

**Comparison of Application Requirements for the
NTIA and RUS Broadband Programs in the
American Recovery and Reinvestment Act of 2009
(Economic Stimulus Legislation)**

Updated As of 2/25/09

The following provides a comparison of the NTIA and RUS broadband programs in the American Recovery and Reinvestment Act of 2009 (the so-called Economic Stimulus bill) that was signed into law by President Obama on Tuesday, Feb. 17, 2009. Both the NTIA program (total of \$4.7 billion) and the RUS program (\$2.5 billion) are intended to encourage investment in and use of broadband services by awarding grants, loans or loan guarantees. While the program requirements have many similarities, there are also many important differences that will have a great impact on the types of applications that will be acceptable for each program. Both agencies are expected to announce rules governing these programs within the near future. The purpose of this document is to identify the essential features of each program based on the statutory language, past practices at these agencies, and statements by government officials.

Because additional rules will be issued by the agencies, this document should be used only as an initial guide and should not be the sole source of information for entities making applications.

This document uses color coding to distinguish between different types of information:

Black: Statutory language contained in the text of the ARRA.

Green: Current agency (NTIA and RUS) rules for the program. These rules are subject to change.

Red: Commentary. These suggestions, analysis, and advice are purely advisory, may change, and should not be relied upon.

The language in black below usually uses the actual statutory language (except for some abbreviations and acronyms, such as using “NTIA” for “Assistant Secretary of Commerce”), but the language does NOT always appear in



the same order in which it appears in the statute. Rather, the provisions have been grouped together to make it easier to compare and contrast the two programs. Also, the NTIA Broadband program appears in two sections of the ARRA; each block indicates whether the language is from Title II or from Section 6001 in Division B near the end of the Act.

Before jumping into the text, it is important to note what is NOT included in the final language:

- The Act does NOT contain definitions of many terms, such as “unserved,” “underserved,” “broadband,” and “high-speed broadband.” These will be defined by the agencies.
- The Act does NOT indicate a preference or allocation for wired or wireless, as in earlier versions of the bills.
- The Act does NOT contain any tax credits specifically for broadband. These were included in the Senate bill but not in the House bill, and they were dropped altogether in conference.
- The Act does NOT delegate decision-making to the States. States play a consultative role in the NTIA program (and no role is set out in the RUS program). All grant and loan decisions are made by the two Federal agencies.
- The Act does NOT restrict the list of eligible applicants to public sector entities and non-profits. Unlike the Senate bill, the final Act allows private sector parties (cable and telephone companies, for instance) to apply. Nonetheless, the emphasis in the Act is to encourage use by and cooperation with public sector entities.

There are some advantages and disadvantages of each program as follows:

NTIA/BTOP program: Possible Advantages

- Not restricted to rural areas. NTIA/BTOP funds can be used for unserved and underserved areas without regard to geographic area;
- Not restricted to any particular portion of the network (last mile, middle mile, backhaul, cell towers);
- Not restricted to any particular technology;
- Funds can be used for hardware, equipment, software, and other capital expenditures



- Allocates funding for “expanding public computer center capacity” (\$200M) and “innovative programs to encourage sustainable adoption of broadband service” (\$250M). An applicant can potential apply for these two programs AND for the broadband deployment funding;
- Open to virtually any entity, no preference for certain entities. But NTIA will decide “by rule” whether applications from private sector entities satisfy the public interest (NTIA will probably find that they do).

NTIA/BTOP Program: Possible Disadvantages:

- The focus is on construction and deployment, and it is possible funds will not be permitted for ongoing operational expenses.
- Must comply with FCC policy statement on net neutrality and perhaps additional requirements.
- Must provide 20% matching funds (subject to waiver).
- Projects must be completed within 2 years (“use it or lose it” may apply).

NTIA/BTOP Program: Preferences (these may be advantages or disadvantages depending on whether you meet the criteria):

- Preference for serving community anchor institutions;
- Preference for serving the maximum number of people;
- Preference for the fastest speed possible;
- Preference for making broadband more affordable for the greatest number of people;
- Preference for serving socially disadvantaged;
- Preference for education and health care purposes;



- Preference for small businesses.

