

# DWT Broadband Stimulus Webinar: What You Must Know Now to Apply for Federal Grants

Thursday, June 11, 2009  
2:00 p.m. - 3:00 p.m. EDT

Anchorage  
Bellevue  
Los Angeles

New York  
Portland  
San Francisco

Seattle  
Shanghai  
Washington, D.C.



# Opening Remarks and Overview

Speaker: Jim Smith

# Agenda

2:00pm

## **Opening Remarks and Overview**

- General Overview of the Broadband Technology Opportunities Program (BTOP) of the American Recovery and Reinvestment Act of 2009
- The Commerce Department's National Telecommunications and Information Administration (NTIA) program vs. the Department of Agriculture's Rural Utilities Service (RUS) program

## **Getting Your Ducks In A Row: How To Prepare Now For a Competitive Grant Application**

- Choosing a project that has the best chance of securing grant or loan funding
- Incorporating key elements or "**Plus Factors**" to include in your application
- Working with state and local governments to enhance likelihood of success

## **Specialized Projects: Unheralded Ways to Differentiate Your Project From the Pack**

- Projects to Enhance Broadband Adoption
- Computer Training Center Projects
- Broadband Mapping
- Small Business Provisions

## **The Elephants In The Room: Issues To Consider When Deciding Whether to Apply for ARRA Money**

- Application of Davis-Bacon Act "Wage Standards"
- Impact of Buy American Requirements
- Constraints on Agency Grantors: Is it "Safe" to Grant Your Application??

## **Looking Forward: Legal and Policy Issues Affecting Operation of Broadband Facilities Built Under These Programs**

- The FCC's National Broadband Plan
- Network management and interconnection mandates
- Future subsidies for services provided over broadband networks
- Mapping, reporting, and other administrative obligations

## **Coming Up Next: Preview of DWT's "How to Apply" Mini-Webinar**

- Timely Update When NTIA/RUS Issue Their Detailed Application Specs

## **Your Turn: Q&A**

3:00pm

## **Conclusion**

# American Recovery and Reinvestment Act of 2009 (ARRA)

- Signed by President Obama Feb. 17, 2009
- Called the “Stimulus Act” or “Recovery Act”
- Includes \$7.2 Billion for Expansion of Broadband Facilities and Services
  - § 6001: \$4.7 Billion “Broadband Technology Opportunities Program” (BTOP): Grants by National Telecommunications & Information Administration (NTIA) of the Dept. of Commerce
  - \$2.5 Billion “Rural Development Broadband Program”: Grants, Loans & Loan Guarantees by Rural Utilities Service (RUS) of the Dept. of Agriculture
  - To prevent duplication in disbursements, no part of an RUS-funded project may also receive funding under the NTIA program (but may apply under both programs)

**BOTTOM LINE OBJECTIVE: JOB CREATION AND ECONOMIC DEVELOPMENT**

# The Broadband Technology Opportunities Program (BTOP)

- \$4.7 Billion Competitive Grant Program Administered by NTIA
  - \$350 million for Nationwide Broadband Mapping (available by 2/17/11)
  - \$250 million for “innovative programs to encourage sustainable **adoption** of broadband service”
  - \$200 million for “expanding public computer center capacity, e.g., at community colleges/public libraries
  - Note: unlike in earlier proposals -
    - Not *exclusively* for projects for “unserved” or “underserved” areas
    - No specific speed thresholds (but a consideration)
    - Federal funding is limited to 80% of a project, unless a specific waiver is granted

# Broadband Technology Opportunities Program (BTOP) (cont'd)

- **Purposes:**
  - Provide broadband access to consumers in unserved areas and improved access underserved areas (but Conference Report: grants to “rural, suburban and urban areas”)
  - Provide “broadband education, awareness, training, access, equipment and support” to, among others, “schools, libraries, medical and healthcare providers, community colleges and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband service“
  - Facilitate broadband use by low-income, unemployed, aged and other “vulnerable” populations
  - Improve broadband access/use by public safety agencies
  - **Stimulate demand for broadband, economic growth, and job creation.**

# Broadband Technology Opportunities Program (BTOP) (cont'd)

- **Role of States:**
  - NTIA to "consult a State... with respect to... the identification of areas... and allocation of grant funds within that state for projects in or affecting the State."
  - At least one grant per state
  - But "NTIA retains the sole authority to approve the awards"
  - Tension: States to play a major role, but some want a dominant role (NARUC: allocate the \$\$\$ to states to dispense)
  - So: Try to gain approval of state! (and county/city)

