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RE: Summary of January 15, 2010 Notice of Funds Availability (“NOFA”) issued by the Rural Utilities Service for its Broadband Initiatives Program (“BIP”) – Infrastructure Projects

RUS announced the commencement of the second and final round of funding for its BIP program, established under the American Recovery and Reinvestment Act of 2009. The application window opens Tuesday, February 16 and closes Monday, March 15 at 5:00 p.m. EDT.

Highlights:

- BIP funding will be concentrated on Last-Mile projects
- A rural area that does not have broadband access at a rate of 5 Mbps (upstream and downstream, combined) in at least 50% of the area will be eligible
- The proposed funded service area must be at least 75% rural
- Standard award is 75% grant, 25% loan (subject to waiver requests)
- Applicants may not apply to both BIP and BTOP – must choose one.
- Cost per premise passed (calculated as award amount divided by # of premises) must be less than \$10,000 (subject to waiver requests).
- Two-step application process eliminated; Environmental Questionnaire required with application

Funding Availability:

Last Mile Projects - Up to \$1.7 Billion
Middle Mile Projects - Up to \$300 Million
Satellite Projects – Up to \$100 Million
Rural Library Broadband, and Technical Assistance Projects - Up to \$5 Million

GENERAL ELIGIBILITY:

1. **Fully Completed Application**
2. **Timely Completion of Project** – substantially complete (67%) in two years; fully complete in three years
3. **Technical Feasibility** - system design, network diagram and project timeline must be certified by a professional engineer for any application requesting funds over \$1 million.
4. **Nondiscrimination and Interconnection – same requirements as First Round**
5. **Service Areas – see discussion of Eligible and Ineligible Service Areas below**
6. **Fully Funded** - after approval of the award, all project costs must be fully funded.
7. **Financial Feasibility and Sustainability** – TIER of one and minimum current ratio of one by end of five-year forecast period.
8. **Leveraging of Recovery Act Funds** - Last Mile projects will only be funded to \$10,000 per premises passed, unless a waiver is requested from the Administrator.
9. **Service Requirements** - Projects must provide broadband service proposed in the application for the composite economic life of the facilities.

ELIGIBLE SERVICE AREAS:

Last Mile - Applications for Last Mile projects must predominantly provide broadband service directly to the premises or to end users in a proposed funded service area(s) that is/are 75 percent or more rural, within which not more than 50 percent of the premises in the rural areas have High Speed Access (5 Mbps).

Middle Mile - Applications for Middle Mile projects must provide interoffice transport, backhaul, internet connectivity or special access to interconnection points. At least 75 percent of the interconnection points must be in rural areas with no more than 50 percent of the premises having High Speed Access (5 Mbps). The communities in which the interconnection points terminate shall be used to determine the percentage of High Speed Access. For those interconnection points which do not terminate in any recognizable community, the nearest Census Designated Place shall be used.

INELIGIBLE SERVICE AREAS:

No Overlap - RUS will not fund more than one project to serve any given geographic area. If more than one application would serve any overlapping geographic area, the application with the highest score will be funded; other applications for the same area will be rejected in their entirety unless the overlap is *de minimis*, or less than 25 percent of each application's entire proposed funded service area. For the purposes of the Agency's determination of overlap, funding categories will not be subject to overlap analysis. For example, Last Mile projects shall not be considered to overlap with Middle Mile projects

Incumbent Service Areas - For all applications, the existing service area of RUS borrowers in which they provide broadband service shall not be eligible. These areas can be found at <http://www.broadbandUSA.gov>. In addition, the service areas of Awardees under the first round BIP/BTOP NOFA shall also be ineligible for funding

ELIGIBLE COSTS:

1. **Capital Costs of Construction** - To fund the construction or improvement of all facilities required to provide broadband service, including facilities required for providing other services over the same facilities, and including equipment required to comply with CALEA;
2. **Capital Leases** - To fund the cost of leasing facilities required to provide broadband service if such lease qualifies as a capital lease under GAAP. Award funds may be used to fund the cost of a capital lease for no longer than the first three years after the date of the Award Documents; and
3. **Application Expenses** - To fund reasonable pre-application expenses in an amount not to exceed five percent of the award. Pre-application expenses may be reimbursed if they are incurred after the publication date of this NOFA.

