

**SUMMARY OF TESTIMONY OF GARY SHORMAN
PRESIDENT AND CEO, EAGLE COMMUNICATIONS, INC.**

- Eagle Communications, Inc. (“Eagle”) is a small, employee-owned business based in Hays, Kansas. Eagle offers high-speed broadband Internet access service, high definition cable television service, and digital telephone service in central and northwestern Kansas. In the last 5 years alone, Eagle has invested over \$20 million to bring cutting edge broadband to its service areas. 98% of the homes passed by Eagle’s plant have access to broadband connections, and 100% of our cable modem customers have access to broadband service at 6 MB downstream/2MB upstream or faster. As a result of its efforts to continually upgrade its broadband service, 90% of Eagle customers can access the Internet at speeds of 10 MB or better, nearly 40% at 50 MB or better, and many have access to speeds of up to 100 MB or more.
- Eagle strongly supports the primary goals of the Broadband Initiatives Program (“BIP”). However, certain BIP-funded projects may actually frustrate the goals of BIP, lead to wasteful spending, create enormous economic barriers for existing providers, and limit the funds that would otherwise go to residents in other areas whose broadband needs were contemplated by the Recovery Act.
- Last January, RUS announced a \$101 million BIP award to one of Eagle’s competitors, Rural Telephone Service Co. (“RTS”). RUS stated that the award would be used to provide service in an area 99.5 percent unserved or underserved, but RTS has said that the money will be used in part to build and upgrade its network in Hays, Kansas.
- Hays is one of the best-served communities in western Kansas, with broadband available from Eagle and other providers. Eagle had demonstrated to RUS that it provides extensive broadband service in Hays, and urged RUS to seek out information about the broadband services already being offered in Hays by AT&T, RTS/Nex-Tech and other carriers.
- RUS argues that this project met the technical requirements for BIP funding, but the award violates the spirit and the intent of both Congress’s Recovery Act broadband provisions and BIP’s own rules, and demonstrates a serious flaw in the award process. While much of the geographic area covered by the award may be technically unserved, almost 50% of the 23,000 homes and businesses that are within the RTS project area are located in Hays. This means that millions of federal dollars will go towards overbuilding Eagle and other service providers in a non-rural area.
- Facing a government-subsidized competitor creates tremendous difficulties for small companies like Eagle and puts its continued viability seriously at risk. Funding served areas creates disincentives for providers to continue deploying broadband through private investment. Companies that have taken the financial risk of serving a rural market, and serving it well, without government assistance cannot realistically be expected to continue to do so if they must face a government-subsidized competitor. Moreover, wasting valuable dollars to overbuild well-served communities at the expense of unserved residents of Kansas and elsewhere does not make sense.
- Eagle asks that this Committee consider legislation that would require wasteful funding to be returned to the Treasury so it can be used for other, more pressing and needed services; that any future governmental funding go to areas where sufficient access to broadband is lacking; and that this Committee assume an active oversight role over funding awards to ensure that Eagle’s experience is not unnecessarily repeated. Rather than devoting scarce funds to overbuild an area already served, funds that would be expended in Hays should be returned to the U.S. Treasury.

TESTIMONY OF GARY SHORMAN

**PRESIDENT AND CEO
EAGLE COMMUNICATIONS, INC.**

on

ARRA Broadband Spending

before the

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

**UNITED STATES HOUSE OF REPRESENTATIVES
WASHINGTON, D.C.**

February 10, 2011

TESTIMONY OF GARY SHORMAN

PRESIDENT AND CEO EAGLE COMMUNICATIONS, INC.

Good morning. My name is Gary Shorman, and I am the President and Chief Executive Officer of Eagle Communications, Inc. (“Eagle”). Thank you for inviting me today to share my experience about the impact of the Recovery Act’s broadband stimulus funding program, specifically the Broadband Initiatives Program (“BIP”) administered by the USDA’s Rural Utilities Service (“RUS”), on our small, employee-owned business based in Hays, Kansas.

