

B&D CONSULTING

1050 K Street, Suite 400
Washington, D.C. 20001
Tel 202.312.7400 Fax 202.312.7461
www.bakerdconsulting.com

FROM:	B&D Consulting
DATE:	July 14, 2009
RE:	American Recovery and Reinvestment Act – RUS Broadband Initiative 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 Availability (NOFA) for Broadband Initiatives was released. The following memorandum provides a summary of the information provided in the NOFA for BIP'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 NTIA BTOP program.

II. Eligibility

Eligible entities include states, local governments, nonprofits, corporations, limited liability companies, cooperative or mutual organization, and any other entity except sole proprietorships, partnerships or other entities specifically excluded by agency funding guidance. RUS will only fund rural projects under BIP.

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.

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). It is likely that there will only be one round of funding.

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.

IV. RUS - Broadband Initiatives Program (BIP)

BIP will extend loans, grants, and loan/grant combinations to projects where at least 75 percent of a USDA-funded area is in a rural area that lacks sufficient access to high speed broadband service. Under BIP, only applicants proposing to exclusively serve remote, unserved, rural areas will be funded with full grants. BIP loan/grant combination funds will be used to provide funding to applicants proposing to serve non-remote and underserved rural areas. The applicant determines the size of the grant portion of any loan/grant combination award; however, the grant portion cannot exceed the amount of the loan. RUS will favor applications that propose a higher percentage of loan funds. Applicants may also request 100% loan funding.

In total, \$2.5 billion is available in total for BIP. However, \$2.4 billion has been allocated for this round of funding including: up to \$1.2 billion for Last Mile projects, of which up to \$400 million is allocated for grants to Remote Area projects and up to \$800 million for loan/grant combinations for Non-Remote projects. Additionally, up to \$800 million is available for loans or loan/grant combination for Middle Mile projects. Further, \$325 million is available for a national reserve that may be used to augment funding categories listed above or remain unused for subsequent NOFA's.

Program Priorities

Priority will be given to projects which:

- Give end-users a choice of providers;
- Serve the highest proportion of rural residents that lack access to broadband service;
- Are from current or former RUS borrowers; and
- Are fully funded and ready to start once ARRA funding is received.

Selection Process

RUS will be utilizing a two-phase application process described in detail below.

Phase 1

Applications will initially be evaluated by RUS for completeness and eligibility. Ineligible applications will be rejected during this phase. Eligible applications will be evaluated and ranked based on the applicable scoring criteria (listed below under Evaluation Criteria). The highest ranking projects will be invited to submit additional supporting documentation for review during Phase 2.

Phase 2

During this phase, RUS will review the additional information submitted by the applicant. If additional documentation does not adequately verify the representations made in the application, the application will be rejected. All remaining applications will be funded in the order of their initial ranking, and there is no guarantee of funding for proposals that proceed to Phase 2.

Requirements for All BIP Applicants

The following eligibility factors establish basic requirements that all BIP applicants must comply with in order to be eligible for an award:

- *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.
- *Eligible Service Area* – a project is only eligible if the applicant demonstrates that at least 75% of the service area qualifies as a rural area without sufficient access to broadband service to facilitate rural economic development.
- *Overlapping Service Areas* – RUS will not fund more than one project to serve a given geographic area.
- *Fully funded* – A project is eligible only if, all project costs can be fully funded.
- *Financial feasibility and sustainability* – Only financially feasible grants/loans/combinations will be considered eligible.

Additional Requirements Specific to BIP Broadband Infrastructure Projects

- *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.

Categories

- *Last Mile Remote Area* – must predominantly provide broadband directly to the premise or to end-users within completely remote areas.
- *Last Mile Non-Remote Areas* – applications for last mile non-remote area projects must predominantly provide broadband directly to the premise to end-users that are not exclusively within remote areas. Projects within this category may also encompass both remote and nonremote areas, and will be awarded scoring points for remote areas within the application.
- *Broadband Infrastructure 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.

V. Evaluation Criteria

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

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

VI. 'Buy American' Provisions Under ARRA

The BIP 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 BIP 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.

VII. 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 BIP 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 2) and prior to the date on which the application is submitted to RUS.

VIII. Definitions

A full list of definitions of terms and conditions can be found on pages 17 through 23. 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.

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 block 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.

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.

Remote Area

Unserved, rural area 50 miles from the limits of a non-rural area.

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.).

Last Mile Remote Area Project

Any broadband infrastructure project that provides broadband service to the end user or to end-user devices only in a remote area(s).

Last Mile Non-Remote Area Project

Any broadband infrastructure project (or group of projects) that is not exclusively a last mile remote area project, and that provides broadband service to end user or end-user devices in a service area eligible for BIP funding.

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.