

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

Comment Procedures Established )  
Regarding the Commission's ) GN Docket No. 09-40  
Consultative Role in the Broadband )  
Provisions of the Recovery Act )

**COMMENTS OF THE RURAL CELLULAR ASSOCIATION**

Rural Cellular Association (“RCA”),<sup>1</sup> by counsel, hereby provides comments on the consultative role that the Commission will be providing to the Department of Commerce’s National Telecommunications and Information Administration (“NTIA”) and the Rural Utilities Service (“RUS”) in implementing the broadband provisions of the Recovery Act.<sup>2</sup> Congress directed NTIA to consult with the Commission on the following five specific terms and concepts: (1) the definition of “unserved area”; (2) the definition of “underserved area”; (3) the definition of “broadband”; (4) the non-discrimination obligations that will be contractual conditions of Broadband Technologies Opportunities Program (“BTOP”) grants; and (5) the network interconnection obligations that will be contractual conditions of BTOP grants. The Commission may also provide expert, technical advice to RUS as it proceeds with its own programs.

**I. DEFINITIONS OF “UNSERVED AREA,” “UNDERSERVED AREA,” AND “BROADBAND SERVICE”**

As a general matter, RCA’s view is that the question of whether a given geographic area should be treated as unserved or underserved, for purposes of allocating Recovery Act grants and loans, should be driven by an assessment of the level of broadband speeds currently available in

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<sup>1</sup> RCA is an association representing the interests of nearly 100 small and rural wireless licensees providing commercial services to subscribers throughout the nation and licensed to serve over 75 percent of the country. Most of RCA’s members serve fewer than 500,000 customers.

<sup>2</sup> American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“Recovery Act”).

the area.<sup>3</sup> In addition, “broadband service” should be defined in a manner that sets the minimum levels of service that a Recovery Act grant or loan applicant must commit to provide in order to be eligible for receipt of a grant.

In determining the levels of transmission capacity that should be used for purposes of treating an area as unserved or underserved, RCA believes that the requirements and intent of the Recovery Act argue against any attempt to develop a “one size fits all” definition of these terms. There hardly can be disagreement that separate transmission speed thresholds should be used for unserved and underserved areas.<sup>4</sup> In addition, RCA believes that separate thresholds for wireline and wireless technology platforms also would best serve the purposes of the Recovery Act.

The Conference Report expresses the explicit congressional intent that “NTIA take into consideration the technical differences between wireless and wireline networks[,]”<sup>5</sup> and the Recovery Act specifies that NTIA must promote the objectives of the Broadband Program in a technologically neutral manner.<sup>6</sup> The congressional intent that the technical differences between wireless and wireline networks be taken into account supports the view that the definitions of “unserved area,” “underserved area,” and “broadband service” should accommodate current differences in broadband capacity between mobile wireless technologies and wireline technologies.

Further, adherence to the statutory objective of technological neutrality requires that the terms “unserved area,” “underserved area,” and “broadband service” be defined in a manner that does not preclude mobile wireless carriers from receiving BTOP funding. Establishing different

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<sup>3</sup> As RCA discusses further in this section, it is proposing that such assessments of broadband speeds be undertaken separately for wireline and wireless services.

<sup>4</sup> The statute, for example, establishes separate purposes geared to promote access to broadband service in unserved areas and underserved areas. *See* Recovery Act, §§ 6001(b)(1), 6001(b)(2).

<sup>5</sup> *Making Supplemental Appropriations for Job Preservation and Creation, Infrastructure Investment, Energy Efficiency and Science, Assistance to the Unemployed, and State and Local Fiscal Stabilization, for the Fiscal Year Ending September 30, 2009, and for Other Purposes*, Conference Report To Accompany H.R. 1, H. R. RPT. NO. 111-16, at 776 (2009) (Conf. Rep.).

<sup>6</sup> Recovery Act, § 6001(e)(1).

criteria for defining unserved areas and underserved areas, with lower transmission speed thresholds used for wireless technology platforms, will facilitate taking into account technical differences between wireless and wireline technologies, consistent with the purposes of the Recovery Act.

Developing definitions of unserved area, underserved area, and broadband service that preserve the opportunity of mobile wireless service providers to compete for funding helps to optimize the accomplishment of several purposes and objectives of the Recovery Act.<sup>7</sup> First, such definitions will maximize the options for delivering broadband services to unserved and underserved areas, and RCA believes that deploying broadband to these areas should be one of the most important priorities of the Broadband Program.

Second, such definitions will also increase the prospect that broadband services will reach unserved and underserved areas quickly (because wireless infrastructure deployment faces fewer obstacles than the deployment of wireline infrastructure), that the services will be affordable (because wireless infrastructure deployment can be done more efficiently than wireline infrastructure deployment, and because wireless carriers have demonstrated their ability to price their broadband services competitively), and that the services will be made accessible to the largest possible population in areas served (because wireless infrastructure deployment can achieve greater coverage footprints more rapidly than wireline infrastructure deployment).

