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To: **Clients and Other Interested Parties**

From: **The Baller Herbst Law Group**

Date: **January 17, 2010**

Re: **Broadband Stimulus: Round 2 Notice of Funds Availability**

I.   INTRODUCTION

On Friday, January 15, 2010, the Department of Commerce's National Telecommunications and Information Administration (NTIA) and the Department of Agriculture's Rural Utilities Service (RUS) released separate Notices of Funds Availability (NOFA) for the second and final round of broadband stimulus funding under the American Recovery and Reinvestment Act of 2009.

This document highlights and briefly analyzes notable changes that the Round Two NOFAs make to the NTIA Broadband Technology Opportunities Program and the RUS Broadband Initiatives Program.   It is not intended to provide a complete review of all requirements for program eligibility in Round Two, many of which remain unchanged from Round One.   For additional information about these requirements, please see the Round Two NOFAs themselves. For summaries of the Round One requirements, please see the Economic Stimulus page of the Baller Herbst website, www.Baller.com.

II.   ANALYSIS

A.   Generally

1.   Option to Submit to Either Agency

In Round One, applicants proposing to serve an area that is 75 percent or more rural were required to apply first to the RUS BIP program; NTIA could consider such applications under BTOP only if and when RUS rejected them.   Regardless of the viability of an application under BIP (which generally favored loans and limited grants to 50 percent of a BIP award), applicants had to provide additional information in the application to facilitate its review by RUS.

In this Round, "RUS and NTIA conclude that applicants that are eligible for both BIP and BTOP have the option to apply to either agency for funding for the same project, but applicants should apply to only one agency for a given project."

That said, while there is no requirement for applicants to go through BIP first for any project, applicants with rural service areas may have little option: "NTIA strongly recommends that CCI [Comprehensive Community Infrastructure] applicants that are currently RUS loan or grant recipients as well as any CCI applicant whose project will include a Last Mile service area that is at least 75 percent rural apply to BIP for funding. Applications from such applicants will not be viewed favorably by NTIA and will not be a funding priority."

Also, as discussed more fully below, NTIA has a clear preference for funding Middle Mile projects. It therefore strongly encourages applicants seeking funding for projects with a high-cost Last Mile component to apply to RUS: "[A]pplicants whose Last Mile component (to residential consumers and non-community anchor institutions) exceeds 20 percent of total eligible project costs are strongly encouraged to apply to RUS for funding under BIP." (NTIA NOFA at 99)

2.   Streamlined Application Process

As a general matter, NTIA appears to have heeded widespread advice that they make the application process used in Round One less cumbersome, complex, and confusing. Rather than require a vast amount of information with the initial application, and using the due diligence phase to substantiate data and fill in holes, NTIA will only ask for essential information in the application, and will rely on the due diligence phase to gather more extensive data as necessary. (For example, the requirement to obtain an engineering certification has been removed from the initial application.)

While the RUS Round Two NOFA states that it has modified the application process from a "two-step process to a one-step process," it appears that RUS will require more information than NTIA in the initial application, including technical details, an engineering certification, pro forma financial analyses, etc.

In addition, NTIA has eliminated the requirement that applicants use the agency mapping tool to plot a proposed funded service area, while RUS apparently retains that requirement. Both NTIA and RUS will allow applicants to identify proposed service areas by Census block group or Census tract, rather than the highly granular and much-criticized Census block reporting required in Round One.

It is worth noting the disparate approaches taken by RUS and NTIA, in terms of application burdens. NTIA apparently will require less information from applicants in the initial application, with more detailed information sought only in the event the applicant proceeds to the due diligence phase. RUS, conversely, will apparently seek even more information with the application up front in Round Two.

A. NTIA BTOP

NTIA has announced the availability of $2.6 billion for the second and final round of its BTOP program. For Round Two, the BTOP program includes three distinct categories of grant awards: (1) Comprehensive Community Infrastructure (CCI); (2) Public Computer Centers (PCC); and (3) Sustainable Broadband Adoption (SBA). The major changes in Round Two involved the broadband infrastructure program, now known as CCI, as described below. As a general matter, the Public Computer Centers and Sustainable Broadband Adoption components changed little. As a result, most of the analysis in this section focuses on the CCI component.

