

2201 Estimated Number of Responses: 3,164

2202 Estimated Total Annual Burden (hours) on Respondents: 371,187

2203 Public Computer Center

2204 Estimate of Burden: Public reporting burden for this collection of information is
2205 estimated to average 47.6 hours per response.

2206 Respondents: 2500

2207 Estimated Number of Respondents: 2500

2208 Estimated Number of Responses per Respondent: 1.1

2209 Estimated Number of Responses: 2750

2210 Estimated Total Annual Burden (hours) on Respondents: 130,750

2211 Sustainable Adoption

2212 Estimate of Burden: Public reporting burden for this collection of information is
2213 estimated to average 23.9 hours per response.

2214 Respondents: 2500

2215 Estimated Number of Respondents: 2500

2216 Estimated Number of Responses per Respondent: 1.1

2217 Estimated Number of Responses: 2750

2218 Estimated Total Annual Burden (hours) on Respondents: 65,750

2219 Copies of this information collection can be obtained from Michele Brooks, Rural
2220 Utilities Service, at (202) 690-1078 and Gwellnar Banks, DOC/OS, at (202) 482-3781.

2221 *Comments.* Comments are invited regarding: (a) whether the proposed collection of
2222 information is necessary for the proper performance of the functions of RUS or NTIA, including
2223 whether the information will have practical utility; (b) the accuracy of the agencies' estimate of
2224 the burden of the proposed collection of information including the validity of the methodology

2225 and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be
2226 collected; and (d) ways to minimize the burden of the collection of information on those who are
2227 to respond, including through the use of appropriate automated, electronic, mechanical, or other
2228 technological collection techniques or other forms of information technology. Comments for
2229 BIP may be sent to Michele Brooks, Rural Utilities Service, USDA, Rural Development, Stop
2230 1530, 1400 Independence Ave., SW, Washington, DC 20250-1530 and for BTOP to Gwellnar
2231 Banks, 1401 Constitution Avenue, N.W., Washington, D.C. 20230. All responses to this Notice
2232 will be summarized and included in the request for OMB approval. All comments will also
2233 become a matter of public record.

2234 The grant application forms for BTOP Infrastructure, Public Computer Centers, and
2235 Sustainable Broadband Adoption projects and the subsequent step two filing have been approved
2236 by the Office of Management and Budget under the Paperwork Reduction Act of 1995 and
2237 assigned OMB control numbers _____, _____, and _____. Control numbers for subsequent
2238 information collections will be published in separate Federal Register notices. Notwithstanding
2239 any other provision of law, no person is required to respond to, nor shall any person be subject to
2240 a penalty for failure to comply with a collection of information subject to the Paperwork
2241 Reduction Act unless that collection displays a currently valid OMB Control Number.

2242 **W. Recovery Act**

2243 Additional information about the Recovery Act is available at <http://www.Recovery.gov>.

2244 **X. Authorized Signatories**

2245 Only authorized grant and loan officers can bind the Government to the expenditure of
2246 funds.

2247

2248 **Appendix to Notice of Funds Availability – Broadband Initiatives Program and**
2249 **Broadband Technology Opportunities Program**

2250 **Policy Justification**

2251

2252 **Definition of “Broadband”**

2253

2254 BTOP contains five core purposes, all of which relate to deployment of, access to, or

2255 support for “broadband service.”¹ The Recovery Act does not expressly define the term

2256 “broadband,” instead it tasks NTIA with defining what constitutes a “broadband service” eligible

2257 for BTOP support. The Recovery Act expands RUS’s existing authority to make loans and

2258 provides new authority to make grants to facilitate broadband deployment in rural areas. Thus,

2259 the term “broadband” figures prominently in both agencies’ statutory purposes and requires that

2260 RUS and NTIA agree to a common understanding of the term.

2261 Most commenters suggest a minimum transmission speed, ranging from 200 kilobits per

2262 second (kbps)² to over 100 megabits per second (mbps).³ A substantial contingent encourage

2263 NTIA to adopt a minimum speed of 768 kbps downstream, equivalent to the “Tier 1” threshold

2264 in the current FCC broadband data collection process.⁴ Many commenters encourage additional

2265 consideration for applicants promising speeds greater than the minimum.⁵ Some commenters

¹ See Recovery Act § 6001(b), 123 Stat. at 512.

² See Harris Corp. at 8–9 (Apr. 13, 2009); Independent Telephone & Telecommunications Alliance (ITTA) at 4 (Apr. 13, 2009).

³ See Virginia Internet Service Providers Alliance at 5 (Apr. 10, 2009).

⁴ See, e.g., Farmers Mutual Telephone Company (Farmers Mutual) at 12 (Apr. 13, 2009); Motorola, Inc. at 9 (Apr. 13, 2009); Gardonville Cooperative Telephone Association (Gardonville Coop.) at 12 (Apr. 13, 2009); Northern Valley Communications (Northern Valley) at 10 (Apr. 13, 2009); AT&T at 10–11 (Apr. 13, 2009); Progress & Freedom Foundation at 5 (Apr. 10, 2009); Telecommunications Industry Association (TIA) at 13 (Apr. 10, 2009); Free Press at 13 (Apr. 13, 2009) (proposing a reduction in points for “networks that are highly asymmetric”); WildBlue Communications at 4–5 (Apr. 13, 2009); Harris Corp. at 8–9; Alcatel-Lucent Corp. (Alcatel-Lucent) at 27 (Apr. 13, 2009); Western Telecommunications Alliance at 4–5 (Apr. 10, 2009); Cricket Communications (Cricket) at 8 (Apr. 13, 2009).

⁵ See, e.g., AT&T at 10–11.