GENERAL APPLICATION REQUIREMENTS:

A complete application will include the following:

- a) The identity of the Applicant and general Applicant and project information including:
 - a. A description of the project that will be made public consistent with the requirements of the Recovery Act; and
 - b. The estimated dollar amount of the funding request;
- b) An executive summary of the project as detailed in the application;
- c) A description of the proposed funded service area including the number of premises passed including the number of critical community facilities, and public safety entities to be passed and/or involved in the project;
- d) Subscriber projections including the number of subscribers for broadband, video and voice services and any other service that may be offered;
- e) The number of jobs the project is expected to create or save;
- f) A map, as furnished on www.broadbandUSA.gov of the proposed funded service areas indentifying the unserved areas and the areas without High Speed Access.
- g) The names of the communities, census designated places or other areas, including tribal lands, within the proposed funded service area; information as to whether the communities and areas identified above are rural or non-rural; the methodology for making the above classifications; and for Middle Mile projects, identification of the locations of the interconnection points.
- h) A description of the proposed service offerings, and the associated pricing plan, that the applicant proposes to offer, as well as the advertised prices of service offerings by competitors in the same area and; an explanation of why the proposed service offerings are affordable;
- i) A description of the applicant's nondiscrimination, interconnection, and network management plans;
- j) A system design which includes a description of the proposed technology used to deliver the broadband service demonstrating that all premises in the proposed funded service area will be offered broadband service, a network diagram, a timeline including key milestones for implementation of the project, and a construction schedule all of which must be certified by a professional engineer who is certified in at least one of the states where there is project construction, if the funding request exceeds \$1,000,000, unless the Administrator determines that such certification is not possible; an estimate of the cost of the project per household; a depreciation schedule for the facilities proposed for funding, a description of the necessary work

- force needed to build and operate the system, whether the applicant is seeking a waiver of the Buy American provision; and whether the project allows more than one provider to serve end users; a list of all required licenses and regulatory approvals needed for the proposed project; and how much the applicant will rely on contractors or vendors to deploy the network facilities
- k) Resumes of key management personnel, a description of the organization's readiness to manage a broadband services network, and an organizational chart showing any parent organizations and/or subsidiaries and affiliates;
 - l) A legal opinion (as set forth in the application) that: (1) addresses the applicant's ability to enter into the award documents; (2) describes all pending litigation matters; and (3) addresses the applicant's ability to pledge security as required by the award documents;
 - m) Evidence of other Recovery Act awards, or collaboration with other Recovery Act awardees;
 - n) Summary and itemized budgets of the infrastructure costs of the proposed project, including if applicable, the ratio of loans to grants, and any other source of outside funding, especially any other Recovery Act funds under other federal programs, and an explanation of the cost per premises passed;
 - o) A detailed description of working capital requirements and the source of these funds;
 - p) Historical financial statements, Certified Public Accountant (CPA) audits if applicable, for the previous two calendar years;
 - q) Pro Forma financial analysis, prepared in conformity with US GAAP and the Agency's guidance on grants accounting, found at <http://www.usda.gov/RUS/pasd/auditreg.htm>, related to the sustainability of the project, including subscriber estimates and other proposed service offerings in addition to broadband Internet access; annual financial projections including balance sheets, income statements, and cash flow statements and supporting assumptions for a five-year forecast period as applicable; and a list of committed sources of capital funding;
 - r) Attachments required in the application;
 - s) A self-scoring sheet, analyzing the objective scoring criteria set forth in this NOFA;
 - t) The pricing package being offered to critical community facilities, or socially and economically disadvantaged small business concern (SDB) as defined under section 8(a) of the Small Business Administration, if any;
 - u) A list of all the Applicant's outstanding and contingent obligations, including copies of existing notes, loan and security agreements, and guarantees;
 - v) If an SDB, evidence that the applicant is an SDB;
 - w) A completed Environmental Questionnaire, other documentation requests, and required environmental authorizations and permits, including those required by the National Environmental Policy Act of 1969, as amended (42 U.S.C. § 4321 *et seq.*) (NEPA), the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470 *et seq.*) (NHPA), and the Endangered Species Act of 1973, as amended (16 U.S.C. § 1534 *et seq.*) (ESA) as applicable;
 - x) x. A description of measurable service metrics and target service level objectives (SLOs) (*e.g.*, the speed with which new service will be established, service availability, and response time for reports of system failure at a residence) that will be provided to the customer, and a description of the approach and methodology for monitoring ongoing service delivery and service quality for the services being employed;
 - y) Any waiver requests for projects proposing more than the \$10,000 per premises funding limitation, or for applications requesting more than 75% grant; and
 - z) Certification from the applicant that agreements with or obligations to investors do not breach the obligations to the government under the draft Award Documents.

ELIGIBLE ENTITIES:

1. Last Mile and Middle Mile Projects

- a. States, local governments, or any agency, subdivision, instrumentality, or political subdivision thereof;
- b. A territory or possession of the United States;
- c. An Indian tribe (as defined in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. § 450b));
- d. A native Hawaiian organization;
- e. A non-profit foundation, a non-profit corporation, a non-profit institution, or a non-profit association;
- f. Other non-profit entities;
- g. For-profit corporations;
- h. Limited liability companies; and
- i. Cooperative or mutual organizations

2. Satellite Projects

- a. A satellite Internet Service Provider (ISP);
- b. A reseller of satellite ISP service;
- c. A distributor or dealer of satellite ISP service; and
- d. A consortium of a, b, or c above.