Third, definitions of unserved area, underserved area, and broadband that accommodate participation by mobile wireless carriers in the Recovery Act's funding and loan programs serve the congressional intent of ensuring that "as many entities as possible [are] eligible to apply for a competitive grant, including wireless carriers . . . ."<sup>8</sup> This objective, which promotes grant

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<sup>7</sup> See Sprint *Ex Parte* Letter, Attachment at 1 (arguing that broadband should be defined in a manner "that accounts for the unique value of mobile broadband relative to fixed alternatives. Only mobile broadband services are capable of providing access everywhere, all the time and often at lower cost, which is essential to achieving universal broadband connectivity.").

<sup>8</sup> H. R. RPT. NO. 111-16, at 775.

awards and loans to carriers that can deploy affordable broadband services quickly and widely, will maximize benefits to consumers.

With these considerations in mind, RCA suggests that the terms “unserved area,” “underserved area,” and “broadband service” be defined in the following manner.<sup>9</sup> First, “unserved area” should be defined, in the case of wireless services, to mean any area in which no wireless service with a transmission capacity of at least 200 kbps (in at least one direction) is available. RCA believes that establishing separate speed thresholds for wireless and wireline technologies will promote competition (which would serve the statutory objectives of affordability and the maximization of subscribership),<sup>10</sup> and it will give consumers a greater range of options for broadband access (*e.g.*, the utilization of mobile broadband services).

Although RCA recognizes that the FCC recently revised upward the 200 kbps threshold in its definition of broadband services,<sup>11</sup> it is also the case that downlink services ranging from 200 kbps to 768 kbps continue to be offered by carriers in rural broadband services markets.<sup>12</sup> It therefore would be reasonable to treat an area as unserved, with regard to wireless services, if

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<sup>9</sup> RCA notes that, for purposes of the following discussion, it proposes that threshold speeds used in defining unserved areas, underserved areas, and broadband service should be measured and evaluated as speeds that are capable of being provided by a given broadband technology. *See* NTIA & RUS, Joint Request for Information (“JRI”), American Recovery and Reinvestment Act of 2009 Broadband Initiatives, 74 Fed. Reg. 10716, 10719 (Mar. 12, 2009).

<sup>10</sup> *See* Recovery Act, Division A, Title I, Rural Utilities Service, Distance Learning, Telemedicine and Broadband Program (priority for awarding funds “shall be given to project applications for broadband systems that will deliver end users a choice of more than one service provider”); *see also* *Oversight of the American Recovery and Reinvestment Act: Broadband: Hearings Before the Subcomm. on Communications, Technology, and the Internet of the H. Comm. on Energy and Commerce*, 111th Cong. (Apr. 2, 2009), Statement of Rep. Boucher, Chairman, H. Comm. on Communications, Technology, and the Internet (“Boucher Statement”) at 2 (noting that communities should get “the benefit of market competition”).

<sup>11</sup> *See* *Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership*, WC Docket No. 07-38, Report and Order, 23 FCC Rcd 9691, *recon.*, 23 FCC Rcd 9800 (2008) 23 FCC Rcd at 9700-01 (para. 20 & n.66).

<sup>12</sup> *See* Gary Kim, *100 Percent Rural Broadband Access, Study Finds*, TMCNET (Nov. 4, 2008), accessed at [jobs.tmcnet.com/topics/broadband-comm/articles/44483-100-percent-rural-broadband-access-study-finds.htm](http://jobs.tmcnet.com/topics/broadband-comm/articles/44483-100-percent-rural-broadband-access-study-finds.htm) (reporting that, according to a survey conducted by the National Telecommunications Cooperative Association, about 19 percent of rural customers subscribe to broadband service at 200 kbps to 768 kbps).

services with transmission capacity of at least 200 kbps are not available in the area because wireless infrastructure has not yet been deployed in the area.

Second, “underserved area” should be defined, in the case of wireless services, to mean any area in which no wireless service with a transmission capacity capable of providing speeds of 1 Mbps (downlink) and 200 kbps (uplink) is available.<sup>13</sup> This definition would accommodate defining an area as underserved even if competitors are already providing services in the area. This is consistent with Chairman Boucher’s view, for example, that “[u]nderserved can . . . refer to communities with inadequate broadband speeds. A community should not be disqualified from the program because there are multiple providers offering broadband with a download speed of just 256 or 512 kbps.”<sup>14</sup>

In addition, the downlink and uplink thresholds proposed for wireless services are consistent with the transmission capabilities of many wireless carriers currently providing mobile services in rural areas and, therefore, setting these thresholds to define underserved areas would promote the Recovery Act’s objective of technological neutrality and participation of the widest array of service providers in the Recovery Act’s programs, because the thresholds would facilitate the eligibility of most rural carriers to compete for funding to deploy infrastructure and provide services in underserved areas.

