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# BROADBAND LOANS AND GRANTS

## HEARING

BEFORE THE

SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY

OF THE

COMMITTEE ON ENERGY AND COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

MAY 16, 2012

**Serial No. 112–143**

Printed for the use of the Committee on Energy and Commerce
*energycommerce.house.gov*

U.S. GOVERNMENT PRINTING OFFICE
79–965 PDF WASHINGTON : 2013

For sale by the Superintendent of Documents, U.S. Government Printing Office
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# BROADBAND LOANS AND GRANTS

**WEDNESDAY, MAY 16, 2012**

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY,
COMMITTEE ON ENERGY AND COMMERCE,
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2123, Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Members present: Representatives Walden, Terry, Stearns, Shimkus, Bilbray, Bass, Gingrey, Scalise, Latta, Guthrie, Kinzinger, Barton, Eshoo, Matsui, Barrow, Christensen, Pallone, and Waxman (ex officio).

Staff present: Carl Anderson, Counsel, Oversight and Investigations; Ray Baum, Senior Policy Advisor/Director of Coalitions; Michael Beckerman, Deputy Staff Director; Nicholas Degani, FCC Detailee; Andy Duberstein, Deputy Press Secretary; Neil Fried, Chief Counsel, Communications and Technology; Debbee Keller, Press Secretary; Brian McCullough, Senior Professional Staff Member, Commerce, Manufacturing, and Trade; Katie Novaria, Legislative Clerk; David Redl, Counsel, Communications and Technology; Charlotte Savercool, Executive Assistant; Daniel Tyrrell, Counsel, Oversight and Investigations; Phil Barnett, Democratic Staff Director; Shawn Chang, Democratic Senior Counsel ; Elizabeth Letter, Democratic Assistant Press Secretary; Karen Lightfoot, Democratic Communications Director and Senior Policy Advisor; Margaret McCarthy, Democratic Professional Staff Member; Roger Sherman, Democratic Chief Counsel; David Strickling, Democratic FCC Detailee; and Kara Van Stralen, Democratic Special Assistant.

## OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. We will call to order the Subcommittee on Communications and Technology for our hearing on broadband loans and grants, and certainly welcome our witnesses, the audience and our members.

Today marks the third oversight hearing of our subcommittee to examine whether taxpayers are getting their money's worth from the broadband loan and grant programs of the National Telecommunications and Information Administration and the Rural Utilities Service.

Our past hearings have focused on the Broadband Technology Opportunities Program and the Broadband Initiative Program and rightly so. The Recovery Act allocated $7.2 billion—billion—to

these programs, dwarfing previous broadband loan and grant programs in size. And even though these agencies did not have grant-making experience or operations scaled to such a large project, the Recovery Act required that all awards be doled out within 18 months.

We were told such haste was necessary to get the economy going and the money would go to "shovel-ready projects." It has now been 3 years since the Recovery Act created BTOP and BIP, and more than 18 months since the last broadband loans and grants were awarded.

The fiber is beginning to fill the trenches. While all the money has been awarded, however, only about a third of it has been spent. And what have we gotten in return for that $2.5 billion? Well the National Broadband Map is one thing; I think that was about $300 million for the map. And it tells us that 98.3 percent of Americans had access to high-speed broadband service in mid-2011. That is up from the 95 percent estimate in the 2010 National Broadband Plan.

That apparent 3.3 percent jump, however, cannot be attributable to the broadband funding, since the money is only now working its way through the system. And I know that we have a lot of impressive statistics.

Administrator Strickling notes in his written testimony that 56,000 miles of broadband infrastructure have already been built or improved upon using BTOP funds. Administrator Adelstein notes that more than 100 colleges and technical schools and 600 rural health care facilities are in areas served by BIP grantees and loan recipients. Indeed, I have seen evidence of this buildout in my own rural district.

But these statistics do raise some questions. How many of those miles already had broadband infrastructure, because we are concerned about overbuilding? How many of those colleges and technical schools and rural health care facilities already had access to high speed broadband? Overbuilding has been a perennial concern when government gets involved. So I would like to hear how the agencies are taking into account existing deployments when they provide us these numbers.

And even if these were new deployments, might the private sector have met these needs more efficiently in the absence of this cumbersome subsidy program?

So I would like to know how all of those miles translate into additional access. And I would like to know how much that additional access is costing us all.

And before turning away from the stimulus funded broadband grants and loans, I wanted to thank Mr. Bass again, who is on the committee, who took the lead in our committee on the House floor last year on making sure that NTIA and RUS were properly looking into allegations of waste, fraud and abuse and returning those unused dollars or reclaimed money to the United States Treasury.

So, Charlie, thank you for your work and leadership on that.

Although our focus has been on BTOP and BIP, our responsibility to treat taxpayer money with utmost care extends even to the smaller broadband loans and grants programs of RUS. I have two primary concerns about these programs. First, many of them appear to fund the same names as the Universal Service Fund, rather

than dividing management between two agencies and oversight between two sets of inspectors general, consolidating the administration of these programs might save the taxpayer administration costs while reducing inefficient spending.

Second, I am concerned about the performance of these RUS programs. The Open Range loan alone may cost taxpayers millions of dollars, and other loans may fall through because RUS assumed that the Universal Service Fund subsidies would reimburse the subsidies it was providing but apparently did not anticipate the FCC would reform the Universal Service Fund's high-cost program, a scenario we have talked about in private and public and one that we remain concerned about just the funding scheme behind these loans and whether they stay current.

I look forward to hearing from Administrators Strickling and Adelstein to explain to us the performance of their broadband loan and grant programs, to guide us through the statistics to the facts on the ground.

And I look forward to hearing from the Inspectors General Zinser and Deputy Inspector General Gray on their ongoing oversight and how well NTIA and RUS have incorporated past recommendations into their work.

So, gentlemen, thank you very much for being here today.

And with that, I would yield back the balance of my time and recognize the ranking member from California, Ms. Eshoo.

[The prepared statement of Mr. Walden follows:]

**Opening Statement of the Honorable Greg Walden**
**Subcommittee on Communications and Technology**
**Hearing on "Broadband Loans and Grants"**
**May 16, 2012**
*(As Prepared for Delivery)*

Today marks the third oversight hearing of our subcommittee to examine whether taxpayers are getting their money's worth from the broadband loan and grant programs of the National Telecommunications and Information Administration and Rural Utility Service.

Our past hearings have focused on the Broadband Technology Opportunities Program and the Broadband Initiative Program. And rightly so. The Recovery Act allocated $7.2 billion to these programs, dwarfing previous broadband loan and grant programs in size. And even though these agencies did not have grant-making experience or operations scaled to such a large project, the Recovery Act required that all awards be doled out within 18 months. We were told such haste was necessary to get the economy going and that the money would go to "shovel ready projects."

It's now been three years since the Recovery Act created BTOP and BIP, and more than 18 months since the last broadband loans and grants were awarded under those programs. The fiber is beginning to fill the trenches. While all the money has been awarded, only about one-third has been spent.

And what have we gotten for that $2.5 billion? Well, the National Broadband Map is one thing. The map tells us that 98.3 percent of Americans had access to high-speed broadband service in mid-2011. That's up from the 95 percent estimate in the 2010 National Broadband Plan. That apparent 3.3 percent jump, however, cannot be attributable to the broadband funding, since the money is only now working its way through the system.

And I know that we have a lot of impressive statistics. Administrator Strickling notes in his written testimony that 56,000 miles of broadband infrastructure have already been built or improved using BTOP funds. Administrator Adelstein notes that more than 100 colleges and technical schools and 600 rural healthcare facilities are in areas served by BIP grantees and loan recipients. Indeed, I've seen evidence of this build-out in my own rural district.

But these statistics raise some questions. How many of those miles already had broadband infrastructure? How many of those colleges, technical schools, and rural healthcare facilities already had access to high-speed broadband? Overbuilding has been a perennial concern when government gets involved, so I want to hear how the agencies are taking into account existing deployments when they provide us numbers. And even if these were new deployments, might the private sector have met these needs more efficiently in the absence of this cumbersome subsidy program. So I'd like to know how all those miles translate into additional access, and I'd like to know how much that additional access is costing us all.

And before turning away from the stimulus-funded broadband grants and loans, I wanted to thank Mr. Bass again, who took the lead in our committee and on the House floor last year on making sure that NTIA and RUS were promptly looking into allegations of waste, fraud, and abuse and returning unused or reclaimed money to the U.S. Treasury.

Although our focus has been on BTOP and BIP, our responsibility to treat taxpayer money with the utmost care extends even to the smaller broadband loans and grant programs of the RUS. I have two primary concerns about these programs. First, many of them appear to

fund the same aims as the Universal Service Fund; rather than dividing management between two agencies and oversight between two sets of inspectors general, consolidating the administration of these programs may save the taxpayer administration costs while reducing inefficient spending. Second, I am concerned about the performance of these RUS programs. The Open Range loan alone may cost taxpayers millions of dollars. And other loans may fall through because RUS assumed USF subsidies would reimburse the subsidies it was providing, but apparently did not anticipate that the FCC would reform the Universal Service Fund's high-cost program.

I look forward to hearing from Administrators Strickling and Adelstein to explain to us the performance of their broadband loan and grant programs, to guide us through the statistics to the facts on the ground. And I look forward to hearing from Inspector General Zinser and Deputy Inspector General Gray on their ongoing oversight, and how well NTIA and RUS have incorporated past IG recommendations into their work.

###

**OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Ms. ESHOO. Thank you, Mr. Chairman.

I am pleased to welcome back to the committee Assistant Secretary Larry Strickling and RUS Administrator Jonathan Adelstein, who also served with distinction as a commissioner at the FCC.

Your work to advance our Nation's broadband infrastructure has and will continue to bring broadband to more American homes, anchor institutions and public computer facilities. And I thank you for your work. This is a big lift, and it is important for us to examine all parts of it, but I want you to know that I appreciate and respect your work.

Since our hearing last year, NTIA and RUS have continued to make progress to achieve the Recovery Act's stated goals for expanding broadband deployment and adoption. Notably, NTIA has reached 90 percent of its fiscal year 2012 goal by supporting the deployment of 56,000 new or upgraded network miles across our country. And through RUS funding, 625,000 households, about 1.5 million people, have access to new or improved broadband service. So I think that this is real progress.

These programs are creating jobs and are fueling new economic opportunities that would not be possible without broadband. For example, using NTIA funds, the Foundation For California Community Colleges has launched a program to increase digital literacy skills and broadband adoption among low-income residents in 18 counties in California.

Today, the program has enrolled more than 5,800 students, distributed 4,400 laptops and recorded 5,305 new broadband subscribers. But the short- and long-term success of these and other projects will depend on continued oversight from the Inspector General's Office. I have great respect and admiration for the IG's work, and I am pleased that we will hear from them today. The important work of the IG's office, including investigations to determine if there is any waste or fraud, will ensure that the taxpayers' investment is protected.

I recognize there will be challenges along the way. Last Friday's decision to partially suspend the seven regional public safety projects is one I know NTIA weighed very carefully. I think it is the correct action to protect taxpayer dollars and ensure that these projects are deployed consistent with the recently enacted legislation that we worked so hard on to construct a nationwide, interoperable broadband network for our first responders.

So thank you to each one of you for being here and for your work, and I look forward to your important testimony that is going to guide our subcommittee's ongoing oversight of the Recovery Act broadband grants and loans.

And with that, I will yield back the balance of my time.

Mr. WALDEN. The gentlelady yields back the balance of her time.

The chairman recognizes the gentleman from Nebraska, Mr. Terry, for 5 minutes.

**OPENING STATEMENT OF HON. LEE TERRY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEBRASKA**

Mr. TERRY. Thank you, Mr. Chairman, for holding this hearing so we can continue our oversight on the ARRA, dollars being spent on behalf of making sure that all citizens in unsupported areas have connectivity, have access to the broadband backbone.

Now, I think some of the key areas you have already stated, Mr. Chairman, but I want to reiterate that ARRA funds were supposed to help fund shovel-ready projects that would be completed within 2 years, but here we are 3 and a half years later, and the fact is that recipients of $4 billion in NTIA awards have spent just $1.6 billion and less than a dozen projects have been completed; recipients of $2.4 billion in RUS awards have spent only $968 million, and only five projects have been completed. Maybe this is because too many have been found to be unwarranted or redundant and the money is pulled back or the project, so I want to hear why more haven't been completed.

But also, the stimulus funds combined with BTOP and BIP grant loans, the issue of subsidizing or subsidizing overbuilds has been a question we have had since day one. And we have already received complaints in the State of Nebraska about an entity that was all privately funded, business, now has competition laid over it with government subsidized broadband. So those are the type of things I want to hear about as well.

And then, Mr. Adelstein, if you reviewed and seen if any RUS loans have been put in jeopardy because of new projects; do you think there has been an impact on their ability to repay?

Those are the questions I am listening for answers to.

And at this point, I will yield to my friend, Charlie Bass.

**OPENING STATEMENT OF HON. CHARLES F. BASS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW HAMPSHIRE**

Mr. BASS. I thank my friend from Nebraska for yielding to me.

And I would like to associate myself with not only his remarks but also the remarks of the subcommittee chairman and have my regular statement, without objection, be made part of the record.

Mr. WALDEN. Without objection.

Mr. BASS. Mr. Chairman, thank you for having this hearing. And as was mentioned, we are interested in making sure that these funds are spent where they are supposed to be, that there are no, that we know a process of oversight occurs and that we don't have any embarrassing hearings at a later date about either the abuse or misuse of funding in this very large program.

It is also important to focus on whether or not this buildout is going where it is really needed, and it is not paralleling any existing capacity and competing directly with incumbent carriers or anybody else who is trying to provide, as my friend from Nebraska said, competing services.

I do have a constituent in New Hampshire who has raised significant capital to build out areas that are now, because of this program, putting this company's business plan in real doubt because they are going to have to compete with a vendor that is subsidized by the stimulus grant.

That doesn't create jobs. For every job that is created, we may lose jobs on the other side, and that is not how I define stimulus. So I hope that this program can be implemented with a sensitivity to the fact that it needs to go where it is really needed and not parallel existing capacity and not be set up in direct competition with private entities that are trying to do it the way, the old-fashioned way, which is to build it on the basis of a sound, profitable business plan.

And so, with that, Mr. Chairman, I will yield back.

Mr. WALDEN. The gentleman yields back to the gentleman from Nebraska.

Do you yield back your time, Mr. Terry?

Mr. TERRY. Yield back.

Mr. WALDEN. Yields back.

The chair recognizes Mr. Waxman for 5 minutes.

**OPENING STATEMENT OF HON. HENRY A. WAXMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. WAXMAN. Thank you, Chairman Walden, for scheduling this hearing.

This is our third oversight hearing regarding the broadband programs created by the Recovery Act, and I support the chairman's ongoing effort to exercise our committees's oversight of these programs and ensure they are being managed wisely and responsibly.

I would like to welcome Assistant Secretary Strickling, Administrator Adelstein, back to the Energy and Commerce Committee.

Your efforts to set up the broadband programs are paying off. Broadband will soon be available in places where this essential communication service has never been available before.

In particular, I want to commend Assistant Secretary Strickling for NTIA's transparency and accountability measures. These show that the vast majority of broadband grants awarded by NTIA are meeting or exceeding project benchmarks and are well on the way to becoming completed by the end of next year.

Administrator Adelstein, I would encourage you to follow NTIA's model. It has been harder for us to get information about the status of your grants than NTIA's. More regular tracking and reporting of all RUS projects would improve confidence in your programs.

We had a vigorous debate about the merits of the Recovery Act and the broadband programs it funded in the last Congress. Our role today should not be to relitigate those issues. Instead, our focus should be on our joint interest in ensuring the funds are being well managed and the taxpayers' interests are being protected.

We also have new issues to consider in light of the February enactment of the spectrum and public safety provisions in the bipartisan Middle Class Tax Relief and Job Creation Act. The law created a First Responder Network Authority, or FirstNet, to oversee the design and construction of a new broadband public safety network. It is essential that the projects funded by public safety grants awarded under the 2009 Recovery Act be harmonized with the FirstNet network.

And I want to commend NTIA's difficult but necessary decision last week to partially suspend these public safety awards. We all want these public safety projects to be completed on a timely basis, but the ultimate success of these projects will depend on how well they fit into the rest of the nationwide network.

By going a little slower now, NTIA is helping to ensure that we achieve the nationwide interoperable network we should all want.

This short delay is prudent because it will help achieve the long-term goals of these grants, but it should not become a prolonged slowdown. We need to do everything possible to help public safety grant recipients move forward as expeditiously as possible.

I thank all of today's panelists for your participation. I look forward to your testimony, and unless any of my colleagues on the Democratic side wish any time—I will yield my time back.

Mr. WALDEN. I thank the gentleman.

The gentleman yields back his time.

And we will now proceed with our witnesses.

**STATEMENTS OF LARRY E. STRICKLING, ASSISTANT SECRETARY FOR COMMUNICATIONS AND INFORMATION, NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION, DEPARTMENT OF COMMERCE; JONATHAN ADELSTEIN, ADMINISTRATOR, RURAL UTILITY SERVICE, DEPARTMENT OF AGRICULTURE; TODD J. ZINSER, INSPECTOR GENERAL, DEPARTMENT OF COMMERCE; AND DAVID R. GRAY, DEPUTY INSPECTOR GENERAL, DEPARTMENT OF AGRICULTURE**

Mr. WALDEN. And we will start with Mr. Strickling. Thank you for being here, sir, and we look forward to your testimony.

**STATEMENT OF LARRY E. STRICKLING**

Mr. STRICKLING. Thank you, Chairman Walden, and I would also like to acknowledge Ranking Member Eshoo, Vice Chair Terry, and Mr. Waxman.

I want to thank you all for the opportunity to testify this morning regarding the status of NTIA's broadband programs. I am also pleased to appear here today with our Inspector General, Todd Zinser, who has helped us improve our oversight of these programs, as well as RUS Administrator Jonathan Adelstein, whose agency the Department of Agriculture is celebrating its 150th anniversary this week.

Today I am proud to report that our broadband grant recipients are making significant progress and delivering meaningful benefits to their communities. Taken as a group, our projects are exceeding their performance goals in deploying new infrastructure, constructing new public computer centers and encouraging greater Internet adoption.

As of March 31, our grantees have deployed more than 56,000 miles of broadband infrastructure. They have connected more than 8,000 community anchor institutions to high-speed broadband service. They have installed more than 30,000 work stations in public computer centers where they have provided more than 7 million hours of technology training to approximately 2 million users. We have generated approximately 350,000 new broadband subscribers,

and our grantees have funded more than 4,000 jobs in the second quarter of the fiscal year.

As impressive as these numbers are, they only tell part of the story. We hear from people across the country validating the need for these projects and the benefits they bring. Our investments are helping fiberoptic cable manufacturers and other businesses to create jobs. We are stimulating demand for broadband services, such as smart grid, telehealth and remote learning, and we are retraining workers to give them the skills they need to compete in the 21st century economy.

One of our California grantees, the California Emerging Technology Fund, has helped over 1,000 people find jobs through its training program.

These broadband investments are also priming the pump for additional investment by public and private entities. Our philosophy to focus on middle mile projects combined with our open access and interconnection requirements are making it easier for incumbents and other last mile providers to expand their broadband services and speeds for American consumers and businesses. To date, our grantees have entered into 400 interconnection agreements with last mile and other providers.

As you are aware, protecting these Federal funds is of paramount importance to NTIA, and we have been providing diligent oversight and technical assistance to our recipients. To do so requires adequate resources, and we appreciate the bipartisan support you have provided to ensure that we have the resources we need for these tasks. Our focus, as it has always been, is to ensure that our grantees complete their projects on schedule and on budget and provide the benefits they promised to their communities.

We designed our oversight program to mitigate waste, fraud and abuse, to ensure compliance with award conditions and to monitor each project's progress. Our staff is in frequent contact with recipients and requires them to report regularly on key financial and programmatic activities. To date, we have also conducted more than 130 site visits to projects representing 80 percent of the grant dollars, we have held three grantee workshops, hosted over 50 Webinars and conducted more than 3,000 check-in and conference calls. These activities help us to identify and resolve issues as soon as possible. We have been able to provide technical assistance that has helped some projects get back on track.

In a few cases, however, our oversight has led to the cancellation of projects, and to date, eight projects, totaling $125 million in Federal funds, have been canceled. And while I am disappointed that these projects will not deliver their intended benefits to their communities, I am pleased that our diligence and oversight and our early intervention will result in 99 percent of the Federal dollars being returned to the Treasury.

We intend to apply many of the lessons learned from our broadband grants to the new public safety broadband network called for in the Middle Class Tax Relief and Job Creation Act of 2012. Thanks to your work, Congress created FirstNet as an independent authority within NTIA and has allocated $7 billion of spectrum auction proceeds to build, deploy and operate a nationwide interoperable public safety broadband network. We are many com-

mitted to the success of this network because of what it promises in improved safety and better communications for first responders.

Consistent with this goal, we recently took the difficult but necessary step of partially suspending the projects of our seven public safety broadband recipients. The new law dramatically changed the assumptions on which we awarded these grants in 2010 and allowing these seven projects to continue unchecked before the FirstNet board has even met, much less made the basic technical decisions about the new network could have put at risk millions of taxpayer dollars and negatively impacted the success of first net.

In the coming weeks, we will work closely with each recipient to find the best path forward with the dual goals of keeping their grant dollars in their communities and ensuring that this equipment can ultimately be incorporated into FirstNet.

Going forward, NTIA is focused on maintaining rigorous oversight for its broadband grants as they cross the finish line while working to ensure their sustainability and leverage the projects to the fullest extent possible. We are also ramping up to meet our next broadband challenge with first net, and I look forward to working with you as we achieve these goals. Thank you.

Mr. WALDEN. Thank you Mr. Strickling.

[The prepared statement of Mr. Strickling follows:]

**Testimony of**
**The Honorable Lawrence E. Strickling**
**Assistant Secretary for Communications and Information**
**National Telecommunications and Information Administration**
**United States Department of Commerce**

**Before the**
**Committee on Energy and Commerce**
**Subcommittee on Communications and Technology**
**United States House of Representatives**

**Hearing Entitled**
**"Broadband Loans and Grants"**

**May 16, 2012**

## I. Introduction

Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee, thank you for your invitation to testify on behalf of the National Telecommunications and Information Administration (NTIA) regarding the implementation of the Broadband Technology Opportunities Program (BTOP) and State Broadband Initiative (SBI). I am very pleased to highlight NTIA's progress in achieving President Obama's vision of a nationwide, 21st century communications infrastructure, our efforts to expand broadband Internet access and adoption in the United States, and our success in developing the National Broadband Map.

A key element of President Obama's strategy to build the innovation economy of the future – one that supports new and better jobs, and enhances America's global competitiveness – is expanding the availability and adoption of high-speed Internet access in America. In the near-term, investments in broadband infrastructure help create jobs by supporting the installation and upgrade of fiber-optic networks and other high-tech components. Public computer centers offer critical job and educational training as well as Internet access for those without home access.

Sustainable broadband adoption efforts help vulnerable populations become proficient in computer-related skills on the path toward home subscribership of high-speed Internet service. In the long-term, expanding broadband Internet access and adoption will facilitate growth and innovation, especially for small businesses, enhance health care delivery, promote energy independence, improve public safety, and lay a foundation for long-term economic development in communities throughout the United States.

## II. Progress in Achieving Program Objectives

### *a. Meeting and Exceeding Performance Goals*

As directed by the American Recovery and Reinvestment Act of 2009 (Recovery Act), NTIA invested nearly $4 billion in approximately 230 projects to expand broadband access and adoption in the United States. Today, about a year and a half after NTIA met the Congressionally-mandated deadline to award all BTOP funds by September 30, 2010, I am pleased to report that recipients are making significant progress in achieving their anticipated outcomes and delivering meaningful benefits to their communities. BTOP recipients are exceeding their performance goals in deploying new fiber-optic infrastructure, constructing new public computer centers, and encouraging greater Internet adoption. As of March 31, 2012 – the most recent reporting quarter for which we have data – BTOP recipients reported that they had:

- deployed or upgraded more than 56,000 miles of broadband infrastructure;
- connected more than 8,000 community anchor institutions to high-speed broadband Internet service;
- entered into nearly 400 interconnection agreements with third-party providers to leverage or interconnect with their networks;

- installed more than 30,000 workstations in public computer centers;
- provided more than 7 million hours of technology training to approximately 2 million users;
- generated approximately 350,000 new broadband Internet subscribers; and
- funded more than 4,000 jobs in the second quarter of Fiscal Year 2012.

Indeed, some BTOP projects are now wrapping up. In the case of our public computer center and sustainable broadband adoption grants, some projects are complete with others nearing completion. In these locations, demand for job training and educational resources is in many cases exceeding the supply. Several infrastructure projects are nearing completion. For example, BTOP recipient Level 3 has completed its infrastructure investments in California, Florida, Georgia, Kansas, Tennessee, and Texas, and MCNC has completed its Round One BTOP grant that has delivered almost 400 miles of new fiber, and upgraded another 400 miles more, for the benefit of more than 1,000 research and educational institutions in North Carolina.

In all, BTOP recipients have spent approximately $1.6 billion in federal funds and approximately $670 million in non-federal matching funds towards building the nation's 21st century infrastructure. I expect the pace of construction to remain strong over the next several quarters as recipients work hard to meet, and, in many cases, exceed their performance goals.

In April 2012, NTIA launched an interactive map, entitled BTOP's *Connecting America's Communities Map*,[1] to display how BTOP investments are connecting communities across all 50 states, U.S. territories and the District of Columbia. The map depicts the communities benefitting from high-speed middle mile connectivity, along with anchor institutions, new and improved public computer centers, and broadband adoption programs, and

[1] Available at: http://www2.ntia.doc.gov/btopmap/.

includes 27,000 unique data points. The map will help stakeholders and the public more easily see the impact of BTOP projects in their area, and make it easier for potential industry partners and local community members to find new resources in their area.

*b. Impacting Local Communities*

As impressive as these numbers are, they only tell part of the story. Below are just a few examples of how these investments are making a positive impact in the communities they serve:

- MCNC, a nonprofit broadband provider that has operated the **North Carolina** Research and Education Network (NCREN) for more than 25 years, is using Recovery Act funds to deploy or upgrade 2,600 miles of fiber in rural areas across the state. MCNC's project is already creating construction jobs and jobs for local vendors such as Hickory, NC-based CommScope, which is supplying fiber and other materials for the project. It is also laying the groundwork for economic revitalization in places such as Kannapolis, NC, a former textile mill town that is reinventing itself as a biotechnology and life sciences hub.
- The **California** Emerging Technology Fund (CETF), a non-profit established at the direction of the California Public Utilities Commission to help close the state's digital divide, is using a Recovery Act investment to provide computer, digital literacy, and workforce training for low-income communities and other vulnerable populations. This training has helped over 1,000 participants to find jobs. One of this project's beneficiaries is Kevin, a 27 year-old Bay Area resident who returned home after serving in the Air Force and was eager for a career in technology, but a layoff resulted in him having to move back into his parents' home. Without work, Kevin bounced around between relatives and friends and

even slept in his car. Kevin enrolled at The Stride Center, a partner of the CETF project that provides workforce training and access to technology. After 22 weeks of classes, he received his A+ Certification, obtained a full-time job, and is now financially self-reliant.

- SDN Communications, a partnership of 27 independent telecom providers covering 80 percent of **South Dakota**, is using a Recovery Act grant to expand its 1,850-mile, 300-gigabit-per-second fiber-optic network by another 360 miles and add an additional 100 gigabits of bandwidth along high-capacity routes. The new network, which will be completed later this year, has produced construction, engineering, and electrician jobs around the state. Among the institutions that will benefit from new high-speed broadband capabilities is the Telecommunications Lab at the Mitchell Technical Institute. The Lab prepares students for careers in the telecommunications industry and is training workers to operate broadband networks such as those being built with BTOP funds.
- Using funding from NTIA's State Broadband Initiative, the **Massachusetts** Broadband Institute (MBI) is building an innovative web portal that will allow veterans and their families to obtain federal, state, and local services and benefits, including resources on housing, education, and employment. The project represents an innovative collaboration between the Massachusetts Department of Veterans' Services and the Home Base Program, a partnership between the Red Sox Foundation and Massachusetts General Hospital. MBI is also leveraging its BTOP infrastructure grant to expand fiber-optic broadband for anchor institutions,

businesses, and homes in underserved areas of Western Massachusetts, helping to dramatically improve the economic competitiveness of the region.

These examples are but a few of the innovative ways that BTOP investments are already demonstrating an impact in communities throughout the United States. The approximately $4 billion we are investing will not solve all of America's broadband needs, but it is already helping to "prime the pump" for additional investment by public and private entities. In particular, the open access and interconnection requirements of BTOP grants are encouraging other last-mile and incumbent broadband providers to tap into our middle mile networks to expand broadband services and speeds for American consumers and businesses. For example, recipient Delta Communications (d.b.a. Clearwave) plans to deploy fiber to several dozen cell sites that will enable a national wireless carrier to expand its 4G services in southern Illinois. In Western Massachusetts, several broadband service providers have signed up to utilize our grantee's backhaul services to expand and enhance their broadband offerings for the region. Another grantee, Com Net, is working with a broadband operator to deliver fiber-optic service to an otherwise underserved industrial park to serve small and medium-size businesses. As our open access middle-mile investments progress in the coming months, we expect the benefits to continue to multiply.

*c. Empowering States, Collecting Broadband Data, and Promoting Digital Literacy*

In addition to its infrastructure, public computer center, and sustainable adoption grants, NTIA has become a leading source of public data on broadband access and adoption in America. Our SBI grants fund states to collect and verify broadband data in each state, territory, and the District of Columbia, and play a critical role in helping states and territories identify and address obstacles to broadband deployment and adoption. In February 2010, NTIA released the National

Broadband Map – America's first public, searchable nationwide map of broadband Internet availability – and we continue to update it twice a year. Each update is powered by an extensive, publicly available dataset – more than 20 million records collected from nearly 1,800 U.S. broadband providers – that shows where broadband is available, the technology used to provide the service, the maximum advertised speeds, and the names of the service providers. It is the most extensive dataset of its kind. Among the findings from the data is that, while well over 90 percent of Americans have access to some level of broadband service, many communities still need new and better broadband infrastructure. Countless community anchor institutions – such as public safety facilities, hospitals, schools, and libraries – lack adequate broadband to fulfill their missions for their communities. We continue to enhance the map through a "crowdsourcing" feature that enables users to submit data to improve its accuracy and it has already proven to be a powerful tool for researchers, economic developers, state government leaders, and business owners seeking to better harness the power of broadband to improve their communities.

Meanwhile, our *Digital Nation*[2] survey with the Census Bureau indicates that a third of households – more than 100 million Americans – do not subscribe to broadband Internet access at home. In addition, about one in five households – 20 percent – do not use the Internet from any location. This is unacceptable in the 21st century economy, when broadband access and digital literacy skills are needed to compete in the workforce. NTIA's research reveals that households do not adopt broadband because the service is too expensive, they lack an adequate home computer, or they do not see a need for broadband service. Our BTOP-funded SBA projects are identifying best practices to overcome these hurdles. For example, a few common

[2] *See* http://www.ntia.doc.gov/press-release/2011/new-commerce-department-report-shows-broadband-adoption-rises-digital-divide-pers.

threads are starting to emerge from our sustainable adoption programs. The first is the importance of making Internet applications useful in people's everyday lives. Having Internet services that are relevant to people's immediate interests, such as finding a job, applying for benefits, or connecting with family members, helps demonstrate the value of broadband to citizens that might not otherwise subscribe. We also have learned that trusted mentors and community leaders can play a very important role in reducing barriers to adoption by demonstrating the positive impact that broadband can play towards social and economic advancement. This is especially true for the vulnerable populations that are primary beneficiaries of the BTOP-funded programs.

In addition to its BTOP grants that seek to tackle these challenges head on, NTIA, in collaboration with the Department of Education and other federal agencies, created www.DigitalLiteracy.gov to provide librarians, teachers, workforce trainers, and others access to resources and tools to teach computer and online skills necessary for success in today's economy. NTIA and its partners continue to add content, with approximately 500 individual resources available for users, such as college preparation tools and resources for veterans. And, through our efforts to promote its resources, we are seeing, on average, more than 1,000 visitors to the site each week.

