

**Before the  
DEPARTMENT OF COMMERCE  
National Telecommunications and Information Administration  
and  
DEPARTMENT OF AGRICULTURE  
Rural Utilities Service**

In the Matter of )  
 )  
**American Recovery and Reinvestment Act of 2009** ) Docket No. 090309298-9299-01  
**Broadband Initiatives** )

**COMMENTS OF  
THE WESTERN TELECOMMUNICATIONS ALLIANCE**

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Dated: April 10, 2009

## EXECUTIVE SUMMARY

The Western Telecommunications Alliance (“WTA”) proposes definitions of the terms “broadband,” “unserved area” and “underserved area” for the NTIA and RUS programs implementing the American Recovery and Reinvestment Act of 2009 (“ARRA”). WTA also notes that existing common carrier regulatory requirements, plus the FCC’s 2005 broadband policy statement, are thoroughly capable of dealing with any and all nondiscrimination and network interconnection issues that may arise during the implementation of such programs.

“Broadband” is a rapidly evolving service standard that should be defined at a reasonable and realistic level such as the FCC’s current 768 kbps transmission speed for initial ARRA purposes. Fiber deployment comprises a very effective and efficient means to create jobs and stimulate economic recovery. Given the very high cost of deploying fiber all the way to individual homes, NTIA and RUS will create more jobs and improve the service of more customers if they fund a larger number of projects that deploy fiber further out into many networks, than if they fund a smaller number of projects that lay fiber all the way to homes.

“Unserved areas” should be defined, consistent with the FCC’s current broadband standard, as areas whose residents and businesses do not have available to them a non-satellite-provided broadband service with a transmission speed of 768 kbps or greater.

“Underserved areas” should be defined as areas whose residents and businesses do not have available to them a non-satellite-provided broadband service with a transmission speed of 10-to-15 Mbps or greater. If there is ARRA money available for such areas, the floor should be set relatively high to encourage the deployment of fiber optic facilities significantly further out into networks.

Finally, lengthy delays and appeals to consider and resolve complex nondiscrimination and network interconnection obligations should be avoided by requiring grant and loan applicants (with the possible exception of state governments) to agree to common carrier regulation as a condition of receiving such grants or loans. The established jurisprudence of Communications Act provisions regarding interconnection [Sections 201(a) and 251(a)], just and reasonable charges and practices [Section 201(b)], and discrimination and preferences [Section 202(a)], as well as the FCC’s 2005 broadband policy statement, can satisfy the ARRA requirements regarding nondiscrimination and network interconnection efficiently and effectively, so that funds can begin to be dispensed and jobs can begin to be created during the next few months.

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The Western Telecommunications Alliance (“WTA”), a trade association that represents approximately 250 rural telephone companies (RLECs”) operating west of the Mississippi River, submits its comments with respect to the joint request of the National Telecommunications and Information Administration (“NTIA”) and the Rural Utilities Service (“RUS”) for further information regarding NTIA’s establishment and administration of its Broadband Technologies Opportunity Program (“BTOP”) and RUS’s implementation of its expanded authority to make grants and loans for the deployment and construction of broadband systems.

WTA is particularly concerned about the definitions of the terms “broadband,” “unserved area” and “underserved area” that will be employed with respect to the NTIA and RUS programs. WTA also notes that existing common carrier regulatory requirements, plus the Federal Communications Commission’s (“FCC’s”) 2005 broadband policy statement,<sup>1</sup> are thoroughly capable of dealing with any and all nondiscrimination and network interconnection issues that may arise during the implementation of the NTIA and RUS programs, and that the primary impact of detailed consideration of these complex issues in the current proceeding will be to delay the broadband construction and economic stimuli so urgently needed by the nation.

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<sup>1</sup> *Policy Statement*, CC Docket Nos. 02-33, 01-337, 95-20 and 98-10, GN Docket No. 00-185 and CS Docket No. 02-52, FCC 05-151, released September 23, 2005.

### Definition of “Broadband”

“Broadband” is a rapidly evolving term that will continue to change during the two-year horizon of the American Recovery and Investment Act of 2009 (“ARRA”). As recently as 2007, the FCC used transmission speeds of 200 kilobits per second (“kbps”) to define “advanced” (i.e., broadband) services.<sup>2</sup> Today, 200 kbps is considered slow and unsatisfactory by more and more end users, and the FCC definition of “broadband” is moving from the First Generation Data Tier (200 kbps to 768 kbps) into the Basic Broadband Tier 1 (768 kbps to 1.5 Megabits per second (“Mbps”)).<sup>3</sup> During the foreseeable future, the definition of “broadband” is likely to move rapidly through more and more of the following tiers: (a) Broadband Tier 2 (1.5 Mbps to 3 Mbps); (b) Broadband Tier 3 (3 Mbps to 6 Mbps); (c) Broadband Tier 4 (6 Mbps to 10 Mbps); (d) Broadband Tier 5 (10 Mbps to 25 Mbps); (e) Broadband Tier 6 (25 Mbps to 100 Mbps); and (f) Broadband Tier 7 (greater than 100 Mbps). Some service providers are already offering transmission speeds as high as 100 Mbps in limited areas.