1. Comprehensive Community Infrastructure

NTIA has dramatically changed the broadband infrastructure component of BTOP. In Round One, the Broadband Infrastructure program sought proposals for Last Mile projects and Middle Mile projects, both of which had to include service areas that qualified as "unserved" or "underserved."

For Round Two, NTIA expects to devote approximately $2.35 billion to the CCI program. This program will focus almost entirely on Middle Mile projects, particularly those providing new or improved broadband services for a significant number of community anchor institutions (and "especially" community colleges) that have demonstrated a need for it.[1]

NTIA expects CCI awards to fall within the range of $5 million - $150 million. Applicants falling outside of these ranges "must provide a reasoned explanation for the variance in their project size." (NTIA NOFA at 30)

a. Middle Mile focus

The CCI "will focus on Middle Mile broadband infrastructure projects that offer new or substantially upgraded connections to community anchor institutions, *especially* community colleges." (NTIA NOFA at 8, emphasis added) In explaining why it chose to focus so heavily on Middle Mile projects, NTIA noted that a significant portion of funds in first round went to Middle Mile projects, particularly those that connect a significant number of community anchor institutions: "Such projects provide substantial benefits, including enhancing broadband service for community anchor institutions, facilitating the development of Last Mile broadband services in unserved and underserved areas, and promoting economic growth…. Broadband connections to these facilities will not only enhance their services and effectiveness, but can also provide potential points of interconnection for Last Mile service directly to homes and businesses." (NTIA NOFA at 104)

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[1]   Middle Mile projects that focus on serving the community anchor institutions will apparently receive a higher rank than projects that focus primarily on providing services for public safety, involving public-private partnerships, serving economically distressed areas, and/or connecting Last Mile networks. (NOFA at 13-14) The ideal proposed project, though, will involve all of those aspects, and those proposals will be first in line for merit review, as described in Subsection (d) below.

To support its preference for Middle Mile projects, NTIA also cited the nascent work of the FCC National Broadband Plan: "Preliminary findings by the FCC's National Broadband Plan Task Force indicate that broadband service in unserved and underserved areas of the United States is limited due to insufficient capacity and to significantly higher costs of deploying Middle Mile services in some areas." (NTIA NOFA at 105)

b. No stand-alone Last Mile component

Round Two of BTOP has no stand-alone Last Mile broadband infrastructure program. Under CCI, Last Mile infrastructure funding apparently will only be considered as part of a Middle Mile proposal. In fact, NTIA explicitly discourages CCI proposals that involve a rural Last Mile component: "To the extent that a CCI project contains a Last Mile component in rural areas, the additional cost of offering service to residential consumers and non-community anchor institutions may not exceed more than 20 percent of the total eligible cost of the project." (NTIA NOFA at 49)

c. "Underserved," "unserved": unchanged, but no longer required

In response to widespread criticism of the requirement that infrastructure projects must serve unserved or underserved areas, NTIA has eliminated this requirement. The definitions of these terms remain unchanged, however, and projects that do serve unserved or underserved areas will receive additional credit:

The First NOFA provided very specific definitions of what constitutes an unserved and underserved area for BTOP purposes. In NTIA's review of applications submitted by private companies, community anchor institutions, and other stakeholders in the first funding round, NTIA does not believe that its definitions proved to be overly restrictive or hindered applicants from applying. Additionally, NTIA finds that, for purposes of consistency between the two rounds of funding as well as between BTOP and the Broadband Mapping Program, the definitions of unserved and underserved should remain largely unchanged. NTIA has, however, removed the requirement that infrastructure projects connecting community anchor institutions, including community colleges, must be located in unserved or underserved areas. The Comprehensive Community Infrastructure project category will consider whether a proposed funded service area is unserved or underserved as an additional factor giving an application more priority in scoring.[2]

d. CCI review priorities

NTIA also established priorities for the sequential merit review of CCI applications, describing seven desirable project criteria in descending order of importance. According to the NOFA, proposals that include all seven criteria will be at the front of the line for the merit review

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[2]   NTIA Round Two NOFA, at 108.