## III. Monitoring, Oversight, and Technical Assistance

Protecting the federal funds we are spending and the investments we are making is of paramount importance to NTIA. As the members of the Subcommittee are well aware, achieving these objectives is challenging and requires NTIA to perform diligent oversight and provide technical assistance to our recipients. We are very appreciative of the bipartisan support shown

by this Subcommittee's leadership to ensure we have the resources needed for our ongoing broadband grants administration and management.

To solve the issues that arise, yet maintain the rigorous implementation schedule demanded of BTOP projects, NTIA has put into action a program-wide oversight strategy to mitigate waste, fraud, and abuse; to ensure compliance with award conditions; and to monitor each project's progress. This rigorous framework includes a set of integrated activities, including active engagement with recipients, to prevent issues from arising, to detect issues early and resolve them in a prompt manner, to provide technical assistance that recipients need to navigate the federal grant process, and to get their project built on schedule.

*a. Providing High-Quality Technical Assistance and Customer Service*

NTIA remains in close and frequent contact with award recipients via regularly scheduled conference calls, email exchanges, drop-in calls on specific administrative or programmatic topics, and in-person conferences. These contacts serve as both a monitoring tool and a means to reinforce the terms and conditions associated with each award, and helps ensure that NTIA quickly addresses challenges that arise during project implementation. Additionally, recipients must report quarterly and annually to NTIA on key financial and programmatic activities. These reports are posted publicly and provide detailed information on progress in achieving program outcomes, use of funds, challenges faced, and expected future progress.

The technical assistance, oversight, and outreach activities that NTIA has conducted to date include the following:

- More than 130 site visits representing more than $3.3 billion in federal award dollars. Site visits typically involve teams of staff and contractors spending several days on the ground with recipients to monitor progress and resolve issues;

- Three multi-day grantee workshops, allowing recipients to share lessons learned and to benefit from one-on-one consultations with federal staff;
- More than 85 *BTOP in Action* articles posted online to highlight success stories and share best practices;
- 20 fact sheets created, providing detailed guidance on key project implementation topics;
- Over 50 webinars and drop-in conference calls hosted to provide guidance on key compliance topics;[3]
- More than 3,000 check-in and conference calls conducted with recipients to monitor weekly progress in achieving outcomes;
- A 130-page Recipient Handbook published with detailed guidance for grantees;[4]
- An online workspace and collaboration tool created for recipients to share best practices;
- Monthly recipient newsletters published and as-needed emails generated regarding training, lessons learned, and answers to frequently asked questions;
- A comprehensive monitoring plan and site visit checklist created to streamline the oversight process;[5]

*b. Acting Early to Address Issues that Arise*

A primary goal of NTIA's rigorous outreach, oversight, and monitoring is to identify issues as early in the process as possible and resolve them promptly. As issues arise, NTIA utilizes tools such as technical assistance, Performance Improvement Plans (PIPs), Corrective

[3] Some of the webinars are available online at http://www2.ntia.doc.gov/compliance.
[4] The Recipient Handbook can be found at http://www2.ntia.doc.gov/ManagementResources.
[5] BTOP's Monitoring Plan and Site Visit Checklist are available at http://www2.ntia.doc.gov/compliance.

Action Plans (CAPs), Award Suspension, and Termination, to highlight concerns, provide opportunities for recipients to get back on track, and protect taxpayer investments. In most cases, recipients get their projects back on track. In a few cases, however, oversight led to recipients deciding to terminate their awards with minimal expenditure of public funds,[6] and in one case, NTIA took action to terminate a grant to a recipient that materially failed to comply with the terms and conditions of its award.[7] To date, eight projects have been returned or deobligated totaling $125 million in Federal award dollars, of which $124.2 million (99 %) has or will be returned to the Treasury. In each of these instances, NTIA worked with the recipients proactively to identify and address issues that jeopardized the success of the project and potentially wasted taxpayer dollars. While I am disappointed that these particular projects will not deliver their intended benefits to unserved and underserved areas, I do believe that these experiences underscore the importance and value of NTIA's strong federal oversight and monitoring of its BTOP projects, and highlight its commitment to working closely and proactively with all recipients to ensure the success of the program as a whole.

*c. Collaborating with the Inspector General*

To this end, I appreciate the ongoing efforts of the Department of Commerce's Office of Inspector General (OIG) in helping to oversee NTIA's broadband programs and to prevent waste, fraud, and abuse of taxpayer dollars. NTIA and the OIG have worked closely and collaboratively to implement BTOP in the most responsible and efficient manner possible. The

[6] These projects include Education Networks of America, Inc., http://www2.ntia.doc.gov/grantees/EducationNetworksofAmerica; State of Wisconsin Department of Administration, http://www2.ntia.doc.gov/grantees/WiscDeptofAdmin; the City of Tallahassee, http://www2.ntia.doc.gov/grantee/city-of-tallahassee; and DigitalBridge Communications (3 grants), http://www2.ntia.doc.gov/idaho.

[7] For more information, see State of Louisiana Board of Regents, http://www2.ntia.doc.gov/grantees/LouisianaBroadbandAlliance. Consistent with existing law and Department of Commerce practice, NTIA returns all unobligated funds for deobligated awards to the Treasury within 30 days of deobligation.

OIG has issued several reports that have provided valuable input to strengthen our oversight, identify lessons learned for the future, and ultimately demonstrate that we have managed BTOP with the highest degree of responsibility, efficiency, and vigor possible for a novel program of this size, scope, and speed of implementation.

*d. Ensuring Sufficient Resources for Adequate Oversight*

Among the OIG's recommendations in its November 2011 report, *NTIA Has an Established Foundation to Oversee BTOP Awards, But Better Execution of Monitoring Is Needed*, was that given the current federal budget environment, NTIA should identify oversight strategies for different funding levels.[8] The Consolidated and Further Continuing Appropriations Act, 2012 provided $25.6 million for monitoring and administration of BTOP in Fiscal Year 2012. The Fiscal Year 2013 President's Budget includes $26.9 million to support the administration of broadband programs. In terms of actual expenses for BTOP oversight and management, this represents a decline in overall spending for 2013 from 2012 by approximately $2 million. This funding request, and the staffing it supports, is critical to ensure that NTIA can continue its oversight and administration of grants, to ensure continued adequate levels of performance by recipients, and to prevent waste, fraud, or abuse of federal funds. As the grants move toward their completion, these resources will help to ensure project completion and the recovery of unused funds during the grant closeout period.

*e. Sharing Lessons Learned*

Going forward, NTIA is focused on maintaining its rigorous oversight, monitoring, and technical assistance activities for BTOP grants, and ensuring that projects achieve their 2013 completion dates. We are also focused on leveraging our projects' benefits to the fullest extent

[8] Available at: http://www.oig.doc.gov/Pages/NTIA-Has-Established-Foundation-to-Oversee-BTOP-Awards,-But-Better-Execution-of-Monitoring-Needed-.aspx.

possible to help ensure that the broadband benefits are sustainable and grow even after the projects are completed. One of the ways we will do that is by sharing successful strategies across the grant portfolio on issues ranging from procuring fiber to streamlining the environmental review process. In September 2010, NTIA contracted with ASR Analytics, LLC (ASR) to conduct an evaluation of the program's economic and social impacts. The study will assess the degree to which NTIA's implementation of BTOP has met the Recovery Act goals by measuring the short- and long-term economic gains in the grant-funded communities. ASR has submitted its final study design for the project and begun its field work. An initial report summarizing results of its analysis of PCC and SBA recipients will be completed in mid-2012, with its analysis of infrastructure projects to be completed near the end of next year.

## IV. BTOP Grants and the Nationwide, Interoperable Public Safety Broadband Network

Thanks to the efforts of Members of this Subcommittee and others, Congress passed the Middle Class Tax Relief and Job Creation Act of 2012[9] ("Act") earlier this year that, among other things, authorizes and funds the building, deployment, and operation of a nationwide public safety broadband network. Title VI of the Act establishes the First Responder Network Authority or "FirstNet" as an independent authority within NTIA, and charges FirstNet with taking all actions necessary to ensure the building, deployment, and operation of the network. The Department of Commerce and NTIA are working to implement the Act's directives as expeditiously as possible with the same rigor and dedication we have applied to BTOP.

Toward that end, NTIA is working to ensure that its seven BTOP 700 MHz public safety grants proceed in a manner that supports the nationwide public safety broadband network. Our goal in this effort is to ensure that these much-needed investments remain in their communities

[9] Pub. L. 112-96.

and to avoid investments that might have to be replaced if they are incompatible with the ultimate nationwide architecture of the new public safety broadband network. We are committed to working with all stakeholders towards our shared goal of meeting the communications needs of America's first responders.

## V. Conclusion

President Obama, Secretary Bryson, and everyone at NTIA share the goal of expanding broadband Internet access and adoption in the United States so that we may boost America's competitiveness, build the innovation economy of the future, and support new and better jobs for Americans. BTOP grants represent a critical component of this effort, and NTIA is committed to ensuring that grant funds are spent wisely, responsibly, and achieve their intended benefits for American communities. NTIA is also hard at work fulfilling the President's goal of making available 500 megahertz of Federal and nonfederal spectrum for wireless broadband by 2020. I want to commend the bipartisan leadership of this Committee, the Senate, and elsewhere in the Congress for your diligent oversight of the BTOP program and your support for the Middle Class Tax Relief and Job Creation Act of 2012 that will free additional spectrum for broadband use, support a nationwide, interoperable public safety broadband network, and reduce the deficit. NTIA is committed to working with you to achieve these goals.

Thank you.

Mr. WALDEN. Mr. Adelstein, we are delighted to have you back before the committee. We look forward to your testimony as well. Please proceed.

**STATEMENT OF JONATHAN ADELSTEIN**

Mr. ADELSTEIN. Thank you, Mr. Chairman, Ranking Member Eshoo, it is great to be back and thanks for the opportunity to testify on the progress of our broadband investments.

It is also good to be back together with Larry Strickling, who has been my partner, such a wonderful partner in all this. You mentioned this is our third time together, so let's hope the third time is the charm. And it is great to be here with our inspector general as well.

I appreciate your help in getting this program running as well as it can be.

I am pleased to report to you that the broadband initiative program is right on track. It is creating thousands of jobs. It is providing new and improved broadband service, and it is proceeding as the administration and Congress expected.

The Recovery Act will pay dividends to rural communities and the entire country for years to come. These projects are creating high-wage high-skill jobs right now as they are being built. As they were being planned they were creating jobs. They will create more jobs as they become operational, and they will provide the foundation for even more jobs and economic growth as broadband is used by communities to spur innovation, new business and employment opportunities.

RUS broadband investments will connect nearly 7 million rural Americans, including 360,000 businesses in more than 30,000 critical community institutions, like schools, health care facilities and rural public safety agencies. They will bring broadband to 45 States and one U.S. territory. Grant dollars were targeted to those areas that were in the greatest need of service and to those that were the most rural. They overlap with 31 tribal lands, including Warm Springs, which we provided a grant to in your district and 125 persistent poverty counties, which is most of the persistent poverty counties in the United States. They are projected to create more than 25,000 immediate and direct jobs for rural workers in a variety of industries and countless more as the communities benefit from the broadband once it is deployed.

Data provided by the U.S. Department of Education show that more than 1 million K–12 students attend schools within areas served by BIP awards. More than 100 colleges and technical schools are located in those same areas, as you indicated. HHS data shows that nearly 600 rural health care facilities are located in areas served by BIP awardees. All of these health care facilities can expand use of telemedicine, electronic medical records initiatives and improve the quality of health care for citizens in those areas.

Now the Recovery Act funded two types projects; those that were immediate and those that were transformative. Big infrastructure projects, like the ones RUS has been financing now for 60 years, whether done by telecommunications, water or electric facilities, are transformative, and they do take time to build out. Projects

have to be carefully planned constructed and operated. All awardees must comply with Federal, State, environmental, historic preservation and, in some cases, tribal or intergovernmental reviews that often require significant consultation with the public. Based on our experience, these projects are on track with what we have seen historically in terms of the time it takes to build out these large broadband projects.

But RUS is working hard to accelerate the spending of remaining funding. We have repeatedly urged awardees to move quickly. Our field employees are vigorously monitoring and working with our awardees to get construction underway. Compliance is being carefully monitored by our field staff as well as our staff in D.C. We are actively working with awardees, Federal partners and government entities to address issues impacting the completion of the projects. We are vigilant to ensure that the projects remain viable. Our goal is to make sure that each one of these succeeds.

We also want to build businesses on top of these networks. RUS's traditional broadband programs serve as a strong foundation for an initiative we launched called Build Out and Build on. It encourages continued expansion of broadband economic growth impact using all of our programs, including the rural business services so that we can build businesses on top of the new broadband networks we are creating.

One of the ongoing challenges in building out broadband in rural areas is ensuring the financial feasibility and sustainability of the proposed service providers. Strong rural economies buttress the availability of sufficient revenue sources to make these projects succeed.

RUS appreciates our partnership with the USDA OIG to ensure that our programs meet their statutory objectives. All OIG concerns and recommendations raised with regard to the previous Farm Bill Broadband Loan Program have been addressed. That audit, which is the central topic of today's OIG testimony, was closed over a year ago.

I compliment OIG for raising concerns with the statutory definition of rural in the 2002 Farm Bill. RUS could not, of course, change that definition on its own. Only Congress can do that, and Congress itself did act in the 2008 Farm Bill to revise the definition of "rural," and that definition has been completely implemented by RUS.

I am pleased to report that this administration made no loans under the broadband program until all OIG concerns and recommendations were addressed and RUS final actions were accepted.

We look forward to continuing to work with OIG on the Recovery Act and look forward to any recommendations we may receive in the future regarding the program.

There are a lot of challenges that remain in terms of getting broadband out to rural communities. These places have, as you know, coming from Oregon, and as many you know from rural parts of the country, maybe not so much our ranking member, there is a little bit of a rollback on the hills, but there is a lot of difficult terrain out there. There are high costs associated with distance and topography. Access to a skilled workforce is sometimes

lacking, as long-term financial feasibility is more difficult when you are trying to build out over large areas, but we are continuing to see an explosion of new technology that can increase access to health care, expand education opportunities and facilitate all kinds of new business activity. But their success will rely on having broadband in those areas so it is an honor with your support to make that possible.

I thank the committee and its members for the opportunity to testify and look forward to any questions you may have much.

Mr. WALDEN. We appreciate your testimony. Thank you again for being here.

[The prepared statement of Mr. Adelstein follows:]

**Statement of Jonathan Adelstein**

**Administrator, Rural Utilities Service**

**United States Department of Agriculture**

**House Energy and Commerce Subcommittee on Communications and Technology**

Chairman Walden, Ranking Member Eshoo, and members of this Subcommittee, thank you for the opportunity to testify on the U.S. Department of Agriculture's Broadband Initiatives Program (BIP) and the progress on RUS-financed broadband investments under the American Recovery and Reinvestment Act of 2009 (Recovery Act).

I am pleased to report that the RUS Broadband Initiatives Program (BIP) is on track, creating jobs, deploying new and improved broadband service, and proceeding as the Administration and Congress expected.

The Recovery Act brought an unprecedented level of investment in rural infrastructure and economic development. RUS was honored to administer major Recovery Act investments in rural water and broadband infrastructure. These investments are already creating high-skilled, high-wage jobs and will pay dividends to their communities and the nation in terms of further job creation and faster economic growth for years to come. This infrastructure investment, which has been a cornerstone of the Obama Administration's economic recovery strategy, creates jobs when projects are planned and built, additional jobs when these projects become operational and again as these services are used by communities to spur further economic expansion.

To maximize the "bang for the buck," the agency used a portion of its budget authority appropriated by the Recovery Act to make grants, loans and loan/grant combination awards. In total for the broadband program, more than $2.33 billion in grants and $1.19 billion in loans were made to 320 projects totaling over $3.5 billion. Of those 320 projects, 297 were for infrastructure, 4 for satellite broadband service support and 19 were for technical assistance, the majority of which went to tribal communities.

Grant dollars were targeted to those areas that were the in the greatest need of service and were the most rural. Grant dollars were also used to leverage additional private investments in broadband infrastructure projects. As the Recovery Act statute directed, RUS focused its efforts to help communities gain "sufficient access to high speed broadband service to facilitate rural economic development.... ".

RUS broadband investments will connect nearly 7 million rural Americans, along with more than 360,000 businesses and more than 30,000 critical community institutions like schools, healthcare facilities, and rural public safety agencies, to new or improved service. The projects funded will bring broadband service to 2.8 million households, spanning across more than 300,000 square miles in 45 states and 1 U.S. territory. These projects also overlap with 31 tribal lands and 125 persistent poverty counties, and they are estimated to create more than 25,000 immediate and direct jobs for rural workers in a variety of industries.

Data provided by the U.S. Department of Education show that more than one million K-12 students attend school within areas served by BIP awards. More than 100 colleges and technical

schools are located in areas served by BIP awards. Data provided by the U.S. Department of Health and Human Services show that nearly 600 rural healthcare facilities are located in areas served by BIP awards. All of these healthcare facilities will gain access to advanced broadband services, which can expand the use of telemedicine and electronic medical records initiatives.

The response to BIP was tremendous. Our funding ratio was roughly only one in ten grants approved. It was a rigorous competition with multiple checks to verify compliance with the statute and regulations. There were a number of good projects which simply could not be funded. We are hopeful that many of these applicants consider participants in our ongoing Farm Bill broadband program and our Community Connect Grant program, and some are submitting new applications to bring needed services to rural areas.

The Recovery Act funded two types of projects -- those that were immediate and those that were transformative. Big infrastructure projects, whether done by telecommunications, water or electric utilities, are transformative and take time to build out. Projects have to be carefully planned, constructed and operated. All awardees must comply with federal and state environmental, historic preservation and in some cases tribal or intergovernmental reviews that often require significant consultation with the public. Large telecommunications projects, like those financed under the Recovery Act, often take between three and five years to complete, although many are able to move more quickly.

Winning an award in a competitive process is only the beginning. The agency's scrutiny of projects continues throughout the project's life. Portfolio management is a rural development

priority. Tough calls have to be made. That sustained level of vigilance, supervision and review has led to the rescission of 36 Recovery Act awards. As a result, nearly $266 million has been returned to the Treasury.

Before commencing BIP projects, recipients were required to execute RUS loan and grant documents. They are also required to complete environmental and historic preservation reviews. In order to receive loan and grant funds, or "advances," under a loan or grant, the recipient project must be fully compliant with these requirements and can only submit a request for funds to the RUS staff after they are met.

RUS technical and financial staff reviewed the requests for advances to ensure that they comply with the BIP requirements and are consistent with the budget and network system design submitted and approved by RUS under the application process. Recipients generally determine the timing of the loan/grant advances. Under the Recovery Act, contracts signed by awardees require that all loan/grant funds must be advanced by September 30, 2015, or they will be rescinded by RUS and returned to the U.S. Treasury. In light of the current economic climate and the urgent need to put Americans back to work, the Administration directed agencies to accelerate spending of the remaining Recovery Act funding. Accordingly, RUS and senior USDA officials have repeatedly encouraged awardees to complete Recovery Act projects as quickly as possible, and have asked each awardee for a schedule by which they expect to expend funds and complete their projects. RUS field employees vigorously monitor the progress of construction and compliance by recipients with BIP requirements.

The vast majority of the BIP awards were obligated between March and September, 2010. Projects are progressing well and within expectations. The RUS has worked closely with Federal and state partners to complete required reviews and to address regulatory or processing issues. The Agency is working closely with awardees to expedite project construction.

All of the 19 Technical Assistance awards have been fully disbursed.

The $100 million satellite broadband program has disbursed 68 percent of its funds to date to the four satellite awardees.

Infrastructure projects, which are larger and more complex, are also progressing well. Nineteen projects, representing $148 million in funding, have been completed. About $1.8 billion construction contracts for projects are complete, in active construction or under contract. Because loan funds are released as projects progress, the pace of construction exceeds the pace of reimbursement. We anticipate a vigorous level of activity as the spring construction season opens in northern states.

Presently, approximately 7.5 percent of the projects representing over 4 percent of the funding have not drawn any loan or grant funds. The agency is in regular contact with all awardees and there are multiple reasons why these projects have not advanced far enough to draw funds. Several projects are engaged in inter-agency and inter-governmental clearance issues related to environmental reviews, rights of way and historic preservation.

RUS is actively working with awardees, Federal partners and government entities to address issues impacting completion of these projects, and being vigilant to ensure that projects remain viable. Our goal is to make each award a success.

It is also vitally important that we build on the cycle of broadband investments in rural America, which comprises over 75 percent of the total land mass of the United States, and is necessary for all America to benefit from the full participation of rural America in our digital economy and community.

Working as a team, the Rural Development mission area of the USDA has launched the Build On/Build Out initiative which seeks to encourage the continued expansion of broadband capability in rural areas using our programs and our ability to bring people together and to help rural businesses and community anchor institutions create new economic opportunity by using broadband networks to create jobs and wealth.

Our current rural broadband expansion efforts were initiated through RUS' other telecommunications programs, including the Telecommunications Infrastructure Program, the Rural Broadband Loan Program and the Community Connect Program. The traditional telecommunications infrastructure program, authorized in 1949 under Titles II and III of the Rural Electrification Act, was created to ensure rural areas had access to reliable and affordable telecommunications systems. Beginning in 1995, RUS required that telecommunications borrowers be broadband capable to facilitate use of computer networks and information highways for business, educational and medical services. Since 2009, this program has provided broadband service to nearly half a million rural subscribers.

The Rural Broadband Loan Program, first authorized under the 2002 Farm Bill and revised by the 2008 Farm Bill, has provided broadband loans to independent telephone companies, cable companies and broadband service providers. Community Connect grants are available to areas completely lacking broadband service. The funds are used to build broadband infrastructure and awardees are required to establish community centers that offer free public access to broadband. In fact, on May 3, we just announced over $10 million in funding is now available for FY 2012 Community Connect awards.

These programs, with a combined portfolio of over $6 billion, help deliver affordable, reliable advanced telecommunications services to rural communities—services comparable to that in the rest of the United States. These USDA programs play a vital role in bringing broadband to rural America.

One of the ongoing challenges in building broadband out in rural areas is determining the financial feasibility and sustainability of the proposed service territory. It is important to ensure the availability of sufficient revenue sources to make projects successful in accelerating broadband service to underserved areas of the country. The Recovery Act gave priority in funding service that would deliver a choice of more than one service provider, and to REA Act Title II borrowers. Audits conducted by the USDA Office of Inspector General (OIG) of The Rural Broadband Loan Program criticized the RUS for not maintaining its focus on rural communities most in need of Federal assistance. The audit noted that "this is largely because its definition of rural area, although within the statutory guidelines, was too broad to distinguish between suburban and rural communities." In addition to clarifying the rural definition, the OIG

also recommended RUS create a management structure to approve and service the broadband loans.

RUS appreciates our partnership with the USDA OIG to ensure that our programs meet their statutory objectives. All OIG concerns and recommendations in the report have been addressed, and the audit was closed over a year ago. OIG is to be complimented on raising concerns with the statutory definition of "rural" in the 2002 Farm Bill. RUS could not, without an act of Congress, alter that statutory definition. Congress itself acted in the 2008 Farm Bill to revise the definition of rural that has been fully implemented by RUS.

I am pleased to report that this Administration made no loans under the broadband program until all OIG concerns and recommendations were addressed and all RUS final actions were accepted.

We have considerable challenges to address in providing broadband to rural communities that involve difficult terrain, high costs associated with distance and topography, access to a skilled workforce and the long term financial feasibility of small rural systems. While we continue to see an explosion of technology that can increase access to health care, expand educational opportunities and facilitate business activity, economic success will rely on robust broadband in both urban and rural areas.

I thank the Committee and its members for its continued interest in the Recovery Act and Farm Bill broadband programs.

Mr. WALDEN. Now we are going to hear from the inspector general from the Department of Commerce, the honorable Todd Zinser.

Mr. Zinser, thank you for being here as well. We appreciate your work and we look forward to your testimony.

**STATEMENT OF TODD J. ZINSER**

Mr. ZINSER. Thank you, Mr. Chairman, Ranking Member Eshoo, members of the subcommittee, and thank you for the opportunity to testify today about the Broadband Technologies Opportunities Program and the challenges facing the program moving forward.

The BTOP program is currently funding 228 grants, totaling $3.8 billion. The grants were awarded in three categories. There are 120 infrastructure grants, which total more than $3.3 billion. This is a approximately 88 percent of the program's funding. Seven of these grants, totaling more than $380 million, were awarded to fund interoperable public safety network projects.

There are 65 public computer center grants, which total just about $200 million, around 5 percent of the program's funding, and 43 grants for sustainable broadband adoption, which total $250 million or around 6 percent of the program's funding.

Since our testimony before the subcommittee last year, we have examined NTIA's program for monitoring its BTOP grants, looked into one of the public safety grants and recently completed an audit of how well NTIA is managing the matching share requirements under the program.

This morning, we would like to highlight five issues concerning the BTOP program. First is the rate of spending. BTOP spending has improved since the end of the last fiscal year, from 20 percent at the end of September 2011 to 42 percent as of the end of last month. However, the disbursement rate of infrastructure grants, including the public safety awards, remain critical watch items. Many of these infrastructure projects, around 41 percent of them, have spent 40 percent or less of their grant moneys and are at some risk of not meeting spending deadlines.

One common problem causing project delays, outstanding environmental assessments have been largely resolved. Nevertheless these initial delays and other reasons, such as local permitting and predeployment activities, still affect the likelihood of BTOP project's timely completion.

Second, while NTIA is addressing our recommendations to strengthen its oversight, equipment procurement needs to become more of a focus. We think that NTIA has been successful in establishing a BTOP program office and addressing the challenges such a diverse program encounters. This past fall, we reviewed the agency's award monitoring program and recommended ways NTIA can improve the tools it uses to oversee the grants, including the need to verify data provided by the grantee and closer tracking of those projects that have schedule risks.

NTIA has responded with a number of corrective actions. As BTOP continues, NTIA's next focus should be whether or not the equipment for these projects can be procured and deployed on schedule and meet the specifications necessary to achieve intended BTOP objections.

Third, our issues concerning grant match documentation. Grant match is an important Federal requirement. While Federal funding for BTOP is $3.8 billion, the grantees have committed to providing more than $1.4 billion in matching funds. We have issued a draft report to NTIA. For the most part, we did not find significant problems with grantees' matching shares, but we will be making recommendations to strengthen NTIA's oversight of this area, especially with respect to how grantees account for and document their matching shares and their financial records.

Fourth, NTIA has a new program called FirstNet which will impact the seven public safety projects funded by BTOP. FirstNet is the name given to the recently authorized first responder network authority, which NTIA is charged with establishing. Presumably, the seven BTOP public safety projects will need to transition to FirstNet if they are deemed compatible. In doing so, those projects will need to address issues with FCC spectrum waiver transfers, long-term evolution technology purchases and extensions to project deadlines associated with the BTOP grants.

Finally, Mr. Chairman, we wanted to inform the subcommittee that we have requested a waiver from the provisions of the Dodd-Frank legislation that requires Recovery Act funds be returned to the Treasury if they are not obligated by December 31, 2012. We requested a waiver because the Recovery Act funds transferred to us to oversee the BTOP program are being used to pay the salaries of investigators and auditors. Unlike grants or contracts, we cannot obligate funds for salaries in advance. So we have requested a waiver. Without the waiver, we will lose our dedicated funding 9 months before many of the projects funded by the BTOP grants are even required to be finished.

As you know, Mr. Chairman, audit and investigative activities can extend long after the completion of a project. While our communications with the department and OMB have been positive, we do not yet have a waiver, causing a great deal of uncertainty about our future oversight efforts for BTOP. We also note in our testimony that NTIA is facing funding issues for its oversight of the program as well.

This concludes my statement Mr. Chairman.

I would be happy to answer any questions you or other members of the subcommittee may have.

Mr. WALDEN. Mr. Zinser, thank you. Thanks for the work you do and your colleagues.

[The prepared statement of Mr. Zinser follows:]

**Testimony of the Honorable Todd J. Zinser**

**Inspector General**

**U.S. Department of Commerce**

**before the House Energy and Commerce Committee**

**Subcommittee on Communications and Technology**

***May 16, 2012***

# *Broadband Loans and Grants*

Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee:

I appreciate the opportunity to testify today about our oversight of the Broadband Technology Opportunities Program (BTOP), as well as the challenges the National Telecommunications and Information Administration (NTIA) faces in overseeing a large and diverse BTOP award portfolio.

The American Recovery and Reinvestment Act of 2009 (Recovery Act) provided NTIA approximately $4.7 billion to establish BTOP. This competitive grant program provides funds for deploying broadband infrastructure in unserved and underserved areas of the United States, enhancing broadband capacity at public computer centers, improving access to broadband services for public safety agencies, and promoting sustainable broadband adoption. BTOP awards were made in three major areas:

- *program infrastructure (comprehensive community infrastructure, or CCI),* to provide institutions such as schools, libraries, and medical facilities with internet connectivity, including seven grant awards, totaling approximately $382 million, targeting 700 megahertz (MHz) interoperable public safety wireless networks;

- *public computer centers (PCCs)*, to establish new public computer facilities or upgrade existing ones to provide broadband access to the general public or specific populations such as low-income individuals, the unemployed, seniors, children, minorities, and people with disabilities; and
- *sustainable broadband adoption (SBA)*, to foster broadband Internet usage and adoption, including among specific populations traditionally underserved by this technology.

Table 1 provides a summary of BTOP funding:

**Table 1. BTOP Funding**

| Category | Actual (in millions) |
|---|---|
| CCI | $3,358 |
| State Broadband Initiative Program | 312 |
| SBA | 250 |
| PCC | 199 |
| Rescission | 302 |
| Other[a] | 147 |
| Cancelled, modified, or terminated awards | 127 |
| **Total** | **$4,695** |

*Source:* OIG, based on NTIA data

[a] includes transfer to OIG, transfer to Federal Communications Commission, and NTIA administrative expenses (figures have been rounded)

At the conclusion of the BTOP award process on September 30, 2010, NTIA had awarded 233 grants. As of April 30, 2012, the total number of BTOP grants decreased from 233 to 228 due to grant cancellations, modifications, and terminations, which resulted in approximately $127 million returned to the U.S. Department of the Treasury (see table 2).

**Table 2. BTOP Grants**

| Project Type | Number of Grants | Grant Totals (in millions) | Portion of Federal Funds Awarded |
|---|---|---|---|
| CCI | 120 | $3,358 | 88.2% |
| PCC | 65 | 199 | 5.2% |
| SBA | 43 | 250 | 6.6% |
| **Total** | **228** | **$3,807** | **100.0%** |

*Source:* OIG, based on NTIA data

The Recovery Act also established a central role for Offices of Inspector General in monitoring their agencies' use of funds to prevent fraud, waste, and abuse. To date, our oversight efforts have assessed the establishment, implementation, and program operations of BTOP: this includes 6 reports and 29 recommendations developed to improve the administration of BTOP and monitoring of approximately $4 billion in grant awards. Additionally we have provided training and established a formal complaint intake and analysis process. We currently have three open BTOP audit engagements, including an audit of BTOP grantees' matching share, NTIA's management and oversight of its contract for BTOP administration, and BTOP subrecipient monitoring. (Please see appendix for further details.) These, along with our Department-wide Recovery Act review of lessons learned, comprise our most immediate efforts to anticipate and address NTIA's ongoing challenges in administering the program.