RUS Program: Overall Comments:

- Much less is known about how this program will operate. There is much less statutory language describing this program compared to the NTIA/BTOP program. There is also some confusion: the statute uses a heading of the “Distance Learning and Telemedicine program,” but the text that follows does not refer to these purposes. The RUS has operated 3 different broadband programs: the DLT program, the Community Connect program, and the Rural Broadband Loan and Loan Guarantee program. The rules for the ARRA funds are likely to consist of a combination of the rules for these three programs. Some of the advantages/disadvantages discussed below are based on the past practice of RUS in administering its existing programs. The RUS will likely clarify its rules and process in the next month, so this document will be changed as new information becomes available.
 - The DLT program has been in existence for years, but it has only been used to fund equipment (computers, audio and visual equipment), not for telecommunications. So the rules for the new funding program are likely to be very different than the existing DLT rules.
 - The Community Connect program is a small program designed to provide financial assistance in the form of grants to eligible applicants that will provide currently unserved areas, on a "community-oriented connectivity" basis, with broadband transmission service that fosters economic growth and delivers enhanced education, health care, and public safety services.
 - The Broadband Loan and Loan Guarantee Program was created by the 2002 Farm Bill. The rules were recently amended to accommodate the concerns of some that the program has funded companies in areas that already had broadband service available. Since its inception, the program has approved 70 loans in 40 states, totaling over \$1.22 billion. The broadband loans serve 1,263 communities with a total of 582,000 household subscribers. Approximately 40 percent of these communities were unserved at the time of the loan approval, and an additional 15 percent had only one provider.



RUS Program: Possible Advantages:

- More limited pool of applicants (less competition)
- Projects do not need to satisfy net neutrality (non-discrimination and network interconnection) conditions.
- **May include funding for operational expenses**

RUS Program: Possible Disadvantages:

- Preference for small telephone companies;
- Much stricter rural requirements;
- Priority is given to projects that provide end-users a choice of service providers.

Program	NTIA/BTOP Program	RUS Program
Program Names	Broadband Technology Opportunities Program (BTOP)	Distance Learning, Telemedicine and Broadband Program
General Language	NTIA, in consultation with the FCC, shall establish a national broadband service development and expansion program in conjunction with the technology opportunities program. [Sec. 6001]	For the cost of broadband loans and loan guarantees, as authorized by the Rural Electrification Act of 1936 (REA), and for grants (including for technical assistance)
Total Amount of Funding	\$4.7 Billion	\$2.5 Billion
Funding Break-outs	<ul style="list-style-type: none"> • Not less than \$4.35 B shall be expended pursuant to division B/(Section 6001); • Not less than \$200M shall be available for competitive grants for expanding 	Provided that the cost of direct and guaranteed loans shall be as defined in section 502 of the Congressional Budget Act of 1974



Program	NTIA/BTOP Program	RUS Program
	<p>public computer center capacity, including at community colleges and public libraries. (Note “not less than”)</p> <ul style="list-style-type: none"> • Not less than \$250M shall be available for competitive grants for innovative programs to encourage sustainable adoption of broadband service; (Note “not less than”) • \$10M shall be transferred to DOC IG for the purposes of audits and oversight of funds provided under this heading • Up to \$350M may be expended pursuant to Public Law 110-385 and for the purposes of developing and maintain a broadband inventory map pursuant to division B of this Act; (Note “up to”) • Amounts deemed necessary and appropriate by the Sec. of Commerce, in consultation with the FCC, may be transferred to the FCC for the purposes of developing a national broadband plan or for carrying out any other FCC responsibilities pursuant to division B, and only if the Appropriations Committees are notified not less than 15 days in advance (Title II) 	
Service Requirements	<ul style="list-style-type: none"> • Provide access to broadband service to consumers residing in unserved areas of the U.S. 	Notwithstanding Title VI of the REA, this amount is available for loans, loan guarantees and grants for all areas of the U.S.



Program	NTIA/BTOP Program	RUS Program
	<ul style="list-style-type: none"> Provide improved access to broadband service to consumers residing in underserved areas of the U.S. (Sec. 6001) <p>NOTE: Not restricted to rural areas.</p>	<p>Note “all areas of the U.S.”</p> <p>At least 75% of the area to be served by a project receiving funds from such grants, loans or loan guarantees shall be in a rural area without sufficient access to high speed broadband service to facilitate rural economic development, as determined by the Sec. of Agriculture.</p> <p>Note: not just 75% to rural areas, it is 75% to rural area without sufficient access to high-speed broadband. Also note, “high speed”. If a community has only DSL, it may not have “high-speed” broadband.</p> <p>Priority for projects that provide service to the highest proportion of rural residents that do not have access to broadband service.</p> <p>Note: no restriction to “high-speed” broadband here.</p>
<p>Other Priorities/Purposes</p>	<ul style="list-style-type: none"> Improve access to, and use of, broadband service by public safety agencies; Stimulate the demand for broadband, economic growth, and job creation; and Provide broadband education, awareness, training, access, equipment, and support to 	<p>Priority for awarding such funds shall be given to project applications for broadband systems that will deliver end users a choice of more than one service provider.</p> <p>NOTE: Appears to favor an “open access” approach.</p>