# Broadband Technology Opportunities Program (BTOP) (cont'd)

- **Eligible Applicants:**

- States, territories, political subdivisions, Indian tribes, native Hawaiian organizations
- Nonprofit foundations, corporations, institutions and associations
- “Any other entity, including a broadband service or infrastructure provider” that NTIA “finds by rule to be in the public interest”
  - Wireline/wireless; last- or middle-mile or long-haul



# Broadband Technology Opportunities Program (BTOP) (cont'd)

- **Applicants Must Show:**
  - Eligibility/Capability
  - Project would not be undertaken during grant period but for federal funding
  - 20% match commitment (from “non-federal sources”)
    - unless financial need shown/ waiver granted
  - Disclosure of any other federal/state funding of project
  - Ability to substantially complete within two years
  - Promise to comply with program rules/quarterly public reporting (“transparency”)
  - Non-discrimination (TBA)
  - Network interconnection (TBA)
  - Adherence to (at minimum) FCC broadband policy statement principles (TBA)

# Broadband Technology Opportunities Program (BTOP) (cont'd)

- **Types of Projects:**

- Acquire equipment, instrumentation, networking capability, hardware and software, digital network technology, infrastructure for broadband services
- Construct and deploy broadband service related infrastructure
- Ensure access to broadband by “community anchor institutions” (e.g., schools, churches, temples, museums, zoos, family resource centers, health centers, colleges, community colleges, community-based businesses, recreation centers, shelters)
- Facilitate broadband access by low income, unemployed, aged, and other “vulnerable” groups
- Construct and deploy broadband to improve public safety services
- “Other projects and activities”

# Broadband Technology Opportunities Program (BTOP) (cont'd)

- **Other Considerations (“Tie-Breakers”):**
  - At least one grant per state
  - Whether a project will “increase affordability and subscribership” to “the greatest population of users in the area”
  - “Provide the greatest broadband speed possible” to the greatest population
  - Whether a project will “enhance service for health care delivery, education, or children” to the greatest population
  - No “unjust enrichment” through support from other federal programs
  - Whether applicant is a “socially/economically disadvantaged small business” under §8(a) of the Small Business Act
  - **JOB CREATION!!**

# Broadband Technology Opportunities Program (BTOP) (cont'd)

- **Process/Deadlines (Act: “ASAP”):**
  - Must award all grants by the 9/30/10
  - Grantees must "substantially complete" project within 2 years after award
- **The Story So Far. . .**
  - Series of Nationwide Public Forums in March
  - Joint NTIA/RUS Request for Information (RFI) issued in March; Public Comments Received April 13
  - 3 “waves” of applications/grants planned (1/3 of \$\$ in each?):
    - First wave: Detailed RFP (“NOFA”) to be issued by June 30; applications to be filed by September; first awards by Dec. 31, 2009
      - Rumor: NOFA to be issued this week or next week; 60-day filing period??
    - Second wave: Fall-Winter 2009/10
    - Third wave: Spring- 9/30/10
- **Executive Order on ARRA Lobbying Restrictions**

# USDA Rural Utilities Service (RUS) “Rural Development Broadband Program”

- \$2.5 Billion for Grants, Loans & Loan Guarantees Administered by Rural Utilities Service (RUS) of the Dept. of Agriculture
- 75 percent of the area to be served by each project must be "in a rural area without sufficient access to high speed broadband service to facilitate rural economic development" (as determined by the Secretary of Agriculture)
- No “area” of any RUS-funded project may also receive funding under the NTIA BTOP program

# “Rural Development Broadband Program” (cont’d)

- **Priorities for Awards:**

- To applications from borrowers or former borrowers under Title II of the Rural Electrification Act (a traditional telephone loan program primarily for small and mid-sized Rural Local Exchange Carriers (RLECs)), and projects that include such borrowers
- For “broadband systems that will deliver end users a choice of more than one service provider”
- To “projects that provide service to the highest proportion of rural residents that do not have access to broadband service”
- To applications that demonstrate that “all project elements will be fully funded,” can “commence promptly,” and can “be completed”

# “Rural Development Broadband Program” (cont’d)

- **Unresolved Questions In the RUS Program:**
  - Allocation Among Grants and Loans?
  - How Closely Will It Mirror the NTIA BTOP Program??
    - Same Timeline For Applications and Grants?
    - 20% Matching Funds Requirement?
    - Same (or Any?) Non-Discrimination/“Open Access” Rules?
    - How Will the Agencies Coordinate to Divvy Up Grants and Avoid “Double Dipping”?
    - Same Degree of State Consultation?
    - Same (or Greater) Degree of Reporting and Auditing?