Third, RCA proposes that “broadband service” be defined, in the case of wireless services, as a service that is capable of providing speeds of 1 Mbps (downlink) and 200 kbps (uplink). An important aspect of RCA’s proposal is that a grant or loan applicant would be required to commit to the provision of services capable of performing at these speeds in *both* unserved and underserved areas. Thus, even though an unserved area for wireless services would

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<sup>13</sup> See Letter from Eric C. Peterson, Executive Director, RCA, to Hon. Harry Reid, Majority Leader, U.S. Senate, Hon. Nancy Pelosi, Speaker, U.S. House of Representatives, Hon. Mitch McConnell, Republican Leader, U.S. Senate, Hon. John Boehner, Republican Leader, U.S. House of Representatives (Feb. 4, 2009), at 2.

<sup>14</sup> Boucher Statement at 2.

be defined as an area with no access to 200 kbps wireless broadband services, a wireless carrier would not be eligible for any funding unless the carrier committed to the provision of broadband services with transmission capacity capable of providing downlink speeds of 1 Mbps in the unserved area. The purpose of this proposed requirement is to accelerate as much as possible the deployment in rural areas of current generation broadband services that are widely available to consumers in urban areas.<sup>15</sup>

RCA believes that its proposed speed thresholds for defining broadband service are a practical and effective means of providing “the greatest broadband speed possible”<sup>16</sup> because, as NCTA has observed, setting the thresholds at higher speeds would risk “misallocating funds that should be devoted to higher priority geographic areas and populations, and could deter any . . . wireless investments in areas that do not currently support broadband, depriving those areas of jobs in building out broadband and perpetuating the lack of broadband service.”<sup>17</sup> RCA believes that the provision of broadband service that is capable of providing downlink speeds of 1 Mbps is currently achievable by many mobile wireless service providers and therefore would avoid the risks described by NCTA.

RCA also suggests that NTIA and RUS, in prescribing their rules for deciding whether a grant applicant has established eligibility to receive funding, should consider inclusion of a waiver process pursuant to which an applicant could still be found eligible for funding even if the applicant could not warrant that it would deploy services with the minimum transmission speeds required by the definition of broadband service.

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<sup>15</sup> Cf. Section 254(b)(3) of the Act, 47 U.S.C. § 254(b)(3) (“Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas.”).

<sup>16</sup> Recovery Act, § 6001(h)(2)(B).

<sup>17</sup> NCTA Comments at 19.

There may be cases in which a grant proposal makes a convincing showing that, for example, the proposed deployment of infrastructure would significantly increase affordability and subscribership to the greatest population of potential users in the service area. It might be found that allowing such an application to compete for and receive funding would bring substantial benefits to consumers in unserved or underserved areas, even though the grant applicant's service would provide less than the required speed thresholds. RCA believes that granting a waiver in such circumstances would serve the interests of consumers and would also address the congressional concern "that a specific speed threshold could have the unintended result of thwarting broadband deployment in certain areas."<sup>18</sup>

In evaluating the advisability of awarding Recovery Act grants or loans for the deployment of mobile wireless services that would provide the minimum speeds RCA is proposing, some parties may make the argument that it would be better to forego the funding of such deployment at the present time and instead wait for the deployment of 4G wireless technologies in rural areas. RCA strongly believes that such an approach would not be consistent with the purposes and intent of the Recovery Act, and would disserve consumers in rural areas, risking the perpetuation of policies that have had the effect of relegating consumers in unserved and underserved areas to a back seat regarding the availability of broadband services.

While it is true that 4G technologies such as LTE will offer enormous transmission capacity and will likely revolutionize mobile wireless broadband, deployment of these technologies in rural America may not occur in the near-term future.<sup>19</sup> There is no public policy justification for steering Recovery Act funding away from current generation mobile broadband

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<sup>18</sup> H. R. RPT. NO. 111-16, at 775.

<sup>19</sup> Widespread deployment of LTE is expected to begin to occur during 2012, but extending LTE to rural communities will likely take years. See Stacey Higginbotham, *Ericsson Expects Mass LTE Deployment in 2012*, GIGAOM (Feb. 19, 2009) accessed at [gigaom.com/2008/02/19/ericsson-expects-mass-lte-deployment-in-2012/](http://gigaom.com/2008/02/19/ericsson-expects-mass-lte-deployment-in-2012/); Marguerite Reardon, *Verizon Promises 4G Wireless for Rural Areas*, CNET.COM (Apr. 1, 2009), accessed at [reviews.cnet.com/8301-12261\\_7-10209933-51.html](http://reviews.cnet.com/8301-12261_7-10209933-51.html).

services because of the hope that technologies with faster speeds are just around the corner for rural communities.