Program	NTIA/BTOP Program	RUS Program
	<ul style="list-style-type: none"> - Schools, libraries, medical and healthcare providers, community colleges and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband service by or through these organizations; - Organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by low-income, unemployed aged, and otherwise vulnerable populations; <p>Job-creating strategic facilities located within a State-designated economic zone, Economic Development District designated by the Dept of Commerce, Renewal Community or Empowerment Zone designated by the Dept of Housing and Urban Development, or Enterprise Community designated by the Dept of Agriculture (Sec. 6001)</p>	
Eligibility	<ul style="list-style-type: none"> - A State or political subdivision thereof, the D.C., a territory or possession of the U.S., an Indian tribe or Native Hawaiian organization; - A nonprofit foundation, corporation, institution, or association; - Or - Any other entity, including a broadband service or infrastructure provider, that NTIA finds by rule to be in the public 	<p>Priority for project applications from or that include borrowers or former borrowers under title II of the REA.</p> <p><i>Note: This generally means small telephone companies have a preference (but need to look at title II. Some small cable companies have received Broadband Loans)</i></p>



Program	NTIA/BTOP Program	RUS Program
	<p>interest. In establishing such rule, NTIA shall to the extent practicable promote the purposes of this section in a technologically neutral manner;</p> <p>Note: NTIA must find “by rule” what other entities are in the public interest, rather than a case by case basis. Probably NTIA will find everyone to be in the public interest (but query about foreign-owned entities?)</p>	
<p>Application Requirements/</p>	<p>To be eligible for a grant under this program, an applicant shall:</p> <ul style="list-style-type: none"> - submit an application at such time, in such form and containing such information as NTIA may require; - provide a detailed explanation of how any amount received under the program will be used to carry out the purposes of this section in an efficient and expeditious manner, including a showing that the project would not have been implemented during the grant period without Federal grant assistance; - demonstrate to the satisfaction of the NTIA that it is capable of carrying out the project of function to which the application relates in a competent manner in compliance with all applicable Federal, State, and local laws; - demonstrate to the satisfaction of NTIA that it will appropriate (if the applicant is a State or local government agency) or otherwise unconditionally obligate, from 	<p>Priority to project applications that demonstrate that all project elements will be fully funded</p>



Program	NTIA/BTOP Program	RUS Program
	<p>non-Federal sources, funds required to meet the requirements of subsection (f) [regarding the 20% match];</p> <ul style="list-style-type: none"> - disclose to NTIA the source and amount of other Federal or State funding sources from which the applicant receives, or has applied for, funding for activities or projects to which the application relates; and provide such assurances and procedures as NTIA may require to ensure that grant funds are used and accounted for in an appropriate manner. (Section 6001) 	
Matching Funds	<p>The Federal share of any project may not exceed 80 percent, except that NTIA may increase the Federal share of a project above 80% if</p> <ol style="list-style-type: none"> 1. the applicant petitions NTIA for a waiver; and 2. NTIA determines that the petition demonstrates financial need. <p>(Section 6001)</p>	
Uses of Funds	<p>NTIA may make competitive grants to:</p> <ol style="list-style-type: none"> 1. Acquire equipment, instrumentation, networking capability, hardware and software, digital network technology, and infrastructure for broadband services; 2. Construct and deploy broadband service related infrastructure; 3. Ensure access to broadband service by community anchor institutions; 4. Facilitate access to broadband service by low-income, unemployed, aged, and 	



Program	NTIA/BTOP Program	RUS Program
	<p>otherwise vulnerable populations in order to provide educational and employment opportunities to members of such populations;</p> <p>5. Construct and deploy broadband facilities that improve public safety broadband communications services; and</p> <p>6. Undertake such other projects and activities as NTIA finds to be consistent with the purposes for which the program is established. (Section 6001)</p> <p>Note: NTIA “may” make grants for these purposes. These are not requirements, but appear to express the preference of Congress that it make grants to at least some applications serving each of these needs.</p>	
Additional Grant Criteria	<p>NTIA shall, to the extent practical:</p> <ol style="list-style-type: none"> 1. Award not less than 1 grant in each State 2. Consider whether an application to deploy infrastructure in an area <ul style="list-style-type: none"> - Will, if approved, increase the affordability of and subscribership to, service to the greatest population of users in the area; - Will provide the greatest broadband speed possible to the greatest population of users in the areas; 	