# Getting Your Ducks In A Row: How To Prepare Now For a Competitive Grant Application

Speaker: Jim Smith



# How To Get Started Now

- **Get a Head-Start: Application Elements We Already Know**
- **Choose “Grant-Worthy” Project(s)**
  - Tailor Your Project(s) Closely to the Objectives and Priorities for Broadband Development in the Act
  - Understanding the “CYA” Factor
  - Get Political Support!

# Application Elements We Already Know

- Register with **www.Grants.gov**
- Develop Information for Required Showings:
  - Project is of a type contemplated under the statute
    - RUS: 75 percent of the area to be served is "in a rural area without sufficient access to high speed broadband service to facilitate rural economic development"
    - BTOP:
      - Showing that the project would not be undertaken but for federal grant assistance
      - Capability to implement the project competently and in compliance with laws (experience, assembled team, track record on similar projects)

# Application Elements We Already Know (cont'd)

- Line up 20% of project funding from non-federal sources
- Showing of no “unjust enrichment” from duplication with other federal funding
- Readiness to “substantially complete” the project within two years of grant
- Adherence to minimum non-discrimination, network interconnection and “openness” obligations (TBA, but at least FCC “Principles”)

# “Plus Factors” To Separate Your Application From the Pack

- Projects serving “unserved” and “underserved” areas and populations
- Projects that will stimulate broadband demand, economic growth, and job creation
- Status as public-private partnership, non-profit entity, Indian tribal organizations, and/or economically disadvantaged small businesses per the Small Business Act– or participation by such entities
- Projects supported by local authorities, and especially by state agencies that may be submitting “recommended projects” lists to NTIA/RUS
- Projects to deploy broadband to serve public safety agencies and purposes, or improve public safety communications
- Projects that offer higher broadband speeds to the greatest population within an area
- Degree to which project offers “open access”

# “Plus Factors” To Separate Your Application From the Pack (cont’d)

- Projects that will extend broadband access/ support (or provide higher speeds) to:
  - Schools and libraries
  - Medical and healthcare providers
  - Colleges and other higher education or research institutions
  - Other “Community Anchor Institutions” and community support organizations
  - Low-income, unemployed, aged, and otherwise “vulnerable” populations (including providing educational and employment opportunities to these groups)
  - Job-creating facilities within a state-designated economic zone, DOC Economic Development District, HUD Renewal Community or Empowerment Zone, and/or USDA Enterprise Community
- Projects that will increase the affordability of and subscribership to broadband service to the greatest population within the area
- Projects that will enhance health care delivery, education, and/or service to children to the greatest population within the area
- *Strength* of mandatory showings

# Understanding the “CYA” Factor

- **Consider: Is This A “Safe” Project From The Grantor’s Viewpoint???**
  - Will it really advance the goals of the program? How much, compared to other applications?
  - Is it risky?
  - Are the showings strong?

**Put Another Way: Will it get the NTIA/RUS grantor in trouble for granting? (Think “Bridge to Nowhere”)**

# Get Political Support!

- **State Support May Not Be Essential – But It May Be! And It will Surely Help**
  - If there is a state “recommended projects” list, you want to be on it – so start “shopping” your project to the key state agencies NOW
- **Don’t Stop There**
  - Support/testimonials from local officials and agencies
  - Senators and Congressional Representatives
- **Lobbying of NTIA, RUS and White House Is (or Will Be) Restricted, But Not Lobbying of State and Local Officials**
- **We Can Help Identify Key Actors and Arrange Meetings**

# Specialized Projects: Unheralded Ways to Differentiate Your Project From the Pack

Speaker: Maurita Coley



# Specialized Projects - overview

- Not all projects need a “shovel”
- 3 Allocations:
  - To encourage broadband “adoption” (e.g., to stimulate demand) – at least \$250M
  - To expand public computer capacity (e.g, at community colleges and libraries) – at least \$200M
  - To develop a broadband inventory map – up to \$350M
- SDB “plus factor” (for “socially and economically disadvantaged small business”)
- Purpose of specialized provisions:
  - Promote access and use by Unserved and Underserved, including community anchors; vulnerable populations (seniors, disabled, low income, socioeconomically unserved)
  - Create jobs, especially within areas hard hit by unemployment
  - Encourage public/private/non-profit partnerships
  - Provide opportunities for SDBs

# Specialized Projects

- **Projects to Enhance Broadband Adoption:**
  - “...not less than \$250,000,000 shall be available for competitive grants for innovative programs to encourage sustainable adoption of broadband service”
  