Given the complex BTOP grant award profile, there are a number of challenges that now confront BTOP. My testimony will address these challenges, which include:

1. Slow awardee spending could result in unfinished grant projects;
2. NTIA is addressing program office monitoring issues but additional monitoring of equipment procurement may be needed;
3. Issues with awardee grant match documentation require closer NTIA oversight;

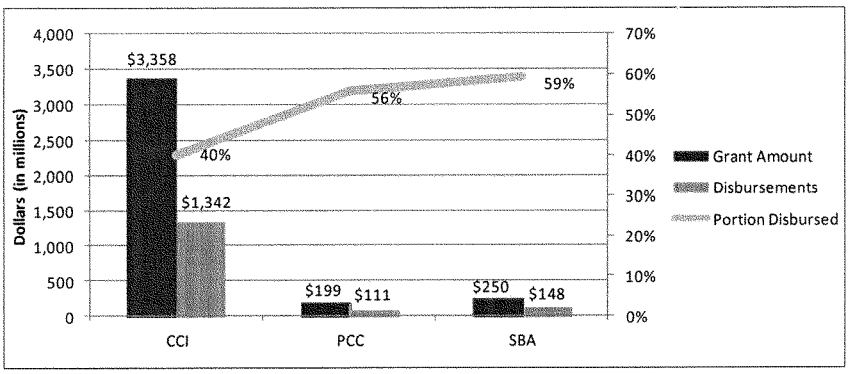
4. NTIA needs to assess the impact that the recently established First Responder Network Authority (FirstNet) program may have on existing BTOP public safety projects; and

5. Funding questions about 2013 and beyond raise concerns over continued BTOP oversight.

**1. Slow Awardee Spending Could Result in Unfinished Grant Projects**

In my November 2011 testimony to the House Subcommittee on Investigations and Oversight (Committee on Science, Space, and Technology), I reported that slow Recovery Act spending posed a challenge. Although overall BTOP disbursement increased from 20 percent (September 30, 2011) to 42 percent as of April 30, 2012, spending—particularly with infrastructure projects—continues to lag. Figure 1 below provides a summary of BTOP disbursements through April 30, 2012.

**Figure 1. BTOP Disbursements by Project Type (as of April 30, 2012)**




*Source:* U.S. Department of the Treasury, Automated Standard Application for Payment

The July 2009 and January 2010 notice of funds availability (NOFA) required that all BTOP projects be fully completed within 3 years of the grant issuance and all BTOP grants be awarded by September 30, 2010. Since the first BTOP grants were awarded in December 2009, the forecasted completion dates range from November 2012 to September 2013. Also subsequent to December 2009, the Office of Management and Budget (OMB) has issued memorandum OMB M-11-34, stating that federal agencies "should work collaboratively and transparently with recipients of discretionary Recovery Act grants to accelerate the spending rate for all awarded funds while still achieving core programmatic objectives." In this September 15, 2011, memorandum, OMB directs federal agencies to "establish aggressive targets, consistent with programmatic objectives, for outlaying remaining funds. . . . [and] take steps to complete Recovery Act projects by September 30, 2013." While it aims to "accelerate the spending rate for all awarded funds while still achieving core programmatic objectives," OMB's directive does allow for deadline extension waivers where complex environmental review, the long-term nature of programs, or other special circumstances or contractual commitments prevent adjusting the timeline for spending.

Table 3 below provides additional details on projects with spending levels at 40 percent or less. With approximately 18 months or about one-half of the 3-year grant life remaining, those projects that have spent 40 percent or less of their grants present a higher risk of not meeting their spending deadlines.

**Table 3. BTOP Grants with Spending Less Than or Equal to 40 Percent (as of April 30, 2012)**

| Project Type | Number of Grants | Portion of Type's Total Grants |
|---|---|---|
| CCI | 49 | 41% |
| PCC | 13 | 20% |
| SBA | 8 | 19% |
| **Total** | **70** | **31%** |

*Source:* U.S. Department of the Treasury, Automated Standard Application for Payment

Spending delays result from multiple causes. For example, special award conditions included in CCI awards require that an environmental assessment (EA) conclude prior to the start of construction. In our November 2011 BTOP award monitoring audit report, we noted that 118 BTOP grants required an EA and, at September 30, 2011, 12 awards continued to have outstanding EAs. Although all but one EA are now complete, the initial delay continues to affect the progress of BTOP projects. Additionally, in its March 2012 *Quarterly Program Status Report,*[1] BTOP reported to Congress that local permitting and agreements for predeployment activities have caused implementation schedule delays for some grant awards, including public safety awards.

### 2. NTIA Is Addressing Program Office Monitoring Issues but Additional Monitoring of Equipment Procurement May Be Needed

NTIA has overcome significant challenges in setting up and administering the BTOP program and continues to face challenges in overseeing such a diverse program. Given BTOP's complex grant portfolio and recipient profile, continual monitoring of the program and technological challenges becomes essential to ensuring $3.8 billion in federal funds are safeguarded. In our

[1] National Telecommunications and Information Administration, March 2012. *Broadband Technology Opportunities Program (BTOP) Quarterly Program Status Report.* Washington, DC: NTIA, 12.

November 2011 BTOP award monitoring report, we determined that NTIA had taken steps to establish a comprehensive BTOP award oversight framework. However we also provided recommendations for improving internal controls over monitoring activities, including that NTIA:

- *strengthen the federal program officers' (FPOs') monitoring efforts*—by revising the FPO handbook to guide the performance of due diligence on seemingly inconsistent recipient information, as well as reinforcing the importance of following up on unresolved issues; streamlining site visits to provide additional time for onsite inspection of project progress and verification of source documents; and conducting FPO training to ensure consistency in the use of monitoring tools and execution of monitoring activities;
- *work with recipients at risk of not meeting award progress and completion requirements*—by helping them develop action plans that aim for revised completion dates; and
- *develop alternative strategies for those awards that will not be able to satisfy award terms*—possibly including project extensions or rescopings.

Implementing recommendations such as these improves NTIA's ability to ensure that operable broadband systems are deployed nationwide with financial integrity and in the spirit of the program's intent. NTIA submitted a responsive action plan to our report and has already taken a number of corrective actions.

As NTIA continues to implement our recommendations on program monitoring, we have identified grantee equipment procurement and installation as areas for NTIA to monitor. Approximately $3.4 billion in grants have been awarded to infrastructure projects, with 60 percent of spending remaining. With a large portion of those funds being spent on equipment

procurement and deployment, it becomes even more important to ensure that the equipment works and meets the intended objectives of BTOP. Based on the BTOP NOFA, it is our understanding that the equipment will meet the minimum technical requirements for broadband data rates: at least 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to end users. OIG will continue to monitor equipment procurements and testing closely; our FY 2012–13 audit plan identifies effective implementation of technology as an important area for review.

### 3. Issues with Awardee Grant Match Documentation Require Closer NTIA Oversight

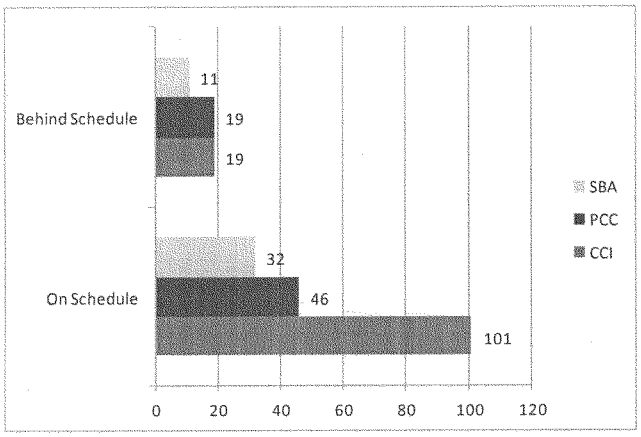
In April 2011, we initiated an audit to determine whether NTIA has processes in place to monitor BTOP recipient match and verify that match contributions meets federal administrative requirements. Since then, we have completed our interviews and testing; identified improvements needed to strengthen NTIA's monitoring of BTOP grant match; and issued our draft report. Our findings include: (1) PCC and SBA grantees do not receive the same detailed match review as CCI projects; (2) grantees permitted a contractor and a subrecipient to access cash drawdowns through the U.S. Department of the Treasury; (3) grantees did not record the grant match in the financial records; and (4) some grantees were behind schedule in contributing their nonfederal match.

NTIA's review of all CCI infrastructure match budgets has identified and addressed many potential match issues. However, its review of PCC and SBA match budgets is not as extensive and does not include all relevant grants. Since PCC and SBA awards have lower award amounts

that might not meet the grantees' independent auditors' testing thresholds, match issues may not be identified in a timely manner if NTIA does not address them.

Additionally, BTOP grant recipients are required to contribute and expend nonfederal matching share at the same general rate as they spend federal funds (i.e., proportionally). NTIA also tracks federal and nonfederal spending quarterly. As of December 30, 2011, 49 grant recipients had not met proportionality requirements (see figure 2). It is important that match funds are contributed in proportion to drawdowns, to ensure that projects are appropriately funded throughout their development and remain on schedule.

**Figure 2. Status of Match Spending (as of December 31, 2011)**




*Source:* OIG, based on NTIA data

We also reviewed BTOP award recipients' processes for drawing down federal funds and found that 2 of the 25 recipients we reviewed allowed third parties (a contractor in one instance and a subrecipient in the other) to draw down funds, which increases the risk of funds misappropriation. Because of the increased risk, NTIA should ensure award recipients are

aware of the issue and are monitoring the drawdowns appropriately. Table 4 provides a summary of the drawdowns that occurred.

**Table 4. Treasury Cash Drawdowns Made by Entities Other Than Grantee**

| Project Type (OIG tested) | Total Drawdowns, as of September 30, 2011 (in millions) | Number of Drawdowns | Duration of Drawdowns |
|---|---|---|---|
| Infrastructure Grantee 1 | $7 | 26 | 14 months |
| Infrastructure Grantee 2 | 2 | 14 | 16 months |
| **Total** | $9 | 40 | — |

*Source:* OIG analysis, based on NTIA and U.S. Department of the Treasury, Automated Standard Application for Payment

**4. NTIA Needs to Assess the Impact that the Recently Established First Responder Network Authority (FirstNet) Program May Have on Existing BTOP Public Safety Projects**

The passage of new legislation requiring NTIA to establish an interoperable nationwide public safety broadband network (PSBN) while continuing to oversee BTOP will place additional requirements on NTIA, increasing program risk. As we track the establishment of FirstNet, its impact on key BTOP public safety projects should be closely monitored.

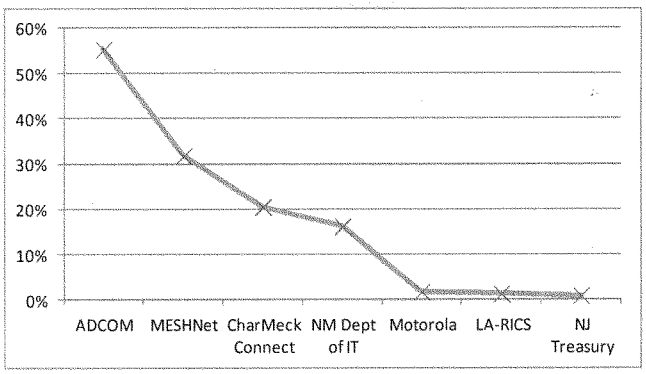
On February 22, 2012, Congress enacted the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96), reallocating the D-block spectrum and $7 billion in funding to NTIA for the establishment of an interoperable nationwide PSBN. Specifically, the law requires NTIA to establish an independent authority called the First Responder Network Authority (FirstNet) to (a) administer the D-block and existing public safety spectrum and (b) oversee the establishment and deployment of the PSBN.

Several BTOP projects involve networks similar to FirstNet's PSBN; as a result, our BTOP oversight helps us anticipate issues and concerns that could potentially arise with FirstNet. We have been closely following the progress of BTOP's seven existing public safety grant awards (totaling $382 million), having already reviewed the BayWEB grant in a report issued May 2011 and a memorandum issued in January 2012. These seven large, complex infrastructure projects have already faced multiple deployment challenges, resulting in slow awardee spending:

- the Adams County (Colorado) Communications Center, Inc. (ADCOM)
- the city of Charlotte, North Carolina (CharMeck Connect)
- the Executive Office of the State of Mississippi (MESHNet)
- the Los Angeles Regional Interoperable Communications System (LA-RICS)
- Motorola, Inc. (in the San Francisco Bay area)
- the New Jersey Department of Treasury
- the New Mexico Department of Information Technology)

Causes include delays in EAs, vendor selection, design modifications, and establishment of governance structure. Figure 3 below depicts the federal fund amounts and the spending rates as of April 11, 2012, for these projects; only one of the projects has spent more than 50 percent of its federal funds.

**Figure 3. Disbursement (by Percent) of BTOP Public Safety Grant Funds**




*Source:* U. S. Department of the Treasury, Automated Standard Application for Payment

If deemed compatible, FirstNet will integrate the progress achieved by the seven public safety grantees into the PSBN (see table 5):

**Table 5. Grants Likely to Transition to PSBN**

| Recipient | Federal Funds (in millions) |
|---|---|
| ADCOM | 12 |
| CharMeck Connect | 17 |
| MESHNet | 70 |
| LA-RICS | 155 |
| Motorola, Inc. | 50 |
| NJ Treasury | 39 |
| NM Dept of IT | 39 |
| **Total** | **$382** |

*Source:* NTIA BTOP infrastructure project reports; see http://www2.ntia.doc.gov/awards

Given the complexity and time requirements of PSBN, it will take FirstNet several more months to establish technical guidance, as well as rules and regulations. NTIA has informed OIG that it has asked all seven BTOP public safety projects to halt all long-term evolution (LTE) deployment activities while it establishes program requirements to avoid any waste of federal

funds. All seven projects currently are at risk of not completing by September 30, 2013, unless they transition to PSBN. As NTIA analyzes this issue, some potential areas of impact we anticipate are:

- *FCC spectrum waiver transfer to FirstNet.* The public safety network grantees were required to obtain a waiver from the FCC to gain a license to operate on the 700 MHz spectrum. Existing spectrum waivers will need to transfer to FirstNet, which will hold one license for the whole public safety spectrum. The existing seven projects will need to re-apply for the waivers from FirstNet.
- *LTE equipment purchases halted.* In an effort to avoid waste of funds, NTIA has asked BTOP public safety awardees to halt any future equipment purchases in light of upcoming directives from FirstNet containing network-related guidance. Three of the seven grants (i.e., ADCOM, CharMeck Connect, and MESHNet) already have received LTE equipment.
- *Grant deadline extensions.* NTIA officials are seeking extensions from OMB on BTOP grant deadlines for the seven public safety awards so that halting LTE efforts will not jeopardize federal funding.

With so much significant spending on public safety equipment procurement and deployment, it is imperative to ensure that the equipment works and meets the intended BTOP objectives. OIG continues to oversee NTIA efforts to ensure it can monitor grantees' equipment procurements.

**5. Funding Questions About 2013 and Beyond Raise Concerns Over Continued BTOP Oversight**

Finally, Mr. Chairman, we would like to inform the Subcommittee that we have requested a waiver under section 1306 of the Dodd–Frank Wall Street Reform and Consumer Protection Act, which requires unobligated Recovery Act funds be returned to the U.S. Department of the Treasury on December 31, 2012.

Recovery Act funds were transferred to OIG to fund oversight of BTOP. However, OIG has managed its BTOP budget so that it will have funding necessary to pay for FY 2013–15 salaries and expenses of auditors and investigators. These expenses cannot be obligated in advance. Without a waiver, OIG will lose its dedicated funding for BTOP oversight up to 9 months prior to the projected September 30, 2013, completion dates for the last BTOP projects, and even longer before project closeout procedures are completed. Our future BTOP oversight plan includes a combination of program audits and targeted audits of risky grants. In addition, we are responsible for investigating and resolving complaints of wrongdoing made against BTOP award recipients, for which we have established a formal complaint monitoring process.

On January 17, 2012, a request for a waiver for five Offices of Inspectors General was submitted to the President by the Council of Inspectors General on Integrity and Efficiency. While our communications with OMB have been positive, the request awaits OMB's decision. That it has not yet been approved by the President requires us to proceed with a degree of uncertainty, which has a significant impact on OIG's FY 2012 operations and FY 2013 planning. Given the Subcommittee's interest in oversight, we wanted to raise your awareness of this issue.

Additionally, while OIG is not in a position to speak to the Administration's budget request for NTIA oversight, that agency also faces challenges in funding the oversight of BTOP's responsibilities. As BTOP project completion dates for recipients approach, NTIA must continue monitoring awards. Recent NTIA reports concerning those grants with two-thirds completion deadlines of February 29, 2012, indicated that half may not meet the deadline because of slower spending. If this trend of project delays continues, NTIA may need to consider granting no-cost extensions or cancelling projects; this underscores the importance of continued oversight.

•

In conclusion, Mr. Chairman, for FY 2012 and beyond, these complex grant implementation issues present BTOP with many and unique challenges, particularly to NTIA's administration and oversight of this important program. The subcommittee's continued attention and oversight are important. For the Department to ensure effective implementation of BTOP, especially in light of fulfilling OMB and legislative requirements, OIG and NTIA will require Congress to continue your oversight efforts. This concludes my prepared statement, and I will be pleased to respond to any questions you or other Subcommittee members may have.

## Appendix

### OIG BTOP-Related Testimony, Reports and Memorandums, Works in Progress, and Training

OIG's BTOP oversight efforts began immediately after passage of the Recovery Act. Our ongoing monitoring activities include: tracking grant recipient spending, reviewing quarterly progress reports submitted by recipients, attending BTOP biweekly meetings to learn updates on program status, attending quarterly meetings with contractors providing program services, reviewing single audit and program-specific audit reports (as well as complaints), and responding to BTOP program office questions. Further, our outreach efforts have resulted in 52 total training sessions, reaching more than 3,100 program staff and grant recipients with more than 3,300 total training hours. For further detail, see table below:

**Table A. OIG Oversight of BTOP (2009–Current)**

| Related Testimony | | |
|---|---|---|
| **Title (Number)** | **Date** | **Congressional Audience** |
| Stimulus Oversight: An Update on Accountability, Transparency, and Performance (OIG-12-012-T) | November 30, 2011 | Committee on Science, Space, and Technology Subcommittee on Investigations and Oversight (U.S. House of Representatives) |
| ARRA Broadband Spending (OIG-11-019-T) | February 10, 2011 | Committee on Energy and Commerce Subcommittee on Communications and Technology (U.S. House of Representatives) |
| **Related Reports and Memorandums** | | |
| **Title (Number)** | **Release Date** | **Summary of Recommendations** |
| Misrepresentations Regarding Project Readiness, Governance Structure Put at Risk the Success of the San Francisco Bay Area Wireless Enhanced Broadband (BayWEB) Project (OIG-12-016-M) | January 10, 2012 | NTIA should:<br>• "[M]ake a determination whether the corrective actions underway by the grantee and political jurisdictions are sufficient to overcome the defects in the initial application"<br>• "[With the Department,] gather lessons learned from this award to employ on other BTOP and future grant programs" |

| Related Reports and Memorandums (continued) | | |
|---|---|---|
| **Title (Number)** | **Release Date** | **Summary of Recommendations** |
| NTIA Has an Established Foundation to Oversee BTOP Awards, But Better Execution of Monitoring Is Needed (OIG-12-013-A) | November 17, 2011 | NTIA should:<br>• Take prompt steps to strengthen federal program officers' monitoring efforts<br>• Verify source documentation as part of its monitoring efforts<br>• Strengthen its monitoring tools' internal control capabilities<br>• Improve guidance for recipient match documentation during site visits<br>• Help recipients at risk of noncompliance with award progress and completion requirements to revise completion dates, request project extensions, or rescope projects<br>• Incorporate continuous trend analysis into its award monitoring process<br>• Identify oversight strategies for all funding levels |
| Review of BTOP Award for the San Francisco Bay Area Wireless Enhanced Broadband (BayWEB) Project (OIG-11-024-I) | May 6, 2011 | NTIA should:<br>• Ensure independent review of complaints and document responses and results<br>• Develop policies and procedures for timely response to complaints, including the communication of issues with OIG<br>• Emphasize for BTOP staff the importance of communication with the grants office when responding to complaints<br>• Ensure, when monitoring awards, that equipment is valued at cost (consistent with cost principles)<br>• Direct BTOP to promptly communicate potential problems or deviations to the grants officer |
| Broadband Program Faces Uncertain Funding, and NTIA Needs to Strengthen Its Post-Award Operations (OIG-11-005-A) | November 4, 2010 | NTIA should:<br>• Manage the future lack of funding for BTOP by developing alternative approaches to monitoring and oversight<br>• Ensure that agreements with other agencies, manuals and guidance, training and development, and monitoring procedures are clearly documented and fully adhered to |

| Related Reports and Memorandums (continued) | | |
|---|---|---|
| **Title (Number)** | **Release Date** | **Summary of Recommendations** |
| NTIA Must Continue to Improve its Program Management and Pre-Award Process for its Broadband Grants Program: (ARR-19842-1) | April 8, 2010 | NTIA should:<br>• Create a staffing plan that outlines the necessary management resources and adjusts to key positions lost<br>• Develop and implement documentation policies and procedures<br>• Have in-house counsel document arising program issues and opinions from the Department's Office of General Counsel<br>• Supplement reviewing staff to address unforeseen delays<br>• Develop procedures for monitoring recipients at risk of experiencing delays in completing post-award NEPA requirements |
| NTIA Should Apply Lessons Learned from Public Safety Interoperable Communications Program to Ensure Sound Management and Timely Execution of $4.7 Billion Broadband Technology Opportunities Program (ARR-19583) | March 31, 2009 | NTIA should:<br>• Seek to extend program office funding to ensure proper oversight<br>• Use joint peer reviews before making grant awards<br>• Complete a prompt environmental assessment of BTOP |

| Related Works in Progress | |
|---|---|
| **Subject** | **Summary of Objectives** |
| NTIA's Processes for Broadband Technology Opportunities Program (BTOP) Grantees' Matching Share | Determine whether NTIA has adequate processes in place to ensure that BTOP grantees' matching shares of approximately $1.4 billion meet both administrative requirements and the terms and conditions of the individual awards |
| Management and Oversight of the Booz Allen Hamilton BTOP Contract | Determine (1) how NTIA ensures the receipt and quality of the goods and services they pay for; (2) what specific controls exist to verify invoices and payment processes; and (3) how NTIA mitigates risks associated with time and material contract and task orders |
| BTOP Subrecipient Monitoring | Assess whether all subrecipients have been identified and properly classified and determine whether adequate controls are in place to ensure effective subrecipient monitoring and compliance with award terms and conditions |
| Recovery Act Lessons Learned | As part of a federal government-wide Recovery Accountability and Transparency Board initiative, identify actions, mechanisms, and processes federal agencies used that were effective for implementing and administering Recovery Act programs—as well as those that were obstacles to successful Recovery Act programs (particularly relating to the overarching goals of transparency and accountability) |

| Selected Trainings | | |
|---|---|---|
| **Subject** | **Date** | **Audience** |
| BTOP | October 6, 2011 | Grant recipients (mixed local, state, nonprofit) |
| State Broadband Data Initiative | April 28, 2011 | NTIA staff; awardees |
| Subrecipient Monitoring | February 3, 2011 | NTIA staff; awardees |
| Fraud Prevention | Various | NTIA staff; awardees |

Mr. WALDEN. Mr. David Gray is up next. He is the deputy OIG for the U.S. Department of Agriculture, and happy 150th birthday to the Department.

**STATEMENT OF DAVID R. GRAY**

Mr. GRAY. Thank you. Good morning, Chairman Walden and Ranking Member Eshoo, and other members of the subcommittee. I appreciate the opportunity to appear before you today and talk about our oversight work of the Department of Agriculture and RUS's broadband grant and loan programs.

Our inspector general appeared before you last February of 2011 and spoke about the audits that we had performed in 2005 and 2009 of the RUS's administration of its regular broadband loan programs.

In those audits, we found that RUS was funding projects and communities that were close to major metropolitan areas. We also had concerns over the funding of projects in areas with preexisting broadband service.

At the time of our second audit, RUS was soon to receive the $2.5 million under the Recovery Act to implement BIP. Following our meeting with the subcommittee, we began a two-phased audit work. The first phase focuses on the controls that RUS had in place pre-award, and our second phase audit focuses on its post-award controls.

Our first phase audit should be complete this September, and the second phase audit should be completed by the end of December or hopefully before then the end of December.

We expect that our current work will identify some of the same issues as our prior audits as they relate to BIP specifically. However BIP differs from the existing and prior broadband programs significantly. For one thing, they received significantly more money than any previous RUS broadband program.

Also, because BIP was a new program, it was necessary for RUS to define and interpret key statutory criteria including, to what extent served areas should be rural and which areas should receive priority? For our audits, we selected a statistical sample that allows us to provide a broad perspective and to provide nationwide analysis.

Our sampling for both phases include a selection from all three of the projects that BIP funds, interest, infrastructure, satellite and technical assistance programs projects. Because RUS's interpretation of the Recovery Act policies will shape how it administers BIP, we will be looking to make sure that these definitions, terms and usages meet the purpose of the Recovery Act and the Recovery Act funds are used as intended to benefit rural areas and communities.

We are committed to working with RUS to ensure that these broadband programs and operations fulfill their important missions as intended.

This concludes my written statement. Thank you, again, for inviting me, and we are happy to answer any questions.

Mr. WALDEN. Mr. Gray thank you for your testimony and for the work that you and your colleagues do.

[The prepared statement of Mr. Gray follows:]

UNITED STATES DEPARTMENT OF AGRICULTURE

OFFICE OF INSPECTOR GENERAL

**STATEMENT OF DAVID R. GRAY**

**DEPUTY INSPECTOR GENERAL**

Before the

Subcommittee on Communications and Technology

Committee on Energy and Commerce
U.S. House of Representatives

**May 16, 2012**

Good morning, Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee. I thank you for inviting me to testify before you today to discuss the Office of Inspector General's (OIG) work to help improve oversight of the Department of Agriculture's (USDA) broadband grant and loan programs.[1]

Since 2001, the Rural Utilities Services (RUS) has administered broadband programs to fund projects intended to provide broadband service to rural communities, particularly those that may not otherwise have access to this important communications technology. As part of OIG's mission to promote the efficiency and effectiveness of USDA's programs, we assessed RUS' administration of USDA's broadband programs to ensure that these programs meet their intended purposes and benefit those needing broadband service.[2] We are currently undertaking work to evaluate RUS' program operations for USDA's Broadband Initiatives Program (BIP), which received $2.5 billion in funding with the passage of the Recovery Act.[3] While this program differs from prior broadband grant and loan programs in some regards (discussed in more detail below), it shares a common goal to expand and provide access to broadband service for those in rural areas across the Nation.

**Prior Audits of USDA's Broadband Grant and Loan Programs**

As our past audit work shows, RUS has not always maintained its focus on providing broadband service to rural communities without existing access to broadband service. When we first reviewed RUS' administration of broadband programs in 2005, we found that its definition of "rural communities" did not distinguish between rural communities and affluent suburbs near major metropolitan areas.[4] This led to RUS issuing loans to provide broadband service to 64 communities within a few miles of major cities. We also reported that RUS devoted significant resources to funding service in areas with preexisting broadband service, even though the law establishing the program emphasized that funds should first be used for expanding

[1] In this testimony, we will refer to USDA broadband grant and loan programs collectively as "broadband programs."
[2] Our audits covered the period from October 2000 to June 2008.
[3] American Recovery and Reinvestment Act of 2009, Public Law No. 111-5, Division A, Title I, dated February 17, 2009.
[4] "Rural Utilities Service Broadband Grant and Loan Programs," 09601-0004-Te, dated September 30, 2005.

services to communities with no broadband service.[5] We questioned whether RUS should be loaning money for competing services when the areas they serve might not be able to reasonably support multiple broadband service providers. Our findings, which included defaulted loans, incomplete applications, and grant funds used for inappropriate purposes, caused us to question $340 million of the $599 million in grants and loans we reviewed. We consequently recommended that the agency improve its administration of the broadband programs and focus its resources on rural communities without preexisting broadband service.

At the request of Congress, we conducted a followup audit in 2009 to determine if RUS had taken sufficient corrective action to address these issues and found that the agency continued to provide questionable loans to providers near very large cities or in areas with preexisting service.[6] At that time, RUS was soon to receive $2.5 billion in Recovery Act funds to implement this broadband initiative, and we expressed concern that RUS' broadband programs may not have controls in place to meet the objectives of the Recovery Act and properly administer associated funding.

**Current RUS Broadband Work**

Given the seriousness of the issues raised by our prior audits and shortly after our meeting with this Subcommittee last year on February 10, 2011, we initiated further audit work to look specifically at Recovery Act BIP grants and loans to assess the effectiveness of RUS' corrective actions and to evaluate whether RUS had controls in place to meet the purposes of the Recovery Act and its program objectives. We coordinated with the Government Accountability Office, which performed a multi-department review of Recovery Act broadband grants and loans, as well as the Department of Commerce (DOC) Office of Inspector General, which has performed audits of DOC's Broadband Technology Opportunities Program in two phases. Our current work is similarly divided into two phases: fieldwork is near completion for the first phase, which focuses on the controls RUS had in place prior to awarding grants and loans; and we have started the second phase, which focuses on RUS' post-award controls. Because BIP's focus was to fund

[5] Amendments to the Distance Learning and Telemedicine Program, Public Law 106-387,114 Stat. 1549A-22, dated October 28, 2000.
[6] "Rural Utilities Service Broadband Grant and Loan Programs," 09601-0008-Te, dated March 31, 2009.

grants and loans to provide broadband service in rural areas, our work will take up some of the same issues as our prior audits. However, BIP differs from prior programs in significant ways, which we have also considered in our audit methodology.

As part of the Recovery Act's efforts to boost the economy nationwide, Congress provided BIP with significantly more funding than other USDA broadband programs. For instance, in fiscal year (FY) 2008, according to RUS, it obligated about $453 million to 38 broadband grants and loans.[7] By contrast, by the end of FY 2010, RUS reported that BIP awarded 320 grants and loans in 46 States and territories for a total of $3.5 billion.[8] RUS utilized a contractor to address more than 2,000 BIP applications in two rounds of funding. Additionally, the agency divided projects according to three types: infrastructure projects (which included last mile projects to provide service to end-users and middle mile projects to establish necessary infrastructure to make broadband connectivity possible); satellite projects to provide satellite broadband to rural areas; and technical assistance projects to plan the future development of broadband infrastructure.

We selected projects to review according to a statistical sample, which enables us to review program operations from a broad perspective and provide nationwide analyses. Our statistical sampling for both phases includes selections from each of the three project types. Of the 320 awards,[9] we selected 86 for review that are spread across 22 geographic locations.[10] In our first phase of work we are also reviewing how RUS managed the high volume of applications and handled approvals, its controls over contractor reviews, and its coordination with DOC's similar Recovery Act efforts.

Because BIP was a new program rather than an extension of prior and existing broadband programs, RUS had to define and interpret key statutory broadband criteria, including to what extent served areas should be rural and which areas should receive priority. The Recovery Act stipulated that at least 75 percent of service areas be rural areas without sufficient access to high

[7] $438 million was obligated to 13 loans, and $15 million to 25 grants.
[8] USDA Broadband Initiatives Program Awards Report, "Advancing Broadband: A Foundation for Strong Rural Communities," dated January 2011.
[9] "Awards" refers to loans, grants, and loan/grant combinations.
[10] Of the 86 awards, 2 were ultimately rescinded.

speed broadband to facilitate rural economic development. It also required that RUS give priority to projects that would deliver broadband service to the highest proportion of rural residents without access and projects that would provide end-users with a choice of more than one service provider.[11] OIG's audits will look at several of RUS' program-level changes—particularly how RUS defined "underserved" and "unserved"[12]—to ensure that BIP grants and loans are awarded and that funds are used for intended purposes.

With BIP, RUS policies allowed overlapping broadband coverage, a practice that, as we have noted before, could lead to RUS encouraging competition rather than expanding service to areas without any broadband access. Such competition could even result in RUS-funded providers failing due to too much competition in markets where there is little demand. In prior broadband programs, to prevent competition among existing or previous loan or grant recipients, RUS generally did not fund additional projects in areas where a RUS loan or grant recipient was already providing broadband service. Similarly, the 2008 Farm Bill broadband programs did not fund service in areas where three or more providers were already present.

However, BIP did not have these limitations. In round one, RUS allowed applications to be approved for any eligible service area—regardless of possible overlap with existing RUS loan or grant recipients' service areas. In round two, RUS did prohibit overlapping service areas of prior RUS grant or loan recipients and BIP round one providers. However, RUS allowed "*de minimis*" geographic overlap between BIP service areas in each of the funding rounds.[13] While our work is still ongoing, we are assessing the impact these policies may have on rural broadband coverage.

