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3 HEARING ON ARRA BROADBAND SPENDING

4 THURSDAY, FEBRUARY 10, 2011

5 House of Representatives,

6 Subcommittee on Communications and Technology

7 Committee on Energy and Commerce

8 Washington, D.C.

9           The Subcommittee met, pursuant to call, at 10:00 a.m.,  
10 in Room 2322 of the Rayburn House Office Building, Hon. Greg  
11 Walden [Chairman of the Subcommittee] presiding.

12           Members present: Representatives Walden, Terry,  
13 Stearns, Shimkus, Bono Mack, Bass, Blackburn, Gingrey,  
14 Scalise, Latta, Guthrie, Kinzinger, Barton, Eshoo, Markey,  
15 Doyle, Matsui, Barrow, Towns, DeGette, Dingell, and Waxman  
16 (Ex Officio).

17           Staff present: Ray Baum, Senior Policy Advisor, C&T;  
18 Mike Bloomquist, Deputy General Counsel; Allison Busbee,

19 Legislative Clerk; Fred Neil, Chief Counsel, C&T; Peter  
20 Kielty, Senior Legislative Analyst; Brian McCullough, Senior  
21 Professional Staff Member, CMT; Jeff Mortier, Professional  
22 Staff Member; Katie Novaria, Legislative Clerk; Lyn Walker,  
23 Coordinator, Admin/Human Resources; Roger Sherman, Chief  
24 Counsel; Shawn Chang, Counsel; Jeff Cohen, Counsel; and Sarah  
25 Fisher, Policy Analyst.

|  
26           Mr. {Walden.} The subcommittee will come to order. And  
27 I would like to ask any of our guests we probably have some  
28 seats there you can take advantage of.

29           And I want to recognize myself for an opening statement.  
30 I want to welcome you all today. With today's hearing we  
31 begin exercising our important oversight role regarding the  
32 approximately \$7 billion in taxpayer money the ARRA allocated  
33 to the NTIA and the RUS for broadband grants and loans. We  
34 will start to examine what the money is being used for and  
35 how we can minimize waste, fraud, and abuse. We will also  
36 consider a staff discussion draft intended to improve  
37 oversight and return unused or reclaimed money to the United  
38 States Treasury. I want to emphasize that this is a  
39 discussion draft. It is only a starting point. We hope it  
40 will elicit suggestions from our colleagues on both side of  
41 the aisle, the witnesses, and any other interested parties to  
42 help accomplish a goal I think we all share that is treating  
43 taxpayer money with the utmost care and insuring that when we  
44 do spend it, it gets spent wisely.

45           When we originally considered the broadband provisions  
46 of the ARRA in the Energy and Commerce Committee, my  
47 colleagues and I suggested some revisions. We were not  
48 convinced that this much money needed to be spent. Private

49 sector investment has resulted in 95 percent of the country  
50 having access to broadband and two-thirds of the country  
51 subscribing. As the FCC's national broadband plan pointed  
52 out, we have gone from 8 million broadband subscribers to 200  
53 million in approximately a decade. We propose therefore that  
54 any subsidies be targeted to the five percent of households  
55 that are unserved and only if it is otherwise uneconomic for  
56 the private sector to deploy there. And we thought it would  
57 be a good idea to finish the nationwide broadband map before  
58 the government started to spend the taxpayer's money. Our  
59 suggestions were not adopted. We will be interested to see  
60 the results and hopefully to learn from the things that work  
61 and the things that don't. Measuring performance I think is  
62 crucial. Otherwise we won't know what is worth repeating and  
63 what we should avoid.

64 A cost benefit analysis is also important. With a 1.48  
65 trillion deficit this year and enormous deficits predicted  
66 for the rest of the decade we have a responsibility to cut  
67 costs. I would suggest for example we determine how much we  
68 end up spending for each additional broadband subscriber. We  
69 ought to know that. All of this is important not just to  
70 evaluate the programs at hand. We are, after all, soon to  
71 embark on a discussion of how to reform the Universal Service  
72 Fund and the President has also recently announced a goal of

73 reaching 98 percent of the country with wireless broadband.  
74 I love the goal, but believe we must be cost efficient about  
75 how we go about it and be realistic in our expectations of  
76 what taxpayers can afford. In pursuit of this goal,  
77 increasing the deployment of wireless broadband to the  
78 unserved areas of rural American it will be important to  
79 remember the colloquial definition of insanity; and that is  
80 repeating the same actions but expecting a different outcome.

81 While there has been disagreement over provisions in the  
82 ARRA everyone agrees on the importance of oversight. My  
83 concerns about possible waste, fraud, and abuse are  
84 heightened by the fact that the only funding currently  
85 available to the NTIA for oversight expires March 4 with the  
86 continuing resolution. My hope is that we can discuss with  
87 the Government Accountability Office and the inspectors  
88 general what we should be keeping an eye out for what they  
89 ordinarily do in their oversight roles and what we can do  
90 help them in that task. The draft legislation is offered in  
91 that vein. It would ensure that the NTIA and the RUS report  
92 to Congress on any red flags the inspectors general find as  
93 well on what they propose to do about it. It would also help  
94 ensure that any money that is returned, reclaimed, or goes  
95 unused is put back in the U.S. Treasury. One would think  
96 that is the ordinary course but there is some ambiguity in

97 the law about whether and when the program administrators  
98 must de-obligate funding and whether it comes back to the  
99 Treasury when they do.

100       So I look forward to hearing from our witnesses about  
101 the language in the draft bill and where there are things  
102 that they suggest we should change.

103       [The prepared statement of Mr. Walden follows:]

104 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
105           Mr. {Walden.} With the minute and a half left I would  
106 like to defer now to the gentleman from Texas, Mr. Barton,  
107 and yield the remainder of my time.

108           Mr. {Barton.} Well, thank you, Chairman Walden. It is  
109 good to see you in the Chair. I am sure we are going to have  
110 a very productive subcommittee and I look forward to working  
111 with you and Ms. Eshoo on a wide range of telecommunications  
112 issues.

113           This issue is something that shows the subcommittee in  
114 its oversight role. We have had a number of concerns about  
115 the broadband plan as it was rolled out several years ago.  
116 And my position as Ranking Member and Mr. Stearns who was the  
117 Ranking Member of this subcommittee in the last Congress, we  
118 wrote several letters to some of you that are sitting at the  
119 table asking about how the funds were being spent and where  
120 the grants were going. Some of the answers we got back to  
121 those letters were to say the least unsatisfactory. So,  
122 today in the Majority with Mr. Walden as Chairman, we are  
123 going to ask some of those same questions. We certainly  
124 support broadband. We support broadband in rural America,  
125 but we also think the money should be spent wisely,  
126 effectively, and transparently.

127           So I look forward to the testimony, and Mr. Chairman,

128 again I look forward to working with you. This is an  
129 important subcommittee. The economy of the United States can  
130 be very positively impacted by what we do in this  
131 subcommittee. So with that let us have a good hearing and  
132 let us get to work.

133 [The prepared statement of Mr. Barton follows:]

134 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
135           Mr. {Walden.} Thank you, Mr. Chairman. I now am  
136 delighted to yield the--for opening statement purposes to my  
137 Ranking Member on the subcommittee, Anna Eshoo from  
138 California. We have already met and talked and I look  
139 forward to a very productive relationship on this  
140 subcommittee as we work to improve telecommunications in our  
141 country and so delighted to work with you and I yield the 5  
142 minutes to you.

143           Ms. {Eshoo.} Thank you, Mr. Chairman very much for your  
144 generous comments. I want to return them by wishing you well  
145 and congratulating you on being the Chairman of this  
146 subcommittee which is really so important, I agree, to our  
147 national economy.

148           There are a number of issues that we are going to be  
149 working on and today's hearing I think is an important one to  
150 examine the dollars that were appropriated, oversight of the  
151 Congress is one of the most important things that we do. So  
152 I know that the members on this side of the aisle look  
153 forward to working with you. Many of these issues are really  
154 nonpartisan so I hope that we can come together for the good  
155 of the country and produce products that the American people  
156 will be proud of and that will benefit the Nation. Again, I  
157 welcome the oversight of these two programs of the BTOP and

158 the BIP because it is important to root out problems. It is  
159 also instructive because we then can find solutions to the  
160 problems. We need a thorough understanding if in fact there  
161 are obstacles that applicants and awardees face in gaining  
162 access to and utilizing the dollars that Congress  
163 appropriated. We have to ensure that the programs are  
164 efficient and effective because we all know what the  
165 consequences are in an era where every dollar is just so  
166 precious. We want these dollars to dance. We want them to  
167 count.

168       The United States of America invented the Internet, but  
169 today we are falling behind in broadband deployment and by  
170 some measure we are now ranked 15th in the world. There are  
171 different measurements but the one that eludes us is number  
172 one. And I think if we do anything together that we raise  
173 that up and that the United States really take over and be  
174 number one in the world. We need significant investment from  
175 both the public and the private sectors to close the gaps and  
176 increase broadband affordability and ensure that Americans  
177 have access to the highest speeds and the latest technology.  
178 And I wanted to repeat that--the highest speeds and the  
179 latest technology. That is why I strongly advocated more  
180 than 2 years ago for recovery act funding to expand broadband  
181 deployment in our country. And that is what I--why I raise

182 it. Again, because I think that America should be number  
183 one, not 15th, or 24th or 17th. If we could build the  
184 transcontinental railroad in the 1800's, I think that we can  
185 certainly do this. So, two years ago a study predicted that  
186 adding 30 million new broadband lines would raise USGDP by  
187 over \$110 billion. Others have specifically examined the  
188 benefits of broadband stimulus concluding that a \$10 billion  
189 investment in broadband networks could support an estimated  
190 498,000 new or retained U.S. jobs per year. And Mr.  
191 Chairman, at this point I would like to ask that this be--the  
192 following be placed in the committee's record today. These  
193 are all comments from letters of members relative to the  
194 program and their support of it.

