

**Statement of
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to the
House Committee on Agriculture
Subcommittee on Rural Development, Biotechnology, Specialty Crops
and Foreign Agriculture
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Chairman McIntyre, Ranking Member Conaway, members of the Subcommittee: Thank you for this opportunity to appear before you today. I am Walter McCormick, President and CEO of the USTelecom Association.

USTelecom represents innovative companies ranging from some of the smallest rural telecoms in the nation to some of the largest corporations in the U.S. economy. Our member companies offer a wide range of services across the communications landscape, including voice, video and data over local exchange, long distance, Internet and cable networks. USTelecom is the nation's oldest – and largest – association representing rural telecom providers. Almost all of our member companies serve rural areas. The vast majority of them are small businesses serving small communities and the surrounding sparsely populated areas. They are proud members of these communities and deeply committed to their future development. What unites our diverse membership is our shared determination to deliver innovative voice, video and data services to the consumer—a commitment we know this Subcommittee shares.

Broadband in the United States has developed with a speed and scope unparalleled by any prior technology. Moreover, unlike any other infrastructure effort of its scope, it has done so largely with private sector investment. By some estimates, cumulative capital expenditures by broadband providers from 2000-2008 were over half a trillion dollars, and private investment in broadband infrastructure has grown consistently since 2003. As a result of this massive private investment in infrastructure, an overwhelming majority of Americans today can choose among *multiple* broadband platform providers.

While this has been an extraordinary decade of growth for both broadband technology and access, more needs to be done. As you well know, portions of rural America are unlikely to see robust broadband without government support. This Committee, through its support of the Rural Utilities Service (RUS) broadband program, has recognized that when it comes to deploying broadband to areas that are uneconomic to serve, using federal resources to leverage the initiative and expertise of established private sector broadband providers is clearly preferable to direct operation and ownership by the government.

USTelecom has urged establishing a national goal of 100% broadband access and adoption by 2014. While these are certainly stretch goals, setting a lesser bar for this important effort would simply be aiming too low. Still, approaching this goal will require the combined

efforts of network providers, applications providers, and community organizations, together with federal, state and local governments.

The RUS Broadband Loan Program

This Committee has been at the forefront of helping advance the development of rural America, from bringing electricity and safe running water to communities that never had it before, to connecting the country via the telephone and now via high-speed broadband. USTelecom and its member companies are proud of the role we play connecting the country, and we fully support the critical role played by the RUS in helping to bring broadband to rural areas.

When I appeared before you in 2007, I recommended several improvements to the RUS broadband loan program. These included:

- 1) Better targeting of areas currently not served;
- 2) Enhancing incentives for investment in the areas not served;
- 3) Expanding program eligibility;
- 4) Improving loan processing at USDA; and
- 5) Exploring public-private partnerships.

The Committee adopted these needed reforms to the RUS broadband program as part of the Farm Bill enacted last year. Your thoughtful modifications to this important program will significantly improve the targeting of funds to areas unserved by broadband, streamline the application process, take into account the greater degree of loan security associated with financially strong borrowers, and expand the availability of money to providers of all sizes. In addition, the Committee improved program transparency by beefing up requirements for publication of notices of each application. Furthermore, a three year build out requirement was included to ensure that borrowers either promptly construct broadband facilities or relinquish the claim and allow another provider to apply for funding to serve that same area.

Unfortunately, although the Farm Bill was signed into law in June of last year, we are now three quarters of the way into fiscal year 2009 without the necessary implementing regulations. As a result, no loans have been made from the over half a billion dollars Congress provided for enhancing broadband access in rural areas. While it is certainly understandable that RUS has been focused on developing rules for the new broadband grant and loan program authorized under the American Recovery and Reinvestment Act of 2009 (ARRA), RUS had seven months after the enactment of the Farm Bill and prior to the passage of the ARRA to promulgate regulations.

The broadband loan program reauthorized in the Farm Bill remains an important tool to bring high speed broadband to rural areas and the regulations should be published promptly. RUS has indicated that such regulations will be published in "interim final" form, allowing them to be immediately implemented but permitting public comment. This less than ideal procedure would not have been required had RUS promptly published regulations within a reasonable period after adoption of the Farm Bill. Given the current circumstances, we hope the Committee

will seek assurances that RUS will still give serious consideration to public comments received on its broadband loan program regulations.

