



Connecting Hometown America

One Parkway Center, Suite 212
Pittsburgh, Pennsylvania 15220-3505
412-922-8300 Office
412-922-2110 Facsimile

Matthew M. Polka, President
Direct Dial: 412-922-8300 Ext. 14
E-Mail: mpolka@americancable.org
Website: www.americancable.org

February 2, 2010

The Honorable Lawrence E. Strickling
Assistant Secretary of Commerce for Communications and Information
National Telecommunications and Information Administration
U.S. Department of Commerce
1401 Constitution Ave., N.W.
Washington, D.C. 20230

The Honorable Jonathan S. Adelstein
Administrator
Rural Utilities Service
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250-3201

Via email and Federal Express

Re: National Telecommunications and Information Administration and Rural Utilities Service Broadband Stimulus Programs

Dear Secretary Strickling and Administrator Adelstein:

Making broadband available to every American at affordable rates is a national imperative that the American Cable Association ("ACA") fully supports, recognizing full well that a connected nation will surely lead to a thriving and prosperous one. ACA wholly endorses the eloquent words from President Obama's Inaugural Address that now is the time to build the "digital lines that feed our commerce and bind us together."¹

ACA represents nearly 900 small, independent cable broadband providers who have been leaders at providing advanced communications services for decades in remote and rural areas that are unquestionably some of the most economically challenging locations to serve. No industry participant can claim to have greater knowledge of the unique needs of rural America on the issue of broadband infrastructure deployment than ACA's membership. In that regard, it should be no surprise that more than 80 ACA member companies applied for broadband stimulus funding for an array of last-mile and middle-

¹ President Barack Obama, Inaugural Address (delivered Jan. 20, 2009).

mile projects totaling more than \$1.3 billion in response to the agencies' first Joint Notice of Funds Availability.²

Under the American Recovery and Reinvestment Act of 2009, Congress appropriated \$7.2 billion in funding to National Telecommunications and Information Administration and Rural Utilities Service for broadband infrastructure loans and grants to be issued to eligible entities.³ In accordance with the Recovery Act, all broadband stimulus funds need to be awarded by September 30, 2010.⁴

Unfortunately, the Notices of Funds Availability recently released by NTIA⁵ and RUS⁶ essentially extinguish any hope for small cable operators to use broadband stimulus funds to build out last-mile facilities. The cumulative effect of the second-round NOFAs is to force all last-mile projects to the RUS for funding where previous RUS borrowers are automatically given a significant advantage in the scoring process. Thus, cable operators with existing facilities already built in rural America are placed at a significant disadvantage in trying to obtain funds to use such facilities to bring broadband to unserved areas. Cable operators' only offense was to fund their operations without the necessity of previous RUS loans, for which they are now being penalized in the second-round scoring process for broadband stimulus funding.

The purpose of my letter is to point out that NTIA and RUS have promulgated rules that lack balance and fairness, so much so that it would not be an exaggeration to say that the rules have effectively excluded small cable operators from meaningful participation in the NTIA and RUS BTOP and BIP programs, respectively. Such an outcome is neither good for ACA members nor the millions of Americans on the wrong side of the digital divide.

As they stand today, the rules applicable to second-round broadband stimulus funding appear to advantage certain segments of the telecommunications industry over small cable operators interested in obtaining broadband infrastructure loans and grants for last-mile broadband deployment. ACA is disappointed that NTIA and RUS have structurally modified the second-round rules for broadband stimulus funding in a way that makes it harder for small cable providers to receive last-mile funding. Moreover, the rules seem to favor every entity except small cable operators, who are ideal candidates to deliver state-of-the-art broadband facilities to rural and remote communities. This is particularly troublesome considering reports that small telephone companies collected \$250 million of the \$310 million awarded by RUS in first-round broadband stimulus funding – ***more than 80% of the total awarded.***⁷

² Notice of Funds Availability (NOFA) and solicitation of applications, 74 Fed. Reg. 33104 (July 9, 2009) ("First NOFA").

³ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) ("Recovery Act").

⁴ *Id.*

⁵ NTIA Notice of Funds Availability (NOFA) and solicitation of applications, 75 Fed. Reg. 3792 (Jan. 22, 2010) ("Second Round NTIA NOFA").

⁶ RUS Notice of Funds Availability (NOFA) and solicitation of applications, 75 Fed. Reg. 3820 (Jan. 22, 2010) ("Second Round RUS NOFA").