Eagle Communications offers high-speed broadband Internet access service, high definition cable television service, and digital telephone service. We also offer web-hosting, e-business, and wireless solutions. Our service area includes 32 cable systems in central and northwestern Kansas communities serving nearly 18,000 customers. The size of our communities ranges from less than 250 in Cuba, Kansas to our largest community, Hays, which has a population of just over 20,000. Ninety-eight percent of the homes passed by our cable plant have access to broadband connections, and 100% of those cable modem customers have access to broadband service that offers 6 MB downstream/2MB upstream or faster service. As a result of our continued and significant efforts to continually upgrade our broadband service, 90% of our customers can access the Internet over our fiber deep plant at speeds of 10 MB or better, nearly 40% at 50 MB or better, and many have access to speeds of up to 100 MB or more.

Our company has 277 employees, 212 of which are employee-owners through our Employee Stock Ownership Plan. These employee-owners live, work, and raise families in the same communities that we serve. Our continued success is important to each of our employee-owners at Eagle.

Our company is also involved charitably within these communities. Our employee-owners dedicate thousands of volunteer hours annually across the state. Our “Eagle Cares” program, a partnership with the Salvation Army, helps needy individuals with their telephone, Internet and cable payments. In 2010, Eagle’s trucks delivered “meals on wheels” to retirees when bad weather kept regular drivers off the road, we recently donated emergency heart defibrillator units to community schools, and we have raised hundreds of thousands of dollars for children by sponsoring an annual telethon. Eagle was also one of the first in the country to connect its schools with broadband Internet connections. We like what we do, and we like where we do it.

I would like to begin by stating that I strongly support the primary goals of BIP. In fact, Eagle applied for several BIP awards in areas we believed were unserved, but our applications were denied. Quality broadband services should be available to all regions of the country, including the least densely populated areas of the country. Broadband is a crucial driver of economic recovery and global competitiveness. Broadband links rural America to the rest of the country and the world, creates jobs, improves educational opportunities, and delivers health care more efficiently. Eagle has invested over \$20 million to bring broadband to its service areas, but we recognize that there are still some rural consumers who lack access to broadband. I was pleased that BIP placed special emphasis on remote and rural areas without any first generation broadband, to allow all areas of the country to enjoy the benefits of broadband service.

My company’s concern with the program, however, is that as it has been implemented, certain funded projects may actually frustrate the goals of BIP, lead to wasteful spending, create enormous economic barriers for existing providers, and limit the funds that would otherwise go to residents in other areas whose broadband needs were contemplated by the Recovery Act.

My testimony today will address these points in a little more detail.

RUS'S AWARD TO RTS

In January 2010, RUS announced a \$101 million BIP award to one of our competitors, Rural Telephone Service Co. (“RTS”) – nearly one-third of all the money awarded in Round One – split about evenly between a grant and a loan.^{1/} We were stunned to find that while RUS’s announcement of the award stated that it would be used to “provide service in an area 99.5 percent unserved/underserved,” RTS’s CEO in an interview said that in fact, the money would be used in part to build and upgrade its network in Hays, Kansas – an area that Eagle and others already serve.

In fact, Hays is one of the best-served communities in western Kansas. As I mentioned, Eagle provides broadband service of up to 100 mbps via fiber, cable modem, and wireless technologies. AT&T also offers high-speed broadband through the community, as does RTS’s own affiliate, Nex-Tech.^{2/} In fact, the Kansas Corporation Commission report last month on the availability of broadband services in Kansas shows that 99.99% (11,191) of the 11,193 total households in Ellis County, where Hays is the county seat, already have access to broadband of 3-6 mbps downstream and at least 200 kbps upstream.^{3/} It also shows that there are many areas of Kansas that truly lack and need broadband service.

EAGLE’S EFFORTS TO PARTICIPATE IN THE PROCESS

We were particularly surprised to hear that Hays was among the served communities

^{1/} The award is comprised of a \$49,588,807 grant and a \$51,612,842 loan for a last mile project. See *Agriculture Secretary Vilsack Announces \$310 Million in Recovery Act Funds for Rural Broadband Projects*, USDA Press Release (Jan. 25, 2010), available at <http://www.usda.gov/wps/portal/usda/usdahome?contentidonly=true&contentid=2010/01/0032.xml>.

^{2/} For the Ellis County, Kansas broadband service inventory map see: ftp://ftp.connectkansas.org/CKSPublic/Connect_Kansas_Mapping/County_Maps/County_Broadband/Broadband_Ellis.pdf (last updated October 1, 2010).

