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FROM:	B&D Consulting
DATE:	July 7, 2009
RE:	American Recovery and Reinvestment Act – NTIA Broadband Technology Opportunities Program

I. Overview

The American Reinvestment and Recovery Act (ARRA) of 2009, signed into law on February 17, 2009, includes a total of $7.2 billion in stimulus funds for broadband, including $4.7 billion for the U.S. Department of Commerce (Commerce) National Telecommunications and Information Administration (NTIA) "Broadband Technology Opportunities Program" (BTOP), and $2.5 billion for the U.S. Department of Agriculture (USDA) Rural Utilities Service (RUS) "Broadband Initiatives Program" (BIP).

On July 2, 2009 a Notice of Funding Availibility (NOFA) for Broadband Initiatives was released. The following memorandum provides a summary of the information provided in the NOFA for NTIA's application procedures and requirements. The document in its entirety can be found at http://www.ntia.doc.gov/frnotices/2009/FR_BBNOFA_090702.pdf. (Page numbers in the following memo refer to the NOFA, not to the Federal Register notice.) A separate summary memo is available for the RUS program.

III. Application Deadlines and Procedures

Applications for the first round of funding will be accepted between July 14, 2009 (8 a.m. EST) and August 14, 2009 (5 p.m. EST). Two additional rounds are expected – a second round between October and December, and a third round between April and June 2010. Awards will be made on a rolling basis subject to the availability of funds.

Application packages for electronic and paper submissions are available at the Broadband Portal (http://www/broadbandusa.gov). Applicants applying for less than $1 million in funding are *encouraged* -- though not *required* -- to submit their applications electronically. Applicants requesting over $1 million in assistance (in the form of grants, loans or a combination) are *required* to submit their applications electronically through the Broadband Portal. Additionally, all applicants are required to submit a copy of their applications to their state Single Point of Contact (SPOC) offices, if they have one.

Fully detailed information regarding required contents for each type of application can be found on pages 43-58 of the NOFA.

All awards must be made no later than September 30, 2010. Grant recipients must substantially complete projects no later than two years from the date of award, and projects must be fully completed by no later than three years.

II. Eligible Applicants

Eligible entities include for profit corporations, not-for-profit organizations, and public agencies, including states, local governments, nonprofits, corporations, limited liability companies, and cooperative or mutual organization.

While RUS will only fund rural projects under BIP, NTIA can fund both rural and non-rural projects through BTOP. BIP applicants may choose to be considered for both BIP and BTOP funds as long as applicants complete the requirements for both programs. NTIA may make awards to such projects after RUS has reviewed them and determined not to fund the projects.

IV. Broadband Technology Opportunities Program (BTOP)

BTOP will make grants for projects that extend broadband access to unserved areas, improve access to underserved areas, and expand broadband access to a wide-range of institutions and individuals, including disadvantaged persons. A total of $4.7 billion is available for BTOP including: at least $250 million for Sustainable Broadband Adoption Grants; at least $200 million for Public Computer Center Grants; up to $350 million for the State Broadband Data and Development Grant Program; and the remainder for Broadband Infrastructure grants. However, only $1.6 billion has been allocated for this initial round of funding including $200 million for a national reserve.

Categories

BTOP is divided into three project categories: Broadband Infrastructure; Public Computer Centers; and Sustainable Broadband Adoption. While applicants can submit projects that fit within one or more categories, they are encouraged to combine projects from more than one category in a single application.

- *Broadband Infrastructure* (awarded no greater than $1.2 billion) – consists of two components - Last Mile projects and Middle Mile Projects.
    a. *Last Mile* – must primarily provide broadband service to end-users or end-user devices (including schools, libraries, medical and health care providers, etc.).
    b. *Middle Mile* – applications must have a primary purpose other than providing broadband service to end-users or to end-user devices, including interoffice transport, backhaul, Internet backbone connectivity, or special access.
- *Sustainable Broadband Adoption* (awarded no greater than $150 million) – will fund innovative projects that promote broadband demand and affordability, including projects

focused on providing education, awareness, training, access, equipment or support – particularly among vulnerable groups. Applications should demonstrate a sustainable increase in demand for and subscription to broadband services. Projects should describe barriers to adoption in a given area and propose and innovation and persuasive solution to encourage adoption. Applications should demonstrate a sustainable increase in demand for and subscription to broadband services. Projects should describe barriers to adoption in a given area and propose and innovation and persuasive solution to encourage adoption.

- *Public Computer Center* (awarded no greater than $50 million) - will fund projects that expand access to broadband service and enhance broadband capacity at places such as public housing developments, community health centers, senior centers, employment service centers, colleges, libraries, schools and public libraries. Applications must have a project in a public place that provides broadband access to the general public or a specific vulnerable population, such as low-income, unemployed, aged, children, minorities and people with disabilities. Projects must create or expand a public computer center meeting a specific public need for broadband service such as education, economic development, health care delivery, etc.

