
**Before the
National Telecommunications & Information Administration
and the
Rural Utilities Service
Washington, D.C.**

Joint Request for Information)
To: NTIA & RUS)

Docket No. 090309298-9299-0

**COMMENTS OF PCIA—THE WIRELESS INFRASTRUCTURE ASSOCIATION

AND

THE DAS FORUM (A MEMBERSHIP SECTION OF PCIA)**

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April 3, 2009

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I. INTRODUCTION

PCIA—The Wireless Infrastructure Association (“PCIA”) and The DAS Forum, a membership section of PCIA (“The DAS Forum”), hereby submit these comments to the National Telecommunications & Information Administration (“NTIA”) and the Rural Utilities Service (“RUS”) pursuant to a joint request for information¹. PCIA is a non-profit national trade association representing the wireless infrastructure industry. PCIA’s members develop, own, manage, and operate over 120,000 towers, rooftop wireless sites, and other facilities for the provision of all types of wireless services. The DAS Forum is a membership section of PCIA dedicated to the development of distributed antenna systems (“DAS”) as a component of our nation’s wireless infrastructure.

Wireless infrastructure providers deploy the backbone of broadband networks; as such, PCIA/DAS Forum member companies have a significant interest in the framework of broadband stimulus grant programs established by the American Recovery & Reinvestment Act² (“the Recovery Act”). Specifically, the Broadband Technology Opportunities Program (“BTOP”) administered by NTIA serves as a unique opportunity for our members to create jobs and engage capital investment on projects that make broadband a reality in unserved and underserved areas.

Currently, four or five wireless carriers provide broadband service, and others (such as Clearwire) are deploying broadband networks. Each carrier requires approximately 35,000 wireless facilities to deploy a nationwide broadband service at current capacity levels. This results in a significant need for wireless infrastructure of all types – towers, rooftop facilities, collocations on other structures, and where traditional facilities are not feasible, DAS. These facilities provide a broadband connection to approximately 270 million users of wireless devices.

¹ Joint Request for Information and Notice of Public Meetings, 74 Fed. Reg. 10716 (Mar. 12, 2009).

² Pub. L. 111-5, 123 Stat. 115 (2009).

Our members are uniquely positioned to enable wireless broadband deployment, which PCIA believes is the most efficient method of providing broadband to unserved and underserved areas. Wireless broadband can deliver fast, reliable broadband results to end-users and cover the frequently large distances between sparse populations with an infrastructure investment that requires a fraction of the time and cost it would take to lay fiber across huge swaths of land that inevitably will involve multiple land owners with whom providers must negotiate access rights. The deployment costs of wire or fiber in these rural areas are generally so great as to make it unlikely that any sustainable business model for these deployments could be developed. Yet, this is not so with wireless deployments, which can, depending upon the topography and demand, cover several miles with a single infrastructure point.

While wireless infrastructure deployment process is the most efficient form of broadband deployment in unserved and underserved areas, there are significant costs associated with the development and expansion of wireless infrastructure. These costs include, but are not limited to, (a) rent or license fees to secure land rights for the vertical structure, or pole attachment fees to deploy on utility infrastructure; (b) the physical structure itself (e.g., the tower, antenna array, and associated equipment); (c) backhaul to connect the facility to a central network; and (d) service costs and professional fees associated with securing land rights, zoning approvals, and other regulatory approvals.

As with any other business, the financial viability of a wireless facility requires a significant return on investment (“ROI”) for the developer. In many unserved or underserved areas, this ROI is not currently achievable because the volume of business that can be forecast will not recoup the cost of making the service available. The Recovery Act grants effectively would transform such unsustainable business models into positive business cases for wireless

infrastructure deployment by the private sector, which has the expertise to do so effectively. In order to maximize the likelihood of a project becoming economically feasible, NTIA should award grants to both wireless carriers and tower companies individually, or as co-applicants for a given project. Structuring grants in this manner will incentivize the two types of companies primarily responsible for the deployment of wireless broadband.

NTIA and RUS should remain faithful to Congressional intent that the Recovery Act's grants be made available to private-sector infrastructure providers, as discussed more fully herein. In addition, NTIA and RUS should establish broadband threshold speeds that do not discriminate among or against different broadband delivery methods (i.e., fiber-based, cable-based or wireless). Finally, BTOP programs should focus on "underserved" areas (defined as those areas in which there is only one provider of ubiquitous wireless broadband service) to provide the greatest public benefit and capital investment potential.