195 Mr. {Walden.} Without objection.

196 [The information follows:]

197 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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198           Ms. {Eshoo.} Thank you. So like the building of our  
199 Nation's interstate highway system, this transformation won't  
200 happen overnight. Recovery Act dollars have begun making  
201 their way into communities across the nation and when  
202 completed, these projects will have a critical impact  
203 especially on community anchor institutions, an issue that  
204 Congresswoman Matsui and others worked very hard on the  
205 committee. Public safety, first responders, schools,  
206 libraries, public health facilities, these are all areas that  
207 affect every single one of our Congressional Districts. NTIA  
208 and RUS have undertaken major task in administrating their  
209 respective programs. Along the way, there have been some  
210 bumps in the road. Some of which I, myself have raised in  
211 past hearings and in letters to the NTIA administrator. And  
212 these challenges are to be expected I think with a multiyear  
213 program. So we have an opportunity to strengthen these  
214 programs. I am committed to ensuring that there is success  
215 because the country needs this and I think in fact demands  
216 it. I think it is clear that our future depends upon the  
217 ubiquitous and rapid deployment of broadband and the Recovery  
218 Act is but a first step in this process and there is much  
219 more work to do.

220           So thank you, Mr. Chairman, congratulations to you

221 again. I don't know how much time I have left, but--

222 Mr. {Walden.} None. You are out.

223 Ms. {Eshoo.} None. Okay. All right, I am out of time.

224 Mr. {Walden.} You were perfectly timed to that one.

225 Ms. {Eshoo.} All right, all right, perfectly timed to

226 use all the time. Again, my congratulations to you and to

227 all of the members. We look forward to working together with

228 you.

229 [The prepared statement of Ms. Eshoo follows:]

230 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
231           Mr. {Walden.} Thank you very much. Now we will yield  
232 for 5 minutes to the Vice Chairman of the committee, a  
233 gentleman who has put a lot of time and effort into  
234 telecommunications issues especially a Universal Service Fund  
235 over the years, Mr. Lee Terry of Omaha.

236           Mr. {Terry.} Thank you, Mr. Chairman. I am pleased  
237 that we are exercising our oversight over the broadband  
238 provisions of the stimulus bill. While some of may have  
239 wished that the \$7 billion allocated for broadband would have  
240 been designated for only unserved households or that we would  
241 have waited until the broadband mapping project was  
242 completed, we all should agree that it is important for this  
243 committee to be involved in oversight now that all the funds  
244 have been obligated. We must analyze risks associated with  
245 the program and help facilitate proper oversight by the  
246 administering agencies including our witnesses here today  
247 and thank you all for being here today.

248           Given the current state of our economy and the absolute  
249 necessity to cut federal spending now it is imperative that  
250 we do our due diligence in making sure that proper oversight  
251 of both BTOP and BIP is conducted in that any waste, fraud,  
252 or abuse is eliminated and that any unused or misused money  
253 is returned to the Treasury. I realize the fine on unserved

254 v. unserved is well, some people think it is over, but I do  
255 look forward to hearing from our witness Gary Shorman today  
256 on his concerns about an overbill that is taking place in  
257 rural Kansas due to BIP award. We have received further  
258 complaints from Montana, from Maine, from Washington State,  
259 from Illinois, so you are not alone. Overbuilding in my  
260 opinion should be considered as waste and abuse as we are  
261 subsidizing competition in areas that are already being  
262 served by broadband providers. Many rural telecommunication  
263 companies have raised this issue with me since the stimulus  
264 was enacted and it would seem to me that this would be  
265 something the inspector general would like to examine when  
266 conducting oversight. It is my understanding that although  
267 awards were obligated by September 30, 2010, only 300 million  
268 on that has been spent to date under BTOP and less than 100  
269 million has been dispersed under BIP. I look forward to  
270 hearing from our witnesses today on how disbursements will be  
271 handled from here on and what kind of performance milestones  
272 must be met as to avoid any rescission of funds. I am  
273 worried that oversight could be needed for years to come on a  
274 program that was initially intended to be an immediate job  
275 creator and needed stimulus in our economy now. I understand  
276 that both RUS and NTIA will be challenged by the oversight, a  
277 dramatically larger and more diverse portfolio of projects

278 while also facing impact of a lack of sufficient oversight,  
279 staff, and resources. We must make sure they have both their  
280 ability to monitor and ensure compliance with the terms of  
281 the awards. I welcome a discussion on legislation that will  
282 ensure that any unused or reclaimed funds are returned to the  
283 federal Treasury and hope that we can act quickly but  
284 prudently in providing NTIA and RUS the appropriate resources  
285 to find these unused and reclaimed funds. And thank you for  
286 holding this hearing and I yield back.

287 [The prepared statement of Mr. Terry follows:]

288 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
289           Mr. {Walden.} Thank the gentleman. Now I would like to  
290 recognize the Ranking Member of the Full Committee, the  
291 distinguished gentleman from California, Mr. Waxman for 5  
292 minutes for an opening statement.

293           Mr. {Waxman.} Thank you very much, Mr. Chairman.  
294 Chairman Walden, I thank you for scheduling this important  
295 hearing and congratulations on your new role as Chairman of  
296 the Subcommittee on Communications and Technology. And I  
297 want to work with you and Ranking Member Eshoo and our  
298 members to accomplish important bipartisan objectives.  
299 Despite some policy differences we can accomplish a great  
300 deal together. I hope we get started by addressing the  
301 spectrum availability and reform, universal service, and the  
302 construction of a nationwide interoperable broadband public  
303 safety network. We also need to conduct appropriate  
304 oversight of ongoing programs and the agencies under our  
305 jurisdiction. And I am pleased that our first subcommittee  
306 meeting is an oversight hearing of two important Recovery Act  
307 programs, the Broadband Technology Opportunity Program and  
308 the Broadband Initiates Program.

309           When Congress passed the landmark Recovery Act, we built  
310 oversight into the very structure of these programs. We knew  
311 it was imperative to provide the Departments of Commerce and

312 Agriculture with the tools necessary to conduct vigorous  
313 oversight of approximately \$7 billion in broadband spending.  
314 The Commerce Department Inspector General was allocated \$16  
315 million and the Agriculture Department Inspector General  
316 \$22.5 million to oversee and audit programs, grants, and  
317 activities funded by the Recovery Act. We need to ensure  
318 that the IG's and Agency program managers have enough  
319 resources for this significant task.

320         With billions of dollars invested in hundreds of  
321 broadband projects throughout the Nation it would be  
322 irresponsible for Congress to skimp on oversight funding. We  
323 had a vigorous debate about the merits of the Recovery Act  
324 and the broadband programs at the start of the last Congress  
325 and it is clear that Republicans and Democrats did not  
326 disagree on the merits, we should all be able to agree that  
327 the agencies and their independent inspectors general should  
328 have adequate resources to oversee these projects.

329         I am encouraged that we are going to hear today from the  
330 IG's at the Department of Commerce and Agriculture as well as  
331 the GAO. The Department of Commerce IG and GAO have been  
332 warning Congress for months that adequate funding must be  
333 assured for these activities. We should heed their advice.  
334 In our zeal for budget cutting we must not trade a temporary  
335 savings in the area of oversight for a significantly larger

336 future losses due to waste, fraud, or abuse.

337           We will also hear from Eagle Communications, a company  
338 that has concerns about the BIP program and how RUS allegedly  
339 funded competitors in its service area to the detriment of  
340 Eagle's business. We should listen carefully to these  
341 concerns but it is unfortunate the subcommittee did not  
342 invite the RUS administrator to testify today so we could be  
343 further enlightened.

344           I am also pleased that we will hear from the CEO of the  
345 nonprofit MERIT network, a Michigan based research and  
346 education network provider that is constructing more than  
347 2,000 miles of ``middle mile'' shared infrastructure to  
348 address Michigan's backhauled needs. Dr. Welch, a former  
349 Army Colonel who served as the Dean for Information  
350 Technology at WestPoint and the Chief of Software Engineering  
351 for Delta Force is also a constituent. And Mr. Dingell's,  
352 his project has bipartisan support from the Michigan  
353 delegation including Chairman Upton who has previously noted  
354 ``this funding provides a tremendous boost to our region  
355 helping a home grown business expand and create jobs in an  
356 effort to deliver broadband to countless families,  
357 businesses, schools, libraries, and health centers across the  
358 state.''

359           Finally, we have before us a Republican legislative

360 proposal to capture de-obligated Recovery funds. None of us  
361 should oppose the prompt return of unused Recovery Act funds  
362 to the U.S. Treasury and I believe that is what current law  
363 requires. We should discuss how this new law--this new  
364 legislation differs from existing statutory requirements. We  
365 also should be careful not to establish a process to defund  
366 projects without cause especially now that obligated money  
367 has been translated into real projects with real jobs in  
368 every state. I would like to thank our witnesses for their  
369 participation at this hearing and I look forward to their  
370 testimony. Thank you, Mr. Chairman.

371 [The prepared statement of Mr. Waxman follows:]

372 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

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373           Mr. {Walden.} And I thank the gentleman from  
374 California. I just note for the record note that we have met  
375 with the RUS administrator. We will have additional  
376 hearings. The RUS administrator actually is out of the  
377 country right now, and so we are going to go ahead with this  
378 part and then we hope to have another hearing where they are  
379 available. Now I would like to recognize the Chairman  
380 Emeritus of the Committee, Mr. Dingell, who would like to  
381 welcome our witness, Dr. Donald Welch who is President and  
382 CEO of Merit Network. So with this I would yield to the  
383 distinguished gentleman from Michigan, Mr. Dingell.

384           Mr. {Dingell.} Mr. Chairman, you are most courteous. I  
385 thank you for your graceful treatment of me and my  
386 constituent and I congratulate you on your first hearing  
387 which is an important one.

388           I want to welcome our witnesses today particularly Dr.  
389 Donald Welch, the President, and the CEO of Merit Network  
390 Incorporated which is based in my District in Michigan.  
391 Merit is the recipient of over \$100 million in grants from  
392 the National Telecommunications and Information  
393 Administrations Broadband Technology Opportunities Program  
394 (BTOP) to extend the broadband Internet infrastructure to  
395 anchor institutions and underserved areas in Michigan,

396 Wisconsin, and Minnesota. So welcome, Dr. Welch, and we wish  
397 you great success in Merit's very valuable project. Federal  
398 support for infrastructure projects such as yours support  
399 economic growth will help our country to recover from current  
400 recession and also are going to be very useful in moving this  
401 country forward in terms of technology which is so important.  
402 Again, Mr. Chairman, I thank you for your courtesy to me and  
403 yield back the balance of my time.