Finally, defining “unserved area” and “underserved area” also involves a geographic component, in addition to the transmission capacity component RCA has discussed. RCA suggests that NTIA and RUS should use Census Tracts as the “building blocks” for designating areas in which grant or loan recipients would deploy broadband services. A grant applicant could propose any group or groups of contiguous Census Tracts as the area to be covered by the proposed project. The applicant would be required to demonstrate or certify that the area qualifies as an unserved area or underserved area, as the case may be, because the defined level of broadband service is not available from any existing service provider in any of the Census Tracts comprising the area.<sup>20</sup>

Using Census Tracts as a component of the definition of “unserved area” and “underserved area” would be technologically neutral because it would not be based upon any pre-existing service areas used either by wireline or wireless carriers. The use of Census Tracts would also help to target the deployment of broadband service at a very granular level. If larger areas were used, this would risk precluding an area from qualifying as an unserved area, for example, even though only a small percentage of end users in the area were receiving the defined level of broadband service from existing service providers. Finally, the use of Census Tracts would be relatively easy to implement because the FCC has begun to collect broadband service data at the Census Tract level.

## **II. NON-DISCRIMINATION AND NETWORK INTERCONNECTION OBLIGATIONS**

The Recovery Act requires NTIA, in coordination with the FCC, to publish non-discrimination and network interconnection obligations applicable to BTOP award recipients, and

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<sup>20</sup> RCA also suggests that NTIA and RUS develop rules or criteria that would prevent the disqualification of a grant application because of the *de minimis* presence of broadband services (at the levels established by NTIA and RUS in their definitions of unserved and underserved areas) in Census Tracts included in the grant application.

indicates that these obligations must include compliance with the FCC's broadband *Policy Statement*.<sup>21</sup> NTIA asks how BTOP should define the non-discrimination and network interconnection obligations.<sup>22</sup>

RCA's view is that the non-discrimination provisions should follow the FCC's *Policy Statement* but should not attempt to extend beyond it.<sup>23</sup> Any effort to develop more extensive or detailed requirements would be very controversial and would likely extend the period of time necessary for NTIA to prescribe the overall set of rules and requirements that will govern its administration of the Broadband Program. Given the fact that the *Policy Statement* has been a durable mechanism for preserving and promoting the interest of consumers in an open, interconnected public Internet, there is no persuasive reason to risk any such delay in the initiation of the grant program.<sup>24</sup> For the same reason, RCA believes that it would be sufficient and effective to base network interconnection obligations on the existing statutory and regulatory framework.

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<sup>21</sup> Recovery Act, § 6001(j).

<sup>22</sup> JRI, 74 Fed. Reg. at 10719.

<sup>23</sup> RCA agrees with Sprint that the *Policy Statement* should be applied in a manner that ensures that mobile carriers will be able "to continue to require that devices connected to their services do not harm the network or degrade the performance of the network for other users." Sprint *Ex Parte* Letter, Attachment at 2.

<sup>24</sup> See Howard Buskirk, Adam Bender & Mike Dolan, *Disagreement Likely on Open-Access Rules for Stimulus Grants*, COMM. DAILY, Mar. 24, 2009), at 3 (quoting Chris Guttman-McCabe, Vice President for Regulatory Affairs, CTIA) ("[t]he goal must be to get the stimulus money into the economy, 'not to spend the next several months debating these [non-discrimination] issues . . . in tortured detail'").

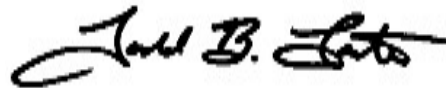
### III. CONCLUSION

The BTOP and the RUS broadband grant and loan programs provide an important opportunity for the expanded and accelerated deployment of broadband service, especially in rural America. As the expert agency on the current state of mobile wireless service and its future possibilities as a result of the funding made available in the Recovery Act, Congress has acknowledged the value the Commission can provide to both NTIA and RUS as each agency implements the broadband provisions of the Recovery Act.

In its consultative role, the FCC should provide recommendations consistent with directions provided by Congress through the Recovery Act that allow NTIA and RUS to craft grant and loan programs that effectively promote job creation and economic development, and that also advance the objective of bringing broadband networks to areas of the country that currently do not have a path to the digital future. Mobile wireless broadband providers look forward to participating in these funding programs and helping to achieve the goals and purposes of the Recovery Act in bringing broadband to rural America.

Respectfully submitted,

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