2266 prefer that NTIA evaluate speed against the project’s overall benefits,⁶ establish different speeds
2267 for rural and urban areas,⁷ or establish different speeds for different price points.⁸ Some wireless
2268 providers argue for different speed thresholds for wireless and fixed services.⁹ Other
2269 commenters favor a definition of broadband based upon the applications that would be
2270 supported.¹⁰ A number of commenters favor symmetrical speeds,¹¹ but many providers claim
2271 that asymmetrical technologies are often more cost effective and efficient.¹² Several commenters
2272 encourage NTIA to consider latency in addition to bandwidth when evaluating proposals.¹³
2273 Several also encourage NTIA to consider not only current demand, but also the needs of future
2274 consumers.¹⁴

2275 RUS and NTIA conclude that “broadband service” should be defined as the provision of
2276 two-way data transmission with advertised speeds of at least 768 kilobits per second (kbps)

⁶ See, e.g., Native American Telecom at 5 (Apr. 13, 2009); Alaska Communications Systems at 10 (Apr. 13, 2009).

⁷ See, e.g., Joe Cremin of Starwire Technologies in webform (Apr. 8, 2009).

⁸ See, e.g., Rural Telecommunications Congress at 9 (Apr. 13, 2009).

⁹ See, e.g., Wireless Communications Association International, Inc. (WCA) at 3 (Apr. 9, 2009); Utopian Wireless Corp. at 3 (Apr. 13, 2009); Alvarion, Inc. at 9 (Apr. 14, 2009).

¹⁰ See, e.g., Buck Graham of Occam Networks (Graham) in webform (recommending 5 Mbps bi-directional) (Mar. 18, 2009); EvenLink, LLC at 3 (Apr. 13, 2009) (advocating a standard of 5 mbps bi-directional, but suggesting a lower-speed definition for rural areas); William Wells Jr. of True Broadband Networks (Wells) (Mar. 17, 2009) (advocating a standard of 10 mbps bi-directional to “allow real-time bi-directional transmission of simultaneous voice, video and data services”).

¹¹ See, e.g., Link Shadley at 1 (Mar. 20, 2009); Stratum Broadband at 32 (Mar. 31, 2009); Univ. of Nebraska at 6 (Apr. 10, 2009); Graham at webform; Wells at webform; U.S. TelePacific *et al.* at 3–4, 6 (Apr. 13, 2009) (discussing business users’ need for symmetrical speeds for video teleconferencing, multiline VOIP, web hosting, and large email files).

¹² See, e.g., ITTA at 35–36 (arguing that an asymmetrical threshold would be “consistent with the preferences expressed by consumers and providers alike through their behavior in the market”); WCA at 12 (“requiring symmetrical speeds for all product markets would disserve consumers and would not be technologically neutral”); Starwire at webform; General Communication, Inc. (GCI) at 14–15 (Apr. 13, 2009); NetAccess System Technologies (NetAccess) at 9 (Apr. 10, 2009).

¹³ See, e.g., Regulatory Commission of Alaska at 12 (Apr. 13, 2009); Michael Blair of Blair Technologies at webform; Univ. of Nebraska at 2 (stating that grant selection “[c]riteria should include speed, price/Mbps, latency, reliability, interoperability, coverage, sustainability, current capacity and growth capacity”); Libbey Scheible of INOSS, Inc. (INOSS) at 6–7, 10 (suggesting a minimum latency of 20 milliseconds) (Apr. 10, 2009); ADTRAN at Appendix 1 (Apr. 13, 2009).

¹⁴ See, e.g., Montana Independent Telecom Systems at 3 (referring to “the anticipated requirements for tomorrow’s applications and consumers”) (Apr. 13, 2009); Fiber Tower Corp. at 11–12 (Apr. 13, 2009).

2277 downstream and 200 kbps upstream to end users, or providing sufficient capacity in a Middle
2278 Mile project to support the provision of broadband service to end users.

2279 RUS and NTIA favor this broadband speed threshold because it leverages the FCC’s
2280 expertise, utilizes an established standard, facilitates the use of many currently common
2281 broadband applications (*e.g.*, web browsing, VOIP, and one-way video), allows for consideration
2282 of cost-effective solutions for difficult-to-serve areas, and is the most technology-neutral option
2283 (because it encompasses all major wired and wireless technologies). For these same reasons,
2284 RUS and NTIA decline to impose a latency requirement or technology-specific definitions. RUS
2285 and NTIA intend to provide additional consideration to applications exceeding the minimum
2286 speed threshold or offering superior upgradeability. This approach offers the greatest flexibility
2287 for the agencies and simplicity for applicants, while still expressing a preference for higher-
2288 capacity projects. An area that has access to service at 768 kbps may still qualify as
2289 “underserved,” and an area that has only high-latency satellite service will still qualify as
2290 “unserved.”

2291 **Definition of “Unserved”**

2292

2293 One of the five core purposes of BTOP is “to provide access to broadband service to
2294 consumers residing in unserved areas of the United States.”¹⁵ The Recovery Act does not
2295 expressly define the term “unserved,” instead it tasks NTIA with developing a definition that
2296 targets specific geographic areas and advances the program’s purposes. Grants under RUS’s
2297 Broadband Initiatives Program (BIP) are to be used to provide funds to applications proposing to
2298 exclusively serve remote, “unserved” rural areas.

¹⁵ Recovery Act § 6001(b)(1), 123 Stat. at 512.