Because RUS' interpretations of the Recovery Act's policies will shape the effectiveness of its program administration, we will be looking to make sure that these definitions, terms, and usages

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[11] American Recovery and Reinvestment Act of 2009, Public Law No. 111-5, Division A, Title I, dated February 17, 2009.
[12] Notice of Funds Availability 1, 74 Federal Register 33109, dated July 9, 2009; Notice of Funds Availability 2, 75 Federal Register 3825, dated January 22, 2010.
[13] RUS' internal guidance limited overlap within the first round to 10 percent. Notice of Funds Availability 2 limited overlap within the second round to 25 percent and prohibited overlap between the first and second rounds.

meet the purposes of the Recovery Act, and that Recovery Act money is reaching the rural population it was intended to serve.

**Conclusion**

OIG's work is designed to help USDA enhance program performance and efficiency by identifying potential areas of concern. OIG is committed to working with RUS to ensure these broadband programs and operations fulfill their important missions as intended.

This concludes my written statement. I thank you again for the opportunity to testify today before the Subcommittee and would be pleased to address your questions.

Mr. WALDEN. I will start out with some questions I have.

First, without objection, I would like to submit for the record this article from the West Virginia Gazette regarding some spending under the BTOP grant.

[The information follows:]

the Charleston Gazette wvgazette.com

GET CONNECTED

May 7, 2012 0 Recommend 1

# Firm to audit W.Va. broadband stimulus spending

By Eric Eyre

CHARLESTON, W.Va. -- A consulting firm has been tapped to review how state officials are spending more than $126 million in federal economic stimulus funds to expand high-speed Internet in West Virginia, state Commerce Secretary Keith Burdette said Monday.

"At the end of the day, I suspect we've made some mistakes," Burdette said. "I'm reading stuff in your stories and learning stuff in the process."

Earlier this week, the Gazette reported that the state of West Virginia is using $24 million in stimulus money to put more than 1,000 high-powered Internet routers in small libraries, elementary schools and health clinics, even though the equipment is designed to serve major research universities, medical centers and large corporations.

The routers cost $22,600 each.

"If those routers are bigger than we need, then we need to figure out what do we do about it," Burdette said. "Where do we go from here? Let's figure out how we can use them."

In March, the state Department of Commerce hired Fairfax, Va.-based ICF International to analyze West Virginia's existing broadband infrastructure and to provide advice to Burdette and the governor's office.

ICF's assignment has been expanded to include a review of the $126.3 million federal stimulus grant, Burdette said. The review is expected to include a financial audit.

"We need guidance from folks who aren't trying to sell us something," Burdette said.

Burdette said he doesn't want the consultants to point fingers and dwell on past decisions.

Instead, Burdette said ICF's consultants would be asked to provide a roadmap to help the state maximize the stimulus money and improve broadband access across West Virginia.

"I don't want to spend a lot of time on things we cannot change," Burdette said. "If we made mistakes, then we need to look at how do we take lemons and make lemonade."

In March 2010, the state received a $126 million federal stimulus grant to bring fiber optic cable to schools, libraries, health-care facilities, state police detachment, 911 dispatch centers, county courthouses, jails and libraries. It was the largest federal broadband award given to any state.

"The grant application was put together in record time," Burdette said. "I don't know if the decisions were the right ones or the wrong ones. I want somebody to come in and say, 'This is what has taken place and this is what we should do.' "

The state purchased the Cisco series 3945 routers in July 2010, even though a state Office of Technology administrator warned that the pricey devices "may be grossly oversized," according to an email obtained by the Gazette. Department of Education and Library Commission officials also raised questions about the size of the routers.

Burdette said, in hindsight, state officials should have hired a consultant before purchasing equipment and starting the broadband expansion project.

"If we had an independent consultant to help us with our decisions at the very beginning, we'd all be smarter," Burdette said. "We probably should have had someone like ICF at the front end."

Burdette said ICF is expected to issue a report about West Virginia's use of the $126.3 million grant in 30 to 90 days. The state must finish the broadband expansion project by February 2013

or risk losing unspent funds.

"This thing is pretty far down the pike," Burdette said. "If there are things we need to do, we need to know pretty quickly. At the same time, we want a thorough review."

At a meeting last summer, West Virginia Broadband Deployment Council members learned that the state could have $30 million to $40 million in leftover stimulus funds.

If that happens, ICF would likely recommend how the state could use the unspent funds -- and not have to return the grant money to the federal government, Burdette said.

"If money is left over, where are we going to put the money?" he said. "Hopefully, they're going to help guide us."

The Gazette also reported this week that the state has 366 unused routers in storage -- nearly two years after purchasing them. The state hasn't found a place to put about half of those routers. The devices direct data, such as email and web pages, from one computer network to another.

State officials have said they will find a home for every router by the time the stimulus grant expires.

The Cisco routers are designed to serve up to "tens of thousands" of users or device connections. Yet state officials have directed the installation of the stimulus-funded routers in West Virginia schools with fewer than a dozen computers and libraries that have only a single computer terminal for patrons.

State Homeland Security chief Jimmy Gianato, who heads West Virginia's broadband project team, has defended the router purchase, saying the equipment will meet the West Virginia's technology demands well into the future.

Burdette noted that the National Telecommunications & Information Administration, which oversees broadband spending, has previously reviewed and approved West Virginia's equipment purchases under the federal stimulus grant.

"This grant was big and complicated," Burdette said. "The bottom line is we're going to catch up real quick now that we've got the consultants on board."

ICF opened a West Virginia office in Charleston in 2009.

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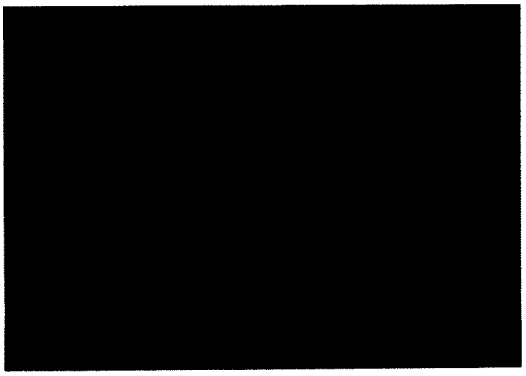


Saturday Gazette-Mail wvgazette.com

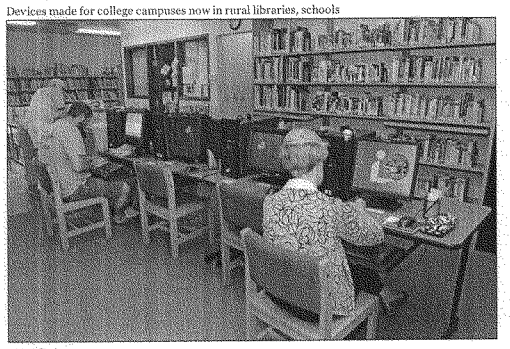
GET CONNECTED

60 Recommend 59

May 5, 2012

# State paid $22K each for Internet routers

Devices made for college campuses now in rural libraries, schools



*Chip Ellis*

The four computers at the Hurricane branch of Putnam County Libraries are connected to a new, high-end router, which is still hooked up to an old copper-wire line while awaiting a fiber connection.

By Eric Eyre

CHARLESTON, W.Va. -- Nobody told Hurricane librarian Rebecca Elliot that the $22,600 Internet router in the branch library's storage closet was powerful enough to serve an entire college campus.

Nobody told Elliot how much the router cost or who paid for it. Workers just showed up and installed the device. They left behind no instructions, no user manual.

The high-end router serves four public computer terminals at the small library in Putnam County.

"I don't know much about those kinds of things," Elliot said last week, before politely leaving to help an elderly patron select books. "I just work here."

The state of West Virginia is using $24 million in federal economic stimulus money to put high-powered Internet computer routers in small libraries, elementary schools and health clinics, even though the pricey equipment is designed to serve major research universities, medical centers and large corporations, a Gazette-Mail investigation has found.

The state purchased 1,064 routers two years ago, after receiving a $126 million federal stimulus grant to expand high-speed Internet across West Virginia.

The Cisco 3945 series routers, which cost $22,600 each, are built to serve "tens of thousands" of users or device connections, according to a Cisco sales agent. The routers are designed to serve a minimum of 500 users.

Yet state broadband project officials directed the installation of the stimulus-funded Cisco routers in West Virginia schools with fewer than a dozen computers and libraries that have only a single terminal for patrons.

"The routers have a lot of power," said Karen Goff, executive secretary of the West Virginia Library Commission. "Because the routers are so big, our tech guys had to build shelves for them. The libraries had no other place to put them."

Morgantown-based WVNET, the state government Internet services agency, uses six Cisco routers with similar capacity to serve all state agencies and public universities.

West Virginia Homeland Security chief Jimmy Gianato, who's leading the state broadband project, defended the $24 million router purchase last week, saying the devices "could meet many different needs and be used for multiple applications."

"Our main concerns were to not have something that would become obsolete in a couple of years," Gianato said. "Looking at how technology evolves, we wanted something that was scalable, expandable and viable, five to 10 years out. We wanted to make sure every place had the same opportunity across the state."

**'Grossly oversized'**

In July 2010, a West Virginia Office of Technology administrator warned that the Cisco 3945 series routers "may be grossly oversized," according to an email obtained by the Gazette-Mail.

The administrator asked state officials to postpone plans to spend $24 million on the routers so he would have time to evaluate the proposed purchase.

Five days later, state officials signed the $24 million contract with Verizon Network Integration to buy the Cisco routers.

Verizon delivered an additional 100 routers to the state for free. West Virginia officials never asked for the additional equipment -- valued at more than $2.26 million.

Verizon spokesman Keith Irland said the company simply responded to router specifications detailed in the state's bid posting.

"They specified the equipment they wanted," Irland said. "That's what they requested, that's what we bid on. We had the lowest price, and we won the bid for the equipment and related maintenance."

The Gazette-Mail contacted two Cisco sales agents last week, asking whether the 3945 series routers were appropriate for schools and libraries.

"The 3945 is our router solution for campus and large enterprises, so this is overkill for your network," a Cisco representative responded.

The sales agents recommended a smaller router -- with a list price of $487.

State Department of Education officials questioned the size of the routers before Gianato and the Office of Technology executed the $24 million purchase order.

It didn't make sense to buy the same size routers for a 1,800-student high school and a 100-student elementary school, according to administrators in the Department of Education's technology division. The state is distributing 471 of the high-priced routers to schools.

"The WVDE asked if the size of the routers could vary based on the needs of a school," said Liza Cordeiro, spokeswoman for the Department of Education. "At that time, it is our understanding that, for consistency and future expansion, the plan was to buy all the same size."

Gianato said putting the same size router in every school was about "equal opportunity."

"We wanted to make sure a student in McDowell County had the same opportunities as a student in Kanawha County or anywhere else," he said. "A student in a school of 200 students should have the same opportunity as a student in a school with 2,000 students."

John Dunlap, operations director at the state Office of Technology, had similar concerns over the size of the routers.

"The Office of Technology is concerned that this equipment may be grossly oversized for several of the facilities in which it is currently slated to be installed," Dunlap wrote in a July 12, 2010,

email to Gianato. "As a result, the Office of Technology would like to evaluate these and make recommendations to deploy the 3,900 series router where it may be better utilized for this project."

Last week, the Gazette-Mail asked Dunlap to explain his email. He referred questions to Gianato.

Gianato acknowledged that he didn't heed Dunlap's advice or wait for an evaluation.

"The routers already had been bid out," Gianato said. "I think John was looking at our needs now, not looking at our needs into the future."

**Where's the accountability?'**

In March 2010, the state received a $126 million federal stimulus grant to bring fiber-optic cable to schools, libraries, health-care facilities, State Police detachments, 911 dispatch centers, county courthouses, jails and libraries.

It was the largest broadband award given to any state.

West Virginia's broadband grant application mentions nothing about router purchases. Routers steer data, such as email and web pages, from one computer network to another.

"The grant was not an equipment grant. It was to build fiber," said Jim Martin, CEO of Citynet, a Bridgeport-based Internet provider. "These routers were not needed and could have been purchased through other funding sources. Where's the accountability?"

Gianato said federal officials have approved all equipment purchases under the grant.

"The grant included paying for everything except the recurring cost of [Internet] service," he said. "It doesn't pay the monthly bill."

A handful of West Virginia facilities -- called "community anchor institutions" under the federal broadband grant -- that initially were scheduled to receive routers, such as Charleston Area Medical Center, might have required the powerful equipment. However, state broadband project leaders later discovered that the facilities already had fiber-optic connections and suitable routers.

**'T1' cards add $1M to price**

The routers alone cost the state $7,800 each, but "add-ons" -- additional equipment that came with the devices -- boosted the price tag by $14,800.

"It's like buying a car," Gianato said. "You get a lot of options with the car."

An online Cisco retailer was selling new 3945 series routers for $5,800 last week. The routers have a list price of $13,000 each.

Cisco was the lower of two bidders for the $24 million router sale. Hebron, Ky.-based Pomeroy bid $24.8 million for the 1,064 Cisco routers.

State officials requested that the devices include a "T1 interface card" that would allow schools, libraries and other sites to use the high-capacity routers with their existing copper-wire T1 broadband connections -- while waiting to hook up to fiber optic cable.

The adapter cards added $1.08 million to the purchase price.

"T1 cards were used to hook the existing lines into the new routers until the fiber could be installed and the lines switched to the new ones," said Cordeiro, spokeswoman with the state Department of Education. "If this had not been done, the routers could not have been operational with the existing lines while waiting for the complete fiber runs."

West Virginia paid the extra cost because it purchased the 1,064 routers all at the same time,

before running fiber cable to the public facilities.

The state also has delivered hundreds of routers to sites -- mostly schools -- that already had fiber-optic connections. So those routers' adapters were never used or needed to connect to a T1 line.

Gianato said the T1 cards have other uses -- video conferencing, wireless Internet and "voice over Internet protocol."

"I'm not an expert on the technical side," he said, "but these have all kinds of capabilities and applications."

**'We're in the dark'**

West Virginia Library Commission technicians are installing 176 Cisco routers at public libraries.

Library officials also have raised questions about the size of the routers.

"[Gianato] said it was important to have that capacity in case it was needed for homeland security reasons," Goff said. "In some places, the library may be the only anchor institution in the community."

That's not the case in Hurricane. The public library stands next to Hurricane Middle School -- which also has a new $22,600 router.

Putnam County Libraries Director Steve Christo, who stopped at the Hurricane branch last week, said Frontier workers recently brought fiber cable into the building. However, the library's high-end Cisco router is still connected to a T1 broadband line because the phone company hasn't extended fiber to the area.

Christo said he has no idea when the Hurricane library will get a high-speed fiber connection to serve its four public computer terminals.

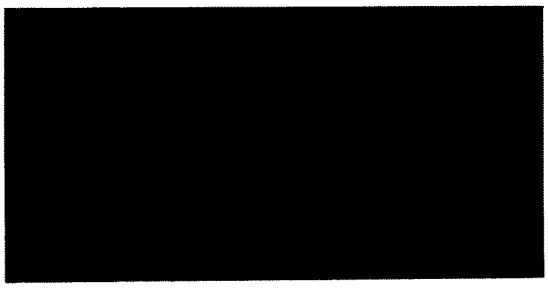
"I don't know exactly where [the routers] are from. They're not the Library Commission's," Christo said, before noticing a router tag with the letters "AARA," which stands for American Recovery and Restoration Act -- the formal name for the 2009 federal stimulus package. "We're in the dark about this."

Gianato said he has no regrets about the router purchase.

"I think we made the right decision," he said. "We have positioned our state to expand and move into the next generation of technology."

Coming Monday in The Charleston Gazette: Why are hundreds of the routers still unused?

*Reach Eric Eyre at erice...@wvgazette.com or 304-348-4869.*



Mr. WALDEN. And Assistant Secretary Strickling, I don't know if you are familiar with the situation in West Virginia.

Mr. STRICKLING. I am, sir.

Mr. WALDEN. It seems pretty disturbing that they would spend $126 million, receive $126 million BTOP grant. It says the State then bought more than 1,000 Cisco 3945 series routers, enterprise grade routers, designed to serve a college campus and then installed them in local libraries with only one to two dozen computers. Each router costs about $22,600, or about $22,000 more than a smaller router that would have worked just as well.

My understanding is that these routers are designed to handle a minimum of 500 computers, and yet, in some of these little libraries in West Virginia, they are handling maybe one public work station.

Can you tell me what NTIA is doing about this and the $22 million of taxpayer money that seems to be wasted here?

Mr. STRICKLING. Yes, sir. First off, I would warn everyone, don't believe everything you read in the newspaper.

But the facts of the situation are not exactly as described in the newspaper article. In West Virginia, they have bought routers. They chose early on, because of the deal they could get, to buy the same router to install in all of the anchor institutions that were going to be served. The average cost of those routers is not $22,000; it is about $12,000. And some of those are going into very large facilities, like universities and hospitals and such.

But overall, had they tried to determine the individual router capacity needed for every of these anchor institutions, they felt they would end up spending more money, as opposed to being able to take advantage of the package discount Cisco offered them on buying all of the same gear.

This gear is scaleable, it will be allowed to be expanded, and while I think you are right to be skeptical as to whether some of these very remote and rural locations will ever need the full capability of the particular router that was purchased, many of these anchor institutions will benefit from this. And overall, our sense is that this was the most economical way forward.

Certainly in terms of maintaining this gear, there will be efficiencies gained by the State by having trained their technicians to only deal with one particular box as opposed to a variety of different pieces of equipment that might have been involved had they chosen a different course.

So, overall, it appears to us, based on our review of the situation, that the State made an economical decision that is well-justified by the facts here.

Mr. WALDEN. So a router that can handle 500 is, was a better buy for a library with half a dozen computers.

Mr. STRICKLING. Now the issue here is what was the best buy to serve the 1,000 institutions that were being served by this project. And on average, West Virginia believes that they have found the most economic solution by buying a single product, getting a substantially discounted per router rate from Cisco, which again is a router that is necessary to meet the needs of many of the anchors they are connected to, but just by selecting out some of the specific

small locations is giving a very, I think, distorted picture of what is actually happening in the State.

Mr. WALDEN. So Cisco wouldn't have given them a discount for the big ones and also a price discounts for small ones? Really?

Mr. STRICKLING. What West Virginia told us was this led to the least amount of dollars being spent on the routers on average.

Mr. WALDEN. So they did submit then an alternative? Did they do any kind of deep analysis? I was a small business owner for 20 years—22 years—and it just seems to me that I would have said I have got X number of libraries out here in the rural areas; it would be real easy to have an intern call and say, how many computers do you have, and determine I only need a router that costs 100 bucks or 200 bucks or whatever, and then I have got bigger ones out there.

I mean, I am giving them money here, right? They can't—I can't collect that basic information? Did they competitively bid this?

Mr. STRICKLING. Yes, they did, and Cisco provided the lowest price of the bidders who responded to their competitive bidding process.

Mr. WALDEN. So I understand there was a quarterly report on this project that noted that it had dramatically decreased its plan for fiberoptic buildout, cutting almost 40 percent of the community institutions on its list. One reason was that the grantee discovered that 88 of these community institutions on its buildout list already had fiber. So is that accurate?

Mr. STRICKLING. I can't dispute the numbers. I don't have the report in front of me.

Mr. WALDEN. But you are familiar with the report?

Mr. STRICKLING. In general, I am aware that, yes, through their diligence upon receiving the grant, they have found it not necessary to overbuild into areas that already had fiber, and I think we should applaud their action in that regard.

Mr. WALDEN. I do, too. I guess what I am trying to figure out here is the independent analysis NTIA might be doing.

It sounds like your agency takes the word of whoever is asking for the grant there, in both of these cases, and then hands out the money before verifying the project costs wouldn't duplicate existing infrastructure.

Let me put it more clearly, you are relying on whatever you are told is going on then.

Mr. STRICKLING. If we are going back to the application period, you will recall that we received 10 times the applications than we had dollars to spend. We were under very tight time frames. We did, I think, an incredible amount of due diligence on the applications we received.

But did we go out and check every anchor institution in all of these projects to determine what existing services they received? No. We relied instead on letters from these anchor institutions indicating this they were not being well-served and that they needed upgrades or needed broadband brought into them that where it didn't already exist.

Mr. WALDEN. And I know the pressure you were under and I know I am over my time here. But when they come back and say, we were 40 percent off, that just raises flags for me.

Mr. STRICKLING. It is not 40 percent off in terms of the total number of anchors that they are serving and we will be able to take the opportunity——

Mr. WALDEN. That is in the report that they——

Mr. STRICKLING. I thought you said 80 anchors.

Mr. WALDEN. No, they cut almost 40 percent of the community institutions on their list.

Mr. STRICKLING. I would want to go back and check that. I am not sure of the accuracy of that. But in any event, I think again that shows good project management and good oversight. And the important thing is we will now be able to use those dollars to reach anchors that perhaps weren't in the original project that now can be reached based on the additional information that we all have today.

Mr. WALDEN. My time is more than expired.

Thanks for the answers.

And I will turn now to the gentlewoman from California, Mr. Eshoo.

Ms. ESHOO. Thank you, Mr. Chairman.

To Mr. Zinser, earlier this year, your office completed its examination of Bay Web, a public safety project covering a good part of Bay area. Did you find any evidence of fraud?

Mr. ZINSER. Thank you, Ms. Eshoo.

We did not find evidence of fraud. We issued a report in January that detailed our findings. Our findings went more toward issues concerning governance and some of the information included in the application wasn't completely accurate, and we have sent our report to NTIA.

Ms. ESHOO. Thank you.

As a follow up to Assistant Secretary Strickling, has NTIA addressed the recommendations outlined in the, I mean this is going back because now these are suspended, but I still would like to know, since it is a Bay Area effort, have you addressed any of the recommendations outlined in the IG's Bay Web report?

Mr. STRICKLING. The IG issued two reports. One was an audit, and one was a supplemental report. In the audit, they recommended that we needed a more robust complaint resolution process. As we received complaints from third parties about projects, we did institute a much more process-rich approach to dealing with complaints as a result of that recommendation.

With respect to the January report that the inspector just mentioned, we reviewed the report. The concern that was raised there was whether or not any of the—what the IG had felt were misstatements in the application rose to the level of material misrepresentations that might have changed the outcome of the grant award.

We had already done a thorough analysis of the application and all of the supporting materials we received, and we felt that, notwithstanding the issues that the inspector general raised about the application and some statements that were in the application, we did not feel that in any way we had been overall misled and that we had a full appreciation of the challenges of that project at the time we made the award.

Ms. ESHOO. Thank you.

To Administrator Adelstein, transparency and accountability are the essential bookends in terms of the work that is done. They are essential ingredients for any program involving a substantial taxpayer investment.

Do you support a requirement that RUS broadband loan recipients file regular publicly accessible reports documenting their progress toward completing their project?

Mr. ADELSTEIN. Yes, that would be helpful I think. We get regular reports, and we are monitoring them on a biweekly basis. I have my field staff going out every 2 weeks and making sure they touch each one of these projects. And it has been an extensive effort. I just want to make sure that any requirements didn't release proprietary information.

Ms. ESHOO. As I understand it, approximately 11 percent of the projects that RUS initially agreed to support have been terminated. How does this figure compare to other RUS loan programs? And can you help us understand the nature of these terminations?

Were there any common themes, such as noncompliance or fraud?

Mr. ADELSTEIN. Not noncompliance or fraud. We find fairly typical when we make loans that a number of them never do follow through, they are drawn down. A similar percentage in our experience, this may be a little bit ahead——

Ms. ESHOO. Excuse me. They applied for the loan, but they don't follow through with the application and therefore nothing comes of it?

Mr. ADELSTEIN. Exactly. That does happen to 5 to 10 percent of our loans. These projects that were rescinded, as I indicated, 99.9 percent of the funds were returned to Treasury. There was a number of reasons for it. Sometimes awardees were unable to produce promised funds that they said they would have. We make sure that every dime they say they have is there. Sometimes they couldn't comply with the terms as we worked with them on that. In some cases, competition moved closer to where they were, and they no longer had the business case for it.

One case, a buyer sold the operation, and the new buyer didn't want to follow through with it. Another case major restructuring caused significant material changes. One awardee refused to show the necessary documents for the closing requirements. There are inter-creditor issues. We put a fairly aggressive mortgage on them to make sure we get taxpayer money back and other lenders——

Ms. ESHOO. I am almost out of time. But I appreciate your answer because I think kind of tucked in there is something that we need to appreciate, and that is that there was a great deal of scrutiny that went on in that process, and that is why they did not come to fruition, which is probably the best outcome in terms of some of these circumstances that you just described.

Between the two projects, the BTOP and the BIP, there are many that are far from completion. Would these be completed by the deadline? I think someone touched on that in their opening statement, but——

Mr. STRICKLING. I will speak with respect to the BTOP program. All of our projects are on schedule to be completed within 3 years, with the exception now of the seven public safety projects, for

which we will seek an extension from OMB given the reality we are facing with FirstNet. But the other ones are all on schedule. We have not granted anyone any extensions. I won't even entertain extensions or requests for extensions for these projects at this time.

We are pushing everyone to stay on schedule, and that is our hope and our plan.

Ms. ESHOO. Thank you very much.

I am out of time, Mr. Chairman. Thank you.

Mr. WALDEN. The chair recognizes the gentleman from Nebraska, Mr. Terry, the vice chair of the subcommittee for 5 minutes.

Mr. TERRY. Thank you, Mr. Chairman.

Mr. Zinser, did I say that correctly?

Mr. ZINSER. Close enough.

Mr. TERRY. I want to follow up on part your testimony, and we understand that the oversight components, funding oversight comes out of the actual funding for the program; it is not a separate fund. But I am curious, in your testimony, what is the totality of the amounts spent in oversight preventing waste, fraud and abuse?

Mr. ZINSER. The totality that my office has spent?

Mr. TERRY. Yes.

Mr. ZINSER. The act required that NTIA transfer $10 million to my office for BTOP oversight. We have spent about $6 million of that fund, and right now, we have about $4 million. And the plan was to spread it out throughout the length or life of the project and then a little bit beyond, and now we have, that is going to be abbreviated.

Mr. TERRY. It is obvious, but I want to point out for the record, you just, that oversight is not for RUS but just NTIA.

Mr. ZINSER. Yes, sir just NTIA.

Mr. TERRY. And Mr. Adelstein, who does the oversight for RUS to make sure that the RUS projects are free of waste, fraud, and abuse?

Mr. ADELSTEIN. Mr. Gray and his team.

Mr. TERRY. Mr. Gray, how much has been spent on oversight, fighting waste, fraud, and abuse in the allocations by the RUS?

Mr. GRAY. I am not sure that I know the specific numbers. Overall, we received $22.5 million under the Recovery Act to perform oversight of all USDA programs. I can find out the specific amount for RUS.

Mr. TERRY. Would you?

And then, both for Mr. Zinser and you, Mr. Gray, the same, and I will ask if you are OK with this, but can you break that down into the number of projects that you have actually reviewed for waste, fraud and abuse?

Mr. GRAY. Yes, sir.

Mr. TERRY. Mr. Zinser?

Mr. ZINSER. Yes, we can itemize the kind of activities that we use the money for.

Mr. TERRY. That would be helpful.

Mr. Adelstein, we go way back. I think you do good work. Recently, and this is probably going to be a hearing some time in the future on USF reform that the FCC has taken up. But I worry that

as the RUS issues grants, that the yin and then the yang. And the yang is, if there is competing grants or that rules proposed by the FCC are making it difficult for the RUS loans to be paid back; have you engaged, RUSengaged in any review of the RUS loans to determine if any are in jeopardy from ARRA grants and/or other rules proposed by the FCC?

Mr. ADELSTEIN. Yes, Congressman Terry, we certainly have. We are doing an ongoing risk assessment and stress testing of our entire portfolio. We are going forward using sensitivity analysis about what would be the impact of loans that we make in the future. So we are very carefully monitoring the impact on our existing portfolio.

Mr. TERRY. Any findings from your investigations?

Mr. ADELSTEIN. Well, we are still determining; it is a work in progress. The FCC order, as you know, part of it took place immediately, other parts are moving targets. They are going to do more I think very soon. We just changed their regression analysis a couple weeks ago, and we are looking at the impact of the new regression. So we are overall looking at it on a company-by-company basis, and it is going to be a while before the FCC has completed its activity.

Mr. TERRY. True. But has RUS, at this time, found any of the recipients of RUS loans in the broadband telecom area to be stressed or kind of borderline stressed?

Mr. ADELSTEIN. Some of our borrowers have indicated to the FCC in waiver requests that they face bankruptcy if waivers are not allowed by the FCC, so we have had direct communication from a number of our borrowers who have come to us indicating that they are under severe stress as a result of the changes. Now some of that might have changed as a result of the new regression analysis that the FCC recently published.

Mr. TERRY. My time is nearly up. So I will yield my last 5 seconds back.

Mr. WALDEN. The gentleman yields back the reminder of his time.

The chair recognizes now the gentlelady from Virgin Islands, Dr. Christensen.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman, and welcome to the panel this morning. Before I ask a question, I just want to say to Mr. Strickling, that, you know, I really had an opportunity to see almost firsthand how NTIA is protecting the taxpayer's money, but at the same time, aggressively pursuing the expansion of broadband, in the unserved and underserved areas. So I want to thank you for working with the Virgin Islands project. We have had a CAP, but in coming out of it, I think we came out stronger with better control for our accountability. But it does slow down the project somewhat, and I was wondering, and Mr. Adelstein can also answer, did the collective action plans and suspensions affect meeting deadlines and is there any built-in consideration given for those kinds of delays?

Mr. STRICKLING. As of now, no, we do not see them affecting any of the completion dates of any of the projects that are currently underway.

Mrs. CHRISTENSEN. OK, great. And Mr. Adelstein, we have not in the Virgin Islands been as successful in the BIP loan program, and I would like to just get a better understanding of how you look at the applications. So how does RUS analyze the financial feasibility and sustainability of BIP applications? Do you examine the extent to which competing broadband providers were present in all or part of the proposed service areas for BIP awardees, and did RUS consider whether and to what extent BIP awardees rely on other Federal funds such as subsidies from the Universal Service Fund?

Mr. ADELSTEIN. Yes, we do very carefully analyze financial feasibility. As a matter of fact, the main reason that we turned down the bulk of the nine out of ten applicants that applied was for either financial or technical infeasibility. These are very difficult projects to prove out feasibility. Obviously, it is difficult in rural areas to make these businesses work, and businesses need to come with substantial equity in order to be able to do the working capital because we don't provide for operations funding. Competition is an issue. Sometimes if there is not an area, if it is an area that has too much competition, there is not going to be a business case that works. If there is—if there is competitors that are about to build, that is an issue that we also look at, so we are looking at the entire market. And we ask all of our borrowers to do a market analysis. We also ask incumbents in the area to report to us whether or not there are competitors in the area, and then we send our field staff into verify it, so that we know whether or not they are not going to be able to make the anticipated take rates that they use as a justification for the revenues that they expect in their application. So we do a very rigorous financial analysis.

Mrs. CHRISTENSEN. Thank you. Mr. Gray, how does OIG determine whether or not to investigate a complaint? For example, could you discuss why your office declined to investigate allegations of fraud in the BIP award to Lake County, Minnesota, and did the OIG refer that complaint to RUS for any further action? And if you did, are you aware of any action taken by RUS?

Mr. GRAY. When we receive complaints, we review them. Usually our criminal investigators review them for potential allegations of crime. We review whatever evidence is submitted with the allegations. We do a certain amount of preliminary inquiry, and then determine how much further to take it.

In the case—if it becomes apparent to us that there is no criminal criminality involved, usually we will let our auditors review it as well, but if it appears to be an administrative matter, perhaps policy dispute, we refer it to the program agency, in this case, RUS. In the case of the Lake County, we did that similar analysis. I think the allegations were that there was misrepresentations in the applications. We did not find that to be the case in our preliminary inquiry, and we did refer it to RUS.

