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April 13, 2009

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, D.C. 20554

Re: GN Docket No. 09-40; Comments Regarding the Commission's Consultative Role in the Broadband Provisions of the Recovery Act

Dear Ms. Dortch:

Today, the City of Chicago filed the enclosed comments with the National Telecommunications and Information Administration ("NTIA") of the U.S. Department of Commerce and the Rural Utilities Service ("RUS") of the U.S. Department of Agriculture. The City of Chicago filed its comments in regard to NTIA and RUS joint Docket No. 090309298-9299-01.

The City of Chicago also files these comments with the Federal Communications Commission (the "Commission") in the above referenced docket. As the Commission deliberates the definitions of "broadband", "unserved area", and "underserved area" in the above-referenced docket, the City of Chicago requests that the Commission take the enclosed comments into consideration.

Respectfully submitted,

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Chief Information Officer
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Enclosure(s)

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NEIGHBORHOODS Alive!
BUILDING CHICAGO TOGETHER

CHICAGO WORKS TOGETHER

Before the
DEPARTMENT OF COMMERCE NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION
and the
DEPARTMENT OF AGRICULTURE RURAL UTILITY SERVICE
Washington, D.C. 20230

In the Matter of	)	
	)	
Implementation of Section 6001 of the American Recovery and Reinvestment Act of 2009	)	Docket No.
	)	090309298-9299-01
Implementation of Title I of the American Recovery and Reinvestment Act of 2009	)	

EXECUTIVE SUMMARY OF THE COMMENTS OF THE CITY OF CHICAGO

"Broadband" should be defined in a forward-looking manner, with minimum speeds of 45 mbps downstream and 15 mbps upstream. Otherwise, the definition will be soon outdated.

Urban neighborhoods can be as disconnected as rural areas. The definitions of "unserved area" and "underserved area" should contemplate several factors, including availability and affordability of services, adoption rates, presence of competition, demographics and geography.

Prior, existing, in-kind or non-cash assets of the applicant and third parties should count toward the applicant's funding requirement. NTIA should favor applicants with comprehensive strategies to increase broadband adoption, promote digital inclusion, and facilitate policy goals.

States should assist NTIA in filtering out unqualified applications. States should not rank applications, though, as the states themselves may be grant applicants.

In evaluating whether a for-profit entity is acting "in the public interest," NTIA should look at several factors, including whether the entity: (1) is partnering with the public sector, (2) is not merely following its own, predetermined business plan, and/or (3) seeks to increase broadband adoption while decreasing the retail cost of broadband.

Before the
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COMMENTS OF THE CITY OF CHICAGO

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I. INTRODUCTION

Chicago is America's third largest city. With 9.5 million people, 4.5 million jobs, and 44 million visitors each year, the Chicagoland area has an economic impact of $453 billion.[1] Chicago is highly diverse in terms of demographics and socio-economic status: 58% of residents are non-white, 22% are foreign-born and 20% are below the poverty line (the per-capita income is $20,175).[2]

Despite their national importance as economic, social and cultural centers, large cities face significant challenges in ensuring that all residents are connected to digital infrastructure. Access to broadband is vital for participating in 21st century life and economy, and such access creates new value during a time of economic challenges. Many historically underserved populations in cities are as likely to be as disconnected as rural Americans. For example, 64% of African Americans, 58% of Hispanics and 57% of low-income people are online, as compared to 63% of rural residents.[3] Congress implicitly acknowledged the needs of urban areas by allocating funds to *both* the Rural Utilities Service ("RUS") and the National Telecommunications and Information Administration ("NTIA").

The City of Chicago believes that the Broadband Technology Opportunities Program ("BTOP") offers just that – an *opportunity* to bridge the digital divide wherever it lies through innovative, scalable approaches. NTIA can make the most of this once-in-a-generation

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[1] World Business Chicago Web site, "Our Story: An Overview" section, available at http://www.worldbusinesschicago.com/Portals/0/infocenter_files/our_story.pdf (last visited April 13, 2009).

[2] U.S. Census Bureau Web site, "Chicago QuickFacts" section, available at: http://quickfacts.census.gov/qfd/states/17/1714000.html (last visited April 13, 2009).

[3] The Pew Research Center's Internet & American Life Project Web site, "Demographics of Internet Users" section, available at: http://www.pewinternet.org/Data-Tools/Download-Data/~/media/Infographics/Trend%20Data/January%202009%20updates/Demographics%20of%20Internet%20Users%201%206%2009.jpg (last visited April 13, 2009).

opportunity by structuring the program in a manner that creates a level playing field; NTIA should allow the best programs and strategies from *across the nation* to compete against one another. Given the pioneering efforts and sustained focus of many cities on increasing broadband adoption, if NTIA allows urban areas to fully contribute to this marketplace of ideas the BTOP will ultimately benefit *all* Americans.