2299 The majority of commenters favor defining “unserved area” as a whole area lacking
2300 access to a certain quality of Internet service,¹⁶ or lacking access to technologies other than dial-
2301 up and satellite service.¹⁷ Some commenters, however, offer definitions based on a percentage
2302 of the population lacking such access.¹⁸ Some suggest that an area should be considered
2303 unserved if no mobile wireless broadband service is available.¹⁹ Finally, still others encourage
2304 the adoption of a definition of “unserved area” that encompasses communities where broadband
2305 infrastructure is available, but where barriers such as affordability effectively prevent residents
2306 from receiving broadband service.²⁰

2307

2308 RUS and NTIA conclude that an appropriate definition of “unserved area” is a proposed
2309 funded service area (*i.e.*, one or more contiguous census blocks, as discussed below) where at
2310 least 90 percent of households lack access to facilities-based, terrestrial broadband service, either
2311 fixed or mobile, at the minimum broadband transmission speed of 768 kbps downstream and 200
2312 kbps upstream. A household has access to such broadband service if it can readily subscribe to
2313 that service upon request.

2314

¹⁶ *See, e.g.*, Farmers Mutual at 12 (less than 768 kbps bi-directional peak load); American Fiber Systems at 4 (Apr. 13, 2009) (10 mbps or less from 2 or fewer providers); ATSI Communications, Inc. at 11 (Apr. 13, 2009) (no provider of duplex broadband at more than 256 kbps in either direction).

¹⁷ *See, e.g.*, Alaska Federation of Natives at 8 (Apr. 13, 2009); Michigan Public Service Commission (Michigan PSC) at 19 (Apr. 13, 2009); Communications Workers of America (CWA) at 21–22 (Apr. 13, 2009); Univ. of Nebraska at 1; NetAccess at 9.

¹⁸ *See, e.g.*, XO Communications, LLC and Nextlink Wireless, Inc. (XO and Nextlink) at 7 (Apr. 13, 2009) (90% of consumers to be served lack access to a provider of Current Generation Broadband Transmission Service, to be defined separately for wireline/fixed access and mobile wireless); Premium Choice Broadband at 3 (less than 25% availability of 768 kbps); Fiber-to-the-Home Council (FTTH Council) at 9 (Apr. 13, 2009) (20% lack access to broadband).

¹⁹ *See, e.g.*, WCA at 10.

²⁰ *See, e.g.*, City and County of San Francisco (San Francisco) at 25 (Apr. 13, 2009) (“If broadband service is not affordable, it effectively is not available.”); Institute for Local Self-Reliance at 8 (Apr. 13, 2009).

2315 Defining an unserved area by reference to the definition of broadband that RUS and
2316 NTIA adopt will ensure consistency between the needs in areas targeted for infrastructure
2317 funding and the improved access that will be provided by infrastructure projects that receive
2318 grants. RUS and NTIA believe that a definition requiring that 100 percent of households lack
2319 access to broadband service could prove overly restrictive and risk inadvertently excluding
2320 populations that should properly fall within the “unserved” definition. For example, an area
2321 should not be considered served merely because one or two households in that area have access
2322 to broadband service. Establishing a 90 percent threshold acknowledges that a *de minimis* level
2323 of broadband service may exist in portions of the area, while also seeking to minimize the risk of
2324 unintentionally excluding an entire area from funding under the BTOP program.

2325

2326 RUS and NTIA do not include existing satellite service in defining whether a given area
2327 is unserved, even though such service may meet the threshold speed level to qualify as
2328 broadband service under the definition adopted in this NOFA. Because the general reach of
2329 satellite service can extend to the entire country, it is excluded as a factor in the unserved
2330 definition to avoid a finding that no area in the United States would be considered unserved.
2331 Such a finding would render the term meaningless.

2332

2333 **Definition of “Underserved”**

2334

2335 Another of BTOP’s five core purposes is to “provide improved access to broadband
2336 service to consumers residing in underserved areas of the United States.”²¹ The term
2337 “underserved” is not a common term in telecommunications, although it is commonly applied in

²¹ Recovery Act § 6001(b)(2), 123 Stat. at 512.

2338 other fields, such as healthcare, education, social services and retail, to denote populations
2339 lacking access to critical services. As with the “unserved” definition, the Recovery Act does not
2340 define “underserved,” instead it tasks NTIA with developing a definition that targets specific
2341 geographic areas and advances the program’s purposes. Under RUS’s BIP program, loan and
2342 loan/grant combination funds are to be used to provide funding to applications proposing to serve
2343 non-remote and “underserved” rural areas.

2344

2345 The majority of commenters favor definitions based on one or more of the following
2346 factors: availability of broadband service at a certain threshold speed,²² affordability,²³ number
2347 of broadband service providers,²⁴ and subscribership or adoption rates.²⁵ Some commenters also
2348 suggest definitions that would include areas where major community institutions lack sufficient

²² See, e.g., American Fiber Systems at 4 (defining “underserved area” as a “geographical area where 90% or less of the population currently has access to a service at a speed less than 100 megabits from a single provider”); Gardonville Coop. at 12 (defining “underserved area” as an area “currently only able to receive broadband service at

a speed of 768Kbps to less than 12Mbps, bi-directional, during peak – hour load”); WCA at 4 (suggesting that a

market is underserved if it “does not have access to mobile wireless broadband capable of delivering at least 3 mbps downlink and 768 kbps uplink speeds”); Nebraska Rural Independent Companies at 9 (Apr. 13, 2009) (defining “underserved area” as “any geographical area . . . where only broadband service with download speeds between 56Kbps and 768Kbps exist today”); National Cable & Telecommunications Association (NCTA) at 23 (Apr. 13, 2009) (“An ‘underserved area’ should be defined as an area where no households have access to at least one provider of Internet access with current generation broadband transmission speeds, e.g., maximum transmission speeds of at least 3 Mbps downstream and 768 kbps upstream. Satellite broadband service, which already is available throughout most of the country, should not be considered in applying this definition.”).

²³ See, e.g., National Association of Telecommunications Officers and Advisors (NATOA) at 34 (“Unaffordable broadband services are unavailable.”); Cricket at 3 (“For millions of Americans . . . both wireline and wireless service options may be available just outside their door, but they nevertheless remain hopelessly out of reach at current prices or terms of service.”); Consortium for School Networking *et al.* at 6 (Apr. 13, 2009).

