



May 29, 2009

The Honorable Gary Locke  
Secretary, U.S. Department of Commerce  
U.S. Department of Commerce  
1401 Constitution Ave, N.W.  
Washington, D.C. 20230

The Honorable Tom Vilsack  
Secretary, U.S. Department of Agriculture  
U.S. Department of Agriculture  
1400 Independence Ave., S.W.  
Washington, D.C. 20250

The Honorable Larry Strickling  
Assistant Secretary-Designate  
Nat'l Telecommunications Information Administration  
U.S. Department of Commerce  
1401 Constitution Ave, N.W.  
Washington, D.C. 20230

The Honorable Jonathan Adelstein,  
Rural Utilities Service Administrator-Designate  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W. Portals II Building  
Washington, D.C. 20554

The Honorable Anna Gomez  
Acting Assistant Secretary, Deputy Assistant Secretary for Communications and Information  
National Telecommunications Information Administration  
U.S. Department of Commerce  
1401 Constitution Ave, N.W.  
Washington, D.C. 20230

Dear Secretary Locke, Secretary Vilsack, Assistant Secretary-Designate Strickling, RUS Administrator-Designate Adelstein, and Assistant Secretary Gomez:

The "American Recovery and Reinvestment Act of 2009" (ARRA) charges the National Telecommunications Information Administration (NTIA) and the Rural Utilities Service (RUS) with the daunting task of *efficiently* disbursing \$6.85 billion dollars via grants for broadband infrastructure and adoption programs.

ARRA demonstrates a preference for project proposals where construction can begin immediately. The recent announcement that funds are *now* targeted to be released at the end of the year has an unfortunate and undoubtedly unforeseen unfair impact on grant proposals. By December winter conditions in many States will, at a minimum, certainly inhibit construction activity. *It appears this delay in releasing the funds is related to perceived difficulties in processing and reviewing the anticipated flood of applications each agency is likely to receive.*

The States can facilitate this review process and perhaps allow both agencies to release funds much sooner. Indeed, *without State assistance*, even with the current schedule, it will be almost impossible to *efficiently* review the anticipated thousands of applications most predict both will receive, much less rank the proposals according to ARRA-specified criteria, disburse the funds, and monitor grant specific implementations.

*NARUC would like to reiterate the benefits of allowing the States to pare down the formidable task facing both agencies.* As the ARRA explicitly allows, both agencies should [1] allow each State to review and provide a preliminary ranking of applications submitted to provide service in that State and [2] give significant weight to those recommendations. The benefits are obvious and immediate. There is NO perfect process. However, proceeding in this way presents the best possible odds that the funds will be properly expended on


projects that have a realistic opportunity of expanding broadband penetration in the United States. After all, States have intimate knowledge of their communications, economic environment, geography, and demographics along with *every incentive* to make certain the money is not wasted and is properly targeted. They also cumulatively have much more experience with the real social and financial costs and difficulties associated with the siting of all kinds of critical/network infrastructures.

*Proceeding this way is also likely to better position both agencies to release the funds months before the end of the year.* After all, ARRA's *raison d'etre* is to stimulate the economy. Every economist agrees these funds should be injected into the U.S. economic engine as quickly as possible.

Rather than contracting with Washington, D.C. consultants that lack both the States' in-depth knowledge about the areas covered and the inherent incentive to do the job right, both agencies should structure the program to ensure State involvement. They should ask State governors to specify an entity to review and rank all applications for all in-State projects based on NTIA/RUS criteria. As an incentive for States' involvement, the agencies should ask States to list top-ranked proposals up to – for the first round of funding – a “use or lose” **minimum** standard State allocation.<sup>1</sup> As the statute requires – NTIA (and RUS) will make the final decisions on the State recommendations and will disburse funds, assuming sufficient projects are recommended, *at least* up to the “standard State allocation.”<sup>2</sup>

This approach saves resources, puts the people with the information needed to make reasonable and rapid decisions in a strong advisory role, provides an additional layer of accountability, and significantly increases the chances that the money will actually get disbursed as States will have proper incentives to both opt-in and complete the task. If you have questions about this proposal, feel free to contact any of the undersigned or call NARUC's General Counsel, J. Bradford Ramsay, at (202) 898-2207 or [jramsay@naruc.org](mailto:jramsay@naruc.org).

