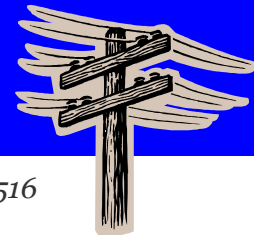


THE FEDERAL WIRE



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Broadband Stimulus NOFA

The moment we have all been waiting for has finally arrived; and only two months behind schedule.

Yesterday, on July 1, 2009, the National Telecommunications and Information Administration (NTIA) and Rural Utilities Service (RUS) released a joint Notice of Funds Available (NOFA) that will be published in the Federal Register for the \$7.2 billion appropriated for broadband stimulus expansion and infrastructure.

http://www.ntia.doc.gov/broadbandgrants/BBNOFANIwithDisclaimer_1.pdf

The first NOFA is 121 pages in length. The two agencies will administer the funds through programs created specifically to monitor the broadband stimulus funding. The NTIA will oversee the allocation of funds through a program called Broadband Technology Opportunities Program (BTOP). RUS created a similar program that they named Broadband Initiatives Program (BIP). These two programs are working together and may be applied to simultaneously.

Definitions Not Found in Your Webster's Dictionary

Broadband: service as defined in the NOFA—i.e., two-way data transmission with advertised speeds of at least 768 kbps downstream and at least 200 kbps upstream to end users; or sufficient capacity in a middle-mile project to support “broadband” service to end users.

Rural area means any area, as confirmed by the latest decennial census of the Bureau of the Census, which is not located within: 1. a city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or 2. an urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants.

Unserved Area: an area, composed of one or more contiguous census blocks where at least 90 percent of households in the proposed funded service area lack access to facilities-based, terrestrial broadband service, either fixed or mobile, at the minimum broadband speed

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The details contained in the NOFA are consistent with the goal of making every rural home and community in America wired for broadband access to promote economic development. This newsletter will provide you with the pertinent information of the NOFA and explain some of the key provisions that will define which projects will be funded.

Underserved Area: Last Mile Projects—an area composed of one or more contiguous census blocks where at least one of the following is met: 1) no more than 50 percent of households in the proposed funded service area have access to facilities-based, terrestrial broadband service at greater than the minimum broadband speed;

2) no fixed or mobile broadband service provider advertises broadband speeds of at least 3 Mbps downstream in the proposed funded service area; or 3) the rate of broadband subscribership for the proposed service area is 40 percent of households or less. **Middle Mile Projects**—an area composed of one or more contiguous census blocks where one interconnection point terminates in a census block area(s) that qualifies as unserved or underserved for Last Mile projects.

What Next?

Applicants have between the dates of July 14, 2009 at 8:00 a.m. (CST) until on August 14, 2009 at 4:00 p.m. (CST), to submit an application for funding approval. Applications will be made available for download on July 7 and can be found at <http://www.broadbandusa.gov>. The application review process will take a few months, and the first allocation of funds will be doled out on a rolling basis beginning on or around November 7, 2009. Approximately \$4 billion was made available for this NOFA. The remaining funds will be dispersed under subsequent NOFAs in the Spring and Fall of 2010.

If you have a project that is shovel ready and you are interested in seeking a grant or loan, your company needs to be registered with Central Contractor Registration (CCR) at www.ccr.gov. CCR registration can take up to two weeks to process, so register as soon as possible if you are not currently registered.

Along with registering for CCR, you need to register for Level 1 eAuthentication ID with the USDA. This simple procedure only requires LOGIN ID, First Name, Last Name, Country, and Email.
<http://broadbandusa.sc.egov.usda.gov/eauth.htm>

Big Brother is Watching... (Government Oversight)

There has been much speculation about how much government oversight will keep companies from applying for Federal funding. These regulations must be adhered to for the life of the awardee's facilities used in the project and not to any existing network arrangements should your company be awarded a grant or loan:

All Broadband Infrastructure (both BIP and BTOP) applicants, must commit to the following Nondiscrimination and Interconnection Obligations: i. adhere to the principles contained in the FCC's Internet Policy Statement (FCC 05-151, adopted August 5, 2005); ii. not favor any lawful Internet applications and content over others; iii. display any network management policies in a prominent location on the service provider's web page and provide notice to customers of changes to these policies (awardees must describe any business practices or technical mechanisms they employ, other than standard best efforts Internet delivery, to allocate capacity; differentiate among applications, providers, or sources; limit usage; and manage illegal or harmful content);

Contents of the Application

Identity of the Applicant and Project Information
 Verification of Eligibility Factors
 Executive Summary of the Project
 Description of the Proposed Funded Area
 Description of the Proposed Service Offerings
 The Technology Type
 Timeline Including Key Milestones for Implantation
 Resumes of Key Management Personnel
 A Legal Opinion
 Partnerships with Public, Non-Profit, & Private Group
 Itemized Budget
 Financial Analysis of Sustainability of the Project
 Historical Financial Statements
 (Several More for BTOP Applicants)

All the information, links, and application packet (once it is made available for download) can be found on the newly created BroadbandUSA website: <http://broadbandusa.sc.egov.usda.gov> or the Broadband Technology Opportunities Program (BTOP) website: <http://www.ntia.doc.gov/broadbandgrants>

If your company plans on applying for funding, materials for completing the packet should be collected in order to start writing a proposal so that it is ready to be submitted by the August 14 deadline.

iv. connect to the public Internet directly or indirectly, such that the project is not an entirely private closed network; and v. offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, on reasonable rates and terms to be negotiated with requesting parties. This includes both the ability to connect to the public Internet and physical interconnection for the exchange of traffic. Applicants must disclose their proposed interconnection, nondiscrimination and network management practices with the application.