²⁴ See, e.g., JAB Wireless, Inc. at 2 (Apr. 9, 2009) (“An underserved area should be defined as an area where a resident does not have a choice of at least 2 broadband service providers providing minimum speeds of 3 Meg down.”); segTEL at 7–8 (Apr. 13, 2009); U.S. Telepacific *et al.* at 5.

²⁵ See, e.g., Wisconsin Department of Commerce at 2 (Apr. 8, 2009) (“An ‘underserved area’ should be defined as an applicant area in which at least 50% of households do not subscribe to a cable or DSL broadband service provider, regardless of whether or not broadband service is available, or an applicant area in which at least 50% of households have access to no more than one broadband internet service provider.”); New Jersey Division of Rate Counsel at 2 (Apr. 8, 2009); One Economy Corporation at 4 (Apr. 13, 2009); Association of Public Television Stations at 9 (Apr. 13, 2009); San Francisco at 23–24.

2349 broadband access.²⁶ Several others also encourage the agencies to consider the particular needs
2350 of public safety.²⁷ Many commenters propose multi-pronged definitions that include multiple
2351 ways an area could qualify as underserved²⁸ while others argue that the agencies should adopt a
2352 presumption that certain types of areas are underserved.²⁹

2353

2354 Several commenters urge the adoption of a separate definition of “underserved” for
2355 broadband adoption programs, focusing on the characteristics of the population to be served
2356 rather than on the characteristics of a geographic area.³⁰ Many commenters draw attention to
2357 types of users they believe should be considered underserved.³¹

²⁶ See, e.g., FTTH Council at 11 (“Underserved area means . . . a geographic area described by Census Tracts where more than 25% of the Community Anchor Institutions to be served by the project currently lack access to a provider of Advanced Broadband Wireline Service); eCLIC, the Emergency Communications Leadership and Innovation Center at 5 (Apr. 8, 2009) (“‘Underserved’ would be any area lacking a digital hub and/or broadband infrastructure connecting LANs inside the rooms and grounds of schools, libraries, public safety and governmental institutions.”); AT&T at 12.

²⁷ See, e.g., Intrado Inc. and Intrado Communications Inc. at 5–6; National Emergency Number Association at 17 (Apr. 13, 2009).

²⁸ See, e.g., XO and Nextlink at 8 (“Underserved Area means: (1) (i) a geographic area that is not an unserved area where at least 90% of the customers to be served by the project lack access to more than one provider of Current Generation Broadband Transmission Service (which is to be determined separately for wireline/fixed wireless or mobile wireless providers) or (ii) a geographic area that is not an unserved area where at least 90% of the customers to be served by the project lack access to a provider of Advanced Broadband Transmission Service (which is to be determined separately for wireline/fixed wireless or mobile wireless providers); (2) a geographic area where at least 90% of the Community Anchor Institutions to be served by the project lack access to a provider of wireline/fixed wireless Advanced Broadband Transmission Service; or (3) any census tract which is located in (i) an empowerment zone or enterprise community designated under section 1391, (ii) the District of Columbia Enterprise Zone established under section 1400, (iii) a renewal community designated under section 1400E, or (iv) a low-income community designated under section 45D.”).

²⁹ See, e.g., Matthew R. Rantanen, Director of Technology, Southern California Tribal Chairmen’s Association in webform (Apr. 13, 2009) (tribal lands); Pulse Broadband LLC at 4–5 (Apr. 13, 2009) (rural areas); Broadpoint, Inc. at 4 (Apr. 13, 2009) (the Gulf of Mexico).

³⁰ See, e.g., ZeroDivide at 13 (Apr. 13, 2009) (citing “barriers to adoption including, race, ethnicity, language, physical capacity, economic conditions, and geography” and “low-income population as determined by state or federal guidelines, such as residents of low-income housing, area with a high rate of participation in free and reduced price lunch/breakfast program”); Michigan PSC at 19. *But see, e.g.*, Free Press at 6 (“Using the income of an area as the basis for an ‘underserved’ definition is common in markets such as health care but is perhaps less fitting for infrastructure-based services such as broadband.”).

³¹ See, e.g., City of Milwaukee in web form (Apr. 13, 2009) (citing “computer literacy, internet literacy, ethnic and language diversity”); Carl and Ruth Shapiro Family National Center for Accessible Media at WGBH (NCAM) and Inclusive Technologies at 5–6 (Apr. 13, 2009) (“People with disabilities MUST be included in the definition of the underserved and unserved population and inclusion of their needs should be explicitly stated in all RFPs issued by NTIA.”); Covad Communications Co. at 4 (Apr. 10, 2009) (urging NTIA to deem all small businesses underserved);

2358

2359 RUS and NTIA conclude that the extent to which a proposed funded service area is
2360 underserved will be evaluated using several criteria that are grouped to reflect the two distinct
2361 components of the Broadband Infrastructure category of eligible projects—Last Mile and Middle
2362 Mile (as defined in this NOFA)—and take account of both advertised broadband speeds and
2363 availability of broadband service. Specifically, a proposed funded service area (*i.e.*, one or more
2364 contiguous census blocks) may qualify as underserved for Last Mile projects if at least one of
2365 the following factors is met, though the presumption will be that more than one factor is present:
2366 i) no more than 50 percent of the households in the proposed funded service area have access to
2367 facilities-based, terrestrial broadband service at greater than the minimum broadband
2368 transmission speed of 768 kbps downstream and 200 kbps upstream; ii) no fixed or mobile
2369 broadband service provider advertises broadband transmission speeds of at least three megabits
2370 per second (“mbps”) downstream in the proposed funded service area; or iii) the rate of
2371 broadband subscribership for the proposed funded service area is 40 percent of households or
2372 less. A proposed funded service area may qualify as underserved for Middle Mile projects if one
2373 interconnection point terminates in a proposed funded service area that qualifies as unserved or
2374 underserved for Last Mile projects.