404 [The prepared statement of Mr. Dingell follows:]

405 \*\*\*\*\* INSERT 6 \*\*\*\*\*

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406           Mr. {Walden.} And I thank the gentleman and with that,  
407 Dr. Welch, if you would like to be our leadoff witness just  
408 go ahead and make sure your microphone is turned on and we  
409 look forward to your testimony. We appreciate your being  
410 here, sir.

|  
411 ^STATEMENTS OF DONALD J. WELCH, PRESIDENT AND CEO, MERIT  
412 NETWORK, INC; GARY SHORMAN, PRESIDENT AND CEO, EAGLE  
413 COMMUNICATIONS; MARK GOLDSTEIN, DIRECTOR, PHYSICAL  
414 INFRASTRUCTURE ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE; THE  
415 HONORABLE PHYLLIS K. FONG, INSPECTOR GENERAL, U.S. DEPARTMENT  
416 OF AGRICULTURE; AND THE HONORABLE TODD J. ZINSER, INSPECTOR  
417 GENERAL, U.S. DEPARTMENT OF COMMERCE.

|  
418 ^STATEMENT OF DONALD J. WELCH

419 } Mr. {Welch.} Thank you. Good morning, my name is Don  
420 Welch. I am the President and CEO of Merit Network and I am  
421 very proud to be here on behalf of Merit Network and its  
422 community in Michigan.

423 Merit Network, as you have heard, is an independent non  
424 for profit that is governed by the public universities.  
425 Merit receives no subsidies from the State. Our mission is  
426 to provide community anchor institutions with advanced IT and  
427 network services to foster collaboration and community and to  
428 facilitate knowledge transfer with and between community  
429 anchors. Merit is guided by a vision of equal access to  
430 information for all Michigan citizens regardless of  
431 geographic location.

432           For almost a decade, Merit has had a planned to build  
433 fiber to serve community anchor institutions in rural and  
434 remote regions of Michigan where an absence of viable  
435 backhaul has left entire communities underserved but we have  
436 lacked the funds to do so. Through BTOP and with the support  
437 of the Michigan public universities, Merit's vision is within  
438 reach to the benefit of all sectors of society and the entire  
439 State. Merit's project is 2,287 miles of fiber optic cable  
440 lit at 10 Gbps that provides both ``middle mile'' or backhaul  
441 infrastructure in underserved areas and redundant paths out  
442 of poorly connected areas that will improve service for the  
443 entire region. Merit and its commercial sub recipients will  
444 each own infrastructure. Merit serving the community anchors  
445 the sub recipients focusing on homes, businesses, and local  
446 internet service providers. Our project will directly  
447 connect over 100 community anchor institutions and has the  
448 ability to serve an additional 900 community anchors. The  
449 network will also have access points in 51 central offices  
450 and create 12 new collocation spaces making it easy for  
451 existing providers to leverage the project. Thus the network  
452 can indirectly serve over 55,000 businesses and 1 million  
453 homes.

454           The majority of the cost for many local ISPs in the  
455 service area are for backhaul to internet exchange points

456 like that are in places like Chicago. Our project provides  
457 cost effective backhaul to areas where it is lacking. In  
458 some instances customers could see over 10 times the  
459 bandwidth for less than half of what they are currently  
460 paying. Merit is a member of the Schools, Health Care and  
461 Libraries Broadband Coalition because we share their belief  
462 that high capacity broadband is the key infrastructure that  
463 K-12 schools, universities, colleges, libraries, health care  
464 providers, and other community anchors need to provide 21st  
465 century education, information, and public services.

466 Community anchor institutions also need access to a private  
467 network of peer organizations for the exchange of  
468 information, consolidation, and sharing of services.

469         The Merit Network is the platform our members use to  
470 collaborate, cut costs, and provide better service to their  
471 constituents and patrons. Our project will eliminate  
472 geographic barriers for Michigan community anchor  
473 institutions. Merit has members in the Upper Peninsula that  
474 are further away from Merit's offices in Ann Arbor than we  
475 are right now from--in D.C. from Ann Arbor. This project  
476 will enable them to collaborate with members across the State  
477 as if they were across town.

478         The project is not without risk. The BTOP grants  
479 provide 80 percent of the estimated capital costs of the

480 project. Merit and the sub recipients are responsible for 20  
481 percent and the maintenance of the complete work. Merit is  
482 responsible for cost overruns and operational costs during  
483 construction. We have drawn out our existing staff to  
484 support the project before we can reduce cost or generate any  
485 revenue. Even exceeding the budget by one penny per foot in  
486 construction and materials means an additional cost of  
487 120,000 for us--a substantial amount. We have every  
488 incentive to spend the money wisely.

489 Merit controls the project and mitigates its risk in  
490 several ways. A competitive RFP process is used to select  
491 vendors. Merit has established a process for handling all  
492 federal funding. We have vetted the process with a red team  
493 exercise in which we try to anticipate every way someone  
494 could get improper access to the funds. Merit has hired four  
495 BTOP funded staff to support our reporting and compliance  
496 team. That team includes the librarian as we expect to have  
497 over 100,000 auditable documents by the project's completion.

498 The impact of our project's success will be profound and  
499 long lasting for Michigan which is working hard to revitalize  
500 its economy. We believe that education and economic  
501 development are inseparable. The two key components  
502 necessary for economic development are an educated work force  
503 of life-long learners and unfettered access to the global

504 information grid. Our project targets both, creating  
505 knowledge infrastructure upon which Michigan will compete and  
506 grow in the 21st century. Thank you very much.

507 [The prepared statement of Mr. Welch follows:]

508 \*\*\*\*\* INSERT 1 \*\*\*\*\*

|  
509           Mr. {Walden.} Dr. Welch, thank you and I would be  
510 remiss not to also thank you for your many years of service  
511 it the U.S. Army and your teaching at WestPoint. We  
512 appreciate that.

513           Mr. {Welch.} Thank you.

514           Mr. {Walden.} Now I would like to move on to Mr. Gary  
515 Shoram--Shorman--I am sorry--President and CEO of Eagle  
516 Communications. Mr. Shorman, you have five minutes for your  
517 opening statement. We thank you for participating in our  
518 hearing today.

|  
519 ^STATEMENT OF GARY SHORMAN

520 } Mr. {Shorman.} And thank you for being here. My name  
521 is Gary Shorman. I am President and Chief Executive Officer  
522 of Eagle Communications, a small business that is based in  
523 Hays, Kansas. And I appreciate being invited today to talk  
524 about my experience on the impact of how the Recovery Act's  
525 Broadband Initiative Program or BIP has had on our company.

526 Eagle offers high speed internet, high definition cable  
527 television, and digital telephone service to our communities  
528 throughout central and northwestern Kansas. In the last five  
529 years alone we have invested over \$20 million to make sure  
530 our customers have cutting edge technology for broadband and  
531 broadband speeds. Our company has 277 employees of which 212  
532 are employee owners through our employee stock ownership  
533 plan. That means that our employee owners live, work, and  
534 volunteer their time in the communities that we serve. We  
535 like what we do and we like where we do it. Eagle strongly  
536 supports the primary goals of the BIP program. Broadband is  
537 a critical driver in the economic recovery and global  
538 competitiveness especially in rural Kansas and rural America  
539 because it provides and creates jobs and provides for a  
540 better educational opportunity. Our concern with the

541 program, however, is that how it has been implemented and  
542 certain funded project may actually frustrate the goals of  
543 BIP. My testimony today will explain part of my concerns.

544 In January of 2010, the RUS announced a \$101 million BIP  
545 award, nearly one-third of the money awarded in round one to  
546 one of our competitors, Rural Telephone Service Company--that  
547 is (RTS). We were stunned at while the award's announcement  
548 stated that is would be used to provide ``service in an area  
549 that was 99.5 percent underserved or unserved'' RTS announced  
550 that money would be used to build part of their plant and  
551 upgrade their network in Hays. Hays is one of the best  
552 served for technology in western Kansas. Eagle, AT&T, and  
553 RTS's own affiliate Nex-Tech all provide high speed broadband  
554 service there. A report last month on the availability of  
555 broadband in Kansas showed that 99.99 percent of the  
556 customers in Ellis County where Hays is the home--is the  
557 county seat already have access to broadband and high speed  
558 broadband.

559 The fact that Hays was one of the communities covered by  
560 this award was particularly surprising. One, because we had  
561 done our best to determine whether Hays was even included in  
562 the RTS application and secondly, we tried to inform the RUS  
563 of the extensive broadband service already available there.  
564 A RUS field representative actually made a stop and a visit

565 in Hays. The fact is that while the RUS argues that this  
566 project meets the technical requirements for BIT funding, it  
567 certainly violates the spirit and the intent of the Recovery  
568 Act and BIPS own rules. It also demonstrates a serious flaw  
569 in the award process.

570 While much of the geographic area covered by the award  
571 may be technically unserved almost half of the 23,000 homes  
572 in this project, homes and businesses within this project are  
573 actually in Hays. This means that millions of federal  
574 dollars will go towards overbuilding Eagle and other service  
575 providers in this non-rural area. With this award, the  
576 government is effectively penalizing small companies like ours  
577 that has invested its own risk capital in this network.  
578 Companies that have taken financial risk of servicing rural  
579 markets and serving them well it is unrealistic to expect us  
580 to continue to do so if we have to face large government  
581 competition; moreover, wasting valuable time and dollars to  
582 overbuild a community that is well served at the expense of  
583 unserved Kansans and unserved others? That just doesn't make  
584 sense. Eagle is happy to face competition from other  
585 providers, but we cannot effectively compete with a  
586 government backed favorite. RTS has already gained millions  
587 from government supported program. Even prior to the \$101  
588 million BIP award, RTS received millions of dollars in

589 assistance from the RUS on 32 other projects in the same area  
590 and they have received millions of dollars from federal and  
591 state Universal Service Fund program. It is clear to us that  
592 the BIP award to RTS will have a serious impact on our  
593 business. RTS has approached every Hays resident and asked  
594 for permission to install for free network boxes on their  
595 home. And they are offering to those who grant permission a  
596 chance to win a free 50 inch HD TV, maybe a laptop computer,  
597 even an I pad. It is unreasonable to expect a privately  
598 funded company to match these free offers and expect to  
599 compete against this kind of funding.