I believe RUS got back to us in January of this year, and they, in turn, found no substance to the allegations and found that the application was appropriate and proper.

Mrs. CHRISTENSEN. OK, thank you. I guess I will yield back my 5 seconds. I don't have time for other questions.

Mr. WALDEN. The gentlelady yields back, and just for the record, we are talking about the Rural Utility Service. There is really not a person named Russ, not Russ Adelstein. We turn now to the gentleman from New Hampshire, Mr. Bass, who has played an important role in this effort and recognize you for 5 minutes.

Mr. BASS. Thank you, Mr. Chairman, and I have two questions for our distinguished panel today, and I want to thank you for being here. It is important. Under the stimulus bill, the purpose of the BTOP infrastructure grants was to, and I quote, "provide access to broadband services to consumers residing in underserved areas," and to "provide improved access to broadband services to consumers residing in underserved areas."

Assistant Secretary Strickling, NTIA recently unveiled an online map that shows where and how BTOP grants are being spent. It would be more helpful, however, if the map were integrated with the National broadband map so that we could see whether the BTOP project is really going to underserved communities, instead of overbuilding. When can we expect to see that integration?

Mr. STRICKLING. You are making a very good point, Congressman. I don't have a time frame as to when we will actually have them on the same platform, but I do think it is possible to make some comparisons, even now. But more importantly, I think you have to keep in mind the difference in the data that the two maps reflect. Our projects, for the most part, are middle-mile projects. They don't serve end users other than anchor institutions. So that what we are really doing is building a robust infrastructure that can be utilized by those last-mile providers in those communities to improve the speed of service they offer, and perhaps to reach, make it more economical for them to reach communities that they don't currently reach.

So we are comparing apples and oranges a little bit when you look to see where the middle-mile circuits are going compared to where end users are being served.

Mr. BASS. So I guess what you are may be warning us perhaps, is that when this does get integrated, it is not going to really show that you are reaching underserved areas directly, but that you are providing the potential to reach underserved areas directly, but there is no guarantee that it will actually happen?

Mr. STRICKLING. Well, I wouldn't agree with that statement as made. Certainly, we are able to reach anchor institutions, and one of the things we find early on in this program is that there is really a separate market for broadband for anchor institutions than there is for the typical residential consumer. The types of speeds at 1–1/2 or 4 megabits per second might be adequate for consumers, although even today, that is increasingly coming into question. But it absolutely doesn't meet the needs of anchor institutions such as hospitals and schools and libraries, where we need to be looking at minimum speeds, 25 megabits per second, 50 megabits per second.

So our projects are definitely meeting the needs of anchor institutions in these areas who are able to get connected to these facilities. But you are right, in terms of the mass market, the residential consumers, we are depending on these investments, as I said earlier, priming the pump for private investment by last-mile providers.

Mr. BASS. OK, thanks. Administrator Adelstein, the FCC has been looking into reform of the USF, Universal Service Fund for a decade with serious efforts in 2008 and another call for reform in 2010's National broadband plan. How did RUS account for potential reforms in the USF in reviewing BIP applications? Can you address that?

Mr. ADELSTEIN. Yes, in fiscal year 2011, we analyzed infrastructure loans losing as much as 10 percent of their USF support to determine if they were feasible despite that loss. And we, of course, know that the FCC has been doing Universal Service Reform and was considering changes since 1997 since the very first order. So if we were waiting for each time the FCC was about to act, and I was on the FCC when we almost acted in 2008——

Mr. BASS. Right.

Mr. ADELSTEIN. —we wouldn't have been able to do any loans if we were assuming that they were going to change it. So given the statute requires that the funding be predictable and sufficient, we moved forward based on what we anticipated with some stress testing done in more recent years as the indication became clearer, that the FCC was, in fact, about to act.

Mr. BASS. OK, very well. Thank you, Mr. Chairman.

Mr. WALDEN. The chair now recognizes the gentleman from California, Mr. Waxman for 5 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman. Assistant Secretary Strickling, we all agree it is critical that the administration implement the provisions of the Middle Class Tax Relief and Job Creation Act effectively. As the agency tasked with hosting FirstNet, the First Responders Network Authority, NTIA has a critical role in ensuring the success of this network. Since the passage of the Act, there have been concerns how the seven public safety recipients of Recovery Act dollars will be integrated into the new nationwide network. I was encouraged that NTIA took the difficult but necessary step of temporarily suspending the public safety awards until decisions are made about FirstNet's technical requirements. I think your action was prudent, but I would appreciate some clarification of a few points.

Can you first explain, what do you mean by a partial suspension? What types of suspending are now prohibited? What types of suspending will be now allowed to continue?

Mr. STRICKLING. Yes, sir, with respect to the partial suspension, all we suspended is the expenditure of dollars on the 4G LTE equipment, but at the same time, we have asked all of the recipients to come back to us within the next 45 days, hopefully sooner, but we put a 45-day limit on it, with how they would propose to move forward with their spending for all of the projects.

We certainly think that things like site preparation, site acquisition, backhaul networks all are assets that ought to be able to be used in the FirstNet network, or ought to have a useful application in other networks or other applications for the community. That work we would like to see continue. And even with the 4G LTE gear, it is not lost upon us that we could learn something by allowing some percentage of these projects to proceed, perhaps on a scaled-down basis, even using the 4G LTE equipment. What I want to avoid is a situation where choices are being made now by indi-

vidual communities that could actually upset our ability, FirstNet's ability to create a viable business model for the public-private partnership that the legislation envisions. And so we have to be very careful about that.

So my immediate goal is to keep the dollars in the community. We will do that by getting an extension from OMB to allow those dollars to be spent past 2013. And then secondly, to ensure that we reduce the risk to the taxpayers by whatever spending goes forward, and in that regard, that is also a conversation that we can have with the manufacturers in terms of are there things they could do now to help reduce the risk that this equipment, if installed, becomes stranded at some point down the road so that we end up having wasted the taxpayer dollars.

Mr. WAXMAN. What steps will you take to ensure that the Broadband Technology Opportunities Program dollars stay with the public safety awardees and that these project will be fully funded, what can we tell cities like Los Angeles, San Francisco and Charlotte, as well as States like New Jersey about the likelihood of retaining their BTOP grants?

Mr. STRICKLING. I am confident that we will be able to do that. What has to happen is that the Office of Management & Budget will need to provide an extension to these projects beyond the September 2013 date. There is currently an order in place from OMB that requires all spending on Recovery Act projects to be completed by September of 2013, and if you can't make that date, you can petition OMB for an extension.

I think it helps in this case that one of the members of the FirstNet board is the director of OMB, and I think they will work with us to secure that extension, but I obviously can't speak for them. But this is, I think, the paradigm case of where an extension would be justified.

Mr. WAXMAN. Thank you very much. I yield back my time.

Mr. WALDEN. The gentleman yields back the balance of his time. The chair now recognizes the gentleman from Illinois, Mr. Kinzinger, for 5 minutes.

Mr. KINZINGER. Thank you, Mr. Chairman, and thank you, gentlemen, for your time today. I can tell you, one of the things I am not a big fan of is just too much bureaucracy. I mean, it seems like the bureaucracy out in Washington, D.C. in the limited time I have been here just grows and grows and grows. So my concerns deal with the duplicative nature of what we are talking about today. It seems as though we keep making more and more government bureaucracy in order to accomplish the same thing, which is getting broadband access out to places that are unserved or underserved.

Along with the BTOP and the BIP programs that have been discussed at this hearing, the FCC, as was mentioned a few minutes ago, is transitioning to the Universal Service Fund in order to expand the deployment of broadband. With this many programs being run by different government agencies at the same time all with similar goals, it is pretty obvious to me that some overbuilding of current networks is going to take place.

At some point I think it would be beneficial for our committee to take a serious look at consolidating some of these programs to ensure taxpayer funds are being used efficiently. To Administrator

Adelstein, and thanks for coming in, given the focus of RUS, which is serving broadband in unserved areas, bringing broadband to unserved areas, I am sure you would share my concern about overbuilding. It would be something that you wouldn't want to see. But an additional concern that I have about overbuilding is it threatens the viability of a loan. So if an area is so rural that one broadband provider can't exist, it is uneconomical for them, then I think it is doubtful that a federally funded competitor can survive for long at all. So how does the RUS address overbuilding concerns when specifically addressing the viability of a loan?

Mr. ADELSTEIN. That is a great question, something we think a lot about. We are a financial institution, essentially, with a very low default rate. Our default rate in telecommunications programs is about 6.2 percent, so we are very careful about not building broadband in places where competition is going to make it impossible for our loan to be paid back. We do a careful market analysis. As a matter of fact, in the BIP program we required each of our awardees to do a market analysis of where broadband was. We open it up for public comment from incumbents to say where are you serving in that territory? But we didn't take their word for it or the market analysis' word for it. In the application where there was about to be a successful award, before we finalize that, we send our field staff in to verify both the market analysis and the incumbent reports to determine what the level of competition was.

And if we determined there was too much competition, that there wouldn't be a sustainable business as a result, we denied the award as not being financially——

Mr. KINZINGER. So you don't think that there has been any overbuilding really anywhere at this point?

Mr. ADELSTEIN. Well, you know, broadband doesn't follow neat lines, and sometimes there are places where there is competition, other times there is none. For example, there might be a small town where the cable company might have built, but it is surrounded by hundreds of square miles of rural area and the builder that—the applicant might say I am going to serve my entire area which might include the town, and often this can be very much be upsetting to the cable company that has made its own private investment there, but without them building their entire network, it wouldn't be financially feasible for them to serve only the rural areas that are very dispersed.

Mr. KINZINGER. Another question I have for you, there is 22 BIP products have yet to receive disbursement, I believe. The purpose of the Recovery Act was to stimulate the rural economy with shovel-ready projects, which has become so popular lately. Are these projects, these 22 projects, that may be slightly different now, but are these 22 projects in compliance with their awards?

Mr. ADELSTEIN. Well, they are so far. We would have rescinded them. As I indicated, we rescinded a number of projects. Some of those projects have begun but haven't done draws. Others haven't begun yet for a number of reasons.

Mr. KINZINGER. What are some of those reasons they haven't begun?

Mr. ADELSTEIN. Well, some of the reasons include that they are just cleared the environmental or historic review. It has taken a long time. Some of them are on tribal lands.

Mr. KINZINGER. They weren't pretty shovel ready. They were just kind of—it just took a number of years to get to this point is, in essence, where we are at?

Mr. ADELSTEIN. It has been a learning experience for me how difficult it is sometimes, particularly on tribal lands to get all the clearances. They might have 220 different owners of one little parcel that they need to get clearance from before they can get a right-of-way. And we have been working with DIA on that. So there is interagency reviews, there is historic reviews, environmental reviews that have slowed some down. We do a very careful legal.

Mr. KINZINGER. At what point when you say, OK, they are in compliance versus, OK, now, this has been too long, there is too much stuff. There is something wrong. They are not in compliance. We are giving the money back to the taxpayers?

Mr. ADELSTEIN. Well, we have done that in a number of cases. We have returned over $200 million to the Treasury for projects that can't do that. And I anticipate some of these 22 projects will end up being rescinded. If they don't get going pretty soon, some of them, we are not going to be able to finish by the deadline, and if they can't finish by the deadline, we are not going to be able to disburse funds after that, and therefore, the project would be no longer financially feasible. So if they don't get going pretty soon—we worked really hard on these 22 to try to get them off the ground. But if they don't get going soon, we are not going to be able to do them.

Mr. KINZINGER. OK, thank you. I yield back.

Mr. WALDEN. If I could just intercede for a second. I represent a district that is 70,000 square miles, 55 percent of which is Federal land. At some point it would be interesting to know, of those projects that are taking so long, how many of those are in these very rural districts where the Federal Government footprint is so large, and I would hate to see them get disenfranchised once again by their own government because of the delays required by NEPA, and all these other things. So I am sort of off my clock, but maybe we can follow-up on that. I will recognize the gentleman from New Jersey, Mr. Pallone for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman. I wanted to direct my comments and questions to Mr. Strickling, and thank you for your hard work and efforts at the agency.

As you know, my home State of New Jersey was one of seven regions to receive funding to early deploy a public safety LTE network, and now, in light of the passage of the Middle Class Tax Relief and Job Creation Act, which included provisions to create a nationwide interoperable public safety broadband network, it sent New Jersey a letter withholding funding out of concerns that their project might conflict with the forthcoming network. And I know this may have been a tough decision for you, but obviously, passage of this law was always our policy goal, but not a reality when these grants were first awarded. But as you can imagine, I am concerned that New Jersey may lose its critical funding and its potential for early deployment.

So I just wanted to ask you first, are you willing to commit to working with me to ensure that New Jersey can still deploy its project, as long as they are able to ensure that they will not interfere with the new law?

Mr. STRICKLING. Sir, we will want to work with you. We want to work with the grantee in New Jersey, and we want to work with all seven of our grantees to chart the best path forward given the reality of the new law. You know, your comment about what we knew in 2010, though, I guess I would take a little issue with in the sense that as partly from the grants we did, it helped the administration, I think, come around to the view that what we need here to be successful is a single, national, interoperable network.

The philosophy before that time was much more one of cobbling together a network of networks. And on that basis, we provided funding back in 2010 to allow individual communities and States to see what they could do with this new technology. But we certainly learned from our projects, particularly ones that involved more than one community that governance challenges that exist when you are trying to bring together a large number of parties to agree on how to build these networks. We have talked already about the BAYWEB project in San Francisco, which clearly was challenged because of the need to bring together a number of counties and cities in the Bay Area into an appropriate governance structure. So I think out of that emerged the new philosophy that Congress adopted in the act in February, and it is on that basis on which we have to determine how best to go forward with these projects and how do we create that pathway that ensures that that equipment is going to be compatible with whatever FirstNet comes up with, and also provides a pathway to make that equipment available to the public-private partnership that has now been envisioned in the new legislation. But the answer to your question is yes, we want to work with you and the grantee to find a way forward here.

Mr. PALLONE. In light of what you just said, New Jersey has asked for an extension of time for its project which is pending before you. In light of what has happened, would you grant our extensions so we can ensure that the project would be interoperable with the forthcoming network? I mean, part of the reason why they put this request for the extension in, is to make sure that it is interoperable with the new network.

Mr. STRICKLING. So as I indicated in responding to the questions from Congressman Waxman——

Mr. PALLONE. I know that mine are similar, but I am asking them for my State.

Mr. STRICKLING. Well, we are going to seek from OMB. It will be OMB that will have to grant us the ability to allow these projects to extend beyond September of 2013. We will put that request to them and I am optimistic that they will grant that, but I don't control that. But I would hope and expect they will do that.

Mr. PALLONE. I appreciate that. Thank you very much. Thank you, Mr. Chairman.

Mr. WALDEN. The gentleman yields back the balance of his time, the chair now recognizes the gentleman from Illinois, Mr. Shimkus, for 5 minutes.

Mr. SHIMKUS. Thank you, Mr. Chairman, and welcome. It is good to see you all again. And let me start with Mr. Adelstein, welcome. If you don't know what is going on on USF, based upon your past life, and being inside the room, then no one does. So I hesitate to fully accept your answer to the question that was posed to you.

Let me ask about carryover funds in the RUS, which the carryover stimulus and any other aspects that that might have. What do you plan to do it with, and obviously, with deficits and debts, if they haven't been spent, the Treasury might be a good place for it to go.

Mr. ADELSTEIN. That's right. All unobligated balances that we have go back to Treasury. We rescinded a number of projects; 99.9 percent of the funds have gone back to Treasury, $267 million. If any other projects are rescinded rather than carry them over, they will be returned to Treasury.

Mr. SHIMKUS. We would love to see it out in rural America, and we do question some of this debate. I understand a cable company providing to local community, and then so you are trying to help get to the rest of the area. I would argue that maybe working with the cable company to deploy, versus, I mean, there is an issue about even though you build it, whether they come. Secondly, will they be able to still be able to afford it? Because you create, as we talked about numerous times, a competing system that may not have the base to fully survive.

So in your example of overbuilding, I think better planning with the incumbents who are providing in a community might help strengthen the base and the portfolio of the servicer.

Mr. ADELSTEIN. We do work with cable companies and we are open to doing—lending to them. I actually recently visited the American Cable Association to encourage them to come in and borrow. We love lending to them.

Mr. SHIMKUS. Why do you think they are reticent? It is because it is too difficult, bureaucratic, time-consuming, not worth their time?

Mr. ADELSTEIN. Some of them do borrow from us. Sometimes their financial structure is not one that lends itself to our mortgage, which can be very aggressive. Other times, frankly, they tend not to build outside of the town, and this is a business decision. I am not criticizing it. But the way cable has built out traditionally, it has kind of ended at the town line and hasn't been cost-effective for them to go outside of it. And that is where some of this issue comes up.

Mr. SHIMKUS. Right, but if we are giving grants and low-interest loans and stuff, and overbuilding a competitor, don't you think that might be incentive enough? I mean, there is a reason they are not. Just, I mean, they don't want a competitor in their backyard subsidized by the government.

Mr. ADELSTEIN. That is why I went to them and I suggested that the best defense is to be their borrower. We want them to borrow from us. We would love to work with them.

Mr. SHIMKUS. I need to go pretty quick, so I hate to cut you off. Mr. Strickling, your answer to this West Virginia stuff is just really bad.

And let me, if I may, Mr. Chairman, submit another story from the West Virginia Gazette, addresses this same issue.

Mr. WALDEN. Without objection.

[The information follows:]

the Charleston Gazette wvgazette.com

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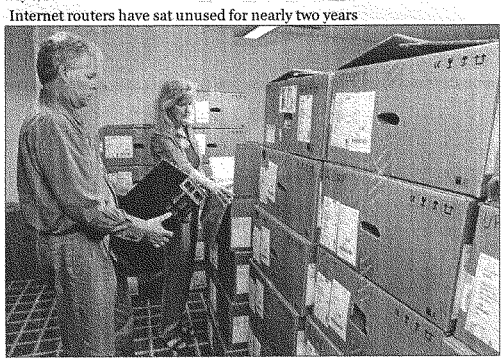
May 6, 2012

0 Recommend 3

# Internet routers have sat unused for nearly two years



*Chip Ellis*

John Dunlap and Diane Holley-Brown inspect routers stored on the 10th floor of Building 5 at the state Capitol Complex. The West Virginia Office of Technology has 234 boxed routers -- 77 in a conference room and the rest in the basement of Building 6.

By Eric Eyre

CHARLESTON, W.Va. -- Nearly two years after state officials used federal stimulus money to buy $24 million worth of Internet routers, 366 of the devices remain boxed up at storage sites in West Virginia.

State officials purchased the routers in July 2010 with plans to distribute the equipment to county courthouses, schools, jails, libraries and health-care clinics as part of $126 million high-speed Internet expansion project funded by the federal economic stimulus.

But more than half of the stored routers -- 186 -- currently don't have designated places to put them. What's more, the 366 boxed-up routers came with a five-year service warranty, so the state has already lost two years of free maintenance on the equipment.

Members of the state's broadband project team said they are working with federal officials to ensure every router winds up at a public facility in West Virginia. The routers cost $22,600 each.

"We're going to hit all the designated numbers as part of the grant," said John Dunlap, a state Office of Technology director assigned to the project. "There's no story here. We're going to find homes for these routers."

State Homeland Security chief Jimmy Gianato said the state negotiated the five-year warranty, expecting delays because of the broadband project's massive size.

"This is the largest project in the country," said Gianato, who heads the broadband grant implementation team. "We wanted the additional maintenance time because we knew a lot of the routers weren't going to be deployed right away."

Two years ago, state officials identified 1,064 "community anchor institutions" that needed new routers and a fiber optic Internet connection.

However, it turned out that more than 300 of those sites already had fiber and suitable routers.

"A lot of [the routers] were assigned, but all of a sudden, we had to redline them," Dunlap said.

Asked why the state would buy more than 1,000 routers before ensuring there were an equal number of places to put them, Dunlap said, "All the engineering hadn't been submitted. We're still discovering sites have already have fiber, and sites where we thought they had fiber, but fiber doesn't exist."

So state officials are scurrying to find "replacement sites" for the "orphan" routers.

The state is now waiting for the National Telecommunications Information Administration (NTIA), which oversees broadband stimulus funding, to sign off on the proposed new locations. State officials declined to name the sites.

"The remaining routers are pending designation once the replacement community anchor institution list is approved by the NTIA," said Diane Holley-Brown, a spokeswoman for the state's technology office. "Once the Office of Technology receives approval from NTIA, these routers will also be shipped out to the respective anchor institution locations."

Routers funnel data, such as email and web pages, from one network to another.

For now, hundreds of stimulus-funded routers remain unused at six storage sites -- in Nitro, Morgantown, South Charleston, Big Chimney, and at two locations in Charleston.

The state Office of Technology alone has 234 of the 366 stored routers stacked up in two locations -- the basement of Building 6 at the state Capitol and in a 10th floor conference room in Building 5. The office is housing routers for jails, health clinics, regional development groups and other agencies.

Seventy-seven of the routers stored at the technology office already have been assigned to a site, Holley-Brown said.

Nearly 70 routers designated for libraries remain in storage. The state Department of Education has 63 routers boxed up.

All 55 routers assigned to county courthouses across West Virginia haven't been shipped.

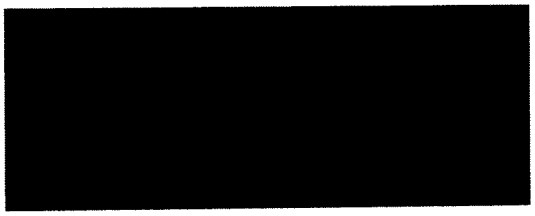
On the positive side, West Virginia State Police have distributed 76 of 77 routers received to detachments and other offices.

Also, 51 of the state's 55 emergency 911 centers have received routers.

Although 738 routers have been distributed to public facilities across West Virginia over the past two years, the state's broadband project team doesn't keep track of how many of the devices have been installed and turned on.

"Since most of the community anchor institutions do not order service through the Office of Technology, we cannot provide that information," Holley-Brown said. "Currently, the primary focus at the time is deploying the routers to the anchor locations. These locations are in various stages of implementation."

Reach Eric Eyre at erice...@wvgazette.com or 304-348-4869.



Mr. SHIMKUS. And it basically says, when people, when people spend other people's money, I don't care if it is you, I don't care—we spend it poorly. This story, there are 366 routers sitting in storage.

Mr. STRICKLING. There is a reason for that, sir. The project is not built.

Mr. SHIMKUS. And we're already 2 years into the—why couldn't you, even if they are going to sit in storage, and the question is whether they will ever get out of storage, why would you have a 5-year maintenance agreement that 2 years have already ticked off the 5-year maintenance agreement?

Mr. STRICKLING. Well, sir, because they could get the 5-year maintenance agreement for the same cost as the 3-year maintenance agreement. Had they purchased a 3-year maintenance agreement they wouldn't have been——

Mr. SHIMKUS. This is great and I hope people continue to dig into the story because you are very eloquent. But the bottom line is, I would like to see the bids, and I would like to see what West Virginia and those folks put out on the bid application because your premise is, they just bid out for all of these routers at this size, and so they got the best product based upon a bulk purchase.

I would like to expect if someone did some due diligence, if it was my money, or if it was someone who had some fiduciary responsibility, they would identify the bid based upon the need. So Mr. Chairman, I would hope there is a way to find out and analyze the bid for the State of West Virginia, and whether the bid was so cavalier that they asked for routers that would serve 500 when the need was 3, and I bet if you produced a bid based upon the need of the State of West Virginia, and the locations, it would be a much competitive and a lower cost than this bulk purchase of tremendous routers. I don't know how we would do that.

Mr. WALDEN. Well, let me ask——

Mr. STRICKLING. Congressman, we would be happy to work with your office to supply any other documents from West Virginia.

Mr. SHIMKUS. Yes, because I mean, as much as you try, you just can't defend what is going on in West Virginia, and I yield back my time.

Mr. WALDEN. I, and so Mr. Strickling, maybe you can provide for the committee. I don't know in terms of the bids if there is confidential information we are not allowed to have.

Mr. STRICKLING. Well, this is all within the confines of the grantee, West Virginia, but I think in our role as overseeing these projects we will get to the bottom of this, and provide any other information you all would like to have about it.

Mr. WALDEN. Yes, we are just after the facts, as they say. So that would be helpful. So you can provide us with the various bids and all on these routers.

Mr. STRICKLING. I will determine what exactly can be provided from the grantee, but we will endeavor to provide you all the information we have on this.

Mr. WALDEN. And if you can let us know what other information that you don't have that we should have in our quest here, we can always, I am sure, contact West Virginia and get some answers as

well. I think our last committee member, Mr. Bilbray, if you have got questions, you have got 5 minutes to ask them.

Mr. BILBRAY. Thank you, Mr. Chairman. Mr. Chairman, I have always worried that experts—what is the line they always say, generals always fight the last war, not the next one. In fact, I remind all of my colleagues that the experts in the military never wanted to accept the Predator; thought it was a toy. I think history has proven that because Congress pushed it, made them look at new technology, it was aligned. There is this broadband map that we have been given the coverage of this. You guys are familiar with it. Does this include, have you considered satellite technology in the covering of this broadband? OK, Billy.

Mr. STRICKLING. I am not sure which map you are holding up, sir.

Mr. BILBRAY. Well, let's just say it shows a lot of areas in California and east of the Mississippi that is not being covered today, and it appears to me that it does not reflect the new satellite technology that is going on line that will totally cover the areas that you are saying cover. So I am concerned that you are fighting the last war and not using the next generation of opportunities. Are you considering an extensive use of satellite technology to cover these areas that you say you want to fill in?

Mr. STRICKLING. You want to take that because you had a satellite program?

Mr. ADELSTEIN. In terms of our program, we did provide $100 million in grants to make sure that people had access to affordable new-generation satellite service. So we certainly took that into account in our bid program.

Mr. BILBRAY. And how did you survey what was coming on line? It reminds me of the fact that those little people movers over at Dulles. It was a great idea until they hadn't checked that the 747 was on the drawing board, and as soon as those super jets showed up, the whole technology was obsolete. Are you saying that in your grid, you are covering and actually considering that there is private sector satellites coming on line that will cover these communities and provide that coverage?

Mr. ADELSTEIN. We only allowed those grants to go to areas that had absolutely no broadband service whatsoever. So we ensured that they didn't have any access to terrestrial or broadband before we provided an award to allow for a consumer to get——

Mr. BILBRAY. So let's roll back. So in other words, you were fighting the last war; didn't look at the fact that there was a new technology coming on that was going to be available. Basically, you created the same mistake that Dulles did. You didn't check with the private sector and the technology, what was in line to be on the service level before you start engineering your tactical approach to this issue.

Mr. ADELSTEIN. No, we did fund satellite. We funded the latest generation of satellite service to places that didn't have access to any other service. So we took into account the fact that for those areas that didn't get broadband through any of these other awards, we wanted to make sure——

Mr. BILBRAY. Well, did you check to see if there was private sector that was already doing this without your subsidies?

Mr. ADELSTEIN. Well, there was. I mean, satellite service was available. It wasn't available at the same price point. Wasn't available for the same—we were able to give people access that they wouldn't have otherwise had because of the——

Mr. BILBRAY. Because we have them going on right now where the whole eastern, east of the Mississippi, if not east of the Plains, is going to be provided by service three times of what the minimum that we are requiring here, but I am still seeing you look like there is big gaps here that somehow you are trying to fill in, and when the discussion of a National system is being considered, why would you go with a terrestrial system if you have got a satellite system coming on board that treats everybody equally, except for the fact that maybe you don't get to give one grant here, one grant there. Because the private sector looks like they see the opportunity to invest in it. Right now, as far as I know, the systems is moving forward without your subsidy. Are you saying that you are engaged with everybody who is involved with that expansion, or you are in communication with everybody that is doing the private sector overlay?

Mr. ADELSTEIN. Yes. We actually gave the awards to Hughes Satellite, as well as EchoStar, and Spacenet, so we were working with the companies providing the latest and greatest satellite service to make sure that they could get that to the most rural——

Mr. BILBRAY. So you chose which private sector you wanted to give the grants to, but did you interview and review everybody that was in the field?

Mr. ADELSTEIN. Yes, it was a competitive grant process and they put the best bang for the buck for the taxpayer dollar to get service out to those rural areas that didn't otherwise have service.

Mr. BILBRAY. The question I have, though, is why would you be giving a grant out for a service that is coming on line anyways though? Why was the taxpayer's money put on there if you have already got companies saying we are going to do this regardless?

Mr. ADELSTEIN. The purpose of the grants was to reduce the cost to the end user so that it was affordable for them. So the initial hookup cost was reduced and the initial subscription costs were reduced.

Mr. BILBRAY. What I don't understand though, is that they are talking about service that would be the same in New York as it would be in West Virginia, and that that would be the same service across the board. I don't understand. Again, did you get into this that we would use the terrestrial system the way you have make that extra effort in certain areas, but with this technology, there is no extra effort needed. It is just like, you know, the GPS. I mean, the guy in, you know, Cleveland gets the same service as somebody in Midland, Texas. But the question is, you picked winners and losers here, and went and subsidized some when you have private sector people who are implementing the same service without subsidy.

Mr. ADELSTEIN. Well, it was the same private sector people that were thrilled that we were doing it.

Mr. BILBRAY. Of course they are thrilled. They are getting fed taxpayers' money to do things that they would be doing anyway. This is where we got this real problem with, was there a benefit to the general public for the expenditure of the general public's

money at a time when the public is pretty mad about how we are doing oversight for that expenditure. Let's face it, there is a credibility gap here and when you say excuse me, Congressman, I go back to San Diego, and they say you wrote checks for these companies and there is other companies that are doing the same things with no checks. Why in the heck did you spend my taxpayers' dollars on that? Unless it was just basically to get money out to our friends and be able to stimulate their businesses over somebody who is not our friends.

Mr. ADELSTEIN. The purpose was to get broadband to people who didn't have broadband through any other means. And these companies, as you indicated, are doing an excellent job of getting broadband out——

Mr. BILBRAY. My point being, I think that if you go back, you will see they were going to get this regardless because the market was being made available through new technology. I yield back, Mr. Chairman.

Mr. WALDEN. The gentleman's time is expired. I recognize the gentleman from Texas, who I believe is going to go ahead and go with the gentleman from Georgia, Mr. Gingrey.

Mr. BARTON. I thought Mr. Gingrey would go and then I would go.

Mr. WALDEN. That is very kind. Mr. Gingrey, you are up next; 5 minutes.

Mr. GINGREY. Mr. Chairman, I thank you and I thank the chairman emeritus for his courtesy in regard to that. Administrator Adelstein, the question that I am going to put to you has actually already been touched on by the gentleman from Illinois, Mr. Kinzinger, as well as my colleague from New Hampshire, Mr. Bass.

I am concerned that many of the broadband loan and grant programs run by RUS duplicate programs within the Universal Service Fund. Do you agree that duplicative Federal programs administered by different agencies with different oversight structures and rules are problematic?

Mr. ADELSTEIN. I don't believe—I think duplicative programs are problematic. I do not believe these programs duplicate each other at all.

Mr. GINGREY. Well, would you commit to working with us to make sure, to eliminate any such programs, and consolidate Federal spending to get the biggest bang for the taxpayer's buck. You don't want that to happen, do you? You want to make sure that these programs are not duplicative. That is your answer, isn't it?

Mr. ADELSTEIN. Yes.

Mr. GINGREY. Thank you. I understand that RUS will not lend money. I think you even said this a second ago. The RUS will not lend money to overbuild an area where there is an existing RUS borrower because doing so would put the RUS's investment at risk. You don't want to compete with yourselves. Doesn't that same logic apply to the use of RUS money to overbuild potentially an existing broadband provider financed by a local bank? Should the government really be in the business of putting another business's privately financed investment at risk, as an example, a credit union or a community bank? The reason I ask that question, I am from Georgia, as you probably know, and community banks are strug-

gling, and we had a lot of bank failures, and other States as well are struggling with that.

And so if the local lender, the community bank, the credit union, whatever, has already financed a small business in that area, would you want to then create competition for them? Do you look at things like that?