2375 RUS and NTIA recognize that in some areas of the country, particularly in rural areas,
2376 many of the underserved criteria for Last Mile projects will apply. The underserved definition
2377 includes a broadband speed criterion to recognize that a proposed funded service area can have
2378 the minimum level of broadband service available (defined as 768 kbps downstream and 200
2379 kbps upstream), but still be considered “underserved.” NTIA and RUS do not want to exclude

NCTA at 23 (“[B]efore funding construction in underserved areas, NTIA and RUS should provide funding for programs that assist underserved populations (low-income, seniors) to acquire and make use of broadband service.”).

2380 proposals to improve the broadband speeds available in a proposed funded service area simply
2381 because the threshold broadband speed is already available.

2382

2383 RUS and NTIA decline to define “underserved” according to particular pricing plans,
2384 median income, or demographic characteristics because the adopted definition uses the criteria of
2385 low levels of broadband subscribership as a proxy for these factors. Studies suggest a strong,
2386 direct correlation between income levels and broadband subscribership; thus, lower broadband
2387 subscribership rates will tend to reflect lower income households. Low broadband
2388 subscribership rates also tend to be seen among seniors, minorities, and other vulnerable or
2389 disadvantaged population groups.

2390

2391 NTIA will use the definition of “underserved” only for purposes of evaluating Broadband
2392 Infrastructure proposals under BTOP. For Public Computer Center and Sustainable Broadband
2393 Adoption proposals, NTIA will evaluate the characteristics of the population to be served, rather
2394 than the Internet services available, in the geographic areas where the programs are located.
2395 Service to vulnerable (rather than “underserved”) populations will be a critical factor in
2396 evaluating such proposals. NTIA, therefore, interprets comments advocating inclusion of certain
2397 categories of users as “underserved” for the purposes of such programs as arguments for
2398 recognition of these categories as “vulnerable populations.”³²

2399

2400 **Utilizing Census Blocks to Define Proposed Funded Service Areas**

2401

³² See, e.g., Barling Bay, LLC and Caption Colorado at 13–14 (Apr. 13, 2009) (arguing for recognition of deaf and hard of hearing students and rural students in poor school districts as unserved or underserved for purposes of broadband adoption programs).

2402 The geographic area used to assess the degree of broadband coverage is a key element in
2403 defining the terms “unserved” and “underserved” found in the BTOP provisions discussed in the
2404 preceding sections. Additionally, the Recovery Act allows RUS to fund a broadband project
2405 with Recovery Act funds only if “at least 75 percent of the area to be served [is] in a rural area
2406 without sufficient access to high speed broadband service to facilitate rural economic
2407 development, as determined by the Secretary of Agriculture.”³³ As a result, RUS must also
2408 define the relevant “area” to which it would apply the criteria for sufficiency of access to
2409 broadband service.

2410

2411 Most commenters suggest defining “area” according to government-recognized
2412 boundaries. For example, multiple commenters suggest the use of census tracts,³⁴ pointing out
2413 that the FCC already collects service data at the census tract level³⁵ and that census tracts are
2414 relatively small.³⁶ Rural Cellular Association also points out that government-defined
2415 boundaries are technologically neutral because they do not correspond to the existing service
2416 areas for any particular technology.³⁷ Multiple commenters also state a preference for census
2417 blocks, or the smallest geographic designation possible, so that proposals for service to all truly
2418 underserved geographic locations qualify for BTOP funding.³⁸

2419

³³ Recovery Act div. A, tit. I, 123 Stat. at 118.

³⁴ *See, e.g.*, FTTH Council at 10–11.

³⁵ *See, e.g.*, American Cable Association at 6 (Apr. 14, 2009); Rural Cellular Association at 42 (Apr. 13, 2009); XO and Nextlink at 6, n. 14.

³⁶ *See, e.g.*, American Cable Association at 6; Rural Cellular Association at 42.

³⁷ Rural Cellular Association at 42.

³⁸ *See, e.g.*, Wireless Internet Service Providers Association (WISPA) at 8 (Apr. 10, 2009) (supporting census blocks as the basic geographical unit and stating, “No ‘unserved’ or ‘underserved’ community should be disqualified because it is too small.”); Frontier Communications at 12 (Apr. 13, 2009) (“An ‘area’ should be determined at as small a geographic level as possible. Using entire census communities or census blocks will disadvantage many unserved areas that are adjacent to served areas.”). *See also* Smith Bagley, Inc. at 3–4 (Apr. 13, 2009) (suggesting that NTIA require applicants to submit a spreadsheet of census blocks with estimates of unserved and underserved households and businesses).

2420 In contrast, some commenters encourage the agencies to allow applicants to define their
2421 own service areas to be evaluated against the criteria established for “unserved” or
2422 “underserved” areas.³⁹ Many of these commenters express concern that requiring pre-defined
2423 geographic units to qualify as “unserved” or “underserved” areas will exclude regions within
2424 those geographic units that actually lack access to broadband service.⁴⁰

2425

2426 RUS and NTIA conclude that applicants should be allowed to define their own proposed
2427 funded service areas, which are composed of one or more contiguous census blocks. RUS and
2428 NTIA believe that employing census blocks, a standardized, technologically neutral geographic
2429 unit, will facilitate the comparison of data from applicants proposing to serve overlapping
2430 regions and will facilitate compliance with the statutory prohibition against providing BTOP and
2431 BIP funding for the same project in the same area.⁴¹ RUS and NTIA have attempted to
2432 accommodate commenters’ concerns about the inadvertent exclusion of areas in need of
2433 broadband service by adopting a very granular definition of proposed funded service area and
2434 defining “unserved” and “underserved,” and “without sufficient access to high speed broadband
2435 service to facilitate rural economic development” in terms of the percentages of a proposed
2436 funded service area meeting the definitional criteria.