II. NTIA

A. Question 1. The economic and societal benefits of broadband deployment are significant; as such, no applicant should be required to address other Recovery Act provisions specifically.

The Recovery Act's stated goals of providing access or improved access to unserved and underserved areas will provide maximum benefit, both in terms of investment and job creation, and by paving a path for the digital future. Broadband deployment is the pre-requisite for many additional goals of the Recovery Act, including telemedicine, e-learning and public safety communications. As an initial matter, broadband accessibility is necessary for broadband utilization. Where broadband is not accessible, the Recovery Act envisions focus on creating or improving accessibility. As such, it is redundant and unnecessary for NTIA to require that

applicants for BTOP funding illustrate benefit to other Recovery Act goals, as such a requirement will delay grant administration and the very goals the Recovery Act envisions. Additionally, NTIA must not give any preference to public-private partnerships in grant administration decisions, and should provide equal grant funding eligibility to projects proposed by private-sector entities. As described above, the public benefits of broadband are sufficient to ensure that an equal footing for private-sector entities and projects will still result in significant public benefit.

B. Question 3. NTIA should find by rule that private-sector entities deploying wireless broadband infrastructure meet the Recovery Act’s “public interest” test, and must not use the “public interest” test to discriminate against private-sector wireless projects.

The success of the Recovery Act’s broadband stimulus provisions depends on the engagement of entities that deploy infrastructure across the country. These entities have expertise, long-standing community ties, “shovel-ready” projects, and the best ability to spark investment and create jobs. Private-sector entities have the ability to deploy infrastructure in unserved and underserved areas.

Congress indicated an unequivocal intent to extend grant eligibility to a broad category of providers. In the ARRA Conference Report section describing “Eligible Entities,” the conferees specifically stated that, “[i]t is the intent of the Conferees that, consistent with the public interest and purposes of this section, as many entities as possible be eligible to apply for a competitive grant, including wireless carriers . . . backhaul providers . . . and tower companies.”³ Legislative intent requires NTIA to adopt Congress’ broad expression of inclusion in defining eligible

³ ARRA Conf. Report, Division B, Title VI, Broadband Technology Opportunities Program, *available at* http://www.house.gov/billtext/hr1_cr_jesb.pdf (“Conference Report”).

entities, and NTIA must find by rule that private-sector entities that deploy any aspect of wireless broadband infrastructure are eligible for funding to the same extent as any other entity identified in the Recovery Act.

The finding that private-sector entities are eligible for Recovery Act grants will also enable the most efficient administration of this investment according to the Act's aggressive timetables. Any funds granted to private-sector entities will be narrowly-tailored to specific projects that NTIA can review for the individual merits and adherence to the Recovery Act's goals. Performance measurement is significantly more manageable with a direct relationship to the grantee. Additional bureaucracy created by the extraneous insertion of public-sector administration will only delay the delivery of grants for infrastructure development and capital investment. Recovery Act grants notwithstanding, private-sector entities succeed in large part based on the efficiency and expeditiousness of their developments. When applied to projects with Recovery Act assistance, that efficiency and expeditiousness will provide the greatest possible benefit for the Act's investment. Private-sector applicants, governmental entities and non-profit institutions should co-operate voluntarily, through mutual interest and agreements, but NTIA should not require such coordination as a condition of the "public interest" test, or of grant award qualifications.

C. Question 4. Selection criteria should reflect the role of wireless infrastructure as the best path to broadband access.

The problem of "underserved" areas (which should be defined as those areas in which there is only one provider of ubiquitous wireless broadband service) is at least as critical as that of "unserved" areas (which should be defined as areas in which no wireless broadband service is available). A greater portion of the population is "underserved" than "unserved," so efforts

pursuant to the Recovery Act to improve broadband networks in “underserved” areas will provide more benefit in terms of capital investment, job creation and ultimately, consumer utilization. Underserved areas exist in communities of all size, and in every region. As discussed more fully in Section II. H below, we urge NTIA to emphasize “underserved” areas to improve broadband coverage.