The definition of “broadband” for ARRA purposes also needs to consider the substantial expense of broadband deployment. Many RLECs have improvised combinations of fiber trunks and transitional digital subscriber lines (“DSL”) to provide broadband services to their customers without replacing major portions of their copper wire plant. However, further increases in bandwidth and transmission speeds will require the extension of fiber optic loops and electronics first to the pedestal (“FTTP”), then to the curb (“FTTC”) and finally to the home (“FTTH”).<sup>4</sup> A 2006 National Exchange Carrier Association (“NECA”) study estimated that an investment of

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<sup>2</sup> Notice of Inquiry (*Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans*), GN Docket No. 07-45, FCC 07-21, released April 16, 2007, at par. 12.

<sup>3</sup> Wireline Competition Bureau Presentation of the Section 706 Report and Broadband Data Gathering Order (March 19, 2008 Open Meeting).

<sup>4</sup> In many rural exchanges in the western United States, the distance from the central office to some customer homes may be from 10 to 50 miles, and often encompasses rugged mountain, desert and forest terrain.

\$11.902 billion will be necessary to upgrade 5.883 million lines of its RLEC members to an 8 Mbps bandwidth that could accommodate voice service, two standard digital video streams and one 1.54 Mbps Internet connection.<sup>5</sup> Additional billions of investment dollars for fiber optic loops and electronics will be needed to increase bandwidth above 8 Mbps as RLEC customers demand more advanced services.

WTA recommends that NTIA and RUS recognize expressly that “broadband” is an evolving service standard, and define it at a reasonable and realistic level such as a 768 kbps transmission speed at the present time. WTA recognizes that fiber deployment comprises a very effective and efficient means to create jobs and stimulate economic recovery. However, given the very high cost of deploying fiber all the way to individual homes, it will create more jobs and improve the service of more customers for NTIA and RUS to fund a large number of projects that deploy fiber further out into many networks, than to fund a much smaller number of projects that lay fiber all the way to homes. Just as with construction of the interstate highway system, it is more effective and more equitable to improve many areas gradually than to focus upon providing high speed service immediately to a few areas at the expense of the rest of the nation.

WTA has no objection to different threshold broadband speeds for wireline and wireless services. WTA notes: (1) that wireline and wireless services are predominately complementary services, with substantial majorities of businesses and residences likely to subscribe to both for many years to come; and (2) that wireless carriers depend upon wireline facilities to connect their cell sites both within their own wireless networks and with the overall public telecommunications network. In addition, the increasingly buried wireline networks are more reliable in times of local, regional and national emergency.

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<sup>5</sup> National Exchange Carrier Association, *The Packet Train Needs to Stop at Every Door* (June 2006) at pp. 30-2.

### **Definition of “Unserved Area”**

WTA recommends that “unserved area” for ARRA purposes be defined as an area whose residents and businesses do not have available to them a non-satellite-provided broadband service with a transmission speed of 768 kbps or greater. This definition is consistent with the current boundary between the FCC’s First Generation Data Tier and its Basic Broadband Tier 1. Any area that does not have available locally the minimal level of service that the FCC considers to be “broadband” service at the present time should be considered to be “unserved” for ARRA purposes.

WTA proposes that the “area” portion of the “unserved area” definition be kept flexible. In many rural areas, there are “pockets” lacking broadband facilities and services that do not coincide neatly with political, census tract, postal, study area or other established boundaries. It would appear most reasonable to allow grant and loan applicants to define their proposed “unserved area” flexibly from a geographic standpoint, particularly given that NTIA and RUS have other weapons (e.g., NTIA’s “broadband speeds to the greatest population of users in an area” criterion) that would prevent grants or loans from going to contrived or gerrymandered geographic areas in a manner contrary to the public interest.

### **Definition of “Underserved Area”**

WTA believes that there are enough “unserved areas” needing minimal broadband service to make it unlikely that there will be a significant amount of ARRA dollars available to fund projects in “underserved areas.” If there is some money available, WTA recommends that the “underserved area” floor be set relatively high above the “unserved area” floor in order to encourage the deployment of fiber optic facilities (or wireless towers) significantly further out into networks. WTA believes that a floor in the lower end of the FCC’s Broadband Tier 5, for

example 10-to-15 Mbps, would constitute a reasonable definition of “underserved area” for ARRA purposes.

**Nondiscrimination and Network Interconnection Obligations**

Nondiscrimination and network interconnection obligations are complex issues that can take years to resolve, and whose implementation can be delayed by judicial appeals and legislative modifications. WTA recommends that these problems and delays be avoided by requiring all grant and loan applicants (with the exception of state governments if such raises Constitutional questions) to agree to be regulated as common carriers under the Communications Act of 1934, as amended, as a condition of receiving the subject grant or loan. Title II of the Communications Act contains substantive provisions -- including provisions requiring interconnection [Sections 201(a) and 251(a)], prohibiting unjust and unreasonable charges and practices [Section 201(b)], and prohibiting unjust or unreasonable discrimination as well as undue or unreasonable preferences [Section 202(a)] -- that have been tried and tested repeatedly and successfully in the telecommunications marketplace as well as FCC and judicial proceedings. Incorporating the FCC’s established common carrier jurisprudence, as well as its 2005 broadband *Policy Statement*, supra, constitutes the most efficient and effective way to satisfy the ARRA requirements regarding nondiscrimination and network interconnection obligations, so that funds can begin to be dispensed and jobs can begin to be created during the next few months.

Respectfully submitted

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