(objective scoring) phase. Due to its importance, we reprint the relevant passage below in its entirety:

> In order of importance, the CCI priority criteria are set forth as follows:
>
> (1) projects that will deploy Middle Mile[3] broadband infrastructure with a commitment to offer new or substantially upgraded service to community anchor institutions [esp. community colleges]. Those projects proposing to service a significant number of community anchor institutions that have expressed a demand or indicated a need for access or improved access to broadband service will receive higher priority;
>
> (2) projects that will deploy Middle Mile broadband infrastructure and incorporate a public-private partnership among government, non-profit and for-profit entities, and other key community stakeholders, particularly those that have expressed a demand or indicated a need for access or improved access to broadband service;
>
> (3) projects that will deploy Middle Mile broadband infrastructure with the intent to bolster growth in economically distressed[4] areas;
>
> (4) projects that will deploy Middle Mile broadband infrastructure with a commitment to serve community colleges that have expressed a demand or indicated a need for access or improved access to broadband service;
>
> (5) projects that will deploy Middle Mile broadband infrastructure with a commitment to serve public safety entities that have expressed a demand or indicated a need for access or improved access to broadband service;
>
> (6) projects that will deploy Middle mile broadband infrastructure that includes (i) a Last Mile[5] infrastructure component in unserved or

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[3] "Middle Mile means those components of a CCI project that provide broadband service from one or more centralized facilities, (*i.e.,* the central office, the cable headend, the wireless switching station, or other equivalent centralized facility) to an Internet point of presence. The Middle Mile includes, among other things, the centralized facilities and all of the equipment in those facilities, except for any equipment that would qualify as a part of a Last Mile component as defined in this NOFA." (NOFA at 25-26)

[4] "Economically distressed area means an area that has: (i) a per capita income of 80 percent or less of the national average; and (ii) an unemployment rate that is, for the most recent 24-month period for which data are available, at least one percent greater than the national average unemployment rate." (NOFA at 24)

[5] The definition of "Last Mile" is considerably more complex in the Round Two NOFA, to say the least: "Last Mile means those components of a CCI project that provide broadband service to end-user devices through an intermediate point of aggregation.

underserved areas; or (ii) commitments or nonbinding letters of intent from one or more Last Mile broadband service providers. For Last Mile infrastructure components in rural areas, however, that additional costs of the Last Mile component used to offer service to residential consumers and non-community anchor institutions may not exceed more than 20 percent of the total eligible costs of the project; and

(7) projects that will deploy Middle Mile broadband infrastructure and propose to contribute a non-federal cost match that equals or exceeds 30 percent of the total eligible costs of the project.

(NTIA NOFA at 13-14)

Solely Last Mile projects are not excluded *per se*, but they are relegated to the back of the line: "While a CCI project may exclusively contain a Last Mile component, it will only be considered for merit review and funding after all projects with a Middle Mile component have been considered." (NTIA NOFA at 17)

e. Elimination of Proposed Funded Service Area Mapping Tool

NTIA eliminated entirely the use of its mapping tool to identify proposed service areas. Applicants still must report their proposed funded service area by Census block group or tract, but they need not undertake the much-criticized task of inputting the data on NTIA's mapping tool. Nor must existing service providers that seek to comment on a proposed service area use the mapping tool to respond.

f. Service Area Reporting: Census Tracts, Block Groups

While applicants no longer need to use the agencies' service area mapping tool, they still must identify their proposed service area. In Round One, NTIA required applicants to identify their service area at the Census block level. This requirement received widespread criticism, because the relevant data is not readily available at the Census block level. For Round Two, the NTIA modified the service delineation from Census blocks to Census tracts and block groups.

