

July 13, 2009

The Honorable Larry Strickling
Assistant Secretary of Commerce
Administrator
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Ave. NW
Washington, D.C. 20230

Dear Assistant Secretary Strickling,

The members of the Schools, Health and Libraries Broadband Coalition congratulate you on the release of the Notice of Funds Availability (NOFA) and other application materials to implement the Broadband Technologies Opportunities Program (BTOP). You and your staff should be proud to have provided the public with such a thoughtful and detailed set of rules concerning the operations of this critical program. We believe that the BTOP program can, with just a few changes, bring enormous benefits to the American public.

While we appreciate the complexity of this undertaking and the short amount of time that NTIA was given to put these rules together, we are somewhat disappointed that anchor institutions such as schools (including K-12, colleges and universities), libraries and health care providers were not given a higher priority in the BTOP program. Broadband service to these anchor institutions was specifically listed as one of the five priorities in section 6001 of the American Recovery and Reinvestment Act. We believe that these critical strategic institutions should be given the highest priority for funding because they provide essential educational and medical services to millions of American consumers every day. These institutions require very high-capacity broadband connections – 100 Megabits to 1 Gigabit and higher – to provide distance learning, remote medical imaging, on-line job training, and many other critical services.

Unfortunately, the NOFA does not reflect these critical needs. We are concerned that the rules for these programs will make it difficult or impossible for many anchor institutions to apply for and/or receive funding for the broadband connections that they need. For instance:

- The NOFA adopts a single definition of broadband (768 kbps download) that is inadequate for anchor institutions. While we appreciate that flexibility for projects intended to serve other populations or entities, it is not adequate for anchor institutions. We suggest that applicants should be encouraged to meet a separate broadband metric requiring facilities capable of delivering 100 megabits per second to 1 gigabit per second or higher when serving schools, libraries, and healthcare institutions. Even though some anchor institutions may only be able to subscribe to a lower service

offering today, their broadband connection should be easily upgradeable and capable of delivering higher speeds as demand grows.

- The NOFA applies the terms “unserved” and “underserved” to anchor institutions, even though the statutory language does not. (In the statute, these terms only apply to residential consumers.) The result is that thousands of libraries, K-12 schools, colleges and universities, hospitals, health clinics, and other anchor institutions in urban and suburban areas that provide critical services to the public will not be eligible for BTOP funding. We respectfully ask that notions of “unserved” or “underserved” not be applied to anchor institutions.
- The NOFA does not give specific scoring “points” for applications that provide high-capacity broadband service to anchor institutions and generally does not provide sufficient incentives to service providers to build broadband networks to anchor institutions. In order to ensure that service providers have sufficient incentives to serve anchor institutions, points should be given for applications that seek to connect anchor institutions with broadband connections of 100 megabits per second to 1 Gigabit per second or higher.
- The NOFA places the burden on the applicant to demonstrate that its area is “unserved” or “underserved” even though this information is held on a confidential basis by service providers. A service provider could potentially derail a legitimate application to serve anchor institutions by submitting proprietary information about the level of service in the area that the applicant has no opportunity to review or contest. In order to address this concern and ensure that applicants have sufficient incentives to serve anchor institutions with high capacity broadband, we ask that the unserved and underserved distinctions not apply to connecting anchor institutions and that applicants be given an opportunity to review and contest any information provided by a service provider.
- The NOFA may prohibit a private sector award winner from selling or leasing its network for 10 years, which may discourage private sector applicants from partnering with anchor institutions to deploy high-capacity broadband service. To ensure that private sector entities have a greater incentive to work with anchor institutions to provide high capacity broadband connections, we ask that this requirement be modified. We do, however, strongly believe that public interest standards present in the Recovery Act and NOFA as statutory contractual obligations should not be evaded by any sale or leasing of the network.
- We appreciate the guidance that applications to provide service to anchor institutions will be considered for Middle Mile funding, that anchor institutions are not required to provide service to the surrounding residential community, and that only one census block must be unserved/underserved. However, the NOFA and the Application itself do not always reflect this guidance. For instance, questions #14 and #18 in the Application appear to assume that applications from anchor institutions will serve the surrounding community. We are also somewhat confused by the request for information about “contiguous census blocks”. This information request does not appear to be compatible with a plan to build a fiber ring (to pick one technology plan for illustrative purposes) that serves only anchor institutions. Further clarification of how anchor institutions may

apply for funding only to serve those anchor institutions with high-capacity broadband would be appreciated.

- As a general matter, there is very little discussion in the NOFA or the application materials concerning the relationship between the BTOP programs and the “E-rate” program. In theory, these two programs should be complementary, but the rules do not clearly explain how to ensure that they are compatible. Further clarification of the interaction between these programs would be extremely useful.

Many federal officials, including yourself in your opening comments at the July 7, 2009 Workshop, have recognized the need for anchor institutions to have high-capacity broadband. We frequently heard that the intention of the program is to assist anchor institutions obtain high-capacity broadband, but this intention is not always reflected in the language of the NOFA. For this reason, we respectfully request that NTIA issue an addendum to the NOFA and to the application guidelines recognizing the importance of service to anchor institutions and reflecting the points noted above. In addition, we also ask that any future NOFA reflect the positions outlined above.

Once again, we are truly impressed with the high quality and professionalism of the work that has gone into the preparation of the NOFA. In many ways, the NOFA seeks to meet the overall goals of the legislation and the needs of the public for greater broadband capabilities. Nonetheless, we feel obligated to request these clarifications because of the priority given to anchor institutions in the statutory language and because high-capacity broadband connections to schools, libraries and health care entities are so critically important to the essential services they provide to millions of people every day.

Sincerely,



John Windhausen, Jr.
Coordinator
Schools, Health and Libraries Broadband Coalition

**MEMBERS OF THE SCHOOLS, HEALTH AND LIBRARIES BROADBAND COALITION:
(46 Members - Updated as of Monday, July 13, 2009)**

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