Mr. ADELSTEIN. Well, we don't want to create competition where there is adequate service. I mean, the best, I think defense against that, is if the existing provider is providing service that is of a level of quality that there is not a market for another provider to come in and provide service. So we look at that very carefully in our loan application process to determine whether or not there is existing competition in a service area that is being proposed and if there is, we often will——

Mr. GINGREY. Well, I am glad to hear that answer. I have got another question that I am going to ask all of the panelists to respond quickly to. But first, before I do though that, let me go to Mr. Gray. Mr. Gray, in your testimony you noted that in past audits, RUS has not always maintained its focus on providing broadband service to rural communities without existing access to broadband service.

I think that was your quote. Additionally, in the March 2009 OIG report on RUS, that report stated: A structured RUS broadband program may not provide service to the most rural residents.

I understand that another audit is underway, so please comment to the degree that you can on these two questions. When looking at the previous audit, would you consider the programs of RUS broadband program to be similar to what USF, Universal Service Fund, hopes to accomplish through this new high-cost fund that the FCC created?

Mr. GRAY. Currently, Congressman, we are not looking at the Universal Service Fund's impact in our current audit work. You know, we are looking at our previous recommendations as they relate to BIP. However, definitions did change for BIP, and so we are looking at that very closely as well.

Mr. GINGREY. Well, let me suggest to you that OIG, I think, should rethink the need for these programs in light of what FCC did in creating this high-cost fund. Now, for all of you, and I will start with you, Mr. Strickling. I would like to ask this question: Congress and the administration have made it a National priority to provide affordable broadband services. However, in many instances these vital services are being taxed at the State and local level at rates comparable to alcohol and tobacco. It would seem that these regressive taxes could have a negative impact on continued broadband development. With this in mind, and do you have this in mind, do either the RUS or NTIA factor in what tax rate a State or locality imposes on broadband services before making a determination of awarding a grant? Let's start, Mr.——

Mr. STRICKLING. I don't believe we did, no.

Mr. ADELSTEIN. We do look at all sorts of revenue and what the cost would be to the end user, and evaluating what the take rate would be so that would be taken into account in our financial feasibility analysis.

Mr. GINGREY. Now for the Inspector General. Mr. Zinser.

Mr. ZINSER. Well, I think that is one of the issues that comes up in these projects that involve multiple jurisdictions. The jurisdictions need to know that they are not buying a pig in a poke where down the road they are going to be on the hook to pay these exorbitant fees or raise taxes to afford the systems, and I think that is a key issue in these multijurisdiction projects.

Mr. GINGREY. Mr. Gray.

Mr. GRAY. I would agree with that. I think keeping the costs low to the underserved, once there is service provided, I think as part of that, the cost to the subscriber needs to be——

Mr. GINGREY. In closing, because I know I am beyond my time, and Mr. Barton has already extended the courtesy to me, I would suggest that the Inspector Generals, you need to talk to these other two gentlemen and make sure they agree with you, because I agree with you. But you need to look at these things very carefully. Thank you, Mr. Chairman, I yield back.

Mr. WALDEN. The chair actually recognizes the gentleman from Kentucky, Mr. Guthrie, who was here when the gavel came down. If he wants to go ahead of Mr. Barton, he should feel free to do so.

Mr. GUTHRIE. I will certainly defer to Mr. Barton if he wants to go first.

Thank you very much. I just have a question for Administrator Adelstein, and Secretary Strickling. I know when the NTIA just put out a map that has all of the BTOP programs where they are moving forward. My understanding is both funded through the stimulus, that the NTIA has the BTOP program, both funded through the stimulus, as the RUS has the BIP program, which are similar programs. And so the question is, that we look at, we have a map that is now through the Commerce, that is posted in there. I don't think there are any BIP projects on the map. Is there any effort to coordinate where this—am I going down the wrong path? Is there an effort to coordinate where you can see where they are, the similar programs for different agencies are being done separately?

Mr. STRICKLING. It is a very good question, and I don't know the answer to it, but maybe Jonathan and I should get together after this hearing and talk about that.

Mr. GUTHRIE. The question I was—Jack Kingston I just talked to—Congressman Kingston from Georgia was in Africa, and he was in a place where they had no running water, no everything, no running water, no roads, no electricity, and the lady's cell phone rang that he was talking to, and it dawned on him that the private industry was putting the cell phones in place and the government was responsible for everything else. And then if you went anywhere in the world, you can swipe a card and get your money from your bank account in your currency. And so some things that we do with the government sometimes, we get conflicting patterns, or it is not as smooth as when the free market or the private sector does it.

These are important programs. I am not saying that, but it just seems like if there are similar programs through similar funding sources, we would have some similar administration to make sure we are not duplicating. Because you can't tell that from your map because you don't know where your map is.

Mr. STRICKLING. Well, to that end though, I would say that during the application process back in 2009 and 2010, our two agencies collaborated very closely on this program, and indeed, we had two rounds of funding. In the second round, based on what we learned in the first round, we each adopted different funding philosophies so that we could avoid the question of duplication and overlap. And I think we were very successful in that regard in both of our rounds. In Round 1, the way we handled it was to make sure that we both weren't both looking at the same applications and stayed in close contact on the projects as we considered whether or not the fund had given applications or not, because in Round 1, people could actually apply to both programs.

We actually had duplicate applications, or it was the same application, but they were being reviewed by both agencies. We fixed that in Round 2, because each of us adopted our own separate funding philosophy to deal with the very question you raise.

Mr. GUTHRIE. I think that is very good, and it would be helpful if you all did have it coordinated and one simple place for us to look to see where they are all on one map. So thanks for your willingness to check into that. I appreciate that, and I yield back.

Mr. WALDEN. The chair now recognizes the gentleman from Texas, Mr. Barton, for 5 minutes.

Mr. BARTON. I thank the chairman, and the Ranking Member, Ms. Eshoo, for holding this hearing. My questions are going to be to Mr. Strickling on this BTOP. I have had inquiries in my office from the State of Texas and the State of Mississippi. The State of Texas got a waiver to begin to implement its statewide system, and Mississippi actually got, I think, up to $70 million, and if I understand correctly, they have almost completed their system. And now they have gotten these letters from you, Mr. Strickling, saying to cease and desist.

My understanding is that if a network is meeting its milestones, that there is not a requirement that work be stopped. It is only if the work hasn't been done, or if it looks as if they are doing it wastefully and inefficiently or outside of the scope of the law. So could you elaborate why you told Mississippi to stop their network, and why Texas, who has a waiver, and is not receiving much, if any Federal funds to build theirs, has been asked to stop also? Because if you stop, my understanding is, we are basically giving up 18 months to 24 months. And in the case of Mississippi, their network, if I understand correctly, is going to be operational sometime this fall.

Mr. STRICKLING. So, yes, sir. I can respond to all of those points. First off, we don't have any direct engagement with Texas. They did not receive any funding from us. You are correct that they have a—they are one of the FCC's 21 waiver jurisdictions. We have not filed at the FCC in terms of a specific recommendation to the FCC as to what they should do with those jurisdictions, but I think as I explained why we did what we did with Mississippi, you will see that the same considerations apply with Texas. What has changed here is that Congress passed the Middle Class Tax Relief Act in February and has now directed, through NTIA, the creation of FirstNet to build a national, single interoperable public safety broadband network.

Our problem is the FirstNet board won't stand up until August. I don't know what decisions they are going to make about how to build this network, but it is clear from the model Congress has provided us, that you expect this to be a public-private partnership that will be largely built by private industry, and it will have to operate as a single interoperable network.

My concern is, that today, I see no path right now as to how we take that investment in Mississippi, and whether it will even be interoperable with the decisions that have yet to be made by FirstNet, and even if it turns out it is, how that equipment ever makes it to that public-private partnership that is now going to be created.

Mr. BARTON. Well, isn't better, though, if it is almost operational to go ahead and let it be built and then integrate it into the system, as opposed to stopping it and waiting 2 years?

Mr. STRICKLING. Well, but you have made a big assumption there in terms of integrating it into the National network. The question of interoperability of this gear in the public safety environment is still an open question, and if what you are suggesting is, I should go ahead and let $380 million of taxpayer money be spent unchecked in the hope that I couldn't verify today that this equipment will be interoperable with decisions that have not yet been made by FirstNet and will somehow be made available to the private companies that will eventually bid on this network, I think that is risking taxpayer money and we would be criticized in 2 or 3 years.

Mr. BARTON. I am not a Congressman from Mississippi, but I have great respect for Mississippi, and when I am told that their network, which I—don't hold me exactly to these numbers, but I think I was told that Federal taxpayers have given the State of Mississippi $70 million, and it has almost all been spent and it is almost ready to go. Why would we not make that network operational? I mean, maybe you have to patch, do some sort of an interstate patch 2 years from now, but if you just sit on it, it can't be used. You wasted $50- to $70 million. That, to me, doesn't seem to make sense. The money has been spent, the equipment has been bought. It is being installed. How much different is their network going to be than a network that is still on the drafting board?

Mr. STRICKLING. Well, sir, the network, they haven't spent all of the money and the network isn't all installed. They have been taking delivery of equipment, largely because manufacturers have been asking and pushing for delivery of equipment and rendering bills. But as of the last time we checked, which was a few weeks ago, Mississippi had only spent $22 million of the $70 million.

Mr. BARTON. Well, is it an open question? I mean, if they, if officials in Mississippi can show due diligence and that they appear to be doing things that make sense, is it open that they could go ahead and complete their network, or do you disagree with my assessment that their network is about to be operational? Are you saying it is going to take them 2 or 3 years anyway, or——

Mr. STRICKLING. No, but I think it is somewhere in the middle between are they ready to go, versus 2 to 3 years. But here is our point: With respect to every one of these grants, we are going to work with the grantee over the next 45 days to determine what part of the project can go forward and on what basis.

Mr. BARTON. So there is some——

Mr. STRICKLING. If, in fact, Mississippi has spent dollars that are not retrievable, I think you make a good point, which is why not go ahead and let them try this out. We will learn something from it. I don't know today that that is the case. I don't know to what extent they have the ability to put this gear back in the box and send it back to the manufacturer and get a refund. And I think we have to look at all of those questions now before we allow all of these dollars to be spent on a network that I can't tell you today will, in any way, end up in the FirstNet network that Congress has not directed to be designed.

Mr. BARTON. I understand that. The chair has been very gracious. My time is expired, but let me just give an editorial comment. If States that have grants are using them properly, I would hope we have the flexibility to let those continue with the understanding that they have to meet the standards and interact and integrate into this new program. I just hope we don't waste money that has already been spent, and I hope that you and the FCC have enough flexibility to use common sense to work with the States to figure out what is the most commonsense, cost-effective path forward. And with that, Mr. Chairman, I yield back.

Mr. WALDEN. I thank the gentleman for his questions and comments, and I now recognize the gentleman from Florida, Mr. Stearns, for 5 minutes.

Mr. STEARNS. Thank you, Mr. Chairman, and when you look at this hearing, Mr. Chairman, "Broadband Loans and Grants," it reminds me of the hearing I have had dealing with loans and grants from the Department of Energy, as chairman of the Oversight Investigations Committee, particularly looking at Solyndra and all of these others, you come away with the feeling that the government obviously is not equipped to handle a lot of these grants and loan guarantees without a whole lot of supervision.

But I would say, Mr. Strickling, that I appreciate your prompt response to our committee's questions, and documents that we requested as we investigated LightSquared/GPS interface interference disputes, so I appreciate your response. On the other hand, Mr. Adelstein, I sent you a letter on December 16th. Mr. Chairman, if I could, I would like to make this part of the record in which I requested Mr. Adelstein to provide information by January 31st, 2012. If I could have this letter——

Mr. WALDEN. Absolutely. I believe I was on that, as well.

[The information follows:]

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6115

Majority (202) 225-2927
Minority (202) 225-3641

November 9, 2011

Mr. Jonathan Adelstein
Administrator, Rural Utilities Service
U.S. Department of Agriculture
1400 Independence Ave., S.W., Room 5135
STOP 1510
Washington, D.C. 20250-1535

Dear Mr. Adelstein:

Pursuant to Rules X and XI of the United States House of Representatives, the Energy and Commerce Committee is examining the Rural Utilities Service's (RUS) $267 million loan to Open Range Communications, Inc. (Open Range), which recently filed a petition for reorganization under the U.S. bankruptcy laws.[1]

In March 2008, RUS approved Open Range's loan pursuant to a program established by the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), which amended the Rural Electrification Act of 1936 to provide grants, loans, and loan guarantees to support broadband development in rural communities.[2] Open Range apparently received the largest loan issued through the program.[3] On October 6, 2011, Open Range filed for protection under federal bankruptcy law.[4] As of the date of its filing, RUS has extended $73.5 million of the $267 total loan amount to Open Range.[5]

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[1] *In re Open Range Comms. Inc.*, No. 11-13188-KJC (Bankr. D. Del. filed Oct. 6, 2011).

[2] P.L. 107-171, section 6103.

[3] Stacey Higginbotham, *A big bet on rural WiMax by the U.S. hits the skids*, Gigaom, Oct. 5, 2011, *available at* http://gigaom.com/broadband/a-big-bet-on-rural-wimax-by-the-u-s-hits-the-skids/.

[4] Phil Milford, *Open Range, Rural Wireless Provider, Files for Bankruptcy*, Bloomberg News, Oct. 6, 2011, *available at* http://www.bloomberg.com/news/2011-10-06/open-range-rural-wireless-provider-files-for-bankruptcy-1-.html.

[5] Ann Schrader, *Open Range Communications on hook for balance of federal loan*, Denver Post, Oct. 8, 2011, *available at* http://www.denverpost.com/business/ci_19067791.

In your May 27 response to follow-up questions for the record relating to your appearance at the Subcommittee on Communications and Technology hearing on April 1, 2011, you spoke positively about RUS's 60-year history of providing loans and grants for advanced telecommunications networks. You also noted RUS's default rate, which stood at 4 percent as of the date of your response. You stated that this percentage represents the number of loans in default, rather than losses, as the agency works with borrowers to seek the recovery of debt.

The U.S. Department of Agriculture's Inspector General, however, has raised concerns about ongoing oversight of the broadband loan programs. Specifically, the Inspector General testified to the Subcommittee on Communications and Technology on February 10, 2011, that of the $599 million expended in broadband programs it reviewed, it "questioned the expenditure of $340 million for reasons including incomplete applications, loans that defaulted, and grant funds used for inappropriate purposes."[6] The Inspector General also testified that RUS "had not maintained its focus on rural communities lacking preexisting broadband service."[7]

Open Range's bankruptcy potentially puts $73.5 million of taxpayer money at risk. Moreover, according to filings from its 30 largest unsecured creditors, Open Range owes as much as $26 million to businesses that performed work for Open Range. .[8]

In light of Open Range's bankruptcy, the Energy and Commerce Committee requests a bipartisan briefing to explain the RUS application review process for the Open Range loan and the oversight RUS conducted to ensure taxpayer funds were used as intended. At the briefing provided by you or your staff, please be prepared to provide additional information about the total number and amount of broadband loans provided pursuant to the 2002 and 2008 Farm Bills, whether any of the recipient companies have experienced or are experiencing financial difficulties, and the oversight RUS conducts to monitor their progress.

In addition, we ask that you please provide the following documents to the Committee:

1. The complete Open Range project application together with any documents related to the project that have been added since the initial application was filed.

2. All documents relating to the Open Range loan application, the decision to approve the loan, and any subsequent developments with respect to the loan.

We request that you schedule a briefing with our staff at RUS's earliest convenience, at which time we will discuss a schedule for document production. An attachment to this letter provides additional information about how to respond to the Committee's request.

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[6] See *ARRA Broadband Spending: Hearing Before the Subcomm. On Communications and Technology of the House Energy and Commerce Committee*, 112th Cong., Written Testimony of Inspector General Phyllis K. Fong, U.S. Dept. of Agriculture, (Feb. 10, 2011), *available at* http://go.usa.gov/0mt.

[7] *Id.*

[8] *See* List of Creditors Holding the Thirty Largest Unsecured Claims Against the Debtor, *In re Open Range Comms. Inc.*, No. 11-13188-KJC (Bankr. D. Del. filed Oct. 6, 2011).

Letter to Mr. Jonathan Adelstein
Page 3

We appreciate your prompt attention to the Committee's request. Please contact Stacy Cline at (202) 225-2927 if you have any questions and to schedule the briefing.

Sincerely,

Fred Upton
Chairman

Henry A. Waxman
Ranking Member

Cliff Stearns
Chairman
Subcommittee on Oversight
and Investigations

Diana DeGette
Ranking Member
Subcommittee on Oversight
and Investigations

Greg Walden
Chairman
Subcommittee on Communications
and Technology

Anna G. Eshoo
Ranking Member
Subcommittee on Communications
and Technology

cc: The Honorable Tom Vilsack, Secretary
U.S. Department of Agriculture

The Honorable Julius Genachowski, Chairman
Federal Communications Commission

Enclosure

Mr. STEARNS. So I guess the question, are you familiar with this letter that I sent to you?

Mr. ADELSTEIN. Yes.

Mr. STEARNS. OK, I guess the real question then would be to you, considering you said in your letter back to me, you said that "because files pertaining to the additional material requested are voluminous and under review, we anticipate that we can deliver the remaining documents by January 31, 2012."

[The information follows:]

**United States Department of Agriculture**
**Rural Development**

DEC 16 2011

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
U. S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515-6115

Dear Mr. Chairman:

Thank you for your letter of November 9, 2011, signed jointly by committee members, requesting a briefing to explain the Department of Agriculture's application review process for the loan made to Open Range Communications under the Rural Utilities' Service Farm Bill broadband program.

As you may know, we provided loan documents to the Energy and Commerce Committee staff on December 8, 2011. In addition, we have had several conversations regarding the timing of providing additional documents and the committee staff was briefed on December 14, 2011. Because files pertaining to the additional material requested are voluminous and under review, we anticipate that we can deliver the remaining documents by January 31, 2012.

We will continue to work with committee staff to deliver additional files pertaining to the Open Range Communications loan and select a briefing date once you have had time to review the material.

Again, thank you for your letter, and please contact Kevin Bailey in the Office of Congressional Relations at (202) 720-0121 for additional information.

A similar letter is being sent to the committee members.

Sincerely,

for Jonathan Adelstein
Administrator
Rural Utilities Service

1400 Independence Ave, S.W. · Washington DC 20250-0700
eb: http://www.rurdev.usda.gov

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1400 Independence Avenue, S.W., Washington, DC 20250-9410 or call (800) 795-3272 (Voice) or (202) 720-6382 (TDD).

Mr. STEARNS. So you have got February, March, April, May, and so we are moving along here, almost 4 months ago. So I guess the question is, I guess when can the committee expect to see the documents that involve our investigation into Open Range Communications' bankruptcy, and I think we even went back to November 9th, is when we started the original request, and so if you could be so kind as to provide when you will comply with even your own letter.

Mr. ADELSTEIN. We have worked very closely with your staff on exactly what the timing is on that, and we are going to get that to you forthwith. We are working now to gather that. We have already provided, I think, over 10,000 pages of documents to the committee. We are happy to provide whatever you need in a time frame that you need it. I mean, what we have available is——

Mr. STEARNS. The time frame from your own letter was January 31st. So it is not what we requested. You said in your letter you would comply by January 31st. So I think we are just puzzled why you are not.

Mr. ADELSTEIN. My understanding is we worked with your staff to explain exactly what it is that we have and how we can organize it so it best meets your needs. The scope of what we are doing has been clarified, and——

Mr. STEARNS. So you are saying you don't understand what we are requesting?

Mr. ADELSTEIN. No, we do. We understand very clearly.

Mr. STEARNS. Then why can't you just comply?

Mr. ADELSTEIN. There is a lot of documents.

Mr. STEARNS. It takes 4 months? I mean, when you wrote this letter and said January 31st, you would comply, did you not realize that you couldn't comply?

Mr. ADELSTEIN. Well, I think it has been more material than I had anticipated. In fact, this is voluminous.

Mr. STEARNS. OK, I accept that. Also you know that the Lake County Fiber Network Project was awarded almost $67 million from RUS, and this was despite data that indicated that a substantial majority of the housing units in that proposed service area were already served by existing broadband providers. I mean, that is hard to believe. In questions for the record, you submitted to Congress, you promised to seek repayment of all of the outstanding loans. Is that correct? Just yes or no.

In questions for the record you submitted to Congress, you promise to seek the repayment of all outstanding loans.

Mr. ADELSTEIN. Well, we do, yes.

Mr. STEARNS. However, there have been allegations that the RUS grantee in Lake County, Minnesota, received assurances from a high-ranking RUS official that RUS would not seek repayment of the loan in the event of a default by Lake County.

In the event this project fails, will RUS require Lake County to completely, completely pay off the $56.4 million loan, yes or no?

Mr. ADELSTEIN. Yes.

Mr. STEARNS. OK, that is good. We are also looking into Open Range Communications' bankruptcy that left $73.5 million in taxpayer funding at risk or of default.

Mr. STEARNS. Among the reasons for the bankruptcy was Open Range's reliance on a satellite network that was not fully in compliance with its license and which the FCC eventually revoked.

How much did RUS understand about the FCC licensing process before it even approved the loan to Open Range Communications?

Mr. ADELSTEIN. I wasn't at the RUS when it was approved, so it was approved by my predecessor in the previous administration, but I think that to his credit that the RUS and the administrator at the time took very careful steps to look into that spectrum issue and to protect the taxpayer in the event of problems which gave us the ability later to work with the awardee and try to minimize the exposure to the taxpayers. So I think they were cognizant of the issues there.

Mr. STEARNS. But you weren't.

Mr. ADELSTEIN. Well, I was when I came on board. We looked at this thing, we worked with the FCC very closely. As a matter of fact the, documents indicate that we did work with the FCC to ensure that the operator could continue to operate and there was no disruption of service because of the spectrum issues, that was not the issue that resulted in the bankruptcy.

Mr. STEARNS. Mr. Chairman, in closing, I would like to put in the record, the Communications Daily has a paragraph that Mediacom officials predicted default, and this is going back to my earlier question with Lake County fiber network. And the RUS has given assurance to Lake County that it wouldn't be responsible to repay the debt beyond the proceeds of a foreclosure auction on a network.

Mr. Adelstein has indicated that they will be forced to pay, but somebody, some official, has indicated they won't. So I would like to make this part of the record, so we can better understand why Lake County fiber network thinks they don't have to pay, yet Mr. Adelstein said they will.

Without objection.

Mr. WALDEN. Without objection.

[The information follows:]

Warren Communications News

Communications Daily

THE AUTHORITATIVE NEWS SERVICE OF ELECTRONIC COMMUNICATIONS

MONDAY, MAY 7, 2012 VOL. 32, NO. 88

TODAY'S NEWS

**BIP LOAN FRAUD ALLEGATIONS** probed by House Commerce oversight subcommittee; Mediacom finds an open ear for its concerns over Minnesota project. (P. 1)

**WHITE HOUSE HOPEFUL** of passage of S-2105 as lawmakers see 'national security implications' of requirements in bills, says Cybersecurity Coordinator Howard Schmidt. (P. 4)

**COMCAST NOT ALONE** in sending channels to Xbox 360s, but among few with bandwidth caps that exclude IP streams. (P. 5)

**ISP SPEED TEST** data gathering phase extended due to server issues. (P. 8)

**TELECOM NOTES:** Verizon should delay dropping DSL, groups say ... Gates Foundation says FCC has Title 1 digital literacy authority ... Spectrum 'highly politicized,' Qualcomm CEO says ... T-Mobile prepaid business doubles. (P. 9)

**MEDIA NOTES:** FCC dismisses Liberty application on Sirius control ... Don't now change media ownership rules, NHMC says ... Nielsen TV households shrink ... MSG media quarterly sales up 13 percent. (P. 11)

## Congress Investigating Cable Operator Allegations Around Minnesota Fiber Network Funded by BIP Loan

Congressional investigators are looking into allegations of loan fraud raised by cable operators against a county government in Minnesota that accepted about $66 million in funds from the Rural Utilities Service (RUS) to build a fiber broadband network there. Mediacom Communications, which serves some of the less sparsely populated parts of Lake County, Minn., complained last year to the U.S. Department of Agriculture's office of the inspector general that Lake County's Broadband Initiatives Project (BIP) loan application appeared to be fraudulent, designed to set the county up for financial failure and allow outside consultants handpicked by local officials to buy the fiber-to-the-home systems at a discount (CD March 17/11 p6). More recently it has been taking its case to nearly anyone else who might listen, including federal prosecutors in D.C. and investigators with the House Commerce Oversight and Investigations Subcommittee, and apparently gaining some traction.

"I'm aware of the allegations regarding the Lake County, Minnesota broadband stimulus project, and the Subcommittee on Oversight and Investigations is investigating the issue," said Rep. Cliff Stearns, R-Fla., the subcommittee's chairman. The project has also attracted criticism from elsewhere in the cable industry. This month an NCTA-commissioned analysis of three RUS-funded broadband projects found that the Lake County proposal will provide service to areas that largely already have it or are uninhabited (http://xrl.us/bm5a24).

Lake County officials and the project's managers defend the project, saying they're doing a job that incumbent telecom companies including Mediacom have refused to do, and that local businesses, many of which cater to tourists, need the service. Lake County Commissioner Paul Bergman also pointed out that Media-

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com could have applied for the same funds but did not. Congressional investigators are welcome to visit the project, which is "full speed ahead," said Jeffrey Roiland, CEO of Lake Communications, the company that will manage the fiber network and other aspects of the project for the county.

Some Lake County residents are eagerly awaiting a fiber network. "Our Internet here is awful," said Patricia Byrnes, owner of the Inn at Palisade, a bed and breakfast in eastern Lake County. She said she buys Internet access from a satellite provider but it isn't fast enough to manage her business's reservations online.

At the root of the dispute is a $56 million BIP loan and $10 million grant Mediacom believes were potentially fraudulently obtained. The county's initial loan application under the broadband stimulus program was rejected because too high a percentage of the proposed service area already had access to broadband services from companies including Mediacom. But after the county redrew the project boundaries to include large areas of sparsely populated national and state forest land in a neighboring county, RUS approved the loan. Even then, the project would have failed to qualify for the BIP program had the applicant used the most up-to-date census data about the population covered, according to Mediacom's attorneys.

Moreover, attorneys for Mediacom and the Minnesota Cable Association (MCA) say the subscriber and revenue assumptions included in the loan application aren't realistic. The project would have to win the business of nearly 100 percent of the occupied homes in its service area to be able to pay back the loans, according to Mediacom's analyses. "It requires every existing cable company, every existing broadband provider and every telephone company [in the area] to go out of business," said Eric Breisach, a former CPA and now an attorney with Womble Carlyle who is representing Mediacom. Furthermore, the area is full of second homes and vacation rentals, many of which are unoccupied much of the year, Mediacom's attorneys said.

The county also allegedly hadn't lined up financing for the part of the network it would be responsible for funding at the time it submitted the loan, according to Mediacom. That should have been another trigger for not granting the loan, according to Mediacom and MCA lawyers. The RUS investment in Lake County's project was made according to the requirements of the American Recovery and Reinvestment Act and Notices of Funding Availability, according to the U.S. Department of Agriculture. In cases where awardees fail to meet those requirements the agency has rescinded funding, according to USDA. RUS is working closely with Lake County, as it does with all projects, to ensure its success, according to a USDA spokesman.

Now Mediacom and the MCA are hoping to stop the project from being built and simultaneously stave off a wave of competition to other broadband and pay-TV operators in Minnesota.

As it stands, Minnesota law prevents municipal governments from owning a telephone exchange without a referendum from voters. The MCA has argued that Lake County doesn't qualify as a "municipality" and therefore couldn't offer the services even with a referendum. Either way, documents obtained by the MCA indicate the county has taken several steps to avoid actually owning the phone exchange, said Anthony Mendoza, an attorney for the association. Instead of providing the services them-

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selves, Lake Communications would manage that part of the network after leasing dial tone services from another entity, documents indicate. Cable officials in Minnesota are worried that other local governments will follow Lake County's lead. Already Minnesota cable operators are hearing about other counties in the state exploring similar options as Lake County, Mendoza said.

Local laws allow the county to operate a broadband network, and a third party will operate the network's voice services, Lake Communications' Roiland said. Several states require approval by voter referendum to re-establish a city's right to provide advanced services including telecom and cable to its residents and business, municipal network consultant Craig Settles said. In Lake County's case, the telcos are upset because they can't fight if the entity operating the network isn't a government entity, he said. It's a legitimate strategy by communities seeking to offer their own networks when service providers refuse to do so, he said. A referendum vote could be a time-consuming process and opponents often use various strategies to sway the vote, he said. In Longmont, Colo., it took more than two years to pass a referendum to let the town offer broadband services either directly or via a partnership, he said.

Mediacom's and Lake Communications' revenue projections differ. Roiland said Lake Communications' projections call for a 50-60 percent penetration rate, and the network could be profitable with even less. If the loan application or network buildout had any legitimate problems, Mediacom would have sued, he said. "We're doing something Mediacom refused to do," by building out to unserved areas, he said. He said the project should be completed in 2014 and that the RUS loan will be repaid with revenue from the broadband portion of the network.

But Mediacom officials predict a default and said they worry that RUS has given assurances to Lake County that it wouldn't be responsible to repay the debt beyond the proceeds of a foreclosure auction on the network. "When I met with Lake County representatives in January 2011, they seemed unconcerned about the possibility of defaulting on a $55.6 million loan," Breisach said. "They claimed to have received assurances from a high-ranking RUS official that RUS would not seek repayment in the event of a default," he said. According to the USDA, defaults on federal funding are handled under the Debt Collection Improvement Act of 1996.

Emails and other documents obtained by the MCA and Mediacom through local open records laws and reviewed by *Communications Daily* describe a back-and-forth between Minnesota's Senate delegation and RUS Administrator Jonathan Adelstein and other RUS officials over the loan application process, in which Adelstein raised concerns about project. That occurred around the time Lake County fired its initial consultants, National Public Broadband, and handed the project over to Lake Communications, Mendoza said. According to the USDA, the RUS responds to all congressional inquiries about its projects, and Minnesota's congressional delegation had no influence over decisions to fund the Lake County project.

Other documents indicate county consultants were in regular contact with Adelstein and other government officials — one refers to a "Deep Throat" within the government who was providing advice on the timing of RUS decisions (http://xrl.us/bm583d). And emails between RUS and the county indicate the agency had some concerns about the project following Mediacom's complaint to the inspector general's office (http://xrl.us/bm59eg).

In July 2011, an RUS official overseeing Lake County's loan told Lake County Coordinator Matthew Huddleston that RUS had concerns that Lake Communications (LCI) appeared to be an extension of the county itself and not an independent consultant. "It appears that LCI has no capital formation. If LCI

did not receive an equity investment to operate on, we have serious concerns since all employees of the system will be LCI employees and there are a number of expenses that LCI must be able to handle," RUS Broadband Division Director Kenneth Kuchno wrote (http://xrl.us/bm582x). "If the county is covering 100% of all the LCI expenses then this is another indication that LCI is an extension of the County," he wrote. But the RUS appears to have ignored its own concerns because it never requested any compliance actions from the county, a memo from Mendoza to the MCA said.

Mediacom and MCA have also raised concerns about the amount of money Lake Communications is set to earn versus the amount that will be paid to the county. An "Operate and Management Agreement" (O&M) between the county and Lake Communications calls for Lake to receive more than $4.4 million from the county over five years for running the network (http://xrl.us/bm59ek). Additionally, Lake Communications will pay just $8 per line per month for access to the county's local loops on the network — a figure cable officials say is below market rates.

So far, the House Commerce oversight subcommittee is conducting a basic investigation to get the facts, Stearns said. Mediacom and MCA hope the attention leads RUS to pull the project's funding, Mendoza said. "We're hoping that by providing the documents the county itself has not really provided, that somebody will say, 'This does not make sense,' and put a stop to it," he said. — ***Josh Wein, Yu-Ting Wang, Adam Bender***

**Not Asking Too Much**

## Obama Veto Decision on CISPA Remains, Says White House Cybersecurity Coordinator

The Obama administration is hopeful that "cooler heads" will prevail to pass a White House-backed Senate cybersecurity bill as lawmakers see "the national security implications" of some provisions of the measure. The "small regulatory regime" for core critical infrastructure that's contained in the Cybersecurity Act (S-2105) is "very narrowly crafted" and built on "best practices" for corporations, many of which are already implementing them for "their own business purposes," said Howard Schmidt, White House cybersecurity coordinator. "We don't see that being asking too much of anybody," he said in an interview on the C-SPAN program *The Communicators* scheduled to air Saturday.