II. THE DEFINITION OF "BROADBAND," WHILE EVOLVING IN NATURE, SHOULD SPECIFY FORWARD-LOOKING, MINIMUM SPEEDS FOR DOWNLOAD AND UPLOAD.

NTIA and the Federal Communications Commission ("FCC") should recognize the evolving nature of the term "broadband." The City of Chicago urges NTIA and the FCC to seize this opportunity by setting a forward-looking definition of "broadband," as opposed to simply describing what "broadband" means today.

As a general principle, the concept of broadband is constantly and rapidly evolving. For example, as recently as 2000, the FCC affirmed that a 200 kbps download or upload speed constituted broadband access.[4] By 2008, the FCC revised its definition of broadband so that 768 kbps to 1.5 mbps constituted "*basic* broadband."[5] In other words, the FCC effectively found that, within a mere eight years, an Internet user's broadband needs increased by 3.5 to 7.5 times.

Although the concept of "broadband" is evolving, it is nonetheless critical for NTIA and the FCC to specify which minimum download and upload speeds qualify as broadband. Specifying minimum speeds, while they may soon be outdated, is a necessary task, primarily because of the significance attached to the term "broadband." For example, in order to

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[4] *Inquiry Concerning the Deployment of Advanced Telecommunications Capability*, CC Docket No. 98-146, *Second Report* ¶ 12 (2000).

[5] *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 and Further Notice of Proposed Rulemaking* ¶ 20 (2008).

determine which grant applicants would provide access or improved access to broadband, one must first specify an expected minimum service level. Further, NTIA or other organizations may look to the definition of "broadband" in administering their own future programs. In short, a definition with specified minimum speeds is easiest to administer.

The City of Chicago urges NTIA and the FCC to adopt the forward-looking minimum speeds of 45 mbps downstream and 15 mbps upstream, which would ensure investments in a competitive future. Assuming that the FCC's current definition of basic broadband (i.e., 768 kbps to 1.5 Mbps) will soon be outdated, it makes little sense to base grant awards on a definition of limited utility. Accordingly, NTIA and the FCC should seize this opportunity to define "broadband" with a vision toward the future.

III. NTIA SHOULD DEFINE THE TERMS "UNSERVED AREA" AND "UNDERSERVED AREA" USING SEVERAL FACTORS, INCLUDING AFFORDABILITY AND COMPETITION.

Throughout the NTIA and RUS public meetings, a consensus seemed to emerge that "unserved area" and "underserved area" should not be defined by one, particular characteristic. Instead, these terms should contemplate several factors, including availability of services, affordability of services, adoption rates, presence of competition, and other demographic and geographic characteristics.

These definitions should include several factors because the BTOP ultimately seeks to ensure all areas become "*served*"; and "served" should mean the universal adoption of broadband. Therefore, NTIA should broadly construe "unserved area" and "underserved area" to encompass the distinct characteristics of various communities. For example, in urban areas, many neighborhoods have low adoption rates where Internet access is simply unaffordable.

Other urban neighborhoods that have been converted from industrial to residential use may have limited Internet access.

These terms should not be defined simply by the availability of Internet access because certain types of broadband access are widely available throughout the United States today. For example, HughesNet currently advertises satellite download speeds of up to 5 mbps as available everywhere.[6] Further, as the Appalachian Regional Commission representative pointed out during the March 19, 2009 public meeting, T1 lines are throughout Appalachia for users willing to pay $3,000 per month.[7] No one would reasonably consider the *entire* United States as being "served," despite the availability of these types of broadband access. Instead, it is generally accepted that the nation has not achieved universal broadband adoption. Therefore, definitions based solely upon availability are less accurate than more robust definitions that consider additional factors such as affordability, competition and demographics.

Last, and as a matter of administrative convenience, the City of Chicago suggests that it is not entirely necessary to distinguish between "unserved area" and "underserved area" for purposes of BTOP funding. By definition, an "unserved area" is, at the very least, an "underserved area" as well. In enacting the American Reinvestment and Recovery Act of 2009 ("Recovery Act"), Congress stated five purposes of the BTOP.[8] Congress chose to not prioritize any of the five purposes over the others. Instead, the Recovery Act implies that all five purposes

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[6] Hughes Network Systems LLC Web site, available at www.hughesnet.com (last visited April 13, 2009).

[7] American Recovery and Reinvestment Act of 2009, Roundtable and Public Comment on the Definition of Underserved Areas and Reaching Vulnerable Populations, March 19, 2009, 1:00 pm – 2:30 pm (statement of Mark DeFalco, Appalachia Regional Commission), available at http://www.ntia.doc.gov/broadbandgrants/090319/NTIA_031909_1300_1430_session.pdf (last visited April 13, 2009).