600 I am here to ask that this committee consider  
601 legislation that would require wasteful funding to be  
602 returned to the Treasury so that it can be used for other  
603 more pressing and more needed services, and they assume a  
604 more oversight role over funding of awards to ensure that our  
605 Eagle experience is not unnecessarily repeated. RUS should  
606 also be required to defund RTS's project in the Hays non-  
607 rural area and other places where BIP funds were spent in  
608 manners contrary to the goals of the program. Taxpayer  
609 dollars should not be wasted in an area that is already being  
610 well served at the potential cost of jobs, lost competition,  
611 and loss of additional investment by private companies.  
612 Again, thank you for inviting me to be here and I look

613 forward to your question.

614 [The prepared statement of Mr. Shorman follows:]

615 \*\*\*\*\* INSERT 2 \*\*\*\*\*

|

616           Mr. {Walden.} Mr. Shorman, thank you for your testimony  
617 today. It is most helpful in our look at this issue. I  
618 would now like to recognize Mr. Mark Goldstein, Director of  
619 Physical Infrastructure Issues from the Government  
620 Accountability Office. Mr. Goldstein, you have 5 minutes.  
621 We appreciate the good work your agency does and we look  
622 forward to your comments and testimony.

|  
623 ^STATEMENT OF MARK GOLDSTEIN

624 } Mr. {Goldstein.} Thank you, Mr. Chairman and members  
625 of the subcommittee. We appreciate the opportunity to  
626 participate in this hearing to discuss oversight of the  
627 broadband programs funded through the Recovery Act.

628 As you know, access to broadband services seem as vital  
629 to economic, social, and educational development, yet many  
630 areas of the country lack access to or the residents do not  
631 use broadband. To expand broadband deployment adoption, the  
632 Recovery Act provided \$7.2 billion to the National  
633 Telecommunications and Information Administration and the  
634 Rural Utilities Service for grants or loans to a variety of  
635 program applicants. The Congress subsequently rescinded the  
636 \$300 million of this funding. The Recovery Act required that  
637 agencies awarded all funds by September 30, 2010.

638 This testimony summarizes an update to two prior GAO  
639 reports including one, NTIA and RUS's efforts to award  
640 Recovery Act broadband funds and two, remaining risks that  
641 NTIA and RUS face in providing oversight for funded projects.

642 NTIA and RUS awarded grants and loans for several  
643 hundred broadband projects in two funded rounds. By the end  
644 of fiscal year 2010 NTIA and RUS awarded grants and loans to

645 553 broadband projects across the country. These awards  
646 represent almost \$7.5 billion in obligated funds which exceed  
647 the 7.2 billion provided by the Recovery Act because an  
648 agency such as RUS that awards loans can obligate funds in  
649 excess of its budget authority.

650 In our review of the first funding round, we found that  
651 NTIA and RUS with the help of agency's contractors  
652 consistently substantiated information provided by awarded--  
653 by award recipients applications. We have not evaluated the  
654 thoroughness of the process used by agencies in the second  
655 round. Because of the challenges the programs face and what  
656 we have previously reported, we recommended that NTIA and RUS  
657 take several actions to ensure the funded projects receive  
658 sufficient oversight. These recommendations included the  
659 following.

660 One, that NTIA and RUS develop contingency plans to  
661 ensure sufficient resources for oversight of funded projects  
662 beyond fiscal year 2010 and that the agencies incorporate  
663 into their monitoring plans steps to address the variability  
664 and funding levels for program oversight beyond 2010. Two,  
665 that NTIA and RUS should use information provided by  
666 applicants to establish quantifiable outcome base performance  
667 goals by which to measure program effectiveness. Three, that  
668 NTIA should determine whether commercial entities receiving

669 BTOP grants should be subject to an annual audit requirement.

670         We can report that NTIA and RUS have taken several  
671 actions to address these recommendations and improve  
672 oversight. These actions include that NTIA has developed and  
673 is beginning to implement a post-award framework to ensure  
674 the successful execution of BTOP. This framework includes  
675 three main elements: monitoring and reporting, compliance  
676 and technical assistance. As part of its oversight plans,  
677 NTIA intends to use desk reviews and on-site visits to  
678 monitor the implementation of BTOP awards and ensure  
679 compliance with award conditions by recipients, and intends  
680 to provide technical assistance in the form of training:  
681 Webinars, conference calls, workshops, and outreach for all  
682 recipients of BTOP funding. RUS is also putting into place a  
683 multifaceted oversight framework to monitor compliance and  
684 progress of recipients of BIP funding.

685         Unlike NTIA, which is developing a new oversight  
686 framework, RUS plans to replicate the oversight framework it  
687 uses for existing grants and loan programs. The main  
688 components of RUS's oversight framework are financial and  
689 program reporting, and desk and field monitoring. According  
690 to RUS officials, no later than 30 days after the end of each  
691 calendar-year quarter, BIP recipients will be required to  
692 submit several types of information to RUS, including balance

693 sheets, income statements, statements of cash flow, summary  
694 of rate packages, and the number of broadband subscribers in  
695 each community. In addition, RUS intends to conduct desk and  
696 site reviews.

697 RUS extended its contract with ICF International to  
698 provide BIP program support through 2013. According to RUS,  
699 the agency fully funded the contract extension using Recovery  
700 Act funds and no appropriations are required to continue the  
701 contract until fiscal year 2013. In addition, RUS extended  
702 the term of employment through fiscal year 2011 for 25  
703 temporary employees assigned to assist with the oversight of  
704 BIP projects. Last spring, NTIA reported that for-profit  
705 awardees will be required to comply with program-specific  
706 audit requirements set forth by the Office of Management and  
707 Budget under the Single Audit Act. This audit and reporting  
708 requirement will give NTIA the oversight tool it needs to  
709 help ensure that projects meet the objectives of the Recovery  
710 Act and guard against waste, fraud, and abuse.

711 Finally, despite these actions, NTIA and RUS have not  
712 fully addressed all our recommendations and we therefore  
713 remain concerned about the oversight of broadband programs.  
714 First, NTIA's oversight plan assumes the agency will receipt  
715 additional funding for oversight. For fiscal year 2011, the  
716 President's budget requested included nearly \$25--\$24 million

717 to continue oversight activities and funds as they are expire  
718 shortly. NTIA reported that it is imperative that it receive  
719 sufficient funding to ensure effective oversight. RUS's  
720 oversight activities which the agency in part addressed  
721 through the extension of this contract with ICF  
722 International, however, should there be a reduction in RUS's  
723 fiscal year 2011 budget and beyond, the agency will need to  
724 assess the fiscal impacts and the temporary employment of  
725 these staff members. Therefore, we believe the agencies and  
726 especially NTIA need to do more to ensure their oversight  
727 reflect current fiscal realities. Second, we continue to  
728 keep our recommendations open regarding performance goals.  
729 NITA has taken some steps on this recommendation such as  
730 creating new goals related to new network miles and  
731 workstations deployed, but the agency continues to establish  
732 additional goals and network is not yet complete.

733 Mr. Chairman and Members of the Subcommittee, this  
734 concludes my prepared remarks. I would be happy to answer  
735 any questions you may have.

736 [The prepared statement of Mr. Goldstein follows:]

737 \*\*\*\*\* INSERT 3 \*\*\*\*\*

|  
738           Mr. {Walden.} Thank you, Mr. Goldstein. Thank you.  
739 Thanks again for your work on this issue and for your advice  
740 and counsel. I would now like to recognize the Honorable  
741 Phyllis K. Fong, Inspector General, U.S. Department of  
742 Agriculture. Ms. Fong, we appreciate your input today and  
743 the work that you and your folks do and we look forward to  
744 you testimony.

|  
745 ^STATEMENT OF PHYLLIS K. FONG

746 } Ms. {Fong.} Thank you, Mr. Chairman, Ranking Member  
747 Eshoo, and Members of the Subcommittee. We appreciate the  
748 opportunity to testify this morning about our work in this  
749 broadband program.

750 As you may know, over the last 10 years, RUS has  
751 administered programs intended to provide broadband service  
752 to rural areas that lack these services. We did audits of  
753 these programs in 2005 and 2009, and our most significant  
754 findings were that RUS was funding projects in communities  
755 close to major metropolitan areas rather than in more rural  
756 areas, and that RUS's funding projects in areas that had pre-  
757 existing broadband service. We made a number of  
758 recommendations to RUS to help RUS improve the management of  
759 its programs and to focus funding on rural communities. RUS  
760 agreed with many of our recommendations but it has not yet  
761 fully implemented its corrective actions. We recognize in  
762 the OIG's office that recent legislation such as the 2008  
763 Farm bill and the Recovery Act has actually partially  
764 addressed some of the concerns that we raised, but we also  
765 believe that the basic policy goals and management challenges  
766 still exist with respect to delivery in these programs and so

767 we will continue our work with RUS to address these issues.

768         Let me briefly talk about fraud in the program. One of  
769 the things that our investigations have revealed that in some  
770 instances broadband providers receiving RUS funds have  
771 engaged in fraud and other criminal conduct. We have had  
772 some successful prosecutions where broadband companies have  
773 been convicted of submitting fraudulent invoices and claims.  
774 And as a result, those companies and some of those  
775 individuals have had to make restitution to the government  
776 and have received prison terms and other probationary terms.  
777 One company has in fact been debarred from doing business  
778 with the government for five years as a result of our  
779 investigative work.

780         With respect to oversight of the Recovery Broadband  
781 Program, as you all know the Recovery Act provided \$28  
782 billion to USDA across nine major mission areas. Of this  
783 amount, 2.5 billion was allocated for broadband. When we  
784 started to assess the--was going to perform multi-agency  
785 review of these programs and so we decided to hold in  
786 abeyance our own oversight until GAO had finished its work  
787 which it appears now an appropriate time. And so at this  
788 time we are planning to initiate audit work within USDA OIG  
789 on RUS's broadband program to determine how effectively it is  
790 running. We have not finalized our audit program, but the

791 kinds of issues that we are considering include the adequacy  
792 of RUS's oversight functions, RUS's use of a contractor,  
793 eligibility of borrowers and grantees, assessment of any  
794 delinquent or defaulted loans, and basically the use of  
795 program funds for authorized purposes. While we develop our  
796 program we will be working very closely with Commerce, GAO,  
797 and FCC to make sure that we don't duplicate efforts and we  
798 expect to roll our initiative in the spring of this year. So  
799 that concludes my statement and I welcome any questions.

