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Federal Broadband Grant Program Approaches Halftime

The "first round" of federal broadband grant applications are under review; grant notices are likely to be issued very soon. With indications that there will be only one more round of grant awards, anyone interested in applying for funds under the Recovery Act's various broadband initiatives would be well advised to start planning now.

The Recovery Act provided a total of \$7.2 billion in funding to advance the deployment of broadband infrastructure and the adoption of broadband services. The Commerce Department's National Telecommunications and Information Administration ("NTIA") and the Department of Agriculture's Rural Utilities Service ("RUS") initially proposed three rounds of funding, with the first round making available a total of \$4 billion dollars. In that first application round, which ended in August, the agencies received nearly 2,200 applications for broadband projects, seeking some \$28 billion in financing – well in excess of the amount to be made available. In addition to telecom industry participants, a wide variety of entities submitted applications, including non-profit organizations, so-called "anchor institutions" such as libraries and educational institutions, state, local and tribal governments, and public safety entities.

Processing of the applications filed for broadband funding under the Recovery Act in the first application round is underway. On September 28, 2009, the agencies posted "Public Notice Filings" (or "PNFs") to their BroadbandUSA.gov website for the majority of the infrastructure applications received. Existing service providers had a 30-day period within which to submit comments on those applications; *i.e.*, by Wednesday, October 28, 2009. Approximately three dozen other applications were the subject of PNFs on October 20, 2009, with a comment deadline of November 20, 2009.

Existing service providers who wish to submit a "response" to one or more of the first-round applications for broadband infrastructure projects must do so through an online system available through the BroadbandUSA.gov site. The comment process does not apply to applications seeking funding for other fundable projects (e.g., for computer centers). Each proposed service area must be "responded to" separately; combined comments covering multiple service areas are not sufficient. NTIA and RUS have stressed to existing service providers that commenting on any application is purely voluntary, and the providers are under no obligation to file comments. Nonetheless, if an existing service provider does not comment on a proposal, its service area will not be considered when the agencies evaluate the eligibility of that applicant's proposed service areas as "unserved" or "underserved."

NTIA and RUS have previously indicated that they anticipate issuing a Notice of Fund Availability ("NOFA") to open a second application round by the end of this year. Many of the eligibility and application requirements applicable in the first round will likely apply to subsequent rounds, including requirements that any proposed service areas qualify as unserved or underserved. Nonetheless, the agencies have indicated that application requirements in the second round may be modified based upon their experience in the first round; prospective applicants should pay close attention to the NOFA when it is released. In light of the overwhelming response to the first round, interested parties would also be well-advised to assume that there may not be sufficient funds to permit a third round of applications, and that the second round may be their last opportunity to participate in the broadband funding program.

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