[8] The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 ("Recovery Act") § 6001(b) (Feb. 17, 2009).

are equally important and work in conjunction with one another.[9] Therefore, NTIA could simply determine whether an area is, at a minimum, "underserved" *as opposed to* "served."

IV. NTIA SHOULD BROADLY CONSTRUE REQUIREMENTS FOR GRANT APPLICATIONS SO AS TO NOT EXCLUDE VALUBLE PROJECTS FROM CONSIDERATION.

A point of consensus throughout the NTIA and RUS public meetings was that the requirements for grant applications should not work to exclude potentially valuable projects from consideration. NTIA should adopt flexible definitions concerning BTOP's 20% matching requirement. Where grant applicants seek to contribute prior, existing, in-kind or non-cash assets to a proposed project, NTIA should consider those assets as constituting a source of the project's funding. NTIA should also consider third-party investment, which is tied to the applicant's project, as also contributing toward the project's funding.

By way of example, if a non-profit foundation proposes to dedicate employee time toward a proposed project, NTIA should accept an assignment of monetary value toward that contribution for purposes of the 20% matching requirement. As another example, if an applicant secures volunteer time, donated hardware, or non-cash contributions as part of grant application, NTIA should value those contributions.

NTIA should not penalize grant applicants for being resourceful. Donated or in-kind contributions should not be deemed valueless simply because an applicant did not pay for those assets. To do otherwise – to consider the 20% funding requirement as being solely cash contributions – could serve to unfairly disfavor public and non-profit entities.

[9] *See Id*.

V. SELECTION CRITERA SHOULD FAVOR APPLICATIONS THAT REFLECT COMPREHENSIVE TECHNOLOGY DEVELOPMENT STRATEGIES.

Throughout the Recovery Act, Congress has signaled its intent that the BTOP should serve a larger technology development strategy. For example, Congress mandated that NTIA, RUS and the FCC act in coordination with one another.[10] As another example, NTIA is to consider whether infrastructure deployments will impact the greatest population of users.[11] Further, Congress designated funding not only for infrastructure but also for programs aimed at increasing public computer capacity and sustainable adoption of broadband service.[12]

To best serve Congress' intent, NTIA should favor applications that reflect broader strategies. These strategies should aim to increase adoption of broadband, promote digital inclusion, and facilitate healthcare access, community economic development and other policy goals.

One manner in which to favor broader strategies is to favor applications that focus on partnerships. Partnered projects reflect strategies in which public entities, private entities, grassroots non-profit organizations and community anchor institutions have *already* negotiated their interests to fit within a broader strategy. Additionally, a preference for broad partnerships would help solve the question of how to resolve differences among competing groups and constituencies within states. By favoring partnerships, NTIA can essentially shift the burden of resolving competing interests onto the groups and constituencies themselves. Further, NTIA can avoid winner-take-all situations – and ensure more sustainable adoption of services – by

[10] *Recovery Act* § 6001(a).

[11] *Recovery Act* § 6001(h)(2).

[12] *Recovery Act* tit. II

rewarding the solutions that public, non-profit, and for-profit entities negotiate on their own terms.

As another essential component of favoring comprehensive technology development strategies, NTIA should also focus on applications with long-term, strategic impact for the nation. Much discussion during the NTIA and RUS public meetings focused on solving next-generation problems now. Projects aimed at meeting the challenge of sustainable and inclusive adoption of advanced broadband services should be prioritized, as should projects that support broadband applications addressing broader goals of the Recovery Act and the federal government. Favoring such applications that provide a long-term, strategic impact will pay future dividends by serving as models that are scalable throughout the United States.

VI. STATES SHOULD FILTER OUT UNQUALIFIED APPLICATIONS, BUT SHOULD NOT RANK APPLICATIONS, AS THE STATES THEMSELVES MAY BE GRANT APPLICANTS.

In determining the role of states, NTIA should acknowledge that the states' dual role under the BTOP creates a degree of inherent tension. States are potential grant applicants;[13] and they are also potential evaluators of grant applications.[14] Perhaps because of this tension, Congress permitted, *but did not require*, NTIA to consider States' evaluation of grant applications.[15]

States and local governments should not rank applications based upon merit. Unlike for-profit entities, which must be "in the public interest" to apply for BTOP funds, the Recovery Act considers state and local governments as unconditional grant applicants. Accordingly, NTIA

[13] *Recovery Act* § 6001(e)(1)(A).

[14] *Recovery Act* § 6001(c).

[15] *Id*.

must expect that states and localities will inevitably apply for BTOP funds. Because of the inherent tension in a dual role as contestant and judge, neither states nor their political subdivisions should *rank* BTOP grant applications. Only NTIA should fulfill that task.