Finally, while we acknowledge and appreciate the efforts of the current management of the agency during this busy time, we urge the other body to promptly consider and approve the confirmation of Jonathan Adelstein as Administrator of RUS. At this crucial time for the RUS program, it would greatly benefit from the expertise and leadership that Commissioner Adelstein will bring. Commissioner Adelstein has been a tireless advocate for both broadband and rural America, and as such is ideally suited to lead RUS at this moment in its history.

Stimulus Presents RUS with a Tremendous Responsibility and a Momentous Opportunity

The ARRA presents the RUS with both a tremendous responsibility and a momentous opportunity. The opportunity, of course, is to make significant progress toward the goal of ensuring that all Americans have access to high-speed broadband services. The responsibility is to do so in a manner that fulfills the fiduciary duty placed on it by Congress, the President and the American public, that RUS must target broadband stimulus funds toward projects that will immediately stimulate economic activity, create jobs and provide high-speed broadband service.

As the RUS worked to develop regulations for its program, USTelecom offered a number of recommendations designed to meet those twin goals. We pointed out that implementation of the Recovery Act should support, not hinder, the ability of providers to continue to expand and enhance services and speeds. In that regard, we are concerned that some view these important programs in the ARRA less as engines for economic recovery and job creation than as an opportunity to advance policies that deserve far greater deliberation and thoughtful debate. This is likely to inject an element of uncertainty and delay that is antithetical to the ARRA's primary objective of promoting economic recovery and creating jobs.

We also urged the RUS to rank applications by focusing on bringing areas most lacking in broadband infrastructure up to levels available to the majority of Americans with a particular emphasis on grants rather than loans. Most of the areas that remain unserved and underserved are not so because of the absence or the price of credit, but due to the inability of broadband providers to demonstrate a feasible business case to bring service to very high cost, low density markets. By allocating new funds that could be used for grants, Congress recognized that loans alone are not sufficient to address the lack of broadband infrastructure in sizable portions of unserved rural America.

Finally, in addition to proper loan and grant ratios, the program requires clear, simple and streamlined procedures and definitions.

Department of Agriculture's Rural Utilities Service Broadband Initiatives Program

On July 1, the Department of Commerce's National Telecommunications and Information Administration and the Department of Agriculture's Rural Utilities Service (RUS) released a 121-page Notice of Funding Availability (NoFA) detailing the rules and process for

the distribution of the first phase of broadband loans and grants established by the ARRA. Even though RUS had indicated that there would be three tranches of funding, this NoFA will be used to distribute at least half of the funding allocated to RUS's Broadband Initiatives Program (BIP).

Applications for this first phase of both programs may be filed beginning July 14 and must be in no later than August 14. There will be a two-part review process, with those applicants making the first cut likely to be required to provide additional information to the agencies in mid-October. The agencies expect to announce awards around November 7.

The NoFA, in accord with USTelecom's recommendation, defines broadband as 768 kbps downstream and 200 kbps upstream. It defines unserved areas as those where at least 90% of households are without broadband access. Underserved areas are defined broadly as:

- those areas where less than 50% of households have access to broadband, or
- those areas where no broadband service provider advertises speeds of at least 3 mbps downstream, or
- those areas where broadband subscribership is 40% of households or less.

In addition to requiring applicants to abide by the FCC's Internet Policy Statement, which USTelecom supports, the agencies have also chosen to require adherence to a non-discrimination principle ("not favor any lawful Internet applications and content over others") and an apparently broad interconnection obligation. The NoFA does allow exceptions for law enforcement, managed services and for reasonable network management. These obligations would apply to any facility supported by the funding, but not any existing network arrangements, and continue to apply for the life of that facility.

BIP funding is split between that for rural and remote areas. Remote areas (those 50 miles outside of non-rural areas) are eligible for grants up to 100% and rural areas that are non-remote can get grants up to 50% of the cost of the project with the remainder being loans. The loan portion will have "attractive loan terms with reasonable security requirements." No further information is provided as to the details of the loan terms and reasonable security requirements. However, as this Committee knows from its work reforming the broadband loan program, those details will be a critical component in the success or failure of this aspect of the program.