800 [The prepared statement of Ms. Fong follows:]

801 \*\*\*\*\* INSERT 4 \*\*\*\*\*

|

802           Mr. {Walden.} Ms. Fong, thank you for your  
803 participation in our hearing and for the work that you do. I  
804 would now like to recognize the Honorable Todd J. Zinser,  
805 Inspector General U.S. Department of Commerce. Mr. Zinser,  
806 we appreciate your work and that of the folks who work with  
807 you on these efforts, and we look forward to your testimony.  
808 Sir, please go ahead.

|  
809 ^STATEMENT OF TODD J. ZINSER

810 } Mr. {Zinser.} Mr. Chairman, Ranking Member Ms. Eshoo,  
811 and Members of the Subcommittee, thank you for inviting me to  
812 testify today about our oversight of the Recovery Act  
813 Broadband spending at the Department of Commerce. My  
814 testimony this morning can be summarized in three points.

815 First, the Broadband Technologies Opportunities Program  
816 was a high-risk program from the outset. And now that the  
817 grants have been awarded and federal funds obligated, the  
818 risk is elevated because the grantees are now beginning to  
819 spend the money that they have received through their grants.  
820 Only about five percent of the broadband funds have been  
821 spent so far. The Recovery Act established \$4.7 billion  
822 Broadband Technology Opportunities Program or BTOP two years  
823 ago. The National Telecommunications and Information  
824 Administration was given responsibility for the program. The  
825 agency in its very dedicated work force have made a herculean  
826 effort in implementing the program so far. Nonetheless, it  
827 remains a high-risk program. The agency successfully awarded  
828 and obligated \$3.9 billion to 232 grantees by last year's  
829 deadline. Approximately \$3.4 billion is funding 123  
830 infrastructure projects including seven public safety

831 broadband networks. \$200 million is funding 65 public  
832 computer centers, and \$251 million is funding 44 projects for  
833 what is called sustainable broadband adoption.

834 In addition to these broadband grants NTIA has also  
835 awarded nearly \$300 million to 56 States, territories, and  
836 the District of Columbia to develop digital maps of broadband  
837 coverage for their jurisdictions. The large dollar amounts  
838 involved, the number of grants, the mix of grant recipients  
839 which include government, not for profit, for-profit  
840 entities, higher education, and Native American tribes, all  
841 with different levels of experience with federal grants, the  
842 technical nature of many of the grants, and the relative  
843 inexperience of the agency and its staff in administering  
844 such a large grant program all contribute to making this the  
845 most complex grant program NTIA has ever administered and the  
846 highest risk Recovery Act program for the Department of  
847 Commerce.

848 Second, the NTIA staff must now shift its attention and  
849 efforts from awarding the grants to managing the grants and  
850 conducting oversight making sure the recipients are properly  
851 spending the money and delivering on their broadband  
852 projects. For example, the program requires the grantees--  
853 the program requires and the grantees have agreed to match  
854 the federal funds with funds of their own. In addition to

855 the \$3.9 billion in federal funds, the grantees themselves  
856 have agreed to apply another \$1.4 billion to these projects.  
857 NTIA has to make sure that the matching funds committed by  
858 the grantees are real funds and not funds that exist only on  
859 paper or as a result of creative accounting treatments we  
860 have seen sometimes in our audits of other grant programs at  
861 the department. I am concerned that without real matching  
862 funds, these projects could wind up underfunded and result in  
863 incomplete projects or lower quality projects. There are  
864 many other aspects of oversight that NTIA must carry out.  
865 They have a sound approach and oversight but the agency must  
866 embrace their oversight role and must have the resource to do  
867 so.

868 Finally it is important that we all remain vigilant in  
869 preventing and detecting fraud. Transparency and  
870 accountability was made a key element of the Recovery Act.  
871 The reporting requirements and visibility of the spending for  
872 these projects is unprecedented. It is ultimately intended  
873 to keep the recipients of Recovery Act funds honest so that  
874 the taxpayers get what they paid for. Over the past two  
875 years members of OIG staff have delivered fraud awareness and  
876 grant compliance briefings to almost 3400 NTIA and Commerce  
877 employees and BTOP applicants and recipients. These  
878 briefings not only provided technical assistance on grant

879 compliance issues, but were also intended to let employees  
880 and grantees know how to recognize and report suspected  
881 fraud. Our focus will continue to be on compliance and fraud  
882 prevention and detection as the projects are carried out over  
883 the next few years. We especially appreciate the  
884 subcommittee's oversight and the invitation to testify this  
885 morning and look forward to working with the subcommittee on  
886 this important program. Thank you, sir.

887 [The prepared statement of Mr. Zinser follows:]

888 \*\*\*\*\* INSERT 5 \*\*\*\*\*

|  
889           Mr. {Walden.} Mr. Zinser, thank you, and I want to and  
890 I want to thank all of your witnesses for your terrific  
891 testimony today. It is most helpful in the work in we are  
892 doing here. I will start with questions. Ms. Fong, and Mr.  
893 Zinser, while a recognize the staff discussion draft of our  
894 legislation may not have all the right language yet, do you  
895 think it would be helpful if the standards and processes were  
896 de-obligating funds were less ambiguous? I will start with  
897 that. In the kind of work that you do and what we are trying  
898 to do I guess the question is, is do you think it would be  
899 helpful to have a clearer standard?

900           Ms. {Fong.} I will just take a crack at that. I don't  
901 believe in any of our audit work that we have identified  
902 difficulties in the past. We did make a number of  
903 recommendations in one of our audit reports that RUS go back  
904 and get money back from grants that had not been well  
905 performed. And we understand that RUS is still working  
906 through that process. Now, it has taken some time to do that  
907 so perhaps a recognition of the time involved would be  
908 helpful.

909           One of the things that we did notice in terms of the  
910 draft legislation is that it talks in terms of awards, grants  
911 and awards. And given the nature of the broadband program at

912 USDA which is usually a funding package of 75 percent grant,  
913 25 percent loan which can vary of course, we weren't sure  
914 whether the legislation addresses the issue of what happens  
915 to the loan piece of the package. The legislation seems to  
916 be clear about what happens with respect to the grant side,  
917 but then the accompanying loan that a recipient may have is  
918 that considered part of an award or do we need to be more  
919 clear about that so that as recipients go through the process  
920 they understand exactly what is on the table. So we would  
921 suggest a look at that language.

922 Mr. {Walden.} Excellent. Thank you. That is most  
923 helpful. Mr. Zinser?

924 Mr. {Zinser.} I do think it would be helpful to  
925 eliminate any ambiguity. I know for example there is  
926 provisions in the Dodd-Frank Wall Street Reform Bill that  
927 talks about unobligated money and the Recovery Act going back  
928 to the Treasury. And so--and we are also aware of various  
929 amendments to piece of legislation about rescinding or taking  
930 back Recovery Act money, so I think it would be a good idea  
931 for the subcommittee to kind of make its mark on what they  
932 want to happen with Recovery Act money.

933 That being said, our experience with grant--with the  
934 grant programs in the department is that it is a long drawn  
935 out process. Once the IG's office identifies a cost on a

936 grant project that we don't think should be paid out or  
937 unallowable, it is a long process, a long due process in  
938 getting the agencies to actually make a decision, give the  
939 grantee an opportunity to make its case, and actually decide  
940 that certain costs are unallowable. I think that whatever  
941 legislation comes about needs to make sure that that due  
942 process isn't--that that due process stays in place.

943 Mr. {Walden.} So let me ask you a couple other  
944 questions then. Under current laws, the decision to de-  
945 obligate funds by the RUS and NTIA Administrator is  
946 discretionary. Is there a clear standard and could a reward  
947 recipient continue to spend money even if you found waste,  
948 fraud, and abuse, and even if you recommended remedial  
949 action? So the first part of that, is there a clear  
950 standard--well, actually is the decision to de-obligate  
951 discretionary? We believe it is.

952 Ms. {Fong.} That is my understanding as well.

953 Mr. {Zinser.} Yes, I believe it is discretionary, sir.

954 Mr. {Walden.} That is one of the issues that we have  
955 with this legislation then. Is there a clear standard to de-  
956 obligate?

957 Mr. {Zinser.} I know that in the case where we will  
958 conduct an audit and recommend that certain costs be  
959 unallowed that ultimately the decision is left up to the

960 agency and it is an interpretation of accounting rules in a  
961 lot of cases, sir.

962 Ms. {Fong.} Exactly.

963 Mr. {Walden.} Is that the same, Ms. Fong?

964 Ms. {Fong.} Exactly.

965 Mr. {Walden.} And could award--could an award recipient  
966 continue to spend money even if you found waste, fraud, and  
967 abuse and even if you have recommended remedial action?

968 Mr. {Zinser.} If the agency does not take proper  
969 action, I would say yes, the grantee could continue to spend  
970 money. We find, for example, that even agencies that have  
971 been convicted of fraud if the agency doesn't check the  
972 excluded list before they made the grant award, that entity  
973 can get that grant and spend that money.

974 Mr. {Walden.} Ms. Fong.

975 Ms. {Fong.} And given the nature of the process, the  
976 process is that we as IG's will go in and do an audit and we  
977 will make a recommendation to the administrator say. The  
978 administrator then has some certain due process procedures  
979 that they follow with respect to the recipient. And as Mr.  
980 Zinser alluded to that process can take some time. So while  
981 that process is ongoing the recipient still has the  
982 responsibility to perform on the grant or loan. And so one  
983 would expect that that performance would continue. And so

984 depending on the length of time that the due process takes,  
985 you know, things could be unresolved for awhile.

986 Mr. {Walden.} My time has run out. I appreciate your  
987 comments. I would recognize now the Ranking Member, Ms.  
988 Eshoo.

989 Ms. {Eshoo.} Thank you, Mr. Chairman, and thank you to  
990 all of the witnesses. Ms. Fong, when you spoke in your  
991 testimony, I think it is important to state for the record  
992 where there was a clear misuse or fraud--I don't remember  
993 exactly which word you used.

994 Ms. {Fong.} Fraud.

995 Mr. {Eshoo.} Those were not Recovery Act funds.  
996 Correct?

997 Ms. {Fong.} Correct. We do not have any investigations  
998 of Recovery Act cases.

999 Ms. {Eshoo.} I just wanted to make sure that that is  
1000 clear for the record, because--

1001 Ms. {Fong.} That is right.

1002 Ms. {Eshoo.} --the hearing is about the Recovery Act,  
1003 what it established, does it have shortcomings, if there are  
1004 what are they, and what can we do about it. So I think that  
1005 that is very important. Oh Mr. Shorman, you are not happy.  
1006 And essentially I think what I heard you say your beef is  
1007 that essentially the government is competing with you and

1008 that an award was made for an area that is what--heavily  
1009 populated and that there is overlap. In your view is there  
1010 anything built into this that would create competition in any  
1011 of these areas? Or is it in your view that they only be  
1012 awarded and that there be a sole operator for the build out  
1013 of broadband funds--of the build out of broadband?