Sincerely,



Frederick F. Butler  
President, NARUC  
Commissioner, New Jersey Board of Public Utilities



Ray Baum  
Chair, NARUC Committee on Telecommunications  
Commissioner, Oregon Public Utility Commission



Anne C. Boyle  
Chair, NARUC Committee on Consumer Affairs  
Commissioner, Nebraska Public Service Commission

cc: Ken Kuchno, Director, Broadband Division, Rural Utilities Service, USDA  
Mark Seifert, Senior Advisor, NTIA  
Larry Atlas, Senior Advisor, NTIA  
Dr. Bernadette McGuire-Rivera, Associate Administrator,  
Office of Telecommunications and Information Applications, NTIA  
Michele Carey, Advisor, NTIA  
James McConnaughey, Senior Economist, Office of Policy Analysis & Development, NTIA

<sup>1</sup> We suggest for NTIA grants, that standard State allocation for the largest 51 jurisdictions be no less than 36 million. An additional minimum “standard State allocation” of about 15 million for the largest 51 jurisdictions should be available to encourage States to opt to review RUS proposals as well.

<sup>2</sup> If a particular State does not opt in to do the reviews, NTIA will review projects *de novo* for that State. But that State loses the opportunity to assure its citizens have an opportunity to receive the benefit of the allocation. If a State opts-in to do the review and ranking for NTIA and either there are insufficient projects submitted or the State fails to complete the task prior to the next Notice of Availability of Funds (NOAF) – those funds become available for NTIA/RUS disbursement under the second NOAF.

**Appendix A**  
**SUMMARY OF NARUC POLICY ON STIMULUS FUNDING**

**[I] CONSULTATION WITH THE STATES**

- [A] *States ranks all in-State applications for NTIA/RUS (as constrained by NTIA/RUS-specified criteria) to review and approve based on a “use or lose” standard State allocation. NTIA/RUS define criteria broadly allowing each State to quickly rank applications and gives State interpretations great weight because of acknowledged expertise.*
- [B] *NARUC suggests the Standard State Allocation be at least 36 million for NTIA funds (and another 15 million if RUS applications are included).*
- [C] *States manage, monitor, and report quarterly – via NTIA/RUS approved template – on grants within a minimum standard State allocation (of 36-51 million).*
- [D] *NTIA allows States that “opt-in” to do the ranking sufficient funds to support 2-4 FTEs to assist State experts in both review and monitoring. If a particular State does not opt in to do the review, NTIA would have to undertake the review of projects for that State – and there would be no minimum State allocation of funds for that State. If a State opts-in to do the review and ranking for NTIA and either there are insufficient projects submitted or the State fails to complete the task prior to the next Notice of Availability of Funds – those funds become available for NTIA/RUS disbursement under the second NOAF.*
- [E] *NTIA/RUS requires applicants to contemporaneously submit proposals to States electronically (and in hard copy) via a common application, and conditions application on unrestricted State access to related information. This would include a contact person (phone and e-mail) that is available to answer questions from that State.*
- [F] *NTIA/RUS gets quick answers through conference calls and regular communications with States that have experience running successful grant, digital literacy, and mapping programs.*

**[II] AGGREGATION STATE ROLE**

*States that have or are organizing public-private partnerships should be allowed to serve as “aggregators” for regionally-based or otherwise larger projects. All of the entities (both public and private) that are working together in partnership should be allowed to apply to NTIA as a group.*

**[III] STATE MAPPING PROGRAMS**

*DATA REPORTING TEMPLATE: NTIA provides reporting template and assures States can provide (and audit) detailed data. Companies should be required to provide granular market and geographical service coverage data as requested by any public agency that seeks to measure the extent of broadband availability to allow policy makers to establish goals for future deployment.*

*GOVERNOR DESIGNATION TEMPLATE: With respect to the “up to \$350 million” in mapping funds NOAF, NTIA should provide a short template letter for State Governors’ use that specifies the applicant is the “State designated” entity for BB data collection as required by the statute.*

**[IV] GENERAL POSITION ON ELIGIBILITY OF “ANY OTHER ENTITIES”**

*Under the Statute, “to be eligible for a grant under the program, an applicant shall—(1)(A) be a State or political subdivision thereof . . . a territory or possession of the United States, an Indian tribe . . . ; (B) a*

*nonprofit— (i) foundation, (ii) corporation, (iii) institution, or (iv) association; or (C) any other entity, including a broadband service or infrastructure provider, that the Assistant Secretary finds by rule to be in the public interest.” NARUC has been asked to comment on the public interest rule that NTIA should adopt regarding eligibility of “any other entity.”*

**PROPOSED MINIMUM STANDARD:** *The public interest standard in this instance must be informed by the purposes and goals of the underlying legislation. As “State or political subdivision thereof” includes State Public Utility Commissions, State broadband authorities, and State universal service administration agencies, at a minimum, a private firm/sole proprietorship/individual’s participation in BTOP should be considered as in the public interest when that entity is acting in partnership with those entities. Also, if NTIA finds the entity/person is applying to serve otherwise unserved citizens (where unserved means no facilities-based Internet access other than dial-up or satellite-based access) or the entity/person’s offering would improve the quality or affordability of broadband in an area (where quality is judged along multiple dimensions including bandwidth (in either direction), redundancy, and reliability) – the standard is met.*