Understanding that NTIA must review a high volume of grant applications, states can play a critical role in siphoning out unqualified grant applications. If NTIA invites states to participate in the review process, states could review applications *for a baseline of merit and feasibility*, and forward only qualified applications to NTIA. Delegating only the task of baseline review would minimize a state's conflict of interest.

Whatever role states do ultimately play, the insight which local governments possess should be included as a valuable contribution to any state-level evaluation process. The maxim that "government works best when it is closest to the people" is equally applicable to both states *and* their political subdivisions. Therefore, states should consult with local units of government regarding BTOP applications which affect those localities.

VII. WHETHER A FOR-PROFIT ENTITY IS PARTNERING WITH THE PUBLIC SECTOR SHOULD BE ONE FACTOR PLACING IT "IN THE PUBLIC INTEREST."

The City of Chicago suggests that the determination of whether a for-profit entity's BTOP application is "in the public interest" is not a bright-line test. Whether a project is in the public interest depends upon which public is being served. For example, a rural community, an urban community, and a tribal community may each have different conceptions of the public interest. Therefore, the Assistant Secretary should not rule that "in the public interest" is possessing one, black-and-white characteristic.

Instead, the Assistant Secretary should apply a multi-factored test to determine whether a for-profit entity is "in the public interest." The City of Chicago suggests *some* factors to consider

are whether the for-profit entity: (1) is acting in partnership with public or non-profit entities; (2) is not merely following its own, predetermined business plan, and/or (3) seeks to increase broadband adoption while decreasing the retail cost of broadband.

During the NTIA and RUS March 2009 public meetings, several commentators proposed *singular* definitions of whether for-profit entities should be deemed as "in the public interest." The City of Chicago urges the Assistant Secretary to disfavor one-dimensional definitions of "the public interest." For example, an entity is not "in the public interest" simply by seeking to fulfill one of the five purposes of the BTOP. If this were so, *all* for-profit entities would qualify to apply for a grant merely by attempting to fulfill a grant purpose, which was not Congress' intent. Congress intended the term "in the public interest" as a limit upon for-profit grant applicants. As another example, a for-profit entity's status as a licensee or franchisee does not *necessarily* place that entity "in the public interest." By way of analogy, licensed retailers, licensed drivers, or licensed software users are not acting "in the public interest" simply because they are licensees.

Ultimately, the guiding principle as to whether a public interest is being served is best summarized by the testimony of NTIA Senior Advisor Mark Seiffert before the House Subcommittee on Communications, Technology, and the Internet. On April 2, 2009, Mr. Seiffert stated that NTIA views "these grants as a test-bed or proof of concept for sustainable, viable, and scalable projects. For example, we encourage partnerships between small businesses, municipalities, and others that may demonstrate nontraditional but effective ways of getting broadband into communities. These grants will not be just for large companies. When the

economy recovers, these projects should show future investors the way forward."[16] Along these lines, any definition of "in the public interest" should rigorously challenge for-profit entities to meet NTIA's stated vision for the BTOP.

VIII. CONCLUSION

The Broadband Technology Opportunities Program is potentially a transformative moment in the technological development of the United States. Incorporating these key principles into the Broadband Technology Opportunities Program will help ensure that all projects contribute to Congress' vision of a 21st century America with increased adoption of broadband technologies.

In crafting the Recovery Act, Congress recognized that *long-term* infrastructure investment is deserving of government attention and investment. Building digital infrastructure that will contribute to America's global competitiveness requires a rigorous definition of broadband that is appropriate for our status as a global leader. It also necessitates that the stewards of this infrastructure – whether public or private – are deploying and maintaining it in a manner that is consistent with the larger public interest, not short-term financial concerns.

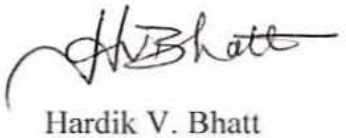
Infrastructure itself is not enough, though. Simply investing additional public resources in the business models and approaches of the past will not help America attain the goal of universal, sustainable adoption of broadband services. Instead, NTIA should prioritize projects that involve broad partnerships including government, businesses, grassroots non-profit organizations and community anchor institutions. Ensuring end-user adoption will require NTIA

[16] Hearing on "Oversight of the American Recovery and Reinvestment Act of 2009: Broadband" Before the House Subcommittee Communications, Technology, and the Internet, 2009, 111th Cong. 7 (April 2, 2009) (testimony of Mark G. Seiffert).

to favor projects that acknowledge broadband's role in fulfilling real human needs, rather than delivering "technology for technology's sake."

Lastly, rather than expanding broadband through top-down approaches like formula funding, Congress recognized that the most innovative and context-appropriate strategies would best be identified through a national competition for funding. NTIA should prioritize projects itself because it has the benefit of viewing the full national "landscape." NTIA should design the grant review process so that the best proposals quickly rise to the attention of national policy makers.

Respectfully submitted,



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