Despite last-minute amendments, the House-passed Cyber Intelligence Sharing and Protection Act (CISPA) still doesn't meet the White House threshold for "privacy for American citizens, corporate liability ... and protecting core critical infrastructure," he said. So the veto threat remains. S-2105 regulations are aimed at core critical infrastructure, "not everything out there," Schmidt said. Companies "absolutely" have a responsibility to report attacks to the federal government, he said. It isn't just enough to hope that "you are doing the right thing and if something happens you may or may not tell us," he said. "We need a higher level of assurance than that."

S-2105 is sponsored by Senate Homeland Security and Governmental Affairs Committee Chairman Joe Lieberman, I-Conn., Ranking Member Susan Collins, R-Maine, Senate Commerce Committee Chairman Jay Rockefeller, D-W.Va., and Senate Intelligence Committee Chairman Dianne Feinstein, D-Calif. What's proposed in the bill doesn't "create some new regulatory regime where now you have to do 15 reports to 15 different government agencies," Schmidt said. "If you already have a responsibility to

Mr. WALDEN. Mr. Adelstein.

Mr. ADELSTEIN. To respond to that, I don't know who said that. I tried to track that down. I don't believe that anyone at RUS said that. That was not attributed directly to us. Somebody said that somebody said that. There is no evidence that it actually happened. And I certainly would reprimand anybody that would make that.

That would be a violation of Federal law. We have a requirement under the Credit Reform Act to aggressively seek collections for any defaults on debts, and we always have. There has never been any evidence that we have done otherwise. So I can't imagine that anyone would say such a thing. But maybe there is a misunderstanding and somebody mischaracterized what was said.

Mr. STEARNS. Well, I can understand being an elected official and a politician, lots of people attribute things to what I say to which I didn't say. I think you win your point overwhelmingly there.

Thank you, Mr. Chairman.

Mr. WALDEN. With that, we will now turn to our final set of questions in this hearing to Mr. Scalise for 5 minutes.

Mr. SCALISE. Thank you Mr. Chairman. I appreciate you having this hearing.

We just started the Spectrum Working Group in the House. I want to commend the chairman for putting that together, and we are going to be looking at a number of things that we can do to try to free up spectrum, especially in the government sector.

I want to ask you, Secretary Strickling, NTIA just gave out with a report that looked at government spectrum, and I think in the report it said it would take 10 years and $18 billion to clear Federal users off the 1755 through 1850 megahertz range.

Where did you get those numbers from, especially to take that long with that amount of money to free it up?

Mr. STRICKLING. Yes, sir. The individual agencies holding the spectrum assignments provided the cost information and the schedule information in terms of how long and how much they thought it would take for them to totally relocate their systems out of the 1755 to 1850 band.

Mr. SCALISE. Was there any third party validation that was used to look at those numbers as well? In the past, we have seen some people try to guard their spectrum and even if they might not be utilizing it as effectively and efficiently as they can, and there may be capacity there. You know, you are asking them to give some up, and oh, by the way, can you tell me what you don't need? Sometimes you might not get as clear of an answer as if you maybe had somebody third party looking at what they really are using and what is available.

Mr. STRICKLING. Certainly. My understanding is that each agency would have worked with their OMB examiners as part of this effort. But I honestly don't know to what extent and how detailed that review was. But if I could just say that what we learn from that report was that 10 years and $18 billion, even if let's assume it is now 8 years and $15 billion, if more detailed cost reviews had been done, it still doesn't solve our problem, which is that is too much money and it takes too long and has led us to recommend, as we did in the report, that we really need to have a new paradigm for how we find additional spectrum for commercial use——

Mr. SCALISE. Do we know how accurate those numbers are? Have there been estimates that you all have made in the past where then you had a track record of actually doing it to compare and see if the estimate was way off?

Mr. STRICKLING. The last time this would have been done would have been the 1710 to 1755 review about 10 years ago, and there would be a track record on that, and I don't know what it would be, but it would be possible to look at that.

Mr. SCALISE. Can you give that to the committee? Get what the estimate was and then ultimately——

Mr. STRICKLING. Sure. One of the things to keep in mind, too, was that up until now, before the spectrum act improvements in February, there hasn't been money for Federal agencies to do the kind of detailed planning for reallocation that has now been made available in the new law passed in February. And for that, we absolutely thank the committee for its efforts to deliver that to us. That is a very important improvement in the Spectrum Relocation Act and one that will help us immeasurably and we move forward in terms of giving agencies the resources they need to do this kind of planning before an auction.

Mr. SCALISE. Chairman Walden worked real hard on that, and it was something that was a major accomplishment to get through. And I have some questions about that.

I have one final question on the relocation issue. If you could go back, I don't know if you have looked at this, if you would just limit it and instead of looking at the entire range of spectrums, from 1755 to 1850, if you narrowed that down to 1755 to 1780 because that seems like an area that might be more realistic to look at instead of looking at an entire swath, if you could give us some estimates and projections on just that narrow band from 1755 to 1780 megahertz.

Mr. STRICKLING. Here is our problem with that. The Federal agencies going back to 1710 to 1755 moved a lot of systems out of that band, and at that time, they were told, just move them up into the 1755 band, and we won't trouble you for that spectrum ever again.

The problem that we have with the 1755 to 1850 band is that there are a number of systems in that band, such as the Department of Defense Air Combat Training System that utilize all 95 megahertz of that spectrum. Plus the agencies know that simply to be told, well, squeeze into the 1780 to 1850 band, and we won't trouble you again for that spectrum——

Mr. SCALISE. This isn't, we are not troubling you, this is the private sector, too, that is being troubled because they are being held back from their ability to create jobs. And we need to start creating jobs. And if some Federal agency says, oh, wait a minute, don't bother me, because I am holding a bunch of spectrum I am not using, and I just don't want to tell you about it, that is not their spectrum. This is the public's spectrum.

And we are trying to see if there are ways to put it into the public using a much better way that can generate money for the taxpayers and that can generate a lot of jobs that are high paying in this country. So if somebody is worried about how much they are going to be put out because they have got to do a little bit of extra

work because they are sitting on assets that the taxpayers of this country, because really it is their spectrum; it is not these Federal agencies' spectrums. So if they give you pushback, please give me their names, and maybe we will bring them in here and have a hearing if they don't want to do something that will comply with something that will create jobs in this country.

Mr. STRICKLING. Sir, I agree with you 100 percent. But could I comment on that? Which is what we need is a new paradigm that will free up 95 megahertz for this band——

Mr. SCALISE. We are working on a new paradigm. We are working on that together. I am almost out of time.

I want to ask you one final question. On the work that has been done to manage a fully operable network and a lot of States have been trying to get this, the Federal Government has been trying to get interoperable, and again, the chairman really did a yeoman's work in finally putting a structure in place. I know a number of States including mine, Louisiana, our Governor's office, homeland security and in the event of hurricanes and other disasters, our Governor's office manages those disasters with local law enforcement. And in cases like Katrina, we had New York police officers going into the City of New Orleans. There was no interoperability, not in September 11, not in Katrina. We are trying to solve that, and I know at the Federal level now, there is a structure being put in place. Our State, and I am sure others have, has requested a waiver from the FCC so they don't have to wait a full 3 years; they can start putting their plan in place now using an interoperable system.

It is my understanding that your agency has petitioned the FCC not to issue any waivers, and of course, our State doesn't want to wait 3 years to start moving forward on building their interoperable network that would work with an entire system. Why would you want to hold States back that already have plans in place like ours and have a need in place to get interoperability if they want to start moving forward with a system that is integrated?

Mr. STRICKLING. Because nobody today can guarantee any of this will be interoperable in 3 years. The FirstNet board is based on a new concept from Congress, which is to build a single national interoperable network. It has commissioned the creation of a board of directors to figure out how to design and build that network. The reason we have pulled back on the $380 million of taxpayer money that was going to be spent in the seven jurisdictions we gave waivers in is we can't guarantee today that that money won't be wasted because we don't know yet. The board hasn't even met.

Mr. SCALISE. But if they are using LTE, for example, if they are using a system that is interoperable——

Mr. STRICKLING. Sir, we don't know these things. People are using these terms——

Mr. SCALISE. The FCC——

Mr. STRICKLING. "Interoperable" means different things to different people.

Mr. SCALISE. But shouldn't the FCC make that determination?

Mr. STRICKLING. Well, what we want to have here is a network that can be built according to a business model that will allow this service to be provided to public safety entities at affordable rates.

Every decision that an entity makes today to build their own little piece of this, even things as innocent as selecting a particular vendor to serve a particular State, can upset what the model is that Congress has now given us in the Middle Class Tax Relief Act.

I am trying to preserve the flexibility and freedom and the prerogative of the FirstNet board to be able to design the network that our first responders have been asking for since even before 9/11, and the concern is that we are headed down a road to repeat all of the same mistakes we made with LMR voice, where individual systems were built, and then they didn't work together with each other.

Give FirstNet a chance to come back with a design for a single interoperable network, and let them get on with the task of building it, and that way we can deliver the safety and the modern communications that our first responders need to have. The concern is——

Mr. SCALISE. I hope I am not suggesting that if a State doesn't want to have that interoperabilty, and clearly Louisiana does, we have had a need for it and let's let FCC make that decision. If they have got a good plan that is already in place and they are going to do all of those things that you were concerned about, then let FCC move forward.

Mr. WALDEN. I am going to many exercise prerogative, since we are 4 minutes over.

Mr. SCALISE. I yield the balance of my time that is expired.

Mr. STRICKLING. I find it interesting that I am the one here who wants to save the most money.

Mr. SCALISE. I would disagree with that.

Mr. WALDEN. I think I voted to actually save more money. But anyway I do appreciate what you are doing here.

I just want to close out the hearing. And I know Anna wants to make a couple of comments as well. One is FirstNet is supposed to come forward with their interoperable standards fairly soon, correct?

Mr. STRICKLING. The FCC has a charge to come forward with the minimal interoperability requirements based on the committee that they were charged with creating.

Mr. WALDEN. But isn't that supposed to happen?

Mr. STRICKLING. Soon, yes. I think in a matter of weeks.

Mr. WALDEN. And so, once that happens, then you will do a review of these proposals that are, that you have suspended, correct, to see if they meet that requirement?

Mr. STRICKLING. We will certainly take that into account yes, sir.

Mr. WALDEN. Well, I would hope so because if these ones that you have suspended, and we have had this discussion, if they do now meet the, once the interoperable standards are established, once they—I would think somebody needs then to go, "OK that works, go ahead." Wouldn't that be the decision, or am I missing something?

Mr. STRICKLING. It may not be. We will need to look at what the FCC comes out with and evaluate it against the projects. But what we have asked for is a fairly minimal set of standards. It may not be dispositive in terms of deciding whether or not to let all of these projects go forward with the 4G aspect of their grants.

Mr. WALDEN. But we should have that discussion at some point.

Mr. STRICKLING. Happy to do so.

Mr. WALDEN. The other thing I would like to know from each of the our two, Mr. Strickling and Mr. Adelstein, is the amount of, if you could provide for the subcommittee the amount of the unobligated management and oversight funds that you have.

Mr. STRICKLING. We don't have any at this point because all of our, other than the IG's dollars that he told you about, we are operating based on appropriated dollars now in terms of oversight.

Mr. WALDEN. All right.

Mr. Adelstein.

Mr. ADELSTEIN. We have no unobligated funds for administration. As a matter of fact, we haven't gotten one dime of additional administration for this program. We have had to basically eat it in our existing budget.

Mr. WALDEN. No good deed will go unpunished in the future, either.

I turn now to the gentlelady from California.

Ms. ESHOO. Thank you, Mr. Chairman, and I thank you for having yet another hearing to track all of this, which is so important.

I want to conclude the hearing by thanking all of the witnesses today, and most especially with a renewed appreciation of what an enormous assignment you were given through the Recovery Act, some $7.3 billion, $7.5 billion divided almost equally between two agencies to carry this out in a relatively short period of time.

Obviously, the work of the IGs has been instructive to you on where you can improve, and I think that that has come out in this hearing as well.

But I also want to note something that I couldn't help but detect because it was so obvious, that there are some members that really want to relitigate, and it is each member's prerogative to say and ask for whatever they wish. But my observation is that there are some that want to relitigate the Recovery Act. They simply don't like it. They never agreed with it.

I am one of the members that pushed our leadership very, very hard to include a significant sum of money to make sure that we really reach people and build broadband out to them because the private sector simply was not doing it; it wasn't profitable to do it, and that is where I think there was a need for public attention to that because there was private sector inattention, and that was their prerogative to do whatever they did.

But there are Americans in different parts of our country that simply were not getting this service and couldn't hope to, even in the long term. So I think that this work is really significant. And there was another generation that made sure that people had telephone service—had telephone service. We take that for granted. And that was the lifeline for people in rural communities. And so, in this generation, we are looking to make sure that people have broadband. And I want America to be number one in broadband. That has been a goal of mine from the very beginning being on this subcommittee.

So I thank the scrutiny of the IGs and what you continue to bring to it.

And to Mr. Strickling and Mr. Adelstein, I think that you have to have real broad shoulders in this. This was really a huge assignment, and I think that today really highlights the successes of what you have done, and certainly the critique that the Congress offers is important and that you will follow up on it.

So thank you, Mr. Chairman, for having this hearing and I thank the witnesses again.

Mr. WALDEN. I, too, thank the witnesses and appreciate your participation, and we look forward to continuing the dialogue. And we will do our part. I know you are trying to do your part as well. Thank you very much. With that, the hearing is adjourned.

[Whereupon, at 12:16 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

**UNITED STATES DEPARTMENT OF COMMERCE**
**The Assistant Secretary for Communications and Information**
Washington, D.C. 20230

OCT 2 2012

The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
House of Representatives
Washington, DC 20515

Dear Chairman Walden:

Thank you for the opportunity to testify on May 16, 2012 before the Subcommittee on Communications and Technology at the hearing entitled "Broadband Loans and Grants." I appreciate your forwarding additional questions for the record to me on August 14, 2012.

My responses to the questions are enclosed. If you or your staff have any additional questions, please do not hesitate to contact me or James Wasilewski, NTIA's Director of Congressional Affairs, at (202) 482-1840.

Sincerely,

Lawrence E. Strickling

CC: The Honorable Anna Eshoo, Ranking Member
Subcommittee on Communications and Technology

Enclosure

**Responses to Questions from the Honorable Greg Walden**

1. **You indicated in your written testimony that NTIA is "working to implement the [Spectrum] Act's directives as expeditiously as possible." What does that mean? When will the nationwide public safety broadband network be built and operational? In one year? In three years? In five years? Do we have any real way of knowing?**

NTIA and the Department of Commerce have fulfilled the Act's initial public safety implementation deadlines on a timely basis. As required, the Acting Secretary of Commerce appointed the members of the FirstNet Board of Directors on August 20, 2012, and NTIA announced the programmatic requirements for the State and Local Implementation Grant Program on August 21, 2012. NTIA will continue to work to implement its obligations under the Spectrum Act as expeditiously as possible, and intends to collaborate closely with FirstNet to assist with its implementation duties, as needed.

At this time, we cannot predict when the nationwide network will be deployed and operational. The FirstNet Board held its first meeting on September 25, 2012. The Board's first order of business was to establish Board committees, consider staffing needs, and other organizational matters. The legislation envisions that FirstNet will consult with regional, state, local, and tribal jurisdictions prior to launching any network deployment.

The funding mechanism for the Public Safety Trust Fund constitutes an additional variable that is likely to affect the schedule for a nationwide network deployment. While NTIA can borrow up to $2 billion to support FirstNet's initial network deployment activities, FirstNet cannot access the remaining $5 billion available for nationwide deployment until the Federal Communications Commission (FCC) has conducted the spectrum auctions that are to fund these activities. Until the FCC conducts those auctions and the revenues are determined, FirstNet will not be able to complete a schedule for nationwide deployment.

2. **The Department of Commerce sent letters in May to a number of BTOP grantees partially suspending funding for projects designed to help create a nationwide, interoperable public safety network. The Department presumably approved the grants in the first place because it believed they would promote interoperability. The Department claimed in the letters, however, that Title VI of the Middle Class Tax Relief and Job Creation Act of 2012 would prevent the grantees from remaining in compliance with certain terms and conditions of their awards. Specifically, the letter claimed that the grantees would be in violation of a special award condition that requires each grantee to comply with the FCC's rules and all subsequent orders and public notices regarding the use of the 700 MHz public safety broadband spectrum.**

**While Title VI of the Middle Class Tax Relief and Job Creation Act does require the FCC to transfer authorization to use the 700 MHz public safety broadband spectrum to FirstNet, nothing in the law specifies when that must happen, requires that authorization to use all the spectrum be transferred all at once, or prohibits the FCC from allowing state and local authorities to continue to use the spectrum. Allowing states and localities to use the spectrum, so long as they commit to the "minimum technical requirements to ensure a nationwide level of interoperability," which FirstNet itself is required to use, might make particular sense since it could be years before FirstNet reaches every corner of the country, if it ever does. Nonetheless, the letter claims as reason for the partial suspensions that the grantees will "be in material noncompliance with the terms and conditions of [the grantees'] award in being unable to comply fully with FCC rules as required by the [special award condition] incorporated into [the] award."**

**For each partially suspended award, please indicate what FCC rules the Department knew at the time it sent the letters that the grantees would be unable to comply with, the date of non-compliance, and a citation to the FCC determination of non-compliance. If there is no such rule and FCC determination, please so state. Furthermore, if it is NTIA's opinion that the Middle Class Tax Relief and Job Creation Act itself created the non-compliance, please explain why NTIA waited three months from the law's passage before sending the suspension letters.**

In the two years since NTIA awarded the BTOP 700 MHz public safety grants, the landscape for public safety broadband has changed dramatically. When originally approved in 2010, the projects pursued a "network-of-networks" model. Although each jurisdiction agreed as a condition of its FCC waiver and BTOP award to interoperate with one another, they were nonetheless developing seven distinct networks. The Middle Class Tax Relief and Job Creation Act of 2012 (Act) adopted a very different vision for the network's architecture and governance, namely, a single, nationwide network.

The seven BTOP public safety recipients had legal authority to use the 700 MHz spectrum only through FCC license waivers executed through lease agreements with the Public Safety Spectrum Trust (PSST) pursuant to FCC Order 10-79. The 700 MHz spectrum lease agreements between PSST and the BTOP public safety grant recipients expired September 2, 2012. The Act directs the FCC to reallocate and grant a single license to the First Responder Network Authority (FirstNet) for the use of the 700 MHz D block spectrum and existing public safety broadband spectrum.

The authority of executive agencies to administer a congressionally created program necessarily requires the formation of policy and the making of rules and decisions to fill any gaps left, implicitly or explicitly, by Congress. In this case, Congress did not address the impact of the transfer of authority for the 700 MHz spectrum from the PSST to FirstNet as it relates to the public safety waiver jurisdictions. Immediately upon the Act's passage, NTIA moved as quickly as possible to analyze its impact on the seven BTOP public safety grants and held numerous discussions with grantees prior to issuing the written partial suspensions in May 2012.

As a steward of taxpayer funds, NTIA has a key mandate to protect against waste. At this time, we do not know with any degree of certainty that Long Term Evolution (LTE) equipment deployed today will be compatible with the network architecture developed by FirstNet in the future. Spending funds on such equipment with that knowledge could risk wasting millions of taxpayer dollars, an outcome which we can all agree would be irresponsible. With the then imminent expiration of the lease agreements and the new direction of the nationwide public safety broadband network, NTIA was within its authority to partially suspend the public safety grants to protect taxpayer funds. NTIA needs to ensure that any grant project using taxpayer funds will proceed in a manner that is consistent with the requirements that FirstNet will establish for the nationwide public safety broadband network.

3. **As a rationale for freezing seven existing BTOP public safety grants, you stated that you wanted to ensure that these projects are compatible with the "ultimate nationwide architecture of the new public safety broadband network." Will that architecture be based upon 3GPP-approved LTE standards? If so, will you be unfreezing funds for any of these public safety projects that are based upon a 3GPP-compliant LTE architecture? Similarly, won't that architecture be based on the "minimum technical requirements to ensure a nationwide level of interoperability" that the FCC approved and transmitted to FirstNet in June? Since FirstNet must incorporate those requirements "without material change," will you be unfreezing funds for any of these public safety projects that comply with interoperability requirements?**

The Middle Class Tax Relief and Job Creation Act of 2012 (Act) requires the nationwide public safety broadband network be based on the 3GPP commercial standards for Long Term Evolution (LTE) service. However, vendor self-certification of compliance with 3GPP – LTE architecture does not necessarily mean the equipment from these projects will interoperate with the nationwide public safety broadband network.

The 3GPP commercial standards leave significant room for interpretation, which means that the same requirements can be developed differently by different vendors. Each component of the network will need to go through suitable conformance and interoperability testing to ensure that it conforms directly to the standard and is interoperable with all other components as designed by FirstNet. In addition, 3GPP has several releases and sub-releases, which means that each company or vendor has its own version of software and hardware. At any given time, companies may be using various release versions, which can lead to problems with how features are supported across different vendors. All of these technical factors need to be considered in light of the Act and with respect to how NTIA proceeds with the BTOP-funded projects.

Similarly, the FCC's Interoperability Board developed minimum recommended technical requirements, which while forming a baseline for interoperability, do not by themselves guarantee that equipment will interoperate.

NTIA needs to mitigate the risk that grantees will use taxpayer funds will be used to pay for equipment that will not interoperate with or be integrated into the nationwide public safety

broadband network. To this end, NTIA has been working with the BTOP public safety recipients and vendors to develop new special award conditions that will ensure that FirstNet, contractors, and users can access the BTOP-funded network; ensure indemnification by vendors of equipment that is not compatible with the FirstNet network; and share lessons learned with FirstNet and the Public Safety Communications Research Program (PSCR). If BTOP recipients receive access to the 700 MHz spectrum, either through the Special Temporary Authority (STA) made available under the FCC Order 12-85 or through a lease agreement with FirstNet, NTIA will work with the recipients to determine if portions of their LTE-related activities can resume under the new special award conditions. At its inaugural meeting on September 25, the FirstNet Board of Directors adopted a resolution to examine the seven BTOP public safety projects and provide input to NTIA as to whether and how these projects can support the development of the nationwide, interoperable public safety network.

4. **The BTOP project in West Virginia is one example of a broadband project shrinking in scope after being awarded a grant or loan. How many other projects have shrunk in scope post-award? How does NTIA review build-out changes to ensure that taxpayers are getting their money's worth? When a project proposes to change its build-out plans, does NTIA correspondingly reduce the size of the award? Does NTIA take into account that a project as revised might have lost out to another applicant had the ultimate scope of the project been known when it was initially considered?**

The State of West Virginia project did not shrink in scope. As originally planned, the recipient will connect or upgrade connections at more than 1,000 community anchor institutions in the state that will benefit from dramatically improved broadband connectivity to better serve their communities. However, from the time of its original application to when it began implementing the project, the State – working with NTIA –identified some instances in which anchor institutions were found to possess adequate fiber connectivity but lacked adequate electronics necessary to fully utilize the fiber. As a result, the recipient adjusted its project to avoid building duplicative broadband facilities, but continued to install electronics at these locations. In approximately 80 instances, the recipient determined that the anchor institutions were adequately served, both in terms of fiber and hardware, and readily identified alternate underserved anchor institutions as replacements. This is an example of the BTOP recipient working with NTIA to maximize the benefits of taxpayer investments and to avoid waste.

BTOP recipients must seek NTIA and Grants Office approval for any significant modifications to their projects. Reasons for project modifications vary, including changes to circumstances on the ground as well as environmental or technical obstacles to the planned deployment. In all cases, NTIA thoroughly reviews proposed changes against numerous criteria, including environmental and historic preservation impact, schedule, budget reasonableness, sustainability, and, in particular, whether the project will continue to deliver the commensurate benefits to the community in terms of improved services for underserved anchor institutions and last-mile providers.

In reviewing proposed project modifications, NTIA also considers whether the proposed changes result in a project that would not have been funded had it been proposed during the original

application process. In one instance, the State of Louisiana requested major changes to its original proposal that would have significantly reduced the benefits to the community. For this and many other reasons, the Department terminated the grant for material noncompliance. Further details regarding this grant, including the justifications for the termination, can be found at http://www2.ntia.doc.gov/grantees/LouisianaBroadbandAlliance.

If a BTOP recipient reduces the scope of its award, that reduction may require a corresponding reduction in the amount of the Federal award. Two recipients, Iowa Health System and Vermont Telephone Company, have reduced the scope of their projects and the amount of their Federal award by $2.97 million and $3.25 million, respectively. These funds have been returned to the U.S. Treasury.

5. **Inspector General Zinser's written testimony states that 49 grantees have not kept pace in spending matching funds. Wouldn't this constitute material non-compliance with the law, if not the terms of the grants? What is NTIA doing to remedy this situation?**

No, there are many reasons why a grantee might not keep pace in spending matching funds. The Department of Commerce requires that grant recipients must generally draw down grant funds in proportion to their matching contributions. NTIA, through its agreements with the National Institute for Standards and Technology (NIST) and the National Oceanic and Atmospheric Administration (NOAA) Grants Offices to provide grants management services, monitors whether recipients are meeting this requirement and evaluates whether there is a good cause for the Grants Office to waive proportionality requirements for a limited period of time. For example, the Public Computer Center (PCC) programs often contribute volunteer labor hours as their match. Since most of the major expenditures for PCC programs (*i.e.*, setting up the computer labs, creating training) occur at the beginning of the award but the volunteer labor hours are contributed later, it is reasonable for NTIA and NIST to allow recipients to make up their match contribution over the course of the award.

NTIA has implemented a rigorous monitoring and oversight plan for BTOP grants. NTIA's regular monitoring includes multiple reviews of recipients' adherence to their matching share requirements, including cash drawdown monitoring, performance report reviews, risk assessment analyses, and site visit feedback. In addition to its monitoring, NTIA has provided recipients with various forms of guidance regarding the BTOP matching share requirement. This guidance ranges from the BTOP Recipient Handbook and fact sheets, which are readily available on the BTOP website, to compliance training at recipient workshops. All of these activities serve as internal controls above and beyond what the NOAA and NIST Grants Offices provide to ensure that recipients expend funds at an appropriate rate and meet their matching requirements.

In addition to its comprehensive day-to-day monitoring, NTIA initiated a process in December 2010 to thoroughly review recipient matching share contributions. Through this process, NTIA reviews and analyzes the allowability, consideration, source, consistency, and valuation of each recipient's proposed cash and in-kind match sources. NTIA will continuously work with OIG to bolster recipient match recordkeeping and ensure proportionate recipient match contributions.

6. **Your quarterly report cited statistics regarding the number of new and upgraded miles of fiber that have been deployed and the number of institutions that have new or improved service because of your grants. What constitutes an "upgrade" or "improvement"? What portion of the miles and connection are upgrades or improvements rather than new deployments, and why are you spending money on upgrades and improvements rather than new deployments?**

An upgrade or improvement includes leveraging existing network capacity—either owned by the recipient or sub-recipient or leased—such as lighting unused existing optical fibers with appropriate electronics. Since the optical fibers are already in the ground, they are considered upgrades, although they are significantly increasing bandwidth to communities and institutions served by BTOP recipients. Roughly one-quarter of the miles deployed by BTOP recipients through June 30, 2012 are improved miles.

To ensure that recipients are making prudent investments when building out Comprehensive Community Infrastructure (CCI) networks, NTIA has endeavored to avoid "overbuilding"—that is, constructing grant-funded fiber in areas where commercial dark fiber was available and unused. By authorizing recipients in those circumstances to use grant funds to light existing dark fiber and bring it online, NTIA has avoided overbuilding and made good use of existing facilities. Using BTOP funds to light unused dark fiber significantly upgrades broadband capabilities in communities. In addition, the program permitted some recipients to connect existing wireless towers to their backbone networks using fiber, when previously connected by microwave, in an effort to significantly upgrade the amount of traffic towers can support.

NTIA has encouraged grant recipients to connect new community anchor institutions (CAIs) to their grant-funded networks while also improving the level of service available to CAIs that have inadequate service today. In many cases, BTOP investments in a network backbone will ameliorate scarce capacity and immediately improve the level of service available to numerous existing CAIs. In other cases, a CAI may have been served previously by expensive copper-based connections offering restricted bandwidth (such as T-1 or fractional T-1 lines) and BTOP funds will be used to ensure the facility has a reliable, higher-bandwidth, more cost-effective fiber-optic connection.

7. **You make claims about the number of additional households that subscribe or have access to broadband because of your awards. How did you calculate those figures? How did you determine that those households would not have subscribed or gained access but for your awards?**

Sustainable Broadband Adoption (SBA) recipients must report quarterly on new household and business subscribers resulting from BTOP-funded SBA activities, such as awareness campaigns, intensive training, and temporary subsidies to incentivize broadband adoption. These quarterly reports are posted publicly on each recipient's webpage at http://www2.ntia.doc.gov/awards. SBA recipients employ a variety of methods to track and calculate new subscribers. For

example, One Community in Ohio works directly with individuals, tracking each one's progress through ongoing contact and extensive follow-up.

NTIA has carefully reviewed the methodologies used by SBA grantees to ensure that they are reliable ways to determine broadband subscribers. Grantees typically use three primary sources of information to directly count or estimate new subscribers:

1) **Use of grantee program records**: Records maintained by grantees, such as equipment distribution inventories, service subsidy lists, and network usage records, provide discrete counts of subscribers.
2) **Third-party datasets**: These allow grantees to estimate new subscribers by measuring service increase within defined geographical areas or specific populations, and comparing changes in adoption rates against similar populations.
3) **Surveys**: Grantees administer surveys to program participants or within defined geographical areas to collect data that are used to determine subscriptions.

Based on this information, NTIA is working with its recipients to develop and share lessons learned to improve efforts to calculate new subscribers resulting from broadband adoption and awareness efforts. With any methodology using extrapolation as a way to measure incidence, there are margins of error, especially in working with vulnerable populations who generally have a lower response rate to traditional survey approaches. Given this inherent challenge, we have generally advised recipients to be conservative in reporting subscribership numbers.

8. **When this Committee debated the language that would become the broadband subsidies in the ARRA, Republicans expressed concern that money was being rushed out the door without adequate thought. For example, we suggested that the National Broadband Map indicating where access is lacking should be completed first so that any awards could be targeted to where they are really needed. We were told that the country couldn't wait for the map because the money needed to be rushed out the door to help the economy and that awards would be given to "shovel ready" projects. But if that was the case, why—more than three years later—have recipients spent only one-third of the NTIA and RUS money? Why were less than 20 of the 550 NTIA and RUS projects complete be the end of last year? What percentage of projects look like they will be complete by the end of this fiscal year? When will 25 percent of the projects be complete? When will 50 percent be complete? When will 75 percent be complete?**

In soliciting applications and selecting awards, NTIA sought to fulfill numerous goals, including ensuring that projects are completed as quickly as possible while also spending taxpayer dollars in the wisest and most responsible manner. NTIA awarded grants to three categories of projects: broadband infrastructure, public computer centers (PCC), and sustainable broadband adoption (SBA). PCC and SBA recipients have been finishing their projects ahead of the three-year completion deadline, delivering computer access and training programs. Indeed, several of these grants have already fully completed their work. However, the majority of BTOP dollars went to broadband infrastructure projects – averaging more than $25 million per grant – that require

significant environmental, engineering, planning, and other upfront activities before construction can begin and more than a year to complete construction. Construction progress can be impacted by a number of factors, including weather, contracting, availability of materials, and ability to secure necessary permitting and pole attachment agreements, among others. NTIA consistently made clear in its Notices of Funds Availability and quarterly reports to Congress that we intend for projects to be complete within three years of their grant award. These timeframes are very aggressive. Notwithstanding the above-mentioned obstacles to rapid deployment, NTIA recipients have made tremendous progress in achieving their anticipated outcomes and benefitting their communities. As of June 30, 2012, recipients have built or upgraded more than 72,000 miles of broadband infrastructure; connected more than 10,000 community anchor institutions to high-speed broadband Internet service; and installed more than 36,000 workstations in public computer centers.