1014 Mr. {Shorman.} Well, I can report from kind of out in  
1015 the front line where I am. When in--

1016 Ms. {Eshoo.} No, just answer my question. I don't have  
1017 a lot of time.

1018 Mr. {Shorman.} Well, in the process of doing this if  
1019 you are looking at the legislation and asking how that would  
1020 work obviously I think this is a good first step. But it  
1021 seems to be there is a lot of discretion put into how these  
1022 agencies actually award this and the ability for Ms. Fong and  
1023 others to go in and say something is wrong. Call time out  
1024 and say something is wrong with this process to make it work.

1025 Ms. {Eshoo.} Well, we will deal with the government  
1026 agencies and their overview and we--we are going to have to  
1027 make sure that you have money to do oversight and all of  
1028 that. Otherwise we are all in trouble. But I want to get to  
1029 your beef. What brought you here? What is your problem?

1030 Mr. {Shorman.} Our community--

1031 Ms. {Eshoo.} What is it that you think needs to be

1032 fixed?

1033 Mr. {Shorman.} We had an award grant to a competitor of  
1034 ours that actually overbuilds our community. Our community  
1035 is a non-rural community of 20,000 plus people. Their award,  
1036 which I understand over half of the money in this total award  
1037 is being used to overbuild our community and provide a  
1038 competitive service to us and others in our community.

1039 Ms. {Eshoo.} Now did Eagle ever apply for BIP funds?

1040 Mr. {Shorman.} Eagle did apply.

1041 Ms. {Eshoo.} Areas that were already--

1042 Mr. {Shorman.} Eagle did. We were naïve in that  
1043 process.

1044 Ms. {Eshoo.} --they had providers?

1045 Mr. {Shorman.} We were naïve in that process. We  
1046 applied for funds in areas we felt were unserved. We applied  
1047 for that. We didn't apply to overbuild other people or do  
1048 that and in the process we were rejected.

1049 Ms. {Eshoo.} And what happened with that?

1050 Mr. {Shorman.} I think the actual quote was in one area  
1051 that actually had another loan applied we failed to  
1052 demonstrate that we met the criteria for being unserved in  
1053 that area.

1054 Ms. {Eshoo.} Was that the only reason that the--that  
1055 you withdrew your--

1056 Mr. {Shorman.} That was the only reason that we  
1057 received and that was one of the applications that happened  
1058 to get funded in the same project by Rural Telephone Service.

1059 Ms. {Eshoo.} Well, so you were rejected?

1060 Mr. {Shorman.} We were rejected.

1061 Ms. {Eshoo.} You are saying that you were rejected and  
1062 someone else wasn't? Is that your beef?

1063 Mr. {Shorman.} Well, it doesn't say this in the  
1064 application. It says that we failed to meet the criteria.

1065 Ms. {Eshoo.} I just want you to tell me what--I am  
1066 trying to get to the heart of what brings you here today. So  
1067 unhappy.

1068 Mr. {Shorman.} The heart of it is that we are wasting  
1069 government dollars, taxpayer dollars, my dollars to provide a  
1070 competitive service in the markets that serve, markets that  
1071 have multiple broadband providers.

1072 Ms. {Eshoo.} And my point is, is that in going into  
1073 underserved areas I don't know of an application that doesn't  
1074 have some overlap. You even acknowledged that your own  
1075 application had overlap. So are you saying that overlap in  
1076 this should be totally eliminated or is not fair or tell me  
1077 what it is?

1078 Mr. {Shorman.} Our application votes on unserved areas  
1079 that did not have broadband providers. This application

1080 over--or nearly half of the application overlaps a community  
1081 that has multiple broadband providers.

1082 Ms. {Eshoo.} Well, do you think that there is a  
1083 multiplicity of broadband providers that that isn't good for  
1084 the consumer?

1085 Mr. {Shorman.} If it is a fair playing field where  
1086 everybody--I have a chance to get government grants,  
1087 everybody gets government grants--there has to be a fair  
1088 playing field for being able to provide service. If one  
1089 provider has a boatload of government taxpayer money it just  
1090 makes it very hard for a private, small company like ours to  
1091 compete.

1092 Ms. {Eshoo.} Part of what I am struggling with is the  
1093 following. And that is that you are saying essentially the  
1094 government is too hard to compete with and I understand that  
1095 it is much larger than Eagle and a lot of other companies put  
1096 together, but they are--in going into underserved areas that  
1097 there is a spillover and you are not acknowledging that.

1098 Mr. {Shorman.} I grew up on the farm. I understand  
1099 unserved areas. If you are unserved that is what the program  
1100 is for. It is not for overbuilding major non-rural  
1101 communities.

1102 Ms. {Eshoo.} Okay. Thank you.

1103 Mr. {Walden.} Gentlelady's time has expired. I would

1104 now like to recognize the gentleman from Illinois, Mr.  
1105 Shimkus.

1106 Mr. {Shimkus.} Thank you, Mr. Chairman, and no one--  
1107 well, a lot of people have a great respect for Anna Eshoo and  
1108 I am one of her biggest fans on stuff we do on--but I want to  
1109 follow up on this line because it really tells the same story  
1110 that happened in my Congressional District. Mr. Shorman, I  
1111 think what helps answer this question is if you were to build  
1112 in a community of like size, what would be your cost to  
1113 capital?

1114 Mr. {Shorman.} One, it would be a tremendous cost  
1115 because you have to go through and--

1116 Mr. {Shimkus.} Well, what about what are you talking  
1117 about? What would you have to borrow?

1118 Mr. {Shorman.} My guess is in our case we would do it  
1119 differently. We are a private company. We fund things  
1120 differently. We do things differently than what--

1121 Mr. {Shimkus.} Well, what would it cost?

1122 Mr. {Shorman.} We haven't shown in Hays, but say \$30,  
1123 \$40 million for a company--

1124 Mr. {Shimkus.} So when the government gives a grant to  
1125 a competitor, what is your cost to capital?

1126 Mr. {Shorman.} Well, in this particular case their cost  
1127 is going to the government. It is a whole different process

1128 in going to a private institution to do that.

1129 Mr. {Shimkus.} I mean, the grant is a grant. That is  
1130 free money.

1131 Mr. {Shorman.} The grant is--it is 50 million and the--

1132 Mr. {Shimkus.} Free money. Our taxpayer's money  
1133 overbuilding a competitor who pays taxes. That is why we  
1134 messed up royally when we did not go by the broadband map.  
1135 When we don't develop a map and you don't know the direction  
1136 in which you are heading then you subsidize competing  
1137 entities. You give taxpayer money to companies to compete  
1138 against people who are providing the level of service that we  
1139 want across the country. I have what we think is now a  
1140 recent one. Just got it today. The light area zero to  
1141 2,000. Darker areas--these are areas that are unserved or  
1142 underserved and we still don't have good maps. So we gave  
1143 money to a competitor of yours, a grant. They didn't have to  
1144 borrow it. They didn't have to pay interest on it and they  
1145 are competing with you. Is that correct?

1146 Mr. {Shorman.} That is correct.

1147 Mr. {Shimkus.} Isn't that the beef?

1148 Mr. {Shorman.} It is a beef that it makes it really  
1149 tough for a private employee owned company to compete against  
1150 the government with taxpayer dollars that I pay a part of.  
1151 Correct.

1152 Mr. {Shimkus.} And that is why when we had the mark up  
1153 of the bill why we tried to on our side say let us have this  
1154 debate of underserved and unserved. And if we are going to  
1155 spend taxpayer dollars let us have taxpayers go to unserved  
1156 areas. Would you have had a beef if this company came in and  
1157 said we want a grant and we are going to an area that is not  
1158 served?

1159 Mr. {Shorman.} I think that is the perfect part of this  
1160 program to reach unserved Kansans, unserved Americans with  
1161 the program.

1162 Mr. {Shimkus.} Would that have met the goals of the  
1163 Administration on the broadband plan?

1164 Mr. {Shorman.} From my standpoint it would have been  
1165 exactly what they were looking for.

1166 Mr. {Shimkus.} When we give taxpayers money to  
1167 overbuilding an area doesn't that delay our ability to read  
1168 our broadband plan for the country?

1169 Mr. {Shorman.} It certainly refocuses money to people  
1170 who already have multiple providers and then at the result of  
1171 people on that map you have shown, there are those areas that  
1172 don't have broadband. And so those people don't have the  
1173 resources that they need.

1174 Mr. {Shimkus.} And there are stories like this all over  
1175 the country and there is one in my District, too. And so I

1176 am going to turn to Mr. Zinser and Ms. Fong. In my District  
1177 I have an incumbent provider who currently exceeds the  
1178 broadband guidelines being published and considered by the  
1179 FCC in the development of a National Broadband Plan they are  
1180 providing speeds of 10 megabytes down and one megabytes up in  
1181 all communities they serve. They also continue to invest  
1182 private capital, private capital lots of business capital  
1183 formation to surpass the FCC broadband deployment speeds.  
1184 You can imagine that they were shocked to hear that another  
1185 provider would be moving into their service area who had  
1186 committed to providing wireless service at 3 megabytes. Now  
1187 this entry came how? How did this new entry come into the  
1188 market? The Federal government--a grant overbuilding,  
1189 competing services that meet the National Broadband Plan.  
1190 This story gets worse because this company then immediately  
1191 sells to a business. So they get the government money; they  
1192 then sell out to a larger company. Was that your plan, Ms.  
1193 Fong?

1194 Ms. {Fong.} Well, just to be clear--

1195 Mr. {Shimkus.} I mean, is that what we wanted to do?  
1196 Is that what we really--was that our plan?

1197 Ms. {Fong.} I don't know.

1198 Mr. {Shimkus.} You, okay.

1199 Ms. {Fong.} I am the inspector general and not

1200 responsible for delivering the program.