2437

2438 An applicant must identify the census block(s) selected for the project and provide
2439 documentation supporting the applicant’s determination that the proposed funded service area is

³⁹ See, e.g., ITTA at 2–3 (“Each applicant should be able to define its proposed service area, including aggregating both adjacent and non-contiguous clusters of unserved homes.”); Embarq at 18 (Apr. 13, 2009); CWA at 22.

⁴⁰ See, e.g., Windstream Communications, Inc., (Windstream) at 28 (Apr. 14, 2009) (“Pockets of unserved and underserved customers are unlikely to fall neatly within existing, arbitrary geographic units, such as ZIP codes or census blocks.”).

⁴¹ See Recovery Act div. A, tit. I, 123 Stat. at 119.

2440 either unserved or underserved. There is a presumption that the applicant will provide service to
2441 the entire territory of each census block included in the proposed funded service area, unless the
2442 applicant files a waiver and provides a reasoned explanation as to why providing coverage for
2443 the entire census block is infeasible. Applicants may be permitted to serve less than the entire
2444 census block under certain conditions. For example, an applicant might seek a waiver if the
2445 census block exceeds 100 square miles or more or is larger than the applicant's authorized
2446 operating territory, *e.g.*, it splits a rural incumbent local exchange carrier's (ILEC) study area or
2447 exceeds the boundaries of a wireless carrier's licensed territory.

2448

2449 **Interconnection and Non-Discrimination Requirements**

2450 The Recovery Act requires NTIA to establish “non-discrimination and network
2451 interconnection obligations that shall be contractual conditions of grants ... including, at a
2452 minimum, adherence to the principles contained in the [FCC's] broadband policy statement.”⁴²
2453 The Recovery Act does not require RUS to impose these obligations on its grantees or
2454 borrowers.

2455 Major incumbent service providers, rural carriers, and their trade associations urge that
2456 the interconnection and non-discrimination obligations be limited to the FCC Internet Policy
2457 Statement.⁴³ These operators emphasize that imposing new requirements in the BTOP process
2458 would cause uncertainty and deter applicants from applying for grants. Major equipment
2459 manufacturers share this view.⁴⁴ Cellular operators and CTIA assert that wireless networks need

⁴² Recovery Act § 6001(j), 123 Stat. at 512.

⁴³ *See, e.g.*, Verizon at 13 (Apr. 13, 2009); AT&T at 14–16; OPASTCO at 11–12 (Apr. 13, 2009); National Exchange Carrier Assoc. (NECA) at 6 (Apr. 13, 2009).

⁴⁴ *See, e.g.*, Motorola at 13–15; Cisco at 9 (Apr. 13, 2009).

2460 the ability to prioritize traffic due to limited capacity.⁴⁵ Content owners argue that non-
2461 discrimination obligations should not preclude copyright enforcement.⁴⁶ On the other side,
2462 public interest groups⁴⁷ and potential new entrants⁴⁸ advocate additional obligations, generally
2463 some combination of interconnection language from Title II of the Communications Act and
2464 non-discrimination requirements precluding degradation or inferior treatment of applications,
2465 content, and services. Many states⁴⁹ and most of the cities filing comments⁵⁰ urge the inclusion
2466 of some open access or non-discrimination obligations.

2467 RUS and NTIA require applicants to commit to five obligations. These requirements,
2468 discussed in more depth below, are subject to the needs of law enforcement and reasonable
2469 network management practices.

2470 *(1) Adhere to the principles contained in the FCC’s Broadband Policy Statement (FCC 05-151*
2471 *adopted Aug. 5, 2005).*

2472 This requirement is specified in the Recovery Act.⁵¹

2473 *(2) Not favor any lawful Internet applications or content over others.*

2474 This requirement ensures neutral traffic routing. Without a non-discrimination condition,
2475 network operators could give preferential treatment to affiliated services, or charge some
2476 application and content providers for “fast lanes” that would put others at a competitive

⁴⁵ See, e.g., CTIA at 8 (Apr. 13, 2009).

⁴⁶ See, e.g., MPAA, RIAA *et al.* at 3 (Apr. 13, 2009).

⁴⁷ See, e.g., Free Press at 18; Open Internet Coalition at 2 (Mar. 10, 2009); Center for Democracy & Technology at 3–5 (Apr. 13, 2009); EDUCAUSE at 4–5 (Apr. 13, 2009).

⁴⁸ See Clearwire Corp. at 14–15 (Apr. 10, 2009); Earthlink and NewEdge at 4–5 (Apr. 13, 2009).

⁴⁹ See, e.g., Michigan PSC at 8; State of Arizona at 11 (Apr. 13, 2009).

⁵⁰ See, e.g., City of Palo Alto at 19–20 (Apr. 13, 2009).

⁵¹ Recovery Act § 6001(j), 123 Stat. at 515.

2477 disadvantage. The standard used here is a more general version of the one the FCC imposed in
2478 the AT&T/BellSouth merger conditions, which specified no differential treatment of packets
2479 based on source, destination, or ownership.⁵² Awardees may employ generally-accepted
2480 technical measures to provide acceptable service levels to all customers, such as caching and
2481 application-neutral bandwidth allocation, as well as measures to address spam, denial of service
2482 attacks, illegal content, and other harmful activities. They also may comply with applicable
2483 statutes such as the Communications Assistance to Law Enforcement Act (CALEA).⁵³

2484 Furthermore, this requirement applies only to Internet applications and content, that is,
2485 those that traverse the public Internet. Awardees may offer managed services such as
2486 telemedicine, public safety communications, and distance learning, which use private
2487 connections or virtual private networks, rather than the public Internet. This approach ensures
2488 that awardees do not distort the Internet's neutral environment for applications and content,
2489 while giving them the flexibility to design their networks in a technically efficient manner and
2490 the ability to provide services that may require enhanced quality of service or separate
2491 connections for privacy and security reasons.

