



Please contact any of the attorneys in our Telecommunications Group if you have any questions regarding RUS and NTIA Release Recovery Act Broadband Funding Application Alert.

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RUS and NTIA Release Recovery Act Broadband Funding Application Package

USDA's Rural Utilities Service (RUS) and NTIA yesterday afternoon released the highly anticipated Notice of Funds Availability (NOFA), soliciting applications for the first round of funding assistance available through the \$7.2 billion established by the Recovery Act (the "Act") for broadband initiatives. Approximately \$4 billion has been allocated to this first round of funding, as detailed below.¹ This memorandum outlines the general policy and application requirements and procedures for the Act's broadband initiatives: the RUS Broadband Initiatives Program (BIP) and the NTIA's Broadband Technology Opportunities Program (BTOP).

Applications for funding assistance will be accepted between **July 14 and August 14, 2009**. RUS and NTIA intend to announce the awards under this NOFA starting on or about **November 7, 2009**.

I. Overview of BIP and BTOP

RUS Broadband Initiatives Program (BIP). The Recovery Act appropriates \$2.5 billion for RUS to extend loans, loan/grant combinations and grants to projects where 75 percent of an RUS-funded area is in a rural area that lacks sufficient access to high speed broadband service to facilitate rural development. BIP will fund broadband infrastructure in qualifying areas.

NTIA's Broadband Technology Opportunities Program (BTOP). The Act appropriates \$4.7 billion to NTIA to provide grants for broadband initiatives throughout the U.S., including unserved and underserved areas. NTIA's BTOP will award grants to programs that support the deployment of broadband infrastructure in such areas, enhance broadband capacity at public computer centers, and encourage sustainable adoption of broadband service.

¹ Additional funds will be available under subsequent funding rounds. Requirements in subsequent NOFAs may, however, differ from those specified in the first NOFA to achieve the agencies priorities.

II. The Joint NOFA (First Round of Funding)

A. Allocation of Funds

BIP Funding Highlights

- Approximately \$2.4 billion has been allocated to this first round of BIP funding
- Up to \$1.2 billion is available for Last Mile projects: \$400 million in grants; \$800 million for loans or loan/grant combinations
- Up to \$800 million is available for loans or loan/grant combinations for Middle Mile projects

BTOP Funding Highlights

- Approximately \$1.4 billion has been allocated to this first round of BTOP funding
- Up to \$1.2 billion is available for *Broadband Infrastructure* projects
- Up to \$50 million is available for *Public Computer Center* projects
- Up to \$150 million is available for *Sustainable Broadband Adoptions* projects

B. Description of BIP Funding Opportunity

The *BIP Broadband Infrastructure* funds are available through three categories of projects: Last Mile Remote Area projects, Last Mile Non-Remote Area projects, and Middle Mile projects. Last Mile Remote Area projects predominantly provide broadband directly to the premise or to end users within completely remote areas. Last Mile Non-Remote Area projects may encompass both remote and non remote areas. Middle Mile projects must connect at least two points without predominantly providing broadband service to the premise or end users, and must be capable of bringing broadband service to eligible service areas.

BIP grants are to be used to fund applications proposing to exclusively serve remote, unserved, rural areas. BIP loan and loan/grant combination funds are to be used to provide funding to applications proposing to serve non-remote and underserved rural areas. Projects which include non-remote and remote areas will be funded by BIP loans or loan/grant combinations. The size of the grant portion of any loan/grant combination award is determined by the applicant, but may not exceed the amount of the loan portion of the award. RUS will favor applications that propose a higher percentage of loan funds. Applicants may request 100 percent loan funding. RUS will seek to make the extension of broadband infrastructure into difficult-to-serve areas affordable—a key objective of BIP funding—through substantial grant funds and attractive loan terms with reasonable security requirements.

Applicants for BIP funding assistance that also wish to apply for BTOP funding must complete the additional elements required of BTOP infrastructure applicants. NTIA may make awards to such applications that it determines to be meritorious after RUS has reviewed the application and determined not to fund it.

² NTIA yesterday also released a separate NOFA for the State Broadband Data and Development Program, which is a competitive, merit-based matching grant program that will fund projects that collect comprehensive state-level broadband mapping data, develop state-level broadband maps, aid in the development of a national broadband map, and fund statewide broadband planning initiatives.

C. Description of BTOP Funding Opportunity

BTOP funds are available through three categories of projects: Broadband Infrastructure; Public Computer Center and Sustainable Broadband Adoption.

