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Feds Throw Open First Stimulus Money Window August 14 deadline for the first \$4 billion looms

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On July 1, the Rural Utilities Service (RUS) and the National Telecommunications and Information Administration (NTIA) released the long and eagerly awaited rules governing the distribution of billions of dollars in stimulus funds to expand broadband service in the United States. The 121-page tome: lays out in detail how much money is to be distributed in the first funding round; adopts critical definitions of “rural,” “unserved” and “underserved” areas; specifies how the applications will be “scored” to determine who gets the money; and prescribes the elements that must be included in each application on pain of dismissal.

Deadline. The most daunting feature of the rules is the *August 14* deadline for filing. That leaves less than a month to pull together a fairly complicated package of information and projections, perhaps involving the receipt and expenditure of millions of dollars. But remember, the underlying purpose of this program is to stimulate the economy, so in this case haste makes not waste, but good public policy. Your whole package must be electronically filed by 5:00 p.m. (EDT) on August 14. (For handicapped people or smaller award requests, paper copies must be hand-delivered by 5:00 p.m. (EDT) on August 14 or postmarked by August 14.) Anguished cries from prospective applicants about the enormous quantum of required information and the short time fuse have already been raised on Capitol Hill, generating some hope that the deadline may be pushed back a bit, but no one should delay preparation of his application in that expectation.

To be sure, the August deadline applies only to the first round of funding – there will be at least one additional opportunity to file later in 2009 or 2010 (RUS is now waffling on whether there will be three funding tranches or only two), but as we will explain, there may be some advantage to filing in the first round.

Know Your Acronyms. The Feds have adopted cute acronyms for the two funding vehicles.

“**BIP**” – Broadband Initiatives Program – is the name for the RUS program intended primarily to bring broadband to rural areas.

“**BTOP**” – Broadband Technology Opportunities Program – is the NTIA program which is open to both rural and urban areas. BIP and BTOP sound like lovable clowns in a small European circus, but they are no laughing matter here.

Funds Available. The official moniker for the document released by RUS and NTIA is a “Notice of Funds Availability” or “NOFA.” That’s because the announcement says that \$2.4 billion is being made available for rural areas by the RUS and \$1.6 billion is being made available from NTIA sources. This \$4 billion represents a hefty chunk of the \$7.2 billion that has been allocated for this program overall. So even though there is at least one more funding tranche still to come, the Feds have front-loaded the awards to try to get the money out there sooner rather than later. Particularly in the case of *rural* applicants, there is some premium on filing early since RUS is proposing to shovel out 96% of its money in this first round.

Within the overall funding amounts, there are some key subsets. Of the \$2.4 billion in BIP money, half is reserved for last mile projects (*i.e.*, projects designed to get broadband service to the end user). Of that half, \$400 million is reserved for grants for remote area projects – projects that address the most sparsely populated and needy parts of the country. The other \$800 million is reserved for loans or loan/grants for non-remote but nevertheless rural areas. Another \$800 million is set aside for loans and loan/grants for “middle mile” projects – what most people would call back haul. By our math, that leaves \$400 million in BIP money available for unrestricted purposes.

BTOP is offering \$1.6 billion, divided as follows: no more than \$1.2 billion for broadband infrastructure projects, \$50 million to establish public computer centers so people will have public access to broadband, \$150 million for “sustainable broadband adoption” projects (nobody, including NTIA, seems to be quite sure what this particular money is supposed to be for), and \$200 million as a “national reserve” – a sort of broadband rainy day fund.

It must be remembered that all of this money does not have to be doled out in the first round. If there are insufficient worthy applications, the funds can simply be held over to the next round. However, *all* the money has to be out the door by September 30, 2010.

Where is the Money Going? There is both a geographic and a service-based component to determining which regions of the country qualify for project funds. As mentioned above, the BIP money is primarily intended for rural applications, so 75% of the areas to be served with this money must go to serve rural areas. Moreover, if you qualify as a rural area, you *must* apply through the BIP program first, even though your application can also be considered for BTOP money if it’s not found worthy of BIP. One of the initially perceived advantages of filing for BIP was that you would not be saddled with

the requirement applicable to BTOP money to pay 20% of the project cost out of non-federal funds – *i.e.*, you can get a grant for the *whole* amount. However, RUS poured cold water on those dreams by declaring that pure grants would be available only for those “remote” areas described above – the areas that nobody wants to serve now. BTOP funds can go to both urban and rural areas.

Both programs, however, emphasize the importance of providing service to unserved and underserved areas. It’s not that difficult to determine if an area is completely unserved – a simple drive test or a look at a cable TV or telco service map would answer that, but how do you determine when an area is “underserved”? This is one of the most criticized elements of the rules as announced because it is so difficult to determine with any accuracy who is receiving service in an area already served by at least one broadband provider. Those companies aren’t saying how many subscribers they have, and they are obviously not going to be eager to help a government-subsidized competitor come into the market. Those companies will also have the right to challenge your claims about service or the lack thereof, so this key component of an applicant’s eligibility package is highly vulnerable. (*See* Tom Dougherty’s article on page 3.)

Application Process. RUS and NTIA have published an electronic version of the application form on their website. (You can check it out at http://broadbandusa.sc.egov.usda.gov/download_app.htm.) The 72-page form is an intimidating one, calling for a large amount of data from the applicant. Required components include a detailed description of the project including:

- a granular description of the area to be served with maps, geography, numbers of households and businesses passed, job impact, etc);
- a description of the proposed service offerings and proposed pricing plans;
- the advertised rates of existing providers;
- a network diagram certified by a network engineer;
- a project timeline;
- management résumés;
- legal opinions as to the applicants’ qualifications;
- financial information about the applicant, both historical and projected;
- other information peculiar to BTOP.

A major purpose of these programs is to stimulate job creation, and the application process itself could be a job creation program for engineers, lawyers, accountants, geographers and others. Perhaps the Feds are relying on the onerousness of the process itself to deter less-than-committed applicants, but the process may also deter otherwise

deserving applicants who are simply unable to amass this mountain of data in the 30 days available.

Who Gets the Money? A scoring system has been established by each program to measure how well the applications serve the purposes of the program and how likely they are to succeed. (See Jeff Gee's article on page 4.) This is an attempt to make the selection process objective, though we note that the BTOP has an astonishing level of personal involvement by high level political appointees at NTIA at the back end of the award process – a design feature that does nothing to assuage fears that the awards may be based on political connections rather than merit. Perhaps to counteract that apprehension, applicants and their representatives are barred from any contact with the funding agencies while their applications are being considered (other than responding to formal notices).

In general, the programs have been set up to prioritize applicants who contribute more rather than less of their own money, who request a larger component of their award as loan rather than grant, and who provide the greatest service to areas that currently have the least broadband access. This will require a challenging trade-off by applicants between getting the funds in the first place, ensuring the sustainability of their project, and risking as little of their own money and as much of the government's as possible.

Post-Grant Accountability. The rules prescribe detailed monitoring and reporting requirements for award recipients to ensure that they are spending the money quickly and as promised. Any failures to meet promised performance can result in "deobligation" of the committed funds and other severe penalties. There are also restrictions on what you can do with the revenues you receive for a few years, and you must get permission to sell the system you have created. (See Joe Di Scipio's article on page 6.)

All of this proves once again the adage that there is no free lunch, but that should not deter folks with a good plan from ordering up the menu.