Program	NTIA/BTOP Program	RUS Program
	<ul style="list-style-type: none"> - Will enhance service for health care delivery, education, or children to the greatest population of users in the area; 3. Consider whether the applicant is a socially and economically disadvantaged small business concern under the Small Business Act. (Section 6001) 	
No Unjust Enrichment or Duplication	<p>NTIA shall ensure that the program complements and enhances and does not conflict with other Federal broadband initiatives and programs. (Sec. 6001)</p> <p>NTIA shall consider whether an application will not result in unjust enrichment as a result of support for non-recurring costs through another Federal program for service in the area (Sec. 6001)</p>	No area of a project may receive funding to provide broadband service under the Broadband TOP (NTIA Program)
State Role	<p>NTIA may consult a State, D.C. or territory or possession of the U.S. with respect to –</p> <ul style="list-style-type: none"> - The identification of areas described in (b)(1) [Purposes] - The allocation of grant funds within that State for projects in or affecting the State. (Section 6001) 	
Timing	<ul style="list-style-type: none"> - NTIA shall establish and implement the grant program as expeditiously as practicable; - Ensure that all awards are made before the end of fiscal year 2010; - Seek assurances as may be necessary or 	<p>Priority to project applications for activities that can be completed if the requested funds are provided.</p> <p>Priority to activities that can commence</p>



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	<p>appropriate from grantees under the program that they will substantially complete projects supported by the program in accordance with project timelines, not to exceed 2 years following an award; (Section 6001)</p>	<p>promptly following approval.</p>
<p>Reporting Requirements</p>	<p>NTIA shall report on the status of the program every 90 days.</p> <p>Any entity receiving a grant shall report quarterly, in a format specified by NTIA on such entity's use of the assistance and progress fulfilling the objectives for which such funds were granted, and NTIA shall make these reports available to the public</p> <p>NTIA may establish additional reporting requirements</p> <p>NTIA shall create and maintain a fully searchable database, accessible on the Internet at no cost to the public, that contains at least a list of each entity that has applied for a grant under this section, a description of each application, the status of each such application, the name of each entity receiving funds, the purpose for which such entity is receiving such funds, each quarterly report, and such other information sufficient to allow the public to understand and monitor grants. (Section 6001)</p>	<p>Sec. of Agriculture shall report on planned spending and actual obligations describing the use of these funds not later than 90 days after enactment, and quarterly thereafter until all funds are obligated.</p>



Program	NTIA/BTOP Program	RUS Program
NTIA Enforcement	<p>NTIA shall establish appropriate mechanisms to ensure appropriate use and compliance with all terms of any use of funds;</p> <p>NTIA may deobligate awards to grantees that demonstrate an insufficient level of performance or wasteful or fraudulent spending, and award these funds competitively to new or existing applicants;</p>	
Public Interest Requirements	<p>Concurrent with the issuance of the Request for Proposal for grant applications pursuant to this section, NTIA shall, in coordination with the FCC, publish the non-discrimination and network interconnection obligations that shall be contractual conditions of grants awarded under this section, including, at a minimum, adherence to the principles contained in the FCC’s broadband policy statement. (Section 6001)</p>	
Administrative Expenses	<p>Not more than 3% of funds provided under this heading may be used for administrative costs, and this limitation shall apply to funds which may be transferred to the FCC. (Title II)</p>	<p>[There is a similar 3% limitation in the body of the bill that applies to all the funding programs, probably including RUS.]</p>
National BB Plan	<p>Not later than 1 year after enactment, the FCC shall submit to Congress a report containing a national broadband plan.</p> <p>The plan shall seek to ensure that all people of the U.S. have access to broadband capability and shall establish benchmarks for meeting that goal. The plan shall also include:</p> <ul style="list-style-type: none"> - An analysis of the most effective and efficient mechanisms for ensuring broadband access by all people of the U.S. - A detailed strategy for achieving affordability of such service and maximum utilization of 	



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	<p>broadband infrastructure and service by the public;</p> <ul style="list-style-type: none"> - An evaluation of the status of deployment of broadband service, including progress of projects supported by the grants made pursuant to this section; and - A plan for use of broadband infrastructure and services in advancing consumer welfare, civic participation, public safety and homeland security, community development, health care deliver, energy independence and efficiency, education, worker training, private sector investment, entrepreneurial activity, job creation and economic growth and other national purposes. <p>In developing the plan, the FCC shall have access to data provided to other Government agencies under the Broadband Data Improvement Act.</p>	
Broadband Mapping	<p>NTIA shall develop and maintain a comprehensive nationwide inventory map of existing broadband service capability and availability in the U.S. that depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State. Not later than 2 years after the date of the enactment of this Act, NTIA shall make the broadband inventory map developed and maintained pursuant to this section accessible by the public on a World Wide Web site of the NTIA that is interactive and searchable.</p>	