In order to encourage sustainable broadband adoption as intended by the Recovery Act, NTIA should give funding priority to wireless service deployment as the clear “path to the broadband future.” A recent study concluded that the vast majority of users will access broadband via mobile devices by 2020.⁴ Since the clear trend in user preference is to access the Internet via wireless device, NTIA should prioritize its Recovery Act grants in a way that will support users’ preferences.

Wireless broadband service is uniquely situated to take full advantage of improving technology. Wireless providers update their networks to provide faster broadband speeds. The current wireless industry transition from “3G to 4G” is an example. Of all broadband service options, wireless broadband is the easiest and quickest to adapt to throughput speed increases.

To the extent NTIA adopts any broadband speed standards, such standards must not discriminate among or against different broadband service delivery options. Whether through the adoption of a wireless-specific speed minimum that is reflective of current industry standard, or through the adoption of a generalized speed standard that accounts for wireless broadband speeds, standards must not eliminate any commercially-viable broadband service option from eligibility for Recovery Act grants.⁵

⁴ PEW CENTER FOR THE INTERNET & AMERICAN LIFE, THE FUTURE OF THE INTERNET III (Dec. 14, 2008) *available at* <http://www.pewinternet.org/Reports/2008/The-Future-of-the-Internet-III.aspx>.

⁵ Additionally, NTIA must take into account that many state-level “broadband mapping” efforts do not address the status of wireless broadband service. As such, such efforts offer only a partial view of current service. NTIA must

D. Question 9. NTIA should fully fund projects that would not otherwise be completed within the funding time period.

The Recovery Act expresses a preference for those projects that could not be completed within the allotted time period but for the funding. As discussed above, NTIA can alleviate the service gap in underserved and unserved areas by providing funds to create financial viability for projects not currently feasible for private-sector entities. NTIA should fully fund projects (i.e., should provide 80% of the project’s funding) when the applicant requests full funding and demonstrates its eligibility according to Recovery Act standards. NTIA should also provide grants to applicants requesting less than 80% funding, as these applicants are likely to propose projects that are financially sustainable.

E. Question 10. NTIA should encourage the removal of deployment delays at the state and local level.

As discussed above, private-sector entities have “shovel-ready” projects⁶ that can be initiated immediately upon Recovery Act funding. The most effective way for NTIA and other federal agencies, especially the Federal Communications Commission (“FCC”), to enable the timely completion of wireless broadband infrastructure proposals, and thereby provide direct and indirect economic benefits, is to reduce or remove delays to deployment that occur at the local and state level.

analyze any “broadband map” to ensure that grant administration does not discriminate among or between different broadband delivery service options.

⁶ As described in Section I above, the wireless infrastructure site development process requires significant costs and professional fees associated with securing land rights, zoning approvals, and other regulatory approvals. Wireless infrastructure providers typically do not expend these costs until they have a reasonable degree of certainty that the project is viable. As such, NTIA must not establish zoning or other regulatory approval as a pre-requisite for a conclusion that a project is “shovel-ready.” Entities that receive Recovery Act funding should be allowed to secure regulatory approvals expeditiously and immediately following the grant award.

Before any wireless infrastructure can be deployed, its siting must be approved at the local level. As PCIA and The DAS Forum have commented⁷ in a current FCC proceeding, the deployment of wireless infrastructure is all-too-often delayed at the local level by a zoning process which prevents the full deployment of wireless services, including broadband. The local “bottleneck” prevents residents in unserved and underserved areas from receiving wireless broadband, despite the mutual desires of both the providers and the consumers to make the service available.

The Telecommunications Act of 1996⁸ (the “TCA”) states that it is the duty of the local government to “act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time. . . .”⁹ Unfortunately, too many jurisdictions do not provide decisions on wireless infrastructure within any type of reasonable time period, often a period of years, delaying the wireless deployment process.

One practical way of limiting delays is for the FCC (pursuant to its authority under TCA Section 332(c)(7)(B) to require local authorities to act on an application within a “reasonable period of time”) to provide a statutory interpretation of the term “reasonable period of time” so that a local jurisdiction must act on an application—either approve or deny—within a set period of time. Additionally, the FCC should interpret Section 332 of the TCA¹⁰ so that applications for collocations on existing structures to which wireless communications antennas are already attached, and where collocation would not extend the height of the supporting structure or increase the size of the compound, should be subject only to a non-discretionary building and/or

⁷ See Comments of PCIA—The Wireless Infrastructure Association and The DAS Forum, WT Dkt. 08-165 (Sept. 29, 2008); Reply Comments of PCIA—The Wireless Infrastructure Association and The DAS Forum, WT Dkt. 08-165 (Oct. 14, 2008).