That is, in most cases, the Last Mile connection goes from the end-user device through an intermediate point of aggregation (*i.e.*, a remote terminal, fiber node, wireless tower, or other equivalent access point) to a primary IP routing entity in a centralized facility (*i.e.,* in the central office, the cable headend, the wireless switching station, or other equivalent centralized facility. The Last Mile also includes equivalent services that, solely because of their close proximity between the customer and centralized facility, are routed directly to the centralized facility. The Last Mile will terminate at, and include, the initial customer-facing router or aggregation switch in the centralized facility (*e.g.,* a DSLAM, CMTS, RNC, or equivalent) that is utilized to deliver Last Mile broadband service." (NOFA at 24)

g. CCI - Other matters

Publication of proposed funded service area.   As indicated, NTIA will again permit existing service providers to comment on proposed funded service areas, but it has reduced the time for response from 30 days to 15 days: "NTIA will post an announcement identifying each CCI application it has received, along with a list of the Census block groups or tracts that each infrastructure applicant has proposed to serve through its project….The posting of this announcement will provide existing broadband service providers with a 15-day window voluntarily to submit to NTIA information about the broadband services they currently offer in their respective service territories by Census block group or tract. … NTIA will consider the comments of existing broadband service providers as a factor.... NTIA may contact the applicant as necessary for additional information to evaluate the unserved or underserved status of its Last Mile or Middle Mile service areas, if applicable…" (NTIA NOFA at 39)

BTOP matching.   As a general matter, NTIA will still require applicants to match NTIA's 80% grants with 20% cash or in-kind funding. In this round, however, NTIA will rank applicants higher if they provide at least a 30% match: "NTIA has sought to bring further leverage to federal funds by giving additional consideration to projects that propose to contribute a non-federal cost share/match that equals or exceeds 30 percent of the total eligible costs of the project."   Also, "[a]pplicants that propose to provide a cost match that is all cash will be given additional favorable consideration…"

Open and nondiscriminatory access and interconnection.   CCI projects still must comply with open and nondiscriminatory access and interconnection requirements, essentially unchanged from Round One. (NTIA NOFA at 35)

Community Colleges. It is worth re-emphasizing that NTIA specifically singled out community colleges, making community colleges the most-favored within the already-favored category of community anchor institutions.

2. Public Computer Centers (PCC)

For Round Two, NTIA expects to award at least $150 million for Public Computer Center projects, with awards ranging in size from $500,000 to $15 million. Applicants requesting amount outside of this range must provide an explanation. (NTIA NOFA at 30)

Unlike NTIA's broadband infrastructure programs, very little has changed from Round One in the Public Computer Center category. "These projects provide broadband access to the general public or a specific vulnerable population and must either create or expand a public computer center or improve broadband service or connections at a public computer center, including those at community colleges, that meets a specific public need for broadband service. PCC projects are a logical complement to CCI projects. ..." (NTIA NOFA at 17)   For specific requirements and criteria, please refer to the NOFA.

3. Sustainable Broadband Adoption (SBA)

For Round Two, NTIA expects to award at least $100 million for Sustainable Broadband Adoption projects, with awards ranging in size from $500,000 - $15 million. (Applicants requesting amount outside of this range must provide an explanation.) (NTIA NOFA at 30) Again, eligibility criteria changed little from Round One.

4. BTOP Application Review & Scoring

a. Review process

BTOP applications for CCI, PCC and SBA will be evaluated through the following process:

(1) Initial eligibility

The initial eligibility review will consider only three criteria: whether the entity is a member of an eligible class; whether the application if fully completed; and whether the applicant is proposing adequate matching. NTIA will not consider budget reasonableness and technical feasibility in its initial review. Such factors, NTIA believes, are better evaluated during the merit review and due diligence steps.

After screening for initial eligibility, the applications are separated into their respective program groups for merit review and due diligence review, described immediately below.