2492 *(3) Display network management policies in a prominent location on the service provider's web*
2493 *page and provide notice to customers of changes to these policies (awardees must describe any*
2494 *business practices or technical mechanisms they employ, other than standard best efforts*
2495 *Internet delivery, to allocate capacity; differentiate among applications, providers, or sources;*
2496 *limit usage; and manage or block access to illegal or harmful content).*

⁵² See In the Matter of AT&T Inc. and BellSouth Corporation, WC Docket No. 06-74, *Memorandum Opinion and Order*, FCC 06-189, App. F at 154 (Mar. 26, 2007), http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-06-189A1.pdf.

⁵³ See 47 U.S.C. § 1001 *et seq.*

2497 This public notice requirement is intended to provide full disclosure of these network
2498 management practices to users and potential users to enable them to make informed decisions
2499 regarding how their usage may be impacted by current policies and any modifications that are
2500 subsequently made.

2501 *(4) Connect to the public Internet directly or indirectly, such that the project is not an entirely*
2502 *private closed network.*

2503 An entirely private closed network would make the interconnection and non-
2504 discrimination obligations moot, since the project would not offer access to Internet applications
2505 and content.

2506 *(5) Offer interconnection, where technically-feasible, on reasonable rates and terms to be*
2507 *negotiated with requesting parties. This includes both the ability to connect to the public*
2508 *Internet and physical interconnection for the exchange of traffic.*

2509 The Recovery Act mandates conditions for “network interconnection,”⁵⁴ which the FCC
2510 Policy Statement and non-discrimination conditions alone do not address. Moreover, an
2511 interconnection condition promotes competition in end-user service provision, consistent with
2512 the Recovery Act’s directives. Specifically, the fourth prong of the FCC Policy Statement states
2513 that users are entitled to a choice of service providers.⁵⁵ The Recovery Act incorporates this
2514 element by reference, because it requires applicants to meet the Policy Statement’s principles as
2515 a minimum condition. The Recovery Act also requires RUS to give priority to projects offering

⁵⁴ Recovery Act § 6001(j), 123 Stat. at 512.

⁵⁵ Internet Policy Statement, FCC 05-15, adopted Aug. 5, 2005.

2516 a choice of end-user service providers,⁵⁶ which is only possible if funded projects offer
2517 interconnection. As a general policy matter, interconnection allows synergies where others can
2518 benefit from subsidized infrastructure. Wholesale service may also generate additional revenue
2519 for recipients, and increase capital efficiency by maximizing utilization of network capacity.
2520 Where not inconsistent with other Recovery Act goals, RUS and NTIA will seek the greatest
2521 possible expansion of broadband from its investment.

2522 An awardee may satisfy the requirement for interconnection by negotiating in good faith
2523 with all bona fide requesting parties that wish to connect to the public Internet using the
2524 awardee's network or to exchange traffic. Interconnection must take place where technically
2525 feasible and without exceeding current or anticipated capacity limitations. The awardee and
2526 requesting party may negotiate terms such as business arrangements, capacity limits, financial
2527 terms, and technical conditions for interconnection. If the awardee and requesting party cannot
2528 reach agreement, they may voluntarily seek an interpretation by the FCC of any FCC rules
2529 implicated in the dispute. If an agreement cannot be reached within 90 days, the party requesting
2530 interconnection may notify RUS or NTIA in writing of the failure to reach satisfactory terms
2531 with the awardee. The 90-day limit is to encourage the parties to resolve differences through
2532 negotiation.

2533 This approach encourages interconnection without requiring micromanagement of private
2534 negotiations. Appropriate interconnection terms will vary depending on the type of project, the
2535 technologies involved, the type of provider requesting interconnection, and the dynamics of the
2536 local market. There is no need to enforce uniform terms or pricing standards, so long as parties

⁵⁶ Recovery Act div. A, tit. I, 123 Stat. at 118. This language does not appear in the BTOP section of the Recovery Act, but is consistent with the network interconnection and non-discrimination obligations specified there.

2537 negotiate in good faith to reach mutually-beneficial business agreements. A more formal
2538 interconnection regime would require enforcement resources beyond the scope of BTOP.

2539 Entities that successfully reach an agreement to interconnect with a system funded under
2540 BIP may not use that interconnection agreement to provide services that duplicate services
2541 provided by projects funded by outstanding telecommunications loans made under the Rural
2542 Electrification Act. Further, interconnection may not result in a BIP-funded facility being used
2543 for ineligible purposes under the Recovery Act. These limitations are needed to comply with
2544 pre-existing loan agreements and Recovery Act language for RUS, but do not apply to BTOP.

2545 With respect to non-discrimination, those who believe an awardee has failed to meet the
2546 non-discrimination obligations should first seek action at the FCC of any FCC rules implicated in
2547 the dispute. If the FCC chooses to take no action, those seeking recourse may notify RUS and
2548 NTIA in writing about the alleged failure to adhere to commitments of the award.