⁸ Pub. L. No. 1040-104, 110 Stat. 56, (codified at 47 U.S.C. §§ 151 et seq., as amended).

⁹ 47 U.S.C. § 332(c)(7)(B)(ii).

¹⁰ 47 U.S.C. § 253(a).

electrical permit pursuant to relevant building codes.¹¹ Alternatively, the FCC could require a decision time limit and “building-permit-only” pre-emption on all projects that receive Recovery Act funding. Whether applied to all projects, or those that receive Recovery Act funding, these two actions would greatly enable the rapid deployment of broadband solutions that the Recovery Act seeks to implement. Finally, state executives and legislatures should encourage this streamlining of critical broadband infrastructure through enabling legislation providing for by-right collocations and decision timelines on all zoning applications for wireless infrastructure¹².

The deployment of wireless broadband infrastructure, including DAS (which is often deployed on pole tops) also depends on fair and timely access to existing utility infrastructure within public rights-of-way. Many states that “certify” regulation of pole attachments¹³ do not address wireless pole attachments, or have regulations that unfairly inhibit the ability of wireless broadband providers to use existing “vertical real estate” in public rights-of-way for wireless broadband deployment. The states that do not “certify” such regulation follow FCC regulations on the subject. Both state regulatory utility commissions and the FCC should confirm pole-top access for wireless attachers. Additionally, state utility commissions and the FCC should institute timelines for pole owners to respond to attachment requests to ensure that “market rates” charged by some pole owners do not make wireless broadband on existing utility infrastructure financially infeasible, even with Recovery Act funding.

¹¹ See MARCH 08-165 ex parte

¹² Some states have done so already. For example, the state of Florida requires wireless infrastructure siting zoning decisions within 45 days, while the state of North Carolina requires collocation decisions within 45 days.

¹³ See 47 U.S.C. § 224. See also *In re: Implementation of Section 224 of the Act; Amendment of the Commission’s Rules and Policies Governing Pole Attachments*, WC Dkt. No. 07-245, RM-11293, RM-11303, *Notice of Proposed Rulemaking*, FCC 07-187, 22 FCC Rcd. 20195, 20196 (rel. Nov. 20, 2007) (“Congress first directed the Commission to ensure that the rates, terms, and conditions for pole attachments by cable television systems were just and reasonable in 1978 when it added section 224 to the Act. Then, as now, the statute provided that the Commission will regulate pole attachments except where such matters are regulated by a state. Eighteen states and the District of Columbia have certified that they regulate pole attachments, and thus the Commission does not regulate pole attachments in those states.”).

F. Question 12. Coordination with USDA’s Broadband Grant Program should ensure full inclusion of wireless broadband infrastructure.

Both NTIA and RUS should find that private entities currently deploying wireless broadband infrastructure are eligible to receive grants from the respective programs. As discussed above, capturing the wealth of experience and knowledge from these companies will be required for BTOP to achieve its goals of expanded broadband accessibility. Additionally, both NTIA and RUS should implement definitions of “underserved” and “unserved” that include the current availability of wireless broadband service. This inclusion would lead to a broadband improvement strategy that encourages consumer choice by allowing for the full complement of broadband services, including robust wireless broadband service.

G. Question 13. Definitions should establish framework for maximum benefit to areas where broadband need is greatest.

NTIA should define “broadband,” “underserved,” and “unserved” in ways that recognize the importance of wireless service to BTOP, that treat wireless as favorably as wired broadband, and that encourage broad participation in BTOP by existing wireless broadband infrastructure providers. In this way, NTIA can meet Recovery Act goals of a competitive and robust broadband marketplace.

The definition of “broadband” must be flexible to accommodate for the industry’s rapid development of increased speeds and throughput, but realistic in its description of near-term development to the areas of greatest need. We decline to endorse a specific speed threshold because broadband in unserved and underserved areas is highly variable depending on what is practicable and achievable, and should not be reduced to a rigid standard.