(2) Merit review

During the merit review phase, applications will be evaluated against objective criteria by expert reviewers. For Round Two, NTIA reduced the required number of expert reviewers "from at least three to at least two" to make the review process "as efficient as possible, without impacting the rigor of review." Those that score highly advance to:

(3) Due diligence

Additional information may be required of applicants that reach the due diligence phase. From that pool, NTIA will select final Round Two awardees.

State consultation: "After the application deadline, NTIA will invite each state, via its Governor, to provide input on those geographic areas within the state for which NTIA should give priority in selecting projects for funding." (NTIA NOFA at 19-20) States may also comment on specific applications. NTIA will make comments of states publicly available online.

b. Merit Review: Scoring Criteria

Scoring criteria for Round Two are somewhat changed from Round One, reflecting various shifts in emphasis among the component programs.

CCI Proposals (NTIA NOFA at 56-62):

Project Purpose: 20 points

      i.   Fit with Statutory Purposes
      ii.   Fit with BTOP Priorities
      iii.   Potential for Job Creation
      iv.   Recovery Act and Other Governmental Collaboration
      v.   Indian Tribes and Socially and Economically Disadvantaged Small Businesses

Project Benefits: 20 points

      i.   Level of Need in the Proposed Funded Service Area(s)
      ii.   Impact on the Proposed Funded Service Area(s)
      iii.   Network Capacity and Performance
      iv.   Affordability of Services Offered
      v.   Nondiscrimination, Interconnection, and Choice of Provider

Project Viability: 30 points

      i.   Technical Feasibility of the Proposed Project
      ii.   Applicant's Organizational Capability
      iii.   Level of Community Involvement in the Project

Project Budget and Sustainability: 30 points

      i.   Reasonableness of the Budget
      ii.   Sustainability of the Project
      iii.   Leverage of Outside Resources

PCC Proposals (NTIA NOFA 63-66):

Project Purpose: 20 points

      i.   Fit With Statutory Purposes
      ii.   Potential for Job Creation
      iii.   Recovery Act and Other Governmental Collaboration
      iv.   Indian Tribes and Socially and Economically Disadvantaged Small Businesses

Project Benefits: 20 points

      i.   Availability to the Public
      ii.   Training and Educational Programs Offered

iii.   Availability and Qualifications of Consulting and Teaching Staff
iv.   Projects in Community Colleges

Project Viability: 30 points

i.   Technical Feasibility of the Proposed Project
ii.   Applicant's Organizational Capability
iii.   Level of Community Involvement in the Project

Project Budget and Sustainability: 30 points

i.   Reasonableness of the Budget
ii.   Sustainability of the Project
iii.   Leverage of Outside Resources

SBA Proposals (NTIA NOFA at 66)**:**

Project Purpose: 20 points

v.   Fit With Statutory Purposes
vi.   Potential for Job Creation
vii.   Recovery Act and Other Governmental Collaboration
viii.   Indian Tribes and Socially and Economically Disadvantaged Small Businesses

Project Benefits: 20 points

v.   Number of New Subscribers
vi.   Cost Per New User
vii.   Innovation
viii.   Support for Vulnerable Populations

Project Viability: 30 points

iv.   Operational Feasibility of the Proposed Project
v.   Applicant's Organizational Capability
vi.   Level of Community Involvement in the Project

Project Budget and Sustainability: 30 points

iv.   Reasonableness of the Budget
v.   Sustainability of the Project Impact
vi.   Leverage of Outside Resources

5. Government Certification

The Recovery Act requires projects to comply with all federal, state and local legal requirements. For infrastructure investments, NTIA will not require the governor, mayor, or other chief executive, as appropriate, to certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. (NTIA NOFA at 83)

6. Timeline

Application Window: Applications must be submitted online, between February 16, 2010 at 8 a.m. EST and March 15, 2010 at 5 p.m. EDT.

Anticipated Announcement and Award Dates: NTIA intends to announce BTOP Round Two awards on a rolling basis starting in June 2010. All grants will be awarded by September 30, 2010.