^{3/} See *Report to the Legislature Regarding the Availability of Broadband Services in the State of Kansas*, Attachment D, available at http://www.kcc.state.ks.us/pi/2011_broadband_report.pdf.

covered by the award, because we had done our best to determine whether or not Hays was covered by RTS's application, and to the extent it was, to inform RUS of the extensive broadband already available in Hays. However, despite Congress's goal that the award process be transparent, we found it to be exactly the opposite.

Although RUS published maps of RTS's proposed service areas so that existing service providers could demonstrate that they provide broadband services in the area, when Eagle viewed RTS's proposed service area on the RUS-designated broadbandusa.gov website, we were unable to clearly determine whether or not Hays was covered. It appeared from the map that all or most of Hays was excluded. In an exercise of caution, Eagle nonetheless submitted data to RUS to show that it provides extensive broadband service in Hays, and a RUS field representative even made an on-site visit to verify this information. We also urged RUS to seek out information about the broadband services being offered in Hays by AT&T, RTS/Nex-Tech and other carriers.

After the award's announcement, we were still uncertain as to whether Hays was included. We wrote repeatedly to RUS Administrator Adelstein seeking clarification as to the extent that Hays was actually included in the funded project, and when RUS did not promptly reply, submitted a Freedom of Information Act ("FOIA") request to RUS asking for a copy of the application, information relating to the geographic scope of the award, and information related to RUS's determination that the area was unserved or underserved.^{4/} Congressman Jerry Moran made a similar inquiry to RUS on March 18. Only in mid-April did RUS finally reply to Representative Moran (we did not receive any response for several more months). Included in the response was a map different from that which previously had been available on RUS's

^{4/} RUS docketed the FOIA request as Request No. 10-106-R.

website. This map appears to show all of Hays as included in the project.^{5/} We have since repeatedly tried to follow-up with RUS to obtain information on how this could have happened and to ask about certain apparent deficiencies in RTS's application in identifying Hays as a covered community, to no avail.

IMPACT OF THIS AWARD ON EAGLE

The fact is, that while RUS argues that this project met the technical requirements for BIP funding, it violates the spirit and the intent of both Congress's Recovery Act provisions for broadband and BIP's own rules, and demonstrates a serious flaw in the award process. While much of the geographic area covered by the award may be technically unserved, almost 50% of the 23,000 homes and businesses that are within the RTS project area are located in Hays.^{6/} And all available data indicates that in the Hays area and Ellis County generally, more than 99% of all households already have access to high-speed broadband service today. This means that millions of federal dollars will go towards overbuilding Eagle and other service providers in a non-rural area, a result clearly not envisioned by the Recovery Act or the BIP program's stated priorities.

Facing a government-subsidized competitor creates tremendous difficulties for small companies like Eagle and puts our continued viability seriously at risk. We have invested over \$20 million in private capital in the last 5 years alone to bring cutting-edge broadband to our communities. Using scarce federal resources to undermine that investment by skewing the

^{5/} Cf. BroadbandUSA.gov Rural Telephone Service Co, Inc. Service Area Map *with* Letter from RUS Administrator Jonathan Adelstein to Representative Jerry Moran, at Attachment "Rural Telephone Services Company BIP-Funded Service Area" (undated letter from April 2010).

^{6/} See Mike Corn, "Rural Gets \$100M in grants, loans," HAYS DAILY NEWS (Jan. 26, 2010), *available at* <http://www.hdnews.net/Story/rural012610>. RUS Administrator Adelstein and the CEO of RTS have each tried to emphasize that the Hays overbuild only covers 8 of the 4,600 miles of this project. See "Under Fire: Adelstein Defends Broadband Stimulus Grants," *CableFax*, March 11, 2010; Mike Corn, "Eagle Takes Issue with Federal Aid," HAYS DAILY NEWS (April 4, 2010). Such a small geographic area could be easily excised from this project. As noted above, those 8 miles contain almost half of the homes and businesses within the project, all of which have access to robust broadband service. RTS should be forced to compete in Hays fairly, without government subsidy.

playing field is wrong. It threatens the jobs of our 277 employees who live in the very communities the award was intended to benefit, offsetting new jobs created by the project, and undermines one broadband provider in the area to benefit another.