The BTOP Broadband Infrastructure category (up to \$1.2 billion) consists of two subcategories – Last Mile and Middle Mile – and will fund projects that deliver broadband service through facilities to “Unserved” and “Underserved” areas, defined as:

- “Unserved” Area: an area composed of one or more contiguous census blocks where at least 90 percent of households in the proposed funded service area lack access to facilities-based, terrestrial broadband service, either fixed or mobile, at the minimum broadband speed (see below).
- “Underserved” Area: *Last Mile Projects*—an area composed of one or more contiguous census blocks where at least one of the following is met: 1) no more than 50 percent of households in the proposed funded service area have access to facilities-based, terrestrial broadband service at greater than the minimum broadband speed; 2) no fixed or mobile broadband service provider advertises broadband speeds of at least 3 Mbps downstream in the proposed funded service area; or 3) the rate of broadband subscribership for the proposed service area is 40 percent of households or less. *Middle Mile Projects*—an area composed of one or more contiguous census blocks where one interconnection point terminates in a census block area(s) that qualifies as unserved or underserved for Last Mile projects.

The Public Computer Center category (up to \$50 million) will fund projects that expand computer center capacity at entities that permit the public to use these computer centers, such as community colleges and public libraries.

The Sustainable Broadband Adoption category (up to \$150 million) will fund innovative projects that promote broadband demand, such as projects focused on broadband education, awareness, training, access, equipment or support, particularly among vulnerable populations.

D. Eligibility Factors

Eligible entities under both BIP and BTOP include for-profit corporations, limited liability companies, cooperative or mutual organizations, non-profits, including foundations, corporations, institutions, and associations, states, local governments, political subdivisions, Indian tribes, native Hawaiian organizations and other entities identified in the NOFA

In addition to submitting a complete application and all supporting documentation, applicants for both BIP and BTOP funds must demonstrate that they will substantially complete the proposed project no later than two years, and that the project will be fully completed no later than three years, following the date of issuance of the award.

Applicants for BIP and BTOP Broadband Infrastructure grants must also comply with the following requirements to be eligible for an award:

- The proposed project must offer “broadband” service, defined as two-way data transmission of at least 768 kbps downstream and at least 200 kbps upstream to end users; or sufficient capacity in a middle-mile project to support “broadband” service to end users.
- Only technically feasible projects will be eligible for an award under this NOFA. For any project requesting funds in excess of \$1 million, the applicant must submit “at a minimum” an engineer-certified system design and project timeline.
- The applicant must commit to the program’s Nondiscrimination and Interconnection Obligations.
- For Last Mile infrastructure projects, the applicant must provide service to the entire territory of each census block included in the funded service area unless the applicant can provide a reasoned explanation as to why providing coverage for an entire census block is infeasible.

All *Broadband Infrastructure* grant recipients that offer Internet access services for a fee must agree to participate in the State Broadband Data and Development Program.²

BIP applicants must also demonstrate that at least 75 per cent of the proposed funded area qualifies as a rural area without sufficient access to broadband service to facilities economic development, as well as demonstrate the project’s financial feasibility and sustainability beyond the funding period.

BTOP applicants must demonstrate that the project will advance one or more of BTOP’s five statutory purposes; provide at least 20 percent matching funds (unless a waiver petition is approved); document that the project would not be implemented during the grant period but for a federal grant; and demonstrate that the budget is reasonable.

E. Application and Submission Information

The contents of an application for funding assistance under BIP or BTOP vary depending on the category of funding: BIP or BTOP *Broadband Infrastructure*, *Public Computer Centers* or *Sustainable Broadband Adoption*. The NOFA contains detailed information about the application requirements for each category.

Applications must be submitted electronically at <http://broadbandusa.gov> (unless compliance would pose a hardship) between **July 14, 2009**, at 8:00 a.m. ET and 5:00 p.m. ET on **August 14, 2009**.

F. Two-Step Review Process

Applications will be individually reviewed using a two-step process, which as outlined in the NOFA, will differ in some respects depending on whether the application is for a BIP or BTOP program. Generally, in Step One, the application will be evaluated for completeness and eligibility, with those that are ineligible or incomplete rejected. Eligible applications will be scored against objective evaluation criteria, with the highest scoring applications invited to participate in Step Two of the process. (BTOP

applications will be evaluated by at least three expert reviewers against evaluation criteria, with scores averaged and applications considered to be the most highly qualified advancing for further consideration.) In Step Two of the application process (the “due diligence” phase), the administering agency – RUS or NTIA – will request the applicant to submit additional information to substantiate representations made in its application. Those applicants that advance to Step Two will have 30 days from the date of the request to submit the supplemental information to RUS or NTIA, which will review and analyze the information and assign a rating that reflects the consistency of the application with supporting documents.

Four categories of scoring criteria will be used to review and analyze BIP and BTOP applications: Project Purpose; Project Benefits; Project Viability; and Project Budget and Sustainability. Each application will be scored against the objective criteria, and not against other applications. The evaluation criteria vary, however, depending on whether the application is for BIP Broadband Infrastructure projects or one of the three BTOP project categories.

Please contact us if you would like additional information about these important funding opportunities.

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