C. RUS – BIP

RUS's Round Two NOFA for the Broadband Initiatives Program "provides loans, grants, and loan/grant combinations to facilitate deployment in rural areas." (RUS NOFA at 1) RUS is setting aside approximately $2.2 billion in funding authority for Round Two.[6] The most significant changes between RUS's Round One and Round Two programs are summarized in this section.

1. Modification of Eligible Service Area

As a threshold qualification for potential funding under the BIP program, a proposed service area must be a rural area:

> that does not have broadband service at the rate of 5 Megabits/second (Mbps) (upstream and downstream combined) ["High Speed Access"] in at least 50 percent of its area. RUS has determined that rural areas without service at 5 Mbps (upstream and downstream *combined*) lack high speed broadband service sufficient to facilitate rural economic development as required by the Recovery Act.

(RUS NOFA at 6, emphasis added)

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[6] Because loans, unlike grants, must be repaid to the government with interest, RUS uses a complex formula to calculate charges to its budget authority. As a result, RUS can award loans and grants in Round Two that, in the aggregate, substantially exceed $2.2 billion.

In Round Two, "only those applications whose proposed funded service area contains 75 percent or more rural areas, within which not more than 50 percent of the premises in the rural areas have High Speed Access will be considered for funding." (RUS NOFA at 19)

2. Change in Loan/Grant Award Allocation

In Round One, RUS awardees could receive (1) grants of up to 100% for projects in "unserved" "remote" "rural" areas, or (2) combinations of loans and grants, with grants limited to 50% of the total award, for projects in non-remote "unserved" or "underserved" rural areas. All of these terms were defined in the Round One NOFA, and unless otherwise indicated below, they remain largely unchanged for Round Two.

For Round Two, RUS has eliminated this distinction and adopted a combination of 75% grant and 25% loan as the base for all Last Mile and Middle Mile infrastructure projects. At the same time, RUS will give extra credit for applications that request a higher percentage of loans.

> This Second Round NOFA … combines rural remote and rural non-remote funding and therefore has a standard award of 75/25 grant/loan combination. It is important to note that applicants requesting a larger loan component will be awarded more points in the scoring system and may have a greater likelihood of being funded. Applicants may request more than a 75 percent grant component by submitting a waiver request to the Administrator….

(RUS NOFA at 8)

3. Program Components

a. Emphasis on Last Mile Projects

As indicated above, NTIA will focus almost entirely on Middle Mile projects in Round Two. In contrast, RUS will focus on Last Mile projects, using the "vast majority" of its funds to support projects in "unserved" and "underserved" rural areas. Specifically, RUS will use up to $1.7 billion of its budget authority for loans or loan/grant combinations for Last Mile projects, as compared to $300 million for Middle Mile projects.

Applicants for Middle Mile projects are not likely to be successful unless they are currently involved in RUS programs. (*See* RUS NOFA at 6) RUS encourages all others to apply to NTIA. Applicants that do apply to RUS – presumably those in current RUS programs – "must propose that at least 75 percent of the interconnection points be in rural areas with no more than 50 percent of the premises having High Speed Access. The communities in which the interconnection points terminate shall be used to determine the percentage of High Speed Access." (RUS NOFA at 20)

b. Satellite Projects

RUS has established a new and separate program category, entitled "Satellite Projects," "to reach premises left unserved by other technologies." (RUS NOFA at 20)   RUS will publish a separate RFP for Satellite Projects once the application window for Last Mile and Middle Mile projects has closed.

RUS will use grants to fund Satellite Projects. "At a minimum, an application must commit to providing broadband service, to providing customer-premises equipment (CPE) to subscribers at no cost (including no costs for installation, activation, or other hidden fees) and to providing to such subscribers at least a 25 percent reduction in the Applicant's service rates as of December 1, 2009, for a term of at least one year." (RUS NOFA at 20)

c.   Technical Assistance Grants

RUS also established a new funding category for Technical Assistance Grants, to enable awardees to support rural economic development strategies, particularly in collaboration with other federal programs.