Additionally, approximately $240 million will be available to fund the State Broadband Data and Development Grant Program to support the development and maintenance of a nationwide broadband map. Funding for this program is the subject of a separate NOFA released on July 2. The document in its entirety can be found at: http://www.ntia.doc.gov/frnotices/2009/FR_BroadbandMappingNOFA_090702.pdf.

Program Priorities

All projects submitted for consideration must advance one or more of the five purposes listed below:

- Provide access to broadband service to consumers residing in unserved areas of the country.
- Provide improved access to broadband service to consumers residing in underserved areas of the country, including both residential and business customers.
- Provide broadband access, education, and support to community anchor institutions (i.e. schools, libraries, medical facilities), or organizations and agencies serving vulnerable populations (i.e. low-income, unemployed, aged), or job-creating strategic facilities located in state or federally designated economic development areas.
- Improve access to, and use of, broadband service by public safety agencies.
- Stimulate the demand for broadband, economic growth creation.

Selection Process

NTIA will utilize the following selection process:

Initially, NTIA will conduct an initial screen of applications to determine whether an application meets the mandatory threshold requirements, such as application completeness. Applicants that fail to meet any of the eligibility factors will be informed in writing of the reason for their rejection.

Applicants who pass the initial screening will continue to the step 1 review process described below.

Step 1

Applicants will then receive at least three independent reviews (by a three member review panel) against eligibility factors as well as against the evaluation criteria. (The Evaluation Criteria are listed under Section VI on page 5 of this memo). The panel will consist of at least three experts, and reviewer scores will be averaged. Based on these scores, applications that are considered highly qualified will advance to the Step 2 "due diligence" review.

Step 2

The highly qualified applications will be announced no earlier than September 14th, and as necessary, will be asked to submit additional information, such as detailed plans or supporting documents to further substantiate information included in the application, within 30 days from the date of the request. The supplemental documents will be reviewed by NTIA staff and external experts to evaluate consistency. Each application will be assigned a rating based on its consistency with the representations made in the application. The rating will be based on a five-point scale (1-5).

During Step 2 of the selection process, NTIA will provide to each State's Governor a list of applications under review. States will be given 20 calendar days to submit a prioritization of recommended projects.

Recommendation

The BTOP Director will recommend applicants to the Office of Telecommunications and Information Applications (OTIA) Associate Administrator for review and approval. Both decisions will be based on the following selection criteria:

- The evaluation criteria review score of the outside peer reviewers;
- The due diligence review rating of federal reviewers and the analysis of NTIA program staff;
- Satisfaction of the program's purpose and priorities (including collaboration with socially and economically disadvantaged small business);
- The geographic distribution of the proposed grant and population served;
- The range of technologies and uses of the technologies;
- Avoidance of unjust enrichment, redundancy, and conflicts with the initiatives of other federal agencies;
- The availability of funds; and
- If applicable, recommendations of the State.

Final Decision

Upon approval by the OTIA Associate Administrator, the BTOP Director's recommendation will then be presented to the Selecting Official, the Assistant Secretary of NTIA.

Requirements for All Applicants

The following eligibility factors establish basic requirements that applicants must comply with in order to be eligible for an award (can be found on pages 27 through 35 of the NOFA):

- *Fully completed application* – applicants must submit a complete application and provide all supporting documents.
- *Timely completion* – a project eligible only if the application demonstrates that the project can be substantially completed within two years of the date of issuance.
- *Conformity with statutory purposes* – A project is eligible only if it advances at least one of the five statutory purposes for BTOP.
- *Cost sharing/matching* – Recipients are required to provide matching funds of at least 20% toward the total project cost. Applicants must document their capacity to provide matching funds. NTIA will provide 80% of total eligible costs, unless the applicant petitions the Assistant Secretary for a waiver of the matching requirement and that waiver is granted by the Assistant Secretary based on the applicant's demonstration of financial need (see page 33 of the NOFA for full details).
- *Demonstration the project could not be implemented without federal grant assistance* – Grant applications must provide documentation that the project would not have been implemented during the grant period without Federal assistance.
- *Reasonableness of Project Budget* – Projects can only be eligible if they demonstrate an appropriate budget for the proposed technical and programmatic solutions, reasonable costs, and sufficient funding allocations.

<u>Additional Requirements Specific to BTOP Broadband Infrastructure Projects</u>

- *Broadband service* – all applicants must propose to offer service meeting the definition of Broadband as defined in the NOFA.
- *Technical feasibility* – all projects must be technically feasible.
- *Non-discrimination and Interconnection* – all applicants must meet the following Non-Discrimination and Interconnection Obligations: 1) adhere to the principles contained in the FCC's Internet Policy Statement (FCC 05-151); 2) not favor any lawful Internet applications and content over others; 3) display any network management policies in a prominent location on the service providers web page and provide notice to customers of changes to these policies; 4) connect to the public Internet backbone directly or indirectly, such that the project is not an entirely private network; and 5) offer technically-feasible physical interconnection, on reasonable rates and terms to be negotiated with requesting parties.
- *Last Mile Coverage Obligation* – applicants for a Last Mile project must identify the census block(s) selected for the project and provide documentation supporting the applicant's determination that the proposed area is either unserved or underserved. There is a presumption that the project encompasses the entire service territory of the census block, though exemptions may be made.