2549 Overall, these five requirements ensure that public funds will support the public goal of
2550 open networks. The standards chosen echo established FCC rules, but avoid detailed regulation
2551 and allow for flexibility when network management requires differential treatment or exclusivity.
2552 The standards chosen are technologically neutral and appropriate for the widest possible range of
2553 applications, because the definition of reasonable network management may differ based on the
2554 network technology used and other dimensions of the project. Applicants are required to
2555 disclose interconnection, nondiscrimination, and network management plans with their
2556 applications, and provide regular network reporting, to facilitate compliance and better
2557 understanding of appropriate network management techniques. As noted above, applicants are
2558 required to provide clear and prominent public disclosure of network management policies to

2559 customers. Additional scoring points will be awarded for clear and prominent public disclosure
2560 of interconnection and nondiscrimination policies to customers.

2561 These conditions will apply for the life of the awardee’s facilities used in the project and
2562 not to any existing network arrangements. The conditions apply to any contractors or
2563 subcontractors of such awardees employed to deploy or operate the network facilities for the
2564 infrastructure project. To the extent that the FCC takes action in this area, such as by modifying
2565 its Internet Policy Statement or by adopting additional or different rules or policies, awardees
2566 will become subject to FCC rules and policies in lieu of the conditions set forth only to the extent
2567 that the FCC rules or policies effectively supersede the conditions set forth above. Recipients
2568 that fail to accept or comply with the terms listed above may be considered in default or breach
2569 of their loan or grant agreements. RUS and NTIA may exercise all available remedies to cure
2570 the default.

2571

2572 **Eligibility**

2573

2574 Section 6001(e)(1) of the Recovery Act expressly identifies the types of entities that are
2575 eligible for BTOP grants and authorizes the Assistant Secretary to find by rule that it may be in
2576 the public interest for any other entity, including a broadband service or infrastructure provider,
2577 to be eligible. Section 6001(e)(1)(C) also requires that “[i]n establishing such rule, the Assistant
2578 Secretary shall to the extent practicable promote the purposes of [BTOP] in a technologically
2579 neutral manner.” The Recovery Act does not explicitly identify the entities that are eligible for
2580 RUS broadband funding.

2581

2582 The comments of service providers of all types,⁵⁷ equipment suppliers,⁵⁸ and various
2583 other entities⁵⁹ state that private, for-profit companies should generally be eligible for BTOP
2584 funding. Some service providers propose automatic eligibility for service providers who already
2585 hold a license or franchise or who already provide broadband service.⁶⁰ Several non-profits,
2586 government entities, and small providers argue that no for-profit entity should be eligible without
2587 a public interest showing, either individualized⁶¹ or based on its agreement to adhere to
2588 additional conditions,⁶² or otherwise favor only limited for-profit eligibility.⁶³

2589
2590 Through this NOFA, the Assistant Secretary of Commerce for Communications and
2591 Information has found it to be in the public interest to permit for-profit corporations and non-
2592 profit entities (not otherwise encompassed by section 6001(e)(1)(A)) that are willing to promote
2593 the goals of the Recovery Act and comply with the statutory requirements of BTOP to be eligible
2594 for a grant. By adopting this broad approach, the Assistant Secretary intends to invite a diverse
2595 group of applicants to participate in BTOP, which reflects his desire to expand broadband
2596 capabilities in the United States in a technology-neutral manner. This approach is consistent
2597 with Congressional intent in this regard.⁶⁴ This finding is reasonable because of the positive

⁵⁷ See, e.g., Qwest Communications (Qwest) at 9–13 (Apr. 13, 2009); NCTA at 6; Bresnan Communications *et al.*, at 5 (Apr. 13, 2009).

⁵⁸ See, e.g., Alcatel-Lucent at 15.

⁵⁹ See, e.g., CWA at 6; EDUCAUSE at 4; Georgia Technology Authority at 4 (Apr. 13, 2009); State of Alabama at 7 (Apr. 13, 2009); State Wyoming at 2 (Apr. 10, 2009).

⁶⁰ See, e.g., Windstream at 8–9; American Cable Association at 5–6.

⁶¹ See, e.g., Kentucky Municipal Utilities Association at 7–8 (Apr. 13, 2009); National Rural Electrical Cooperative Association at 8–9 (Apr. 13, 2009); NATOA at 8–11.

⁶² See, e.g., The Benton Foundation at 14–19 (Mar. 20, 2009).

⁶³ For example, several commenters proposed that private firms should receive grants only in areas where government or non-profit entities do not apply. See, e.g., SEDA Council of Governments at 1 (Mar. 24, 2009); NATOA at 9. Some small rural telephone companies favored limiting eligibility for large providers. See, e.g., National Telecommunications Cooperative Association at 3–4 (Apr. 13, 2009).

⁶⁴ See Conf. Rep. at 775 (stating that “as many entities as possible [should] be eligible to apply for a competitive grant, including wireless carriers, wireline carriers, backhaul providers, satellite carriers, private public partnerships, and tower companies”).

2598 impact that the inclusion of for-profit corporations will have on the administrative and
2599 programmatic requirements of this program. Many for-profit corporations have expertise in
2600 deployment and sustainable operation of telecommunications facilities,⁶⁵ which may lead to the
2601 creation of more efficient and sophisticated broadband networks that consumers will be able to
2602 access in a shorter period of time. In some cases, for-profit corporations also may have the
2603 resources to deploy new infrastructure more quickly or efficiently than other types of entities.⁶⁶
2604 Moreover, for-profit corporations provide economic growth and job creation, which is consistent
2605 with many of the key purposes of the Recovery Act.⁶⁷

2606

2607 Dated: _____

2608

2609

2610 _____

2611 James R. Newby, Acting Administrator

2612 Rural Utilities Service

2613

2614 _____

2615 Thomas C. Power, Chief of Staff

2616 National Telecommunications and Information Administration

⁶⁵ See Qwest at 10–12; NCTA at 6; Windstream at 9.

⁶⁶ See Qwest at 10–14; Windstream at 9.

⁶⁷ See State of Alabama at 7.