> Under this program, Technical Assistance Awardees will work in public/private partnerships to develop a USDA-approved regional plan to provide broadband service in rural areas that remain critically unserved. In addition, in order to foster cross collaboration with other related Federal programs, Technical Assistance plans may be used by Applicants for submission to other Federal agencies, including programs of the Department of Transportation, Homeland Security, the Federal Communications Commission (FCC), and Telemedicine Program of the Indian Health Service.

(RUS NOFA at 21)

Technical Assistance grants may be made up to $200,000.

d.   Rural Library Broadband Grants

RUS has also created a separate funding category for rural libraries, which will be funded through grants.

> Awardees from the First Round NOFA or Applicants under this NOFA may submit a request for a grant to reimburse the associated costs for connecting any rural library in their proposed funded service area, being constructed, or to be constructed, with funding from an award from USDA's Community Facilities program of the Rural Housing Service. Such costs need not have been addressed in the original application submitted under the First Round NOFA or Second Round NOFA.

> Subsequent to the opening of the window for Last Mile and Middle Mile projects, the Agency will publish a Request for Proposals for Rural Library Broadband grants, including the announcement of the funding allocation and the requirements of the application. Applications for Rural Library Broadband grants will be accepted in paper-form only, as set forth in the Request for Proposals.

(RUS NOFA at 22)

4. Application Process and Review

a. Elimination of two-step application process

Like NTIA, RUS is also modifying its application process. Unlike NTIA, however, RUS is front-loading, rather than back-loading, the application process.

According to RUS, "Under [the Round One] process, the bulk of the materials required from the Applicant were sought with the application. Once this material was evaluated, RUS made an initial determination as to whether the application would likely be funded. If so, the application was moved into a second review process in which additional information was requested from the Applicant. The Applicant was given an additional 30 days to provide it." (RUS NOFA at 11)

In Round Two, RUS will use a "one-step application process. Removal of the second step simplifies the application process, and adds valuable time to both the application window and the Agency review process. This clearly promotes the submission of a more solid application." (RUS NOFA at 11)

b. Second review

RUS has added a "second review" component, under which RUS may request applicants that have not received approval under the single-step review process to provide additional information "if the application: (a) can be revised, reviewed and awarded funds before the expiration of Recovery Act funding, (b) contains specific and limited adjustments; and (c) promotes significant economic rural development, as determined by the Administrator." (RUS NOFA at 48) Such applicants will have 15 days to provide the additional information.

The contents required under the various funding categories are too lengthy for review here. Please consult the RUS NOFA at p. 33 *et seq.*

5. Criteria and scoring

RUS will score all applications for Round Two funding against the following objective criteria (RUS NOFA at 42):

1. Proportion of Rural Residents in Unserved Areas (10 points)
2. Rural Area Targeting (10 points)
3. Distance from Non-Rural Areas (5 points)
4. Title II Borrowers (8 points)
5. Other Recovery Act Awards (5 points)
6. Performance of the Offered Service (10 points)
   (For Last Mile and Middle Mile projects, various point values are awarded based on the technology used and the speed of the service. For Last Mile projects, wireline projects delivering a minimum of 5 Mbps combined will be awarded 5

                points.   Wireline projects delivering a minimum of 20 Mbps combined will receive 10 points, etc.   Middle Mile projects "that are constructed to deliver" 100 Mbps service to all interconnection points in the network will receive 10 points.)

7.   Discounted Service to Critical Community Facilities and SDBs (6 points)
8.   Applicant's Organizational Capability (10 points)
9.   Socially and Economically Disadvantaged Small Business Concern (3 points)
10.   Leverage of Outside Resources (10 points sliding scale)
11.   Extent of Grant Funding (15 point sliding scale)
12.   Cost Effectiveness (8 point sliding scale for Last Mile projects, based on cost per premises passed)

6.   Timeline

Application Window: Applications for RUS funding must be submitted online, between February 16, 2010 at 8 a.m. EST and March 15, 2010 at 5 p.m. EDT.