SCORING:

Each application will be scored against the following objective criteria, and not against other applications.

CRITERIA	POINTS
1. Proportion of Rural Residents Served in Unserved Areas	10
2. Rural Area Targeting (2 points for every 5% above 75% rural)	10
3. Distance from Non-Rural Areas	5
4. Title II Borrowers	8
5. Other Recovery Act Awards	5
6. Performance of the offered service	10
7. Service to Critical Community Facilities and SDBs	6
8. Applicant's organizational capability	10
9. Socially and Economically Disadvantaged Small Business Concern	3

10. Leverage of outside resources (from new investments, not Applicant's existing resources)	10
11. Extent of grant funding	15
12. Cost Effectiveness a. 2 points if cost per premises passed is less than \$8,000. b. 4 points if cost per premises passed is less than \$7,000. c. 6 points if cost per premises passed is less than \$6,000. d. 8 points if cost per premises passed is less than \$5,000.	8
Administrator's Bonus Points (discretionary, for applications that provide significant assistance to critical community facilities (including libraries), promote rural economic development, support persistent poverty counties, serve chronically underserved areas, demonstrate cost effectiveness, offer low-cost service options and/or provide for geographic diversity.	10

AWARDS:

Standard award is 75% grant, 25% loan. The Administrator may grant a request for waiver for a larger grant component based on the following factors:

1. Distance from Non-Rural Areas - The Administrator will consider the distance from the focus of the proposed funded service areas from the closest non-rural area.

2. Rural Area Targeting - The Administrator will consider the percentage of the proposed funded service area that is above the 75 percent requirement.

3. Density - The Administrator will consider the density of the proposed funded service area, calculated from the population and area totals of all proposed funded service areas taken from the mapping tool.

4. Median Household Income - The Administrator will consider the median household income of the proposed funded service area, comparing the county median household income to that of the State median income level. For applications serving multiple counties, the Administrator will weigh the percentages of all counties.

5. Unemployment - The Administrator will consider the state unemployment level compared to the National Unemployment Level in the state of the proposed funded service area. For applications serving multiple states, the Administrator will weigh the percentages in each State.

Award Terms and Conditions:

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

2. Restrictions on Sale/Lease of Project Assets - The sale or lease of any portion of the award-funded broadband facilities shall be governed by the applicable Award Document and the Department's grant regulations at 7 CFR 3015, 3016, and 3019. Unless otherwise permitted in the Award Document, project assets cannot be sold while the loan is outstanding. Terms under which grant assets can be sold are outlined in the Department's grant regulations cited above

3. Interest rate - Loans shall bear interest at a rate equal to the cost of borrowing to the Department of Treasury for obligations of comparable maturity. The applicable interest rate will be set at the time of each advance.

4. Repayment period - Unless the Applicant requests a shorter repayment period, broadband loans must be repaid with interest within a period that, rounded to the nearest whole year, is equal to the expected Composite Economic Life of the assets to be financed, as determined by RUS based upon acceptable depreciation rates.

5. Security - The portion of the award must be adequately secured, as determined by RUS.

i. The loan and loan/grant combination must be secured by the assets purchased with the loan or loan/grant funds, as well as all other assets of the Applicant and any other co-signer of the loan documents that are available to be pledged to RUS.

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

iii. Unless otherwise approved by RUS, all property purchased with award funds must be owned by the Awardee.

iv. In the case of awards that include financing of facilities that do not constitute self-contained operating systems, the Applicant shall furnish assurances, satisfactory to RUS, that continuous and efficient service at the broadband funding speed will be rendered.

6. Post-Award Reporting Requirements are generally commensurate with the First Round requirements.

SECOND REVIEW:

Subject to available funding, Applicants with applications that have not been approved under the first review, may be requested to provide additional information if the application: (a) can be revised, reviewed, and awarded funds before the expiration of Recovery Act funding, (b) contains specific and limited adjustments; and (c) promotes significant economic rural development, as determined by the Administrator.

Applicants will have no more than 15 days within which to provide the additional information. Applicants will not be permitted to redo the application, but only provide the supplemental information the Agency has requested. The application with the additional information will be reviewed under the same standard as the first review. Any application that is processed under this procedure will be funded only after all properly submitted applications have been funded and will be subject to all applicable requirements under this NOFA.

TRANSFER OF APPLICATIONS:

For applications that NTIA determines it will not fund, but that may be consistent with RUS' BIP requirements and priorities, NTIA will transfer to BIP for consideration of funding. RUS will handle such applications, if timely received from NTIA, under its Second Review process outlined above.