Eagle is happy to face competition from other providers. We have competed with RTS for many years, just as we have competed with large corporations like DISH Network, AT&T, Verizon, and DirecTV. That type of competition, however, differs from government-backed investment in particular companies. RTS already has repeatedly gained millions from government support programs. Even prior to its \$101 million BIP award, RTS received assistance from RUS on at least 32 other projects, and received many millions of dollars from federal and state Universal Service Fund (“USF”) programs.^{7/} Specifically, over a 5-year period, RTS received over \$100 million in USF support for its wireline network and its wireless affiliate received almost \$50 million in additional USF support. The \$101 million in BIP funding for a fiber network thus represents the third network RTS is building at taxpayer expense.

By injecting this level of BIP funding into our existing service area, on top of the tens of millions that RTS receives every year in USF support, the government is effectively penalizing our small company that has invested private capital in its communities while supporting another company that has repeatedly benefitted from government subsidies. Competing with such a handpicked beneficiary of taxpayer funds greatly and unnecessarily disadvantages a small, private, employee-owned business as ours.

It is already clear to us the overwhelming impact that the BIP award to RTS will have on our operations. RTS has approached every Hays area resident and asked for permission to install – *for free* – network boxes on each residence in preparation for its buildout. It has people all

^{7/} See FCC’s Response dated May 4, 2009 to U.S. House of Representatives Committee on Energy and Commerce Universal Service Fund Data Request of April 1, 2009, pp. 139, 177, 215, available at http://republicans.energycommerce.house.gov/Media/file/News/050409_FCC_Response_on_USF.pdf.

over the city working evenings and weekends to contact residents and businesses to secure this approval. RTS's subsidiary in Hays, Nex-Tech, has sent letters to Hays residents advertising that the construction of Nex-Tech's fiber-to-the-premise communications system "will soon begin," seeking permission to install the fiber, and emphasizing that the "fiber installation is FREE for you." Moreover, the letters entice Hays residents to sign up to enter drawings to "Win a Free Laptop Computer!" and "Win a 50" Hi-Def TV." RTS's CEO has stated publicly that it anticipates tremendous response to these efforts, and expects to win at least 75% of the households this way.^{8/} It is unreasonable to expect a privately funded company to match these offers or expect to compete against this kind of government funding.

BIP awards must be consistent with the goals of the program and made with full awareness of marketplace realities. Funding served areas creates disincentives for providers to continue deploying broadband through private investment. A robust broadband strategy inevitably depends on this continued private investment – government subsidies cannot fund all the broadband deployment needed for the country to become truly broadband-accessible. Companies that have taken the financial risk of serving a rural market, and serving it well, without government assistance cannot realistically be expected to continue to do so if they must face a government-subsidized competitor. Moreover, wasting valuable dollars to overbuild well-served communities at the expense of unserved residents of Kansas and elsewhere does not make sense.

EAGLE'S RECOMMENDATIONS

I conclude today by first, thanking the Committee for holding this hearing; second, asking that this Committee consider legislation that would require wasteful funding to be