9. **Your program requires projects to be "substantially complete" by Sept. 30, 2012, and finished by Sept. 30, 2013. An NTIA stimulus project is considered substantially complete when the awardee has met 67 percent of the project milestones and received 67 percent of its award funds. How many of your projects are in jeopardy of missing the Sept. 30, 2012, deadline? How many projects are in jeopardy of missing the 2013 deadline? Will you rescind funding from such projects?**

There is no statutory requirement that projects be "substantially complete" by September 30, 2012. The Recovery Act did direct NTIA to "seek such assurances as may be necessary or 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." NTIA met this directive by requiring grant applications in 2009 and 2010 to demonstrate that they would substantially complete their projects within two years of the start date of the grant award and fully complete them no later than three years following the date of issuance of the grant award. Under the Notices of Funds Availability (NOFAs), a project would be considered substantially complete when the awardee has met 67 percent of the project milestones and received 67 percent of its award funds. Applicants in both rounds provided timelines for their projects that demonstrated timely completion, and NTIA staff and merit reviewers evaluated the reasonableness and viability of these proposed timelines in considering applications. NTIA is intently focused on ensuring that recipients meet the three-year completion deadlines. To achieve this, we regularly review the projects, carefully reviewing the status of each project and factors influencing progress to determine the appropriate actions to protect taxpayer dollars. For example, we conduct schedule reviews of projects at risk of falling behind in order to explore ways to accelerate deployment, such as adding additional construction crews to mitigate schedule delays. NTIA utilizes a number of interventions, such as Performance Improvement Plans, Corrective Action Plans, suspensions of award activities, and, if necessary, award terminations in response to schedule delays or other challenges on the part of grantees in fulfilling the terms and conditions of their awards.

NTIA has not considered or granted any requests by any other grantees for extensions beyond the 2013 deadline. At this time, the only projects that we do not expect to be complete in 2013 are the seven BTOP public safety grants that we partially suspended pending a review of how

those projects are impacted by the Middle Class Tax Relief and Job Creation Act of 2012. We cannot speculate now as to how we would respond to a future request for extension, including what action we might take regarding the funding for such a project. Any such request will be handled on a case-by-case basis.

**Responses to Questions from the Honorable Joe Barton**

1. **Assistant Secretary Strickling referenced interoperability challenges with early deployments and FirstNet. What is the exact concern around interoperability? It is my understanding that all equipment being deployed is standards-based and will interoperate assuming FirstNet deploys standard equipment in a best practice manner.**

Requiring vendors to comply with commercial standards is different than the reality of achieving interoperability. Right now, vendors self-certify that they are compliant with 3GPP – LTE standards. This certification does not necessarily mean the equipment from these projects will interoperate with the FirstNet nationwide public safety broadband network established by the Middle Class Tax Relief and Job Creation Act of 2012 (Act).

3GPP commercial standards leave vendors and manufacturers some room for interpretation, which means that the same requirements can be developed differently by different vendors. Each component of the network will need to go through suitable conformance and interoperability testing to ensure that it conforms directly to the standard and is interoperable with all other components as designed by FirstNet. In addition, 3GPP has several releases and sub-releases, which means that each company or vendor has its own version of software and hardware. At any given time, companies may be using various release versions, which can lead to problems with how features are supported across different vendors. All of these technical factors need to be considered in light of the Act and with respect to how NTIA proceeds with the BTOP-funded projects.

NTIA takes very seriously its responsibility as steward of taxpayer funds and its oversight of BTOP projects. Given the many unknowns and uncertainties regarding interoperability with FirstNet, NTIA took the necessary step of partially suspending its seven BTOP 700 MHz public safety projects to avoid spending taxpayer funds on equipment that might need to be replaced once FirstNet develops the architecture for the nationwide public safety broadband network. NTIA is working closely with each recipient to identify a path forward to ensure that grant funds are spent in the most responsible manner.

2. **Does the NTIA think it is prudent to wait an undetermined amount of time for FirstNet to fully establish itself and prevent many jurisdictions, who could accomplish this task in 2012, from working with first responders to implementing this critical technology?**

Yes. The public safety community deserves a nationwide public safety broadband network so that we can finally achieve the vision of interoperability and avoid the communications problems that have plagued the nation and were acutely evident on September 11, 2001. Congress took a major step in achieving this goal when it enacted the Middle Class Tax Relief and Job Creation Act of 2012. Recent events (*e.g.* Hurricane Katrina, September 11) have highlighted the critical need for public safety communications interoperability on a nationwide basis. Allowing FirstNet the time necessary to establish itself and to consult with stakeholders is necessary and appropriate given the limited resources and tasks at hand.

Decisions made by individual localities today could impact the ultimate viability of the future nationwide public safety broadband network. Individual projects or jurisdictions implementing LTE solutions for their areas can change the environment of the marketplace in unintended ways, the overall cost of the network, competition among vendors and integrators, and/or the design of the network architecture. NTIA is concerned that the current approach of jurisdictions independently procuring, deploying, and outsourcing operations of LTE equipment would lead to higher costs in each of those elements of the network. It is imperative that FirstNet have as much flexibility as possible in its early stages so as to ensure the ultimate success and sustainability of the nationwide public safety network. The FirstNet Board of Directors clearly appreciates the importance of this issue. At its inaugural meeting on September 25, the Board adopted a resolution to examine the seven BTOP public safety projects and provide input to NTIA as to whether and how these projects can support the development of the nationwide, interoperable public safety network.

3. **The FCC has heard from over two dozen jurisdictions and organizations that have expressed opposition to your posture to suspend the work on these early deployments, including: the states of Virginia, Oregon, New Mexico, Nevada, Mississippi, Texas, New Jersey, Michigan, Louisiana and Hawaii; the cities of New Orleans, Seattle, Irving, Ft. Worth, Charlotte, San Francisco, Oakland, Los Angeles, San Jose, Sacramento and Chesapeake VA; and organizations such as the Operators Advisory Group, the National Association of Counties, the National League of Cities, the U.S. Conference of Mayors, the Public Safety Spectrum Trust and others. How do you reconcile your approach with such widespread opposition from so many states, cities, public safety organizations and other stakeholders?**

NTIA recognizes and appreciates the desire of many individual jurisdictions and commercial entities to move forward as quickly as possible with their public safety broadband deployment. The history of public safety voice communications shows that building individual, disparate systems does not serve the ultimate need of the public safety community. Many of the individual jurisdictions wish to move forward with their own broadband solutions under the initial concept of a "network-of-networks" model. However, Congress dramatically changed the landscape for public safety broadband by adopting a very different vision for the network's architecture and governance. The network is to be based on a single national network architecture and governed by the FirstNet Board of Directors. The recently appointed FirstNet Board must have the opportunity and time to accomplish the goals set out in the Act. Allowing FirstNet the time necessary to establish itself and to consult with stakeholders is necessary and appropriate given its limited resources and the importance of its responsibilities.

**Responses to Questions from the Honorable Anna Eshoo**

1. **A substantial part of NTIA's investment has been in middle mile projects. These projects represent thousands of miles of fiber optics. As you know, for several years, I've advocated for a dig-once policy – which would encourage the inclusion of "broadband conduit" during the construction of federal highways. Do you support such a policy as a way to facilitate greater broadband deployment while saving taxpayer dollars?**

Yes. On June 14, 2012, President Obama signed an Executive Order to streamline broadband construction along Federal roadways and properties. Currently, the procedures for approving broadband infrastructure projects on properties controlled or managed by the Federal Government—including large tracts of land, roadways, and more than 10,000 buildings across the Nation—vary depending on which agency manages the property. The new Executive Order ensures that agencies charged with managing Federal properties and roads take specific steps to adopt a uniform approach for allowing broadband carriers to build networks on and through those assets and speed the delivery of connectivity to communities, businesses, and schools. The Executive Order, among other things, directs federal departments to help carriers time their broadband deployment activities to periods when streets are already under construction—an approach that can reduce network deployment costs along Federal roadways by up to 90 percent.

**Responses to Questions from the Honorable Henry Waxman**

1. **At the hearing you took issue with the costs reported in press accounts examining the purchase of routers by a BTOP grantee in West Virginia, saying that "The facts of this situation are not exactly as described in the newspaper article. ...the average cost of those routers is not $22,000, it's about $12,000...." Has NTIA independently investigated the claims of waste made in the press accounts about the West Virginia BTOP project cited at the hearing? Have you discovered any other discrepancies in the press accounts? Please provide the Committee with any relevant documentation demonstrating the costs related to this project.**

Our review of the documentation for the router purchase indicates that the more accurate hardware cost per router is approximately $12,000. The inflated figure cited in press reports appears to be derived from simply dividing the total invoice cost by the number of routers purchased. The invoice, however, included the cost of switch modules as well as long-term maintenance of the routers, which are usually considered stand-alone costs. Adjusting the overall invoice for these items indicates that the actual cost per router was approximately $12,000 (*i.e.*, $24,049,957 (overall invoice) - $8,384,107 (maintenance) - $2,870,118 (switch modules) = $12,795,732/1064 = $12,026 per router).

The State of West Virginia conducted a competitive procurement for the routers. NTIA requires BTOP grant recipients to comply with the procurement standards described in Department of Commerce regulations (*e.g.*, 15 C.F.R. § 24.36). Awardees must maintain and follow written procurement procedures that include cost or price analysis, determinations of reasonableness, allocability, and allowability. We also require procurements to be competitively bid unless otherwise justified. The West Virginia router equipment purchase was competitively bid and consistent with federal grant rules. Further, the State of West Virginia determined that its router procurement strategy was the most economic. In developing the technology plan for its BTOP project, the State considered alternative approaches and determined that a single standard router platform was the most logical and practical alternative given circumstances such as the size of the project, scalability, the variety of community anchor institutions being served, and the expected lifecycle costs for operating and maintain the equipment. The Chief Technology Officer of West Virginia reviewed and approved the approach's economic justification, system design, and suitability. We had no reason to disagree with the on-the-ground judgment of the recipient as reviewed and affirmed by the state's Chief Technology Officer.

Press reports regarding the router purchase also criticized the state for warehousing some routers. However, the warehousing is temporary, based on when the communications facilities are completed to the anchor institutions slated to receive the routers. The state has now deployed more than 75 percent of routers into the field. The remaining routers will be installed at each anchor institution as the fiber build is completed and each anchor becomes ready to be connected to the network.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

# Congress of the United States
## House of Representatives

COMMITTEE ON ENERGY AND COMMERCE
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August 14, 2012

The Honorable Jonathan Adelstein
Administrator
Rural Utility Service
U.S. Department of Agriculture
1400 Independence Avenue, S.W., Room 5135
STOP 1510
Washington, D.C. 20250-1535

Dear Administrator Adelstein:

Thank you for appearing at the Subcommittee on Communications and Technology hearing entitled "Broadband Loans and Grants" on Wednesday, May 16, 2012.

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions to witnesses, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please e-mail your responses, in Word or PDF format, to Charlotte.savercool@mail.house.gov by the close of business on Tuesday, August 28, 2012.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Anna Eshoo, Ranking Member,
Subcommittee on Communications and Technology

Attachment

**FINAL Responses for House Energy & Commerce May 16 QFRs**

The Honorable Greg Walden

1. The BTOP project in West Virginia is one example of a broadband project shrinking in scope after being awarded a grant or loan. How many BIP projects have shrunk in scope post-award? How does the RUS review build-out changes to ensure that taxpayers are getting their money's worth? When a project proposes to change its build-out plans, does the RUS correspondingly reduce the size of the award? Does the RUS take into account that a project as revised might have lost out to another applicant had the ultimate scope of the project been known when it was initially considered?

RESPONSE:
None of the Rural Utilities Service's Broadband Initiatives Program (BIP) projects have "shrunk" after receiving funding under the American Recovery and Reinvestment Act of 2009 (the Recovery Act). To ensure that an awarded project does not materially change, RUS will not approve changes that are not financially and technically feasible or that would result in a significant variation in scope when compared with the original project. This accounts, in part, for the rescission of several BIP awards after which 100 percent of the funds were returned to the U.S. Treasury, and addresses concerns of applicants not receiving awards. Part of Rural Utilities Service's (RUS) due diligence includes monitoring Broadband Initiatives Program (BIP) projects from origination through project completion, with a variety of tools. This ensures that awardees are meeting program and statutory requirements to provide reliable, affordable broadband services in rural areas. In some cases awardees have proposed changing their build out plans. Reasons for proposed changes can be changes in the design or the reallocation of funds from one construction category to another construction category. In each case, RUS evaluates the proposed changes to determine whether they still comply with the original award and will result in sustainable broadband service commensurate with the taxpayer investment.
2. You make claims about the number of additional households that subscribe or have access to broadband because of your awards. How did you calculate those figures? How did you determine that those households would not have subscribed or gained access but for your awards?

RESPONSE:
RUS's estimates of businesses and residents eligible to receive broadband service under BIP are based on "premises passed," which accounts for those who can connect to broadband based on data submitted by applicants and reviewed by RUS staff. Applicants generally used census data to provide potential subscriber numbers to RUS. In addition, the applicant proposes certain penetration rates and RUS uses competitive quantitative and qualitative analytical tools, combined with on-site review to validate that these rates are reasonable for the areas in question.

3. Your written testimony highlights the number of rural households, schools, and healthcare providers that could be served once all BIP projects are complete. But I'm interested in today. What can you tell me about how far along the BIP projects are and how many households are now served because of BIP funding?

RESPONSE:

RUS collects awardee data on a quarterly basis, and in general, that data is available approximately 60 days from the end of quarter. We anticipate that additional data will be available by the fourth quarter that can address your specific question of how many households are now served because of BIP funding. From the most current data, we can report that all of the 19 Technical Assistance awards have been fully disbursed. The $100 million satellite broadband program has disbursed 75 percent of its funds to date to the four satellite awardees.

Infrastructure projects, which are larger and more complex, continue to make progress. As of, May 16, 2012, nineteen projects, representing $148 million in funding, were completed. About $1.8 billion of construction projects have been completed, or are underway. Because loan funds are released as projects progress, the pace of construction exceeds the pace of reimbursement. That level of activity has continued to increase. As of May 16, 2012, 19 projects representing $122 million had not drawn any loan or grant funds. The agency continues to oversee projects and has remained in regular contact with all awardees. The agency continues to work closely with those few projects that have been delayed for environmental, right of way and other regulatory reasons.

4. Given the focus of RUS on getting broadband out to unserved rural communities, I am sure you share my concern about overbuilding. An additional concern I have about overbuilding is that it threatens the viability of a loan. If an area is so rural that it is uneconomic for one broadband provider, it's doubtful that a federally funded competitor can survive for long. How does RUS address overbuilding concerns when assessing the viability of a broadband loan?

RESPONSE:
RUS takes a number of factors into account when assessing the financial feasibility of broadband projects. To ensure the viability of the project, RUS completes a thorough analysis of the proposed service area as well as a comprehensive financial analysis of the proposed operation. If an existing provider is already in the area, RUS completes a competitive analysis to ensure that the project is viable and promotes the economic development needs of the rural communities it serves. If RUS determines that an applicant does not have a viable proposal, RUS will not approve the application. In addition, in the 2008 Farm Bill, Congress directed RUS to establish eligibility requirements that make any area with three incumbent service providers ineligible for the Farm Bill loan programs. Please note that this is just a gating requirement to be considered for a loan and RUS still completes a thorough feasibility analysis. RUS will continue to focus on providing reliable, affordable broadband to rural areas when final regulations are published this year.

5. I understand that the RUS will not lend money to overbuild an area where there is an existing RUS borrower because doing so would put the RUS' investment at risk. Doesn't that same logic apply to the use of RUS money to overbuild an existing broadband provider financed by a local bank? Should the government really be in the business of putting another business's privately-financed investment at risk?

RESPONSE:

Our focus is on rural communities that lack quality, affordable broadband service. In the 2008 Farm Bill, Congress recognized that competition may be necessary in some rural areas; however, directed us to limit eligibility for broadband funding to areas with three or fewer providers as a gating requirement to further determine loan feasibility. Our proposed broadband regulations were released last year, and final regulations are expected to be published shortly. RUS evaluates all loan applications for financial and technical feasibility by taking a variety of factors into account before funding broadband projects. It is not RUS' intent to put an existing service provider out of business. If RUS determines that an area cannot support more than a single service provider and a provider is already in the area in question, the award will not be approved.

6. Last year we asked you about the recovery of loans in default. I am sure you agree we prefer to avoid getting to that point and catching problems early to minimize any losses to the taxpayer. Can you describe RUS's process for monitoring and evaluating projects, both before and after an award is made, to ensure financial viability?

RESPONSE:
RUS has a long history of diligently monitoring projects, including buildout and operations. RUS is in regular, direct contact with each of our borrowers to assess progress and review technical and financial aspects of the projects. Our network of field representatives and field accountants review financial documents and work with our broadband providers on a regular basis. In addition, BIP awardees must submit quarterly financial reports on the status of their projects. After the BIP awards were made, RUS completed a risk assessments of the companies awarded the funds and for projects that were determined to be at risk, a team of financial and technical staff visited the company to look at management and operations to preemptively identify those with financial challenges. RUS has recently implemented a new dashboard to help monitor the status of broadband projects and is continuing to build tools to identify those facing difficulty.

7. NTIA recently suspended a portion of several public safety BTOP grants in light of recent changes in law. Given the recent reforms to USF and the continued uncertainty of the precise impact of those reforms, will RUS suspend its taxpayer-guaranteed broadband loans that depend on USF funding?

RESPONSE:
RUS works closely with borrowers to monitor the operational and financial success of these projects. Over one-half of RUS BIP awardees receive Federal Universal Service Fund support and many depend on intercarrier compensation revenues to build out new and upgraded service in rural high cost areas. RUS is actively working with awardees and the Federal Communications Commission to ensure that these projects remain viable.

8. When this Committee debated the language that would become the broadband subsidies in the ARRA, Republicans expressed concern that money was being spent without adequate thought. For example, we suggested that the National Broadband Map indicating where access is lacking should be completed first so that any awards could be targeted to where they are really needed. We were told that the country couldn't wait for the map because the money needed to be rushed out the door to help the economy and that awards would be given to "shovel ready" projects. But if that was the case, why-more than three years later-have

recipients spent only one-third of the NTIA and RUS money? Why were less than 20 of the 550 NTIA and RUS projects complete by the end of last year? What percentage of projects look like they will be complete by the end of this fiscal year? When will 25 percent of the projects be complete? When will 50 percent be complete? When will 75 percent be complete?

RESPONSE:
The Department of Commerce's national broadband map was released in March 2011. The Recovery Act required that all awards be obligated in 2010. Broadband build-outs are generally long-term infrastructure projects that cross city, town, county, and often state lines. Through its non- ARRA programs, most broadband build-outs take three year after environmental clearances and our BIP projects are generally following these same build-out trends. Recovery Act projects, while on a fast track, were still required to meet local, state and federal construction requirements and in some cases, meeting these requirements have caused delays. Because awardees determine the timing of their funding requests, more projects are under construction than funding requests indicate and the ratio of construction progress underway constantly increases when compared to funds advanced. RUS is confident that active BIP projects are on track and will be completed within the timeframes authorized by the Recovery Act.

9. I understand that there are 22 projects that have yet to receive a disbursement. And yet the purpose of the Recovery Act was allegedly to stimulate the rural economy with shovel-ready projects. Are these projects all in compliance with the terms of their awards? If so, how can that be? And if not, is RUS looking to recover the funding obligated to these projects and return it to the U.S. Treasury?

RESPONSE:
Recipients generally determine the timing of the loan/grant advances. AS of May 16, 2012, 19 projects have not yet drawn funds a relatively small portion of the $3.5 billion Recovery Act projects originally awarded. Most of these awards cross county, state or tribal lands and federal clearances are taking longer than anticipated and RUS continues to work diligently with these awardees to address these challenges. We constantly review these projects and if construction does not commence in a timely manner, RUS will de-obligate the funds and return the money to the Treasury. In fact, to date 38 awards totaling $268 million have been rescinded for various reasons.

10. Your program requires projects to be "substantially complete" by Sept. 30, 2012, and finished by Sept. 30, 2013. An RUS stimulus project is considered substantially complete when an awardee has received 67 percent of its award funds. How many of your projects are in jeopardy of missing the Sept. 30, 2012, deadline? How many projects are in jeopardy of missing the 2013 deadline? Will you rescind funding from such projects?

RESPONSE:
RUS anticipates currently that all active projects will meet the deadline required by the Recovery Act. If we have reason to believe that a project will not be substantially complete within statutory guidelines, we will review all options available under the terms of the award and if necessary, rescind the award. The vast majority of the BIP projects are progressing well and within

expectations. The RUS has worked closely with Federal and state partners to complete required reviews and to address regulatory or processing issues and is working closely with awardees to expedite project construction.

The Honorable Henry Waxman

1. How does RUS track whether BIP projects are making progress towards completion? Does RUS have systems in place for ongoing monitoring of BIP awards, so that challenges can be addressed before the viability of the project is threatened?

RESPONSE:
RUS technical and financial staff reviewed the requests for advances to ensure that they comply with the BIP requirements and are consistent with the budget and network system design submitted and approved by RUS under the application process. We have implemented risk assessments to identify projects that may benefit from closer monitoring. RUS field employees vigorously monitor the progress of construction and compliance by recipients with BIP requirements. RUS now has a dashboard to track BIP projects and is identifying additional tools to help reduce credit risk. RUS constantly reviews all of this information and works to address challenges to try to ensure that these BIP projects will provide reliable, affordable broadband service to their rural consumers. In addition, in January, RUS required all awardees to submit updated construction timelines so that RUS can continue to track, on an individual basis, each awardee's build-out schedule and take action if the awardee does not perform in a responsible manner.

**Following the Testimony of the Honorable Todd J. Zinser**

**Inspector General**

**U.S. Department of Commerce**

**before the House Energy and Commerce Committee**

**Subcommittee on Communications and Technology**

***May 16, 2012***

## *Broadband Loans and Grants*

**Question for Response**

**The Honorable Greg Walden**

1. **You mention in your written testimony that NTIA needs to focus more on monitoring and reviewing equipment purchases. Can you explain the weaknesses in NTIA's current approach to equipment purchases? Could taxpayer dollars be saved with better oversight?**

Grantees' purchase, deployment, testing, and acceptance of equipment represents a significant portion of BTOP funds. While grantees spent the initial months of their awards performing such activities as planning and obtaining environmental assessments, these awards are now in the phase in which the grantees increase their spending, including the bulk of equipment procurement and deployment activities. As of June 30, 2012, BTOP grantees had spent almost 50 percent ($1.89 billion) of the $3.8 billion total BTOP grant awards. Except for those grantees whose projects receive extensions, they will spend the remaining BTOP funds over the next 15 months; working to complete their projects will include the purchase and deployment of equipment. As a result, NTIA will need to shift its monitoring focus to these critical activities.

Our November 2011 assessment of NTIA's monitoring of BTOP awards found that NTIA should take additional steps to improve its internal controls over its monitoring efforts. The report noted that the current BTOP monitoring process could benefit from adjustments that include increased verification of source documentation and systems, detailed review of nonfederal match, and increased consistency in the use of monitoring tools and execution of monitoring activities. These issues raised concerns about NTIA's ability to effectively oversee the equipment procurement and deployment that would be central to grantees' completion of BTOP projects and fulfillment of the program mission. NTIA submitted a responsive action plan to address our recommendations and implemented a number of corrective actions. As NTIA continues to strengthen its monitoring efforts, we believe that grantee procurement and

installation of equipment is a critical area that NTIA should emphasize in its ongoing monitoring efforts.

NTIA faces several challenges in this endeavor. For example, we are concerned that BTOP site visits and desk reviews do not always verify:

a. ***Proper use of federal funds.*** Even though NTIA's monitoring plan notes the importance of federal funds being used as intended, we are not aware of staff verification of equipment deployments and operations during site visits.

b. ***Inventory.*** Even though the NTIA site visit checklist requires program officers to verify that the grantee has an adequate inventory management system, we are not aware of officers observing assets listed on inventories or verifying asset tag numbers as a part of reviews.

c. ***Technical solutions.*** It is unclear whether BTOP has sufficient staff with the necessary technical expertise to verify the suitability of equipment and technologies selected by grant recipients.

The potential for cost savings in equipment acquisitions exists for some BTOP projects. In our November 2011 report on NTIA's monitoring efforts, we made several recommendations to the bureau to strengthen its oversight of BTOP projects. Effective oversight can discourage waste, fraud, and abuse by verifying that recipients have effective internal controls over equipment purchases and deployments. Also, effective oversight enhances the likelihood that grant recipient technical solutions are appropriate and that procured equipment is safeguarded. Desk reviews and site visits are tools that the program office uses to identify problems and facilitate course corrections prior to the expenditure of significant funds. NTIA's effectiveness in implementing the recommendations from our November 2011 report—and other lessons learned through the monitoring of its projects—will minimize opportunities for misspending federal grant funds on unapproved or ineffective solutions.

FRED UPTON, MICHIGAN
CHAIRMAN

HENRY A. WAXMAN, CALIFORNIA
RANKING MEMBER

ONE HUNDRED TWELFTH CONGRESS

**Congress of the United States**

**House of Representatives**

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August 14, 2012

Mr. David Gray
Deputy Inspector General
U.S. Department of Agriculture
Room 117-W Jamie Whitten Building
1400 Independence Avenue, S.W.
Washington, D.C. 20250

Dear Mr. Gray:

Thank you for appearing at the Subcommittee on Communications and Technology hearing entitled "Broadband Loans and Grants" on Wednesday, May 16, 2012.

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for 10 business days to permit Members to submit additional questions to witnesses, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please e-mail your responses, in Word or PDF format, to Charlotte.savercool@mail.house.gov by the close of business on Tuesday, August 28, 2012.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: The Honorable Anna Eshoo, Ranking Member,
Subcommittee on Communications and Technology

Attachment

Subcommittee on Communications and Technology
**"Broadband Loans and Grants"**
May 16, 2012
Additional Questions for the Record

**The Honorable Greg Walden**

1. ***How many audits of BIP is your office currently working through? Would you be willing to share those audits with the Committee when you have completed them?***

**Response:** Currently, we have two ongoing audits of the Broadband Initiatives Program (BIP). We will provide the Committee with copies of the final reports as soon as they are issued. The two ongoing audits are:

a. American Recovery and Reinvestment Act of 2009 (Recovery Act) – Broadband Initiatives Program (BIP), Pre-Award Controls (09703-0001-32)

- Our objectives are to assess RUS' internal controls over the approval of BIP loan and grant applications (pre-approval controls). Specifically, we will determine if: (1) RUS' corrective actions adequately addressed prior OIG and GAO broadband audit recommendations as they relate to BIP; (2) RUS controls were adequate to ensure BIP participants and projects met eligibility requirements; (3) RUS established effective controls over contractor reviews of BIP applications; (4) RUS effectively coordinated BIP with the National Telecommunications and Information Administration and the Federal Communications Commission; (5) RUS took actions to mitigate the risks of overbuilding in service areas; and (6) RUS' definitions of "unserved" and "underserved" areas met the intent and purpose of the Recovery Act.

b. American Recovery and Reinvestment Act of 2009 (Recovery Act) – Broadband Initiatives Program (BIP) – Post-Award Controls (09703-0002-32)

- Our objectives are to assess RUS' controls over BIP awardees' fulfillment of their grant and loan/grant agreements (post-award controls). As part of the audit, we will also evaluate the effectiveness of BIP in meeting/attaining the goals of the Recovery Act.

***2. Has your office audited any of the non-BIP broadband loan and grant programs of RUS, such as the Community Connect program, the Distance Learning and Telemedicine program, and the Telecommunications Infrastructure Loan Program? If you have not, would your office consider reviewing the efficacy of those programs in the near future?***

**Response:** Yes, OIG reviewed the Community Connect Grant Program in 2005 as part of our Broadband Loan and Grant Program audit.[1] That audit found that RUS did not have a system for tracking loan or grant projects. It also found that RUS did not have written instructions governing the administration of these programs. Our current audit work (as referenced in our response to Question #1) is reviewing RUS' corrective actions to address these issues.

In fiscal year (FY) 2013, we plan to conduct a follow-up audit to (1) identify and evaluate management controls over the Community Connect Grant program; (2) determine whether grant recipients met eligibility requirements and used grant funds as intended; and (3) determine the impact of the Recovery Act BIP on the Community Connect Grant program. RUS did not administer the Community Connect Grant program for the 2-year period (approximately FYs 2009 and 2010) of the Recovery Act BIP.

We have not audited the Distance Learning and Telemedicine Program given the relatively small dollars involved compared to some of the high-risk, high dollar USDA programs. Although we have not recently audited RUS' Telecommunications Infrastructure Loan Program, we will consider it in planning for future audits.

**The Honorable Henry Waxman**

***1. How does the OIG determine whether or not to investigate a complaint?***

**Response:** There are three key factors that determine whether OIG will investigate a complaint. The first includes an initial assessment of potential criminal activity in a referral. In many instances, OIG receives referrals alleging criminal activity when in fact the issue of concern is more readily addressed administratively or from a policy perspective. A second factor that affects whether an investigation is opened is whether the United States Attorney's Office will accept the matter for prosecution. The third factor is whether we have the resources to conduct the investigation.

***2. How many complaints has the OIG received about BIP awards? How many complaints about BIP awards has the OIG investigated? How many complaints has the OIG referred to RUS for further action?***

**Response:** Since FY 2009, Investigations has received 25 complaints involving BIP awards through the OIG hotline. Of those 25 complaints, 2 complaints were referred directly to RUS. The 23 remaining complaints were sent for initial assessment to either OIG Audit or Investigations. Eighteen (18) of those complaints were ultimately forwarded to RUS and 5 remain pending with Audit or Investigations. OIG has four open investigations involving BIP.

[1] OIG, Audit Report 09601-0004-Te, "Rural Utilities Service Broadband Grant and Loan Programs," September 2005.

***3. Administrator Adelstein testified at the hearing that all OIG concerns and recommendations in previous audits of non-Recovery Act RUS broadband loan programs have been addressed. Have all of OIG's concerns with the Rural Broadband Loan Program been addressed? Does the OIG assess whether RUS has addressed outstanding audit findings?***

**Response:** The USDA agency responsible for determining resolution and final closure of OIG recommendations, the Office of the Chief Financial Officer (OCFO), found that RUS had achieved final action for all prior OIG broadband recommendations on March 24, 2011. Achieving final action means that OCFO determined that RUS has implemented the corrective actions agreed upon by the agency and OIG.

In the course of conducting our current BIP audits (referenced in our response to Rep. Walden's Question #1), we are assessing whether RUS has addressed previous broadband audit recommendations, as they relate to BIP.

***4. Administrator Adelstein testified at the hearing that 7.5% of BIP projects have yet to draw down on any loan or grant funds. What is OIG doing to ensure that these 22 projects, that would appear to be at particular risk, receive adequate oversight?***

Response: Our post-award BIP audit is assessing, in part, the timeliness of awardees' quarterly progress reports to RUS, the internal controls RUS has implemented to ensure that BIP projects are on schedule to be timely completed, and the status of project construction.

During our current fieldwork (August 29, 2012), RUS officials stated that only 7 of the 22 BIP projects still remain without any draw-downs of their BIP loan or grant awards. None of the remaining 7 awards falls into our statistical sample. However, our audit examination of sampled projects involves related testing of RUS' post-award controls at the awardees' headquarters. This will include reviews of project expenses, supporting documentation, and construction status. Therefore, our audit will be able to address situations such as the 22 prior BIP projects without draw-downs, and whether RUS has controls to limit this type of inactivity.

We do not have resources to do detailed audits on all of the 22 or 7 slow-drawing projects. Given that, since our sample of 83 projects (being tested in-depth) was done statistically, we may be able to directly project any results found in our sample projects to the entire universe of 320 BIP projects and $3.5 billion in obligations.

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