- **Computer Training Center Projects:**
  - “...not less than \$200,000,000 shall be available for competitive grants for expanding public computer center capacity, including at community colleges and public libraries”
  
- **Broadband Mapping:**
  - Up to \$350,000,000 may be expended pursuant to Public Law 110-385 (47 USC 1301 note) and for the purposes of developing and maintaining a broadband inventory map pursuant to division B of the ARRA
  
- **SDBs:**
  - 6001(h)(3): NTIA shall, in awarding BTOP grants, to the extent practical “consider whether the applicant is a socially and economically disadvantaged small business concern as defined under section 8(a) of the Small Business Act (15 USC 637).” Collaborations between the public, private and non-profit sectors should be encouraged

# Specialized Projects: Broadband Adoption

## PROJECTS TO ENHANCE BROADBAND ADOPTION

- Studies such as 2008 Pew Report show that approximately 40% of people who have broadband choose not to subscribe or use it
  - “No relevance” was deemed to be the primary factor
  - Other factors included affordability, lack of equipment (i.e., a computer), lack of training, privacy concerns
- Goal is to stimulate broadband use and demand where broadband already exists
  - Training - e.g., One Economy’s “Digital Connectors” program – trains youth to train others in inner city communities
  - Content – e.g., production of culturally relevant or multilingual content
    - E.g. One Economy’s [www.pic.tv](http://www.pic.tv) channel and “Beehive” content
  - Equipment (e.g., free or subsidized laptop programs)

# Specialized Projects: Broadband Adoption (cont'd)

- Other “innovative” ways
- Partnerships - DWT can help to connect you with the right partners – local can help
  
- Partnerships seeking adoption grant funds:
  - Alliance for Digital Equality/Connected Nation/Communications Workers of America
  - One Economy and Broadband Opportunity Coalition (BOC)
    - BOC is led by National Urban League and major civil rights groups such as National Council of LaRaza, LULAC, Asian American Justice Center, National Congress of American Indians, others.

# Specialized Projects: Public Computer Center Grants

## **PUBLIC COMPUTER CENTERS**

- Not less than \$200m shall be available for competitive grants for “expanding public computer center capacity, including at community colleges and public libraries”
  - Some commenters want these grants to be available only to public or non-profit institutions such as community centers, homeless shelters, senior citizens centers, work-skills centers, and entities that have relationships with vulnerable populations without access to computers or broadband.
  - Wait for NOFA – probably best to partner with public or non-profit

# Specialized Projects: Broadband Mapping Funds

## BROADBAND MAPPING

- Up to \$350 million for broadband mapping grants (for the development and maintenance of a national broadband inventory map)
  - Reality is that much of stimulus money will be dispensed before mapping is completed (or simultaneously)
  
- Mapping Partnerships add “plus factors”:
  - Partnering with local schools, smartgrid providers, healthcare providers, community anchor institutions, and grass roots partners can help you find the “unserved” and “underserved” areas
  - Connected Nation has been the primary source of broadband mapping data - plans to apply with ADE and CWA
  - Other mapping partnerships forming

# Specialized Projects: The SDB “plus factor”

## SDBs

- 6001(h)(3): NTIA shall, in awarding BTOP grants, to the extent practical “consider whether the applicant is a socially and economically disadvantaged small business concern as defined under section 8(a) of the Small Business Act (15 USC 637).”
- SDB – “socially and economically disadvantaged small business concern”
  - Mostly ethnic minorities
  - Sliding scale size qualifications
  - net worth less than \$750K (excluding equity in home and business)
  - SBA’s size standards table (based on the North American Industry Classification System (NAICS)).
    - E.g.: Telecom ISP - maximum of 1,500 employees
    - Internet publisher - maximum of 500 employees
- DWT can connect you with SDBs - partnerships
  - E.g., MMTC Access to Capital Conference, July 20-21

# The Elephants in the Room: Issues to Consider When Deciding Whether To Apply for ARRA Money

Speaker: Maria Browne



# There's No Such Thing As Free

- Grants come with some strings attached
- Mandated disclosures in application process
- Compliance with certain federal requirements
- Audits, reports and other federal examination
- Heightened scrutiny by the press

# Contractor Registration Requirements

- Applicants must register with CCR and [www.Grants.gov](http://www.Grants.gov)
- CCR requires disclosure of gross receipts for last 3 years for applicant and all affiliates and average number of employees
- IRS will have access to information, as will .gov and .mil entities
- Limited safeguards offered for protection of information but public need not have access
- Must then register with **[www.Grants.gov](http://www.Grants.gov)**