1201 Mr. {Shimkus.} All right, then let us go to Mr. Zinser.

1202 Is that--was that the plan?

1203 Mr. {Zinser.} Well, we are responsible for overseeing  
1204 the program. We are not responsible for running the program,  
1205 but I--it doesn't really sound like that should be part of  
1206 the plan, sir.

1207 Mr. {Shimkus.} I agree. Thank you. I yield back my  
1208 time.

1209 Mr. {Walden.} Gentleman yields back his time. Now  
1210 according to my list here we go to Mr. Barrow--has departed.  
1211 And then we will go to Mr. Markey who is not here. So then  
1212 next on the list is the Distinguished Chairman Emeritus, Mr.  
1213 Dingell for 5 minutes.

1214 Mr. {Dingell.} Thank you, Mr. Chairman. Now, this  
1215 question to Dr. Welch. Doctor, to what extent does Merit  
1216 rely on NTIA's staff with respect to technical assistance,  
1217 guidance and the prevention of waste, fraud, and abuse?

1218 Mr. {Welch.} Sir, we rely extensively on our federal  
1219 program officer and the rest of the NTIA staff. The program  
1220 that we are under is a complex program and our federal  
1221 program officer is our single point of contact. He knows our  
1222 program as well as people in our organization do. He knows  
1223 us. When we come to him with a problem he helps us solve it.

1224 He keeps us out of trouble as we try to understand the rules  
1225 and regulations that can sometime seem conflicting to make  
1226 sure that we are not inadvertently breaking any of the rules.  
1227 He serves as an advocate. He serves as an overseer. He  
1228 serves so many roles. I do not think we could successfully  
1229 complete the project if we did not have a dedicated federal  
1230 program officer.

1231 Mr. {Dingell.} Thank you. Now Doctor, as you may well  
1232 be aware, NTIA stands to lose funding for oversight of BTOP.  
1233 If NTIA no longer had the resources with which to provide  
1234 BTOP grant recipients, what effect would that have on Merit's  
1235 ability to implement its project and to comply with federal  
1236 requirements pursuant to ARRA?

1237 Mr. {Welch.} I think that would have a severe impact.

1238 Mr. {Dingell.} Which way? Good or bad?

1239 Mr. {Welch.} In that it would hurt us and our ability  
1240 to comply with the oversight requirements. We would have to  
1241 dedicate more staff time to talk to more--different people to  
1242 try and make the decisions on our own. And some of the  
1243 decisions that we would make would in fact be incorrect  
1244 because we just don't have the experience and the access that  
1245 the staff of the NTIA has.

1246 Mr. {Dingell.} So you are telling us you need him.

1247 Mr. {Welch.} Yes, very much.

1248 Mr. {Dingell.} Very well. Now this question to Mr.  
1249 Zinser, Ms. Fong, and Mr. Goldstein. Will--and this is a yes  
1250 or no question. Will a future lack of dedicated oversight  
1251 funding for NTIA and RUS reduce these agencies' ability to  
1252 mitigate waste, fraud, and abuse in BTOP and BIP projects?  
1253 Yes or no?

1254 Mr. {Goldstein.} Yes, sir it would.

1255 Mr. {Dingell.} Ms. Fong?

1256 Ms. {Fong.} Yes.

1257 Mr. {Dingell.} If you please?

1258 Mr. {Zinser.} Yes, sir.

1259 Mr. {Dingell.} Very good. Now, again to Mr. Zinser,  
1260 Ms. Fong, and Mr. Goldstein, again, a yes or no question.  
1261 Will future lack of dedicated oversight funding for NTIA and  
1262 RUS diminish these agencies' ability to ensure BTOP and BIP  
1263 projects successfully meet respective program objectives?  
1264 Yes or no?

1265 Mr. {Goldstein.} Yes, sir, it would.

1266 Ms. {Fong.} Yes.

1267 Mr. {Zinser.} Yes, sir.

1268 Mr. {Dingell.} Now, again to Mr. Zinser, Ms. Fong, and  
1269 Mr. Goldstein and this is a yes or no question again. Do you  
1270 believe NTIA and RUS require additional appropriations  
1271 through 2013 dedicated to oversight of BTOP and BIP projects?

1272 Yes or no?

1273 Mr. {Goldstein.} I don't know, sir.

1274 Mr. {Dingell.} Ms. Fong?

1275 Ms. {Fong.} I am not sure. I don't know.

1276 Mr. {Dingell.} Okay. Mr. Zinser.

1277 Mr. {Zinser.} I would say yes depending on the amount,  
1278 sir.

1279 Mr. {Dingell.} Okay. But if they don't have the money  
1280 to do this oversight there is great opportunity for fraud,  
1281 waste, abuse, and also misdirection of the efforts of the  
1282 grant recipients. Am I correct?

1283 Mr. {Goldstein.} Yes, sir.

1284 Ms. {Fong.} Yes.

1285 Mr. {Zinser.} Yes.

1286 Mr. {Dingell.} I notice you are nodding yes, Mr.  
1287 Shorman, too.

1288 Mr. {Shorman.} I agree.

1289 Mr. {Dingell.} Thank you, sir. Thank you. Ladies and  
1290 gentlemen, you have answered my questions. I express to you  
1291 my thanks. Mr. Chairman, you will note I am under time.

1292 Mr. {Walden.} We appreciate that, Mr. Chairman. We  
1293 would now--next on our list is Ms. Bono Mack who is not here.  
1294 Mr. Gingrey recognized for 5 minutes.

1295 Dr. {Gingrey.} Mr. Chairman, thanks and first of all

1296 thank all the witnesses for testifying on the four issues of  
1297 oversight and recovery funds spent by NTIA and RUS--as we  
1298 have seen with the \$7 billion dedicated in--across the  
1299 country, it proves that we are good stewards of taxpayer  
1300 dollars and that we are more on task and moving forward. And  
1301 I certainly it sounds like from Mr. Shorman's testimony as a  
1302 glaring example of a mistake at a time when already 95  
1303 percent of the country has access to broadband how do we  
1304 ensure that the remaining five percent of the country has  
1305 exception to one of the economic catalysts we have at our  
1306 disposal? I am also glad that we are using this hearing as a  
1307 way to open up a discussion on what to do with returned funds  
1308 from NTIA and RUS.

1309       At a time when we are facing almost a \$14 trillion debt,  
1310 I believe that it is actually necessary that we return any  
1311 unspent funds to the Treasury. And I look forward to working  
1312 with members of the subcommittee in a bipartisan way on the  
1313 discussion draft legislation that we have before us. To that  
1314 end, there are several items I would like to ask of our  
1315 panel. I realize my time is limited, but let me begin with  
1316 the inspector general. Both Mr. Zinser and Ms. Fong, how  
1317 will the release of the National Broadband Map next Thursday,  
1318 February 17 impact your ability to determine where there is  
1319 either waste, fraud, and abuse in BTOP and BIP or overbuild

1320 in areas that are already connected?

1321 Mr. {Zinser.} Sir, I think that one thing that the  
1322 agency did to try to compensate for not having that map is  
1323 they did reach out to the State governments when the  
1324 application for broadband grants were received and asked the  
1325 governors of each State whether these applications were  
1326 consistent with the broadband goals of the State. So I think  
1327 one thing that you would want to look at with the new map is  
1328 whether the governor's offices were on target with respect to  
1329 their vetting of those applications.

1330 Dr. {Gingrey.} Ms. Fong?

1331 Ms. {Fong.} I think the map will be very helpful to us  
1332 as we do an assessment to see whether the awards that were  
1333 made were made in the appropriate way and taking into account  
1334 already existing service in areas.

1335 Dr. {Gingrey.} Yeah. Well, thank both of you for that  
1336 response and I think you gather from the testimony at least  
1337 on this side of the aisle that we think that the map is  
1338 absolutely essential and to go forward before having a map  
1339 certainly seems to be putting the proverbial cart before the  
1340 horse. Ms. Fong, in your testimony you discussed in length  
1341 the 2005 audit of RUS. And that ought to be in question the  
1342 practice of devoting significant portions of its resources to  
1343 funding competitive service in areas where pre-existing

1344 providers. Somewhere like Mr. Shorman was describing. You  
1345 found that 66 percent of the products were in areas that had  
1346 pre-existing broadband access despite the fact that the law  
1347 established in the broadband program, made it clear that  
1348 these funds were intended to be used first for ``eligible  
1349 rural communities in which broadband service is not available  
1350 to residential customers''. Your 2009 audit found that 34 of  
1351 the 37 applications approved were in areas with at least one  
1352 broadband provider. Is there a culture of overbuilding? Do  
1353 you think that anything has changed? What are your concerns  
1354 with the Broadband--program going wrong?

1355 Ms. {Fong.} We think this is a very difficult policy  
1356 issue and that is represented by the fact that over the last  
1357 few years there have been several different legislative  
1358 provisions that address the issue of underserved, unserved,  
1359 and what is the appropriate level of service. And going  
1360 forward we are committed to working with RUS to make sure  
1361 that they abide by the terms of the law. I understand that  
1362 the Recovery Act provisions differ from the Farm Bill  
1363 provisions which differ from the provisions that existed in  
1364 2005. So it is a very complex area for RUS to administer,  
1365 but we are focused on that and we think it is an issue that  
1366 needs constant oversight.

1367 Dr. {Gingrey.} I don't mean to interrupt you, but I

1368 realize it is a difficult but you know it is time for the  
1369 Federal government to quit pouring taxpayer dollars down a  
1370 proverbial sinkhole and that is what this is all about if I  
1371 completely understand. I guess I am about out of time, but  
1372 quickly, Mr. Shorman, you testified and you have stated that  
1373 there is already a significant market for broadband in Hays,  
1374 Kansas yet you have raised concerns regarding why \$101  
1375 million dollars awarded to one of your competitors. Would  
1376 you please discuss with subcommittee what impact that will  
1377 have on competition in that area and how do you think will  
1378 negatively impact your ability to run your own business and  
1379 to continue to employ the number of people that you employ?

1380 Mr. {Shorman.} That is a challenge when you have those  
1381 kinds of dollars in that size of community it is a massive  
1382 amount of money that is there. When you have 99.9 percent as  
1383 reported by the Kansas Corporation Commission of customers in  
1384 our county in the county seat already served by multiple  
1385 broadband providers it then becomes a very competitive  
1386 process and frankly it just makes it just more difficult to  
1387 do business. If that company takes a chunk of our business  
1388 those are private investment dollars in our employees that  
1389 somewhere along the line we are going to have to figure out  
1390 how to operate our company differently to compete. There is  
1391 going to be more dollars spent on marketing. For example,

1392 you drive down Main Street they talk about television as  
1393 their new product that they are offering--not broadband. And  
1394 so the whole process is just dollars going to compete with a  
1395 private industry and it is our tax dollars that are going  
1396 there.