⁷ See Jesse Ward, *USDA Awards \$310 Million to 14 Broadband Providers* (Jan. 25, 2010), available at <http://www.ntca.org/new-edge/data/usda-awards-310-million-to-14-broadband-providers> (last visited Feb. 2, 2010) ("The USDA announced today that it has selected 14 new BIP projects that will receive nearly \$310 million in funding through the American Recovery and Reinvestment Act, of which ***more than \$250 million was awarded to [National Telecommunications Cooperative Association] members.***"); see also U.S. Department of Agriculture News Release, *Agriculture Secretary Vilsack Announces \$310 million in Recovery Act Funds for Rural Broadband Projects* (Jan. 25, 2010), available at

After a careful review of the separate NTIA and RUS NOFAs that were released on January 15, 2010, ACA discovered that both NTIA and RUS made various adjustments to their second-round funding rules that dismayingly tilt in favor of rural telephone and satellite companies to a degree that gives them a decided advantage over smaller cable operators that decide to apply for last-mile grants and loans. For instance, RUS opted to increase the number of points (from 5 to 8) out of 100 automatically awarded to applicants that have previously borrowed funds under Title II of the Rural Electric Act of 1936,⁸ which are overwhelmingly traditional telephone companies.⁹ Moreover, RUS plans to set aside \$100 million in grants specifically for satellite broadband targeted at rural unserved areas – areas that might be targeted by small cable operators for the buildout of wireline broadband.

The decision to bolster incumbent RUS borrowers has taken on greater urgency because NTIA states that the majority of its allotted \$2.6 billion in second-round broadband grants will go to middle-mile projects, while the RUS's \$2.2 billion in grants and loans will mostly go toward last-mile infrastructure projects. If the last round of funding is any indication, competition for the funds will be fierce, with the amount requested far exceeding the amount of funds available. ACA, which has maintained all along that a five-point preference was excessive, is perplexed as to why RUS would make matters worse by increasing that amount to eight points. In our new era of open government, we hope to receive an explanation for changes that clearly disadvantage small cable operators. Favoritism and disparate regulatory treatment are not a formula for success.

We appreciate that NTIA and RUS did respond to some of ACA's concerns. For example, NTIA eliminated the strict prohibition on the sale of funded facilities within 10 years;¹⁰ RUS eliminated the definition of "remote," thereby broadening access to grants in lieu of loans;¹¹ and NTIA eliminated the requirement that certain applicants had to apply to RUS first before they were eligible to apply for NTIA grants.¹²

But for the agencies' decision that RUS will be the primary source of last-mile funding, and RUS's increased preference for awarding certain segments of the industry, these rule changes would have encouraged more small cable providers to participate. As it stands now, I am afraid that we will see fewer, rather than more, smaller cable operators seeking to apply for stimulus funding to help the Obama Administration achieve the goal of making broadband service both universal and affordable to every American anytime soon. In addition, the agencies' new broadband stimulus rules will disadvantage many small businesses across the country at a time when the economy and jobs are the number one priority of the Obama Administration. That is unfortunate, indeed.

Sincerely,

http://www.usda.gov/wps/portal/!ut/p/ s.7_0_A/7_0_1RD?printable=true&contentidonly=true&contentid=2010/01/0032.xml (last visited Feb. 2, 2010). The National Telecommunications Cooperative Association ("NTCA") is an association representing "small and rural **telephone** cooperatives and commercial companies." See NTCA's "About NTCA" webpage, *available at* http://www.ntca.org/index.php?option=com_content&view=category&layout=blog&id=1&Itemid=279 (last visited Feb. 2, 2010) (emphasis added).

⁸ Rural Electrification Act of 1936, *as amended* (7 U.S.C. §901, *et seq.*).

⁹ Second Round RUS NOFA at 3831.

¹⁰ Second Round NTIA NOFA at 3810.

¹¹ Second Round RUS NOFA at 3822.

¹² Second Round NTIA NOFA at 3804.



Matthew M. Polka
President and CEO
American Cable Association

cc: House Energy and Commerce Committee
Chairman Henry A. Waxman
Ranking Member Joe Barton
Subcommittee Chairman Rick Boucher
Subcommittee Ranking Member Cliff Stearns

Senate Commerce Committee
Chairman John D. Rockefeller, IV
Ranking Member Kay Bailey Hutchison
Subcommittee Chairman John F. Kerry
Subcommittee Ranking Member John Ensign

House Agriculture Committee
Chairman Collin C. Peterson
Ranking Member Frank D. Lucas
Subcommittee Chairman Mike McIntyre
Subcommittee Ranking Member K. Michael Conaway

Senate Agriculture Committee
Chairwoman Blanche Lincoln
Ranking Member Saxby Chambliss
Subcommittee Chairwoman Debbie Stabenow
Subcommittee Ranking Member John Cornyn