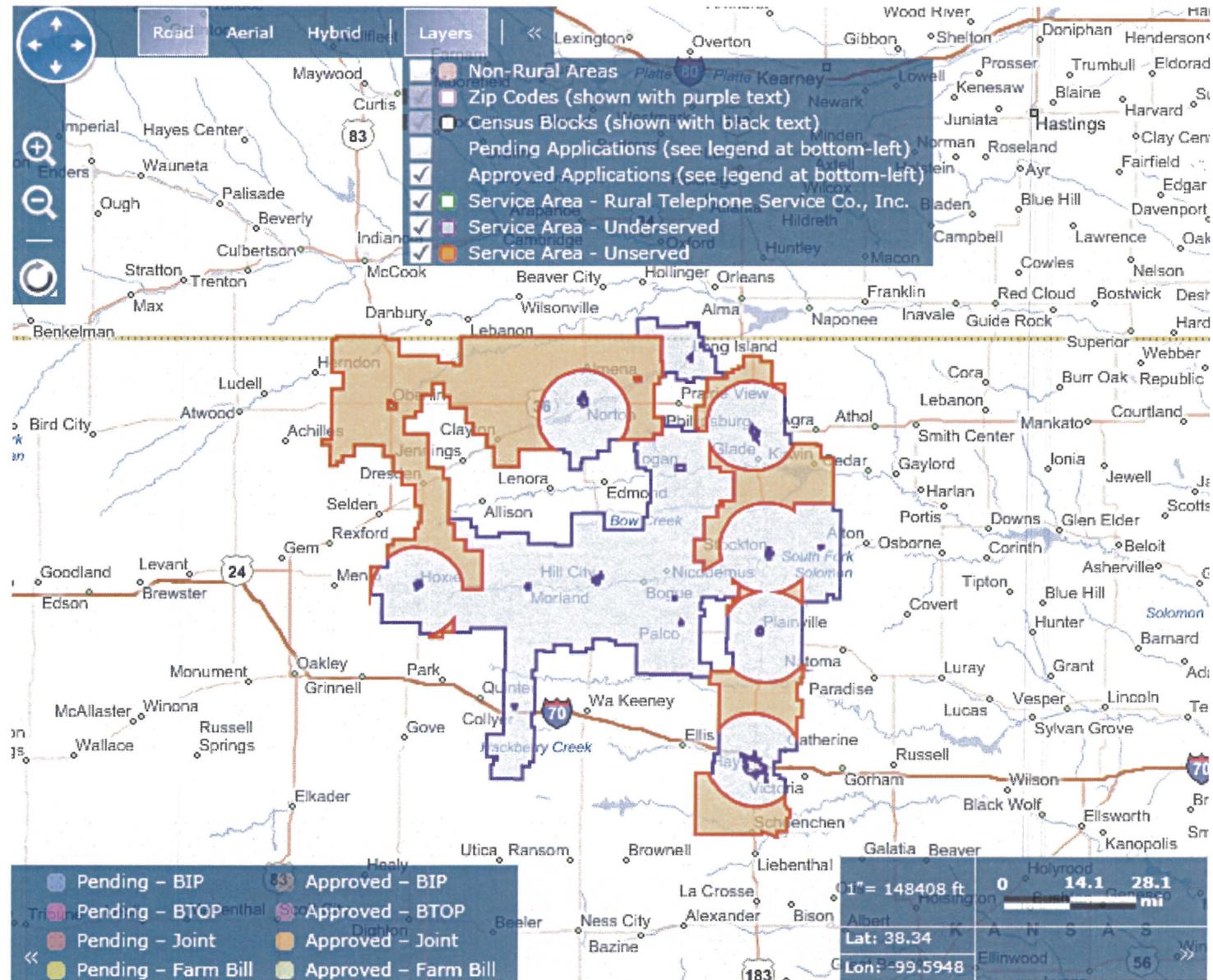
^{8/} See Mike Corn, "Nex-Tech Pushes Ahead With Project," HAYS DAILY NEWS (Feb. 14, 2010), available at <http://www.hdnews.net/Story/rural021410>.

returned to the Treasury so it can be used for other, more pressing and needed services; and third, asking that this Committee assume an active oversight role over funding awards to ensure that my experience is not unnecessarily repeated.

Specifically, RUS should be required to defund RTS's project in the Hays non-rural served area and other places where BIP funds were spent in manners contrary to the goals of the program. Rather than devoting scarce funds to overbuild an area already served, the funds that would be expended in Hays should be returned to the U.S. Treasury. Any future governmental funding should go to areas of the state where sufficient access to broadband is lacking, as identified by both the Kansas Corporation Commission and Connect Kansas.

Taxpayer dollars should not be wasted in an area that is already being served with significant broadband by more than one enterprise, at the potential cost of job loss for Eagle employees, lost competition, and lost additional investment by private enterprise. RTS should be required to compete fairly in Hays and other served areas, without the benefit of a federal subsidy. Moreover, our experience shows that there remains a need for meaningful transparency in the process before providing funding.

I sincerely thank you for the opportunity to speak here today and I appreciate your willingness to consider ways to ensure that broadband stimulus funds are spent in the most effective way possible for all Americans.



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Rural Telephone Services Company BIP-Funded Service Area