# Buy American Requirements

- Applies when ARRA grant money is used for “construction, alteration, maintenance, or repair of a public building or public work”
- Key terms remain undefined, and regulators have yet not indicated how they will implement the provision and its exceptions
  - Not clear whether it applies if connect public buildings
- If applies, it requires that all iron, steel and manufactured goods be produced in the United States
  - Exceptions exist for public interest, insufficient quantity in US, or exceed 25% cost increase; require detailed justification by grant administrator
- Requests made to NTIA to waive because most money for labor and equipment source primarily outside US (CWA opposed)

# Wage Rate Requirements

- ARRA extends Davis-Bacon Act (DBA) to ARRA funding
- Laborers and mechanics employed on projects funded by ARRA must be paid 'prevailing wage' (as determined based on local parameters by the Labor Department) and fringe benefits
- Applies to federally funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works
- Also required: overtime premium, record keeping and certified payrolls
- Does not apply to supervisors, or to maintenance projects and may not apply to demolition projects. Unclear whether it applies to installation of telephony equipment. California sees installation as subject to state DBA, other jurisdictions see it as installation of equipment which is typically not DBA. NOFA should inform.

# Additional Strings

- The Copeland “Anti-Kickback Act” and overtime pay requirements under the Contract Work Hours and Safety Standards Act also apply to ARRA funded construction
- ARRA appropriations will fund federal service contracts subject to the Service Contract Act (SCA), and federal contracts subject to coverage under the Walsh-Healey Public Contracts Act (PCA)
- Funds may not be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool

# What if You Win?

- Build out requirements and quarterly progress reports
- Grantees to show how funds were spent and how those funds further the public purpose for which they were provided
  - For example, Grantees to report quarterly on how the use of funds created or preserved jobs and aided in the economic recovery
- Grant money to be spent in compliance with the cost principles issued by the Office of Management and Budget
- Grantees to comply with well established reporting requirements for federal grant money
- NTIA may clawback (“deobligate”) funds if insufficient performance, waste or fraud
- Possible application of FCC’s four broadband principles and possible additional principle of non-discrimination

# Looking Forward: Legal and Policy Issues Affecting Operation of Broadband Facilities Built Under These Programs

Speaker: KC Halm

# Looking Forward – Emerging Federal Policies Will Affect Operations

- ARRA mandates “National Broadband Plan”
  - Stimulus funding: only one element of emerging broadband policy
    - Broadband Data Improvement Act of 2008
    - FCC Rural Broadband Report, May, 2009
  
- National Broadband Plan
  - February, 2010 release
  - Five key issues
    - Define broadband (speed, quality)
    - Analyze mechanisms to ensure access
    - Report status of deployment (including stimulus projects)
    - Support social policies
    - Encourage investment



# Looking Forward – Operational Issues Affected by Emerging Policies

- Operational issues affected by new federal policy
  1. Potential subsidies for service providers
  2. Access, network management & interconnection
  3. Administrative costs & burdens

## 1. Potential subsidies

- Extend Universal Service subsidies to broadband service providers?
  - Lessons from existing broadband USF programs: e-rate and rural healthcare
    - Programs use *post hoc* funding process
    - Significant audits and administrative burdens

# Looking Forward – Operational Issues Affected by Emerging Policies

## 2. Access, network management & interconnection

- Non-discrimination and network interconnection obligations, currently more questions than answers
  - Additional details may be released in NoFA
  - FCC's 2005 Broadband Policy Principles (at a minimum)
  - Potential new fifth principle: non-discrimination?

## 3. Administrative costs & burdens

- Current broadband data reporting obligations
  - Number of connections by "Census Tract"
  - Upload and download speeds
  - Mobile wireless subscribers and coverage
- Potential future reporting obligations
  - Speed "as delivered"
  - Prices for broadband services
  - Additional info. to support broadband mapping

# Coming Up Next: DWT's “How to Apply” Mini-Webinar

Timely Update When NTIA/RUS Issue  
Their Detailed Application Specs



# Your Turn: Q&A

# DWT Contacts

## For More Information Please Contact:

- **Jim Smith – 202.973.4288 (jamesmsmith@dwt.com)**
- **Maurita Coley - 202.973.4284 (mauritacoley@dwt.com)**
- **Maria Browne - 202.973.4281 (mariabrowne@dwt.com)**
- **KC Halm - 202.973.4287 (kchalm@dwt.com)**