Finally, the BIP allocates \$1.2 billion for last-mile projects, both remote and non-remote. Approximately \$400 million is for remote area grants and \$800 million for rural but non-remote loans and grants. BIP will fund last-mile facilities to end users and middle-mile facilities connecting up the provider to the Internet backbone. Applications for areas that are at least 75% rural must be made to BIP, but can also be submitted to NTIA's broadband program. Applications for all other areas go to NTIA's program.

The NoFA is quite complex, and USTelecom staff is continuing to analyze its details. But let me offer some preliminary thoughts about several aspects of the NoFA that USTelecom focused on in its commentary to the Administration.

We believe the rules implementing the Recovery Act's requirement that "priority for awarding [RUS] funds shall be given to project applications for broadband systems that will deliver end users a choice of more than one service provider" should be interpreted as awarding a priority to those applicants that agree to adhere to the FCC's Broadband Policy Statement. More than three years of experience under that Policy Statement has demonstrated its successful balancing of interests among stakeholders – consumers, cable and wireline broadband service providers, application and content providers and technology companies. The NoFA, however, appears to exceed the principles laid out in the Policy Statement. We are concerned that this could impact the number and type of applications the RUS receives and therefore undermine the goals of the ARRA to immediately stimulate economic activity and deploy high speed broadband service.

Further, the scoring system for prioritizing applications for funding has some troubling implications. For example, out of a possible 100 points awarded to an application, only a maximum of 5 points are awarded for serving rural residents located in unserved areas. And each of those 5 points requires serving 10,000 unserved households – the vast majority of our members have substantially less than 10,000 customers in their entire service areas, so smaller companies or those seeking funding for smaller scale projects serving pockets of customers without broadband service may be ignored. These are the very places that we believe Congress intended to support through the ARRA and this proposal appears to unduly disadvantage these areas. Of similar concern is the reduced availability of grant funding for "non-remote" rural areas – those within 50 miles of towns larger than 20,000 people. It can be prohibitively expensive to provide broadband in these areas, and we are concerned that a maximum of 50 percent grant funding may not be adequate to structure a financially feasible project.

Furthermore, technological neutrality is clearly cast aside. The same number of points is awarded to a wireless provider that builds a system that will deliver a total of 2 megabits per second upstream and downstream, while a wireline provider must construct a system 10 times as fast to be awarded the same number of points.

Finally, there are unnecessarily restrictive provisions on the sale or lease of award funded facilities which may discourage potential applicants from providing needed broadband service to rural consumers. The NoFA prohibits an awardee from selling or leasing stimulus financed facilities for ten years, and only then may the awardee request a waiver. While restrictions on transferring such facilities is reasonable to prevent speculation, the rule specifying a ten year time frame is excessive. For example, the public interest would not be well served by prohibiting two small rural companies wishing to better serve their subscribers with broadband service from merging.

Conclusion

Mr. Chairman, in closing, let me reiterate that it is critically important that rural areas be included in the nationwide drive for greater bandwidth capacity. This modernization of the

nation's communications infrastructure will seed economic growth, attract new businesses to rural America and expand opportunities ranging from telecommuting to distance learning to telemedicine.

After 60 years of success, the RUS loan programs remain an essential public-private partnership conceived with the best of intentions—spreading opportunity throughout the country and helping the private sector overcome the often significant economic barriers associated with our nation's vast geography. The results have been impressive: RUS loans generate more revenue than they cost. RUS loans, loan guarantees and grants provide incentives where the market does not, so that private companies can invest in infrastructure that promotes rural economic development. And, it expands our citizens' access to services that can vastly enhance their quality of life and the economic opportunities available to them in their own communities.

We thank you for your invitation to appear today. USTelecom and its member companies look forward to working with the Subcommittee and this Congress to achieve our shared objective of making broadband as ubiquitous today as electricity, water and telephone service. Broadband is an essential building block of every modern American community. We look forward to working with you to make its many opportunities accessible to all Americans. Thank you.