Applicants for Last Mile infrastructure projects must provide service to the entire territory of each census block included in the funded service area unless the applicant can provide a reasoned explanation as to why providing coverage for an entire census block is infeasible.

There are several more requirements that are listed in detail in the NOFA. These will be focused on in the next issue of *The Federal Wire*. If you want to read them now, they can be found on Pages 74 – 101 of the NOFA listed on Page 1 of this newsletter.

Buy American Provision Exemption

As expected, the Secretary of Commerce granted a limited waiver of the Buy American provision of the Recovery Act with respect to broadband equipment funded under the NTIA and RUS programs. This was done because it would be difficult for a broadband stimulus applicant to have certain knowledge of the manufacturing origins of each component of a broadband network and the requirement to do so would be overwhelmingly burdensome as to deter participation in the program. The essential components of a modern broadband infrastructure that were listed a limited waiver are as follows:

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 Transparent 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.

The list does not include fiber optic cables, coaxial cables, cell towers, and other facilities that are produced in the United States in sufficient quantities to be reasonably available as end products. Equipment not included on either list, applicants can request a waiver on a case-by-case basis.

Two-Step Review Procession

The BTOP application review is a two-step process. After an initial screening to determine whether applications meet eligibility factors, such as application completeness, each BTOP application will be scored against objective evaluation criteria and not against other applications. A description of each step follows.¹

Step One - Evaluation

Applications will be evaluated by at least three expert reviewers against evaluation criteria. Scores will be averaged and applications considered to be the most highly qualified will advance for further consideration.

Step Two - Due Diligence

For applications that advance to this "due diligence" phase, NTIA will request applicants to submit additional information as necessary to substantiate representations made in their application. The nature and scope of additional information requested will depend on the BTOP funding category in which the application was made. NTIA will review and analyze supplemental information and assign a rating, based on a five-point scale, reflecting the consistency of the application with supporting documents.

Grants vs. Loans

BIP will allocate funds in grants, loans, and a combination of the two. They will favor applications that propose a higher percentage of loan funds. Applicants may request 100 percent loan funding.

BTOP will allocate funds through grants. Awardees under BTOP will be required to provide matching funds of at least 20 percent toward the total eligible project cost. Applicants that propose to provide greater than 20 percent and are all cash will be given additional favorable consideration in step one of the review process.

Generally, federal funds may not be used as matching funds except as provided by federal statute. In-kind contributions, including third party in-kind contributions, are non-cash donations to a project that may count toward satisfying the non-federal matching requirement of a project's total budget.

BIP Evaluation Criteria Point Scale

<u>Description</u>	<u>100 Points</u>
1) Project Purpose	25
Project Purpose	5
Rural Area Targeting	5
Remote Area Targeting	5
Title II Borrowers	5
Recovery Act and other gov't collaboration	5
2) Project Benefits	25
Performance of the offered service	10
Affordability of services offered	5
Choice of provider	5
Critical community facilities	5
3) Project Viability	25
Applicant's organizational capability	12
Community support	2
Ability to promptly start project	10
Disadvantaged small business	1
4) Project Budget and Sustainability	25
Reasonableness of the Budget	5
Leverage of outside resources	10
Extent of grant funding	10

BTOP Evaluation Criteria Point Scale

<u>Description</u>	<u>100 Points</u>
1) Project Purpose	30
Fit with statutory purposes	
Recovery Act & other governmental collaboration	
Enhanced Services for health care delivery, education, and children	
Socially and economically disadvantaged small businesses	
2) Project Benefits (too many to list)	25
3) Project Viability	25
The technical feasibility of the proposed project	
Applicant's organizational capability	
The level of community involvement in the project	
Ability to promptly start project	
4) Project Budget and Sustainability	20
Reasonableness of the project	
Sustainability of the project	
Leverage of outside resources	

If you know coworkers or anyone else that would be interested in receiving this electronic publication, please have them contact David Slattery (dslattery@ssbcipas.com) to be added to the email list.

If you do not wish to receive newsletter updates in the future, please respond to this email and type unsubscribe in the subject line.

Odds and Ends

Grant applicants must provide documentation that the project would not have been implemented during the grant period without federal grant assistance. This documentation may consist of, but is not limited to, such items as a denial of funding from a public or private lending institution, denial of a funding request from RUS for a loan or loan/grant combination, a current fiscal year budget that shows the lack of available revenue options for funding the project, or a business case that demonstrates that the project would not be economically feasible without grant financing.

Strain Slattery Barkley & Co. is ready to assist your company with securing broadband stimulus funds. Contact us with questions or to get started on the application packet.

Filing Deadlines

<u>July</u>	<u>August</u>
21 Form 497: Lifeline and Link Work Up Worksheet	3 Form 499Q
31 Form 507: ICLS Line Counts	3 Form 502
31 2008 Cost Studies to NECA	14 BTOP & BIP
31 Federal USF Data Request	22 Elect NECA to administer 2008 FCC Regulatory Fees
	31 Lifeline Verification Surveys and Certifications
	31 NECA Company Services Questionnaire