Wireless is the fastest and most cost-effective way to deploy broadband services. Therefore, the definition of “underserved” should include any area in which there is only one provider of ubiquitous and reliable wireless broadband services. Satellite coverage should not be included in this definition, nor the definition of “unserved,” as issues with weather, latency, and line of sight necessity do not make it a *reliable* broadband alternative. The problem of “underserved” areas is at least as critical as that of “unserved” areas, as “underserved” areas comprise a much larger segment of the nation’s population than does “unserved” areas. The use of BTOP funds to address the widespread problem of “underserved” areas would have immediate and lasting economic benefit by connecting vulnerable populations and communities that lack cost-effective service options.

Because wireless is the only practicable path to broadband in thinly-populated areas, the definition of “unserved” should include any area in which reliable wireless broadband service is unavailable. In these areas, users do not have ubiquitous broadband service, and the competitive benefits of adding wireless broadband service will flow to users. To the extent that economic or other circumstances have left “unserved” areas behind, BTOP funds can transform individual coverage challenges into financially-viable projects for the private-sector wireless broadband infrastructure providers with the greatest expertise and ability to deploy immediately.

The physical structures utilized for wireless broadband services (i.e., the towers) have a long life expectancy of 20 years or more [*confirm tower life expectancy with Tech Committee*]. In contrast, NTIA must conclude BTOP grant administration by September 2010, and projects that receive BTOP grants must be substantially completed by September 2012. NTIA should not extend BTOP obligations beyond the grant period. To attach BTOP obligations to the useable

life of wireless broadband infrastructure or equipment would create an unreasonably burdensome bureaucracy for decades.

III. RUS

A. Question 2. Coordination with NTIA should ensure full inclusion of wireless broadband infrastructure.

Both NTIA and RUS should find that private entities currently deploying wireless broadband infrastructure are eligible to receive grants from the respective programs. As discussed above, capturing the wealth of experience and knowledge from these companies will be required for BTOP to achieve its goals of expanded broadband accessibility. Additionally, both NTIA and RUS should implement definitions of “underserved” and “unserved” that include the current availability of wireless broadband service. This inclusion would lead to a broadband improvement strategy that encourages consumer choice by allowing for the full complement of broadband services, including robust wireless broadband service.

B. Question 3. Definitions should establish framework for maximum benefit to areas where broadband need is greatest.

As discussed in Section II above, RUS should define “broadband,” “underserved,” and “unserved” in ways that recognize the importance of wireless service to our nation, that treat wireless as favorably as wired broadband, and that encourage broad participation in grant programs by existing wireless broadband infrastructure providers. In this way, RUS can meet Recovery Act goals of a competitive and robust broadband marketplace.

C. Question 4. RUS should prioritize project options to ensure maximum consumer benefits.

As discussed in Section II above, Recovery Act grants should result in greater consumer choice for broadband service delivery options. As such, “Option 1” (giving end-users a choice of Internet service providers) is an appropriate customer-focused priority for RUS funding. Serving the highest percentage of rural residents (as described in “Option 2”) should also receive significant priority, as projects funded with this goal in mind will result in maximum net benefit. Fully-funded and “shovel-ready” projects (as described in “Option 4”) should receive priority. Finally, while the Recovery Act expresses a preference for former or existing borrowers,¹⁴ RUS should not allow prior or current RUS status (as described in “Option 3”) to transcend the merits of an individual grant applicant with a workable solution to broadband needs if such applicant is not a former or current RUS participant.

IV. CONCLUSION

The Recovery Act’s broadband stimulus provisions provides an opportunity for our nation to address demands of the digital future, one in which economic activity, social connectedness, and emergency response will depend on ubiquitous broadband access. The provisions charge NTIA and RUS with significant responsibility to disburse grants that spark investment and job creation while building a long-term broadband network that will accommodate significant technological advancement. Through the active participation of wireless infrastructure providers that build the backbone of our broadband future, NTIA and RUS can meet its responsibilities and achieve the Recovery Act’s goals.

¹⁴ Recovery Act (“[P]riority shall be given for project applications from borrowers or former borrowers under title II of the Rural Electrification Act of 1936 and for project applications that include such borrowers or former borrowers. . .”).

Respectfully submitted,

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