VI. Evaluation Criteria

The scoring criteria used to review BTOP projects are grouped under four headings:

- Project Purpose (30 Points);
- Project Benefits (25 Points);
- Project Viability (25 Points); and
- Project Budget and Sustainability (20 Points).

Each application will be scored against the objective criteria and not against other applications. Within the NOFA, pages 59 through 73 provide detailed information regarding scoring per project type and section.

VII. 'Buy American' Provisions Under ARRA

The BTOP programs have been granted a "limited waiver" from the Buy American (section 1605) provisions under ARRA. Generally, the Buy American provisions in the law state that no funds appropriated under the act may be used for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

The following list of exemptions will apply to all BTOP projects:

- *Broadband Switching Equipment* - equipment necessary to establish a broadband communications path between two points.
- *Broadband Routing Equipment* - equipment that routes data packets throughout a broadband network.
- *Broadband Transport Equipment* - equipment for providing interconnection within the broadband provider's network.
- *Broadband Access equipment* - equipment facilitating the last mile connection to a broadband subscriber.
- *Broadband Customer Premises Equipment and End-User Devices* - end-user equipment that connects to a broadband network.
- *Billing/Operations Systems* - Equipment that is used to manage and operate a broadband network or offer a broadband service.

This list does not include fiber optic cables, cell towers, and other facilities that are produced in the United States in sufficient quantities to be reasonably available as end products. To the extent that an applicant wishes to use equipment that is not covered by the proposed waiver, it may seek a waiver on a case-by-case basis as part of its application for funds, stating the statutory exemption upon which it is relying and its rationale for receiving a waiver.

VIII. Eligible Costs

Any application that proposes to use any portion of the award funds for any ineligible cost will be rejected. A complete list of eligible and ineligible costs for BTOP projects can be found on pages

35-39 of the NOFA. Pre-application expenses may be reimbursed if they are incurred after the publication date of the NOFA (July 2nd) and prior to the date on which the application is submitted to NTIA.

IX. Definitions

A full list of definitions of terms and conditions can be found on pages 17 through 23 of the NOFA. Below are definitions that may be of particular interest.

Broadband

Providing two-way data transmission with advertised speeds of at least 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to end-users, or providing sufficient capacity in a middle mile project to support the provision of broadband service to end-users.

Unserved Area

A census block or combination of contiguous census blocks, where at least 90% of households in each census block lack access to facilities-based, terrestrial broadband service, either fixed or mobile, at the minimum broadband connectivity speed. A household has access to broadband service if the household can readily subscribe to that service upon request.

Underserved Area

A census block meeting certain criteria (or a combination of contiguous census blocks) each meeting certain criteria that measure the availability of broadband service and the level of advertised broadband speeds. These criteria conform to the two distinct components of the Broadband Infrastructure category of eligible projects – last mile and middle mile.

Specifically, a proposed census black area(s) may qualify as underserved for the last mile if *at least one* of the following factors are met:

- No more than 50% of the households in the proposed area have access to facilities-based, terrestrial broadband service at greater than the minimum broadband transmission speed;
- No broadband service provider advertises broadband transmission speeds of at least 3 megabits per second (mbps) downstream for fixed broadband service and 1 mbps downstream for mobile broadband service in the proposed area;
- The proposed service area has two or fewer providers offering access to facilities-based, terrestrial-broadband service, either fixed or mobile;
- The rate of broadband subscribership for the proposed area is 40% of households or less.

A proposed area would qualify as underserved for middle mile projects if one end point terminates in a census block area that qualifies as unserved or underserved for the last mile.

Rural Area

Any area, as confirmed by the latest decennial census of the Bureau of Census, which is not located within:

- A city, town, or incorporated area contiguous and adjacent to a city or town that has a population of greater than 20,000 inhabitants; OR
- An urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants. (For purposes of the definition of rural area, an urbanized area means a densely populated territory as defined in the latest decennial census of the U.S. Census Bureau).

Last Mile Project

Any infrastructure project for which the predominant purpose is to provide broadband service to end-users or end-user devices (including schools, libraries, medical and health care providers, etc.).

Middle Mile Project

An infrastructure project that does not predominantly provide broadband service to end-users or to end-user devices, including interoffice transport, backhaul, Internet backbone connectivity, or special access.

Community Anchor Institutions

Schools, libraries, medical and healthcare providers, community colleges and other institution of higher education, and other community support organizations and entities.

Critical Community Facilities

Public facilities that provide community services essential for supporting the safety, health and well-being of residents, including but not limited to, emergency response and other public safety activities, hospitals, and clinics libraries and schools.