1397 Dr. {Gingrey.} Thank the witness, thank the Chairman  
1398 for his indulgence and I will yield back.

1399 Mr. {Walden.} And I will just--for the other members,  
1400 too, if you can kind of get your question in in time for the  
1401 witness to respond on your time that would be a good thing.

1402 Mr. {Terry.} Well, the gentleman talks slow. He is  
1403 from Georgia.

1404 Mr. {Walden.} Well, we have interpreters.

1405 Dr. {Gingrey.} I am out of breath.

1406 Mr. {Walden.} Regular order. We are going to go--I  
1407 believe Mr. Waxman has stepped out. We go to Mr. Doyle for 5  
1408 minutes.

1409 Mr. {Doyle.} Thank you, Mr. Chairman, and thanks for  
1410 holding this hearing. I think it is regrettable that we  
1411 don't have the NTIA and our U.S. Administrators here. I know  
1412 there was reasons we don't but I am saying it would have  
1413 really helped to give us some perspective.

1414 Mr. {Walden.} And we will have another hearing where  
1415 they are here. They are out of the country at a conference

1416 and unable to attend. So we wanted to get this panel in  
1417 before.

1418         Mr. {Doyle.} Yeah, I understand. It is not a criticism  
1419 of you, Mr. Chairman, I am just saying I think we would have  
1420 better perspective yet to hear Ms. Fong talk about things  
1421 that are pre-stimulus funds, pre-Farm bill and make  
1422 allegations of this management of RUS it would be nice to  
1423 have the administrator to at least respond to that. I would  
1424 be interested in what he had to say, he or she had to say.  
1425 And Mr. Shorman, I certainly have sympathy for what you are  
1426 saying, but it also would have been interesting to have the  
1427 administrator here to hear their side of the story. We are  
1428 being told that during the public comment period that you  
1429 made comment and they actually sent field staff, boots on the  
1430 ground to review the coverage area and the proposed  
1431 application--found it to be valid. We are being told that  
1432 the area in dispute is 7.6 square miles of an application  
1433 that covers 4,600 square miles. Ninety-nine percent of the  
1434 proposed territory is vast rural area. This received letters  
1435 of support from Congressman Jerry Moran and Congresswoman  
1436 Lynn Jenkins in addition to 118 other area letters of support  
1437 and the estimated expenditure in Hays where you are claiming  
1438 to have competition we are being told by the administrator is  
1439 18 million. Not half, 18 million of the \$101 million

1440 awarded. Now I don't know if your figure is correct or their  
1441 figure is correct and unfortunately we don't have both of  
1442 them here. I would love to have you both here and maybe at a  
1443 future hearing we will do that.

1444 But since this overbuilding seems to be such an issue,  
1445 Mr. Goldstein, I want to get some perspective from you on  
1446 this overbuilding issue. In your testimony, you noted the  
1447 GAO reviewed 32 award recipient applications from round one  
1448 of the funding process and found that the agencies  
1449 consistently reviewed the application and substantiated  
1450 information submitted by the applicants. As you know there  
1451 are a number of providers that have alleged that Recovery Act  
1452 dollars are going into projects that compete unfairly with  
1453 incumbent networks. So I want to ask you a couple questions  
1454 about that. In the cases that you observed, did you find  
1455 that the agencies engaged in overbuild analysis? Did they do  
1456 analysis on whether there was overbuilding?

1457 Mr. {Goldstein.} Yes, sir, in all cases where that  
1458 occurred they did do an analysis.

1459 Mr. {Doyle.} Okay. And so in the cases you observed  
1460 that the agencies or their contractors researched the  
1461 companies' claims of overbuilding, people who claimed there  
1462 was overbuilding going on did they actually go out and  
1463 research this?

1464 Mr. {Goldstein.} The files we looked at showed some  
1465 substantiation. I don't know if in every single case they  
1466 went out. I could certainly get back to you on that.

1467 Mr. {Doyle.} How did they go about this research? What  
1468 did NTIA do? What did RUS do to do this research?

1469 Mr. {Goldstein.} They reviewed materials that were  
1470 submitted. They interviewed people. They looked at various  
1471 available maps that were from the States. They looked at any  
1472 public comments that had been made. As you know there was a  
1473 30 day public comment period with respect to these issues.  
1474 And they did the due diligence, that the criteria that were  
1475 established required them to do.

1476 Mr. {Doyle.} In the cases that you reviewed were any of  
1477 the claims of overbuilding substantiated?

1478 Mr. {Goldstein.} In the cases we looked at there was  
1479 some overbuilding. But as you know ARRA and the NOFA both  
1480 allow for it and so they made a decision to go forward  
1481 nonetheless in those cases.

1482 Mr. {Doyle.} And did you interview the industry  
1483 regarding the process created by NTIA and RUS?

1484 Mr. {Goldstein.} We did do some interviews with  
1485 industry and industry associations at that time. We reviewed  
1486 all the criteria that were in place. We felt for the most  
1487 part that the criteria that had been developed were

1488 sufficient, but as you look back at the reports we did we  
1489 were concerned with whether or not there would be sufficient  
1490 resources to implement it. Now, you will recall from my  
1491 testimony we only reviewed the first round. We did not look  
1492 at the second round. There wasn't enough time.

1493 Mr. {Doyle.} Right.

1494 Mr. {Goldstein.} And so obviously during the second  
1495 round there was more money that was spent. There were fewer  
1496 criteria and it was at a faster pace. So you know it remains  
1497 to be seen whether or not that same level of due diligence  
1498 occurred. We don't know the answer to that.

1499 Mr. {Doyle.} Did the industry representatives or trade  
1500 associations confirm that their constituents who had applied  
1501 for and received broadband funding had undergone their due  
1502 diligence reviews?

1503 Mr. {Goldstein.} We talked to many people and they had-  
1504 -they told us that they were being interviewed, that a lot of  
1505 information was passing back and forth, and that the agencies  
1506 were absolutely in contact with them as needed.

1507 Mr. {Doyle.} Did you interview any company that  
1508 received funding?

1509 Mr. {Goldstein.} That received funding? We talked to a  
1510 number of companies regarding the process at that point in  
1511 time. Funding had really not occurred.

1512 Mr. {Doyle.} Is it your opinion that the agency's  
1513 review processes were thorough and rigorous?

1514 Mr. {Goldstein.} Based on what we looked at in the  
1515 first round, yes, sir, they were.

1516 Mr. {Doyle.} Thank you. I think that is my time.  
1517 Thank you, Mr. Chairman.

1518 Mr. {Walden.} I thank the gentleman for his questions  
1519 and the panel for their answers and now I go to the gentleman  
1520 from Kentucky, Mr. Guthrie.

1521 Mr. {Guthrie.} Thank you, Mr. Chairman. Thank the  
1522 witnesses for being here today. And Mr. Shorman, is RTS--is  
1523 that a private company? I don't know the answer is. Is that  
1524 private or is that like a cooperative type?

1525 Mr. {Shorman.} It is a cooperative telephone company  
1526 that started in Lenora, Kansas, I believe.

1527 Mr. {Guthrie.} Okay. And so Hays is only 7 miles and  
1528 then there is 400 square miles are 400? Was the remainder of  
1529 their territory underserved?

1530 Mr. {Shorman.} The way they set it out is that the Hays  
1531 area is actually about 8 square miles. If we are service  
1532 with this broadband plan square miles, that is one thing.  
1533 But if we are serving customers that are actually getting  
1534 broadband--

1535 Mr. {Guthrie.} Well, that is what I am--

1536 Mr. {Shorman.} --nearly half of the customers--

1537 Mr. {Guthrie.} Why are there more incumbents in Hays  
1538 then there are in the rest of the district.

1539 Mr. {Shorman.} That is correct.

1540 Mr. {Guthrie.} That is where the money is.

1541 Mr. {Shorman.} However, there are incumbents in other  
1542 parts of the area for our wireless. There are other  
1543 providers in other parts of that area also.

1544 Mr. {Guthrie.} But outside of Hays is it an  
1545 underserved--you would say it is an underserved area they are  
1546 serving?

1547 Mr. {Shorman.} In some areas yes, some areas no. And I  
1548 am not arguing about the unserved areas.

1549 Mr. {Guthrie.} Right.

1550 Mr. {Shorman.} Where I am talking about is where over  
1551 almost half of the people are in that one 8 mile area.

1552 Mr. {Guthrie.} At least you that I see would overbuild  
1553 just from my WestPoint economics background is forgetting  
1554 subsidized, go to the underserved, but you are also getting  
1555 to the served. Then I mean, you really don't want to go into  
1556 the underserved unless you can get into the served because  
1557 that is where you are going to make money. Your subsidy you  
1558 are going to make money because you are getting subsidized to  
1559 go into the underserved, but you are going to make your

1560 profits--the money is in Hays it appears. And that is why--I  
1561 mean, would you want to build out in the other areas even  
1562 though you are subsidized? And that is the question I mean  
1563 you go to get into that so when people look at overbuilds it  
1564 is really an incentive to get in and compete with what you  
1565 are trying to do. And it puts you at a disadvantage. I  
1566 mean, there is no other way to--I know that is what your beef  
1567 for coming here as we talked earlier is that you can't  
1568 compete with that.

1569 Mr. {Shorman.} Well, if the overbuilds and take money  
1570 away from private industry so they can--

1571 Mr. {Guthrie.} Well, that is what is happening.

1572 Mr. {Shorman.} --so they can move out there it seems  
1573 like the wrong way to go.

1574 Mr. {Guthrie.} Yeah, I thought that.

1575 Mr. {Shorman.} Use the funds to reach the unserved  
1576 areas and reach those people that really need it, not to  
1577 compete.

1578 Mr. {Guthrie.} Well, my--it is coming up with one  
1579 player.

1580 Mr. {Shorman.} Yeah, eventually.

1581 Mr. {Guthrie.} It is going to end up with one player in  
1582 that area.

1583 Mr. {Shorman.} And that has happened in that region in

1584 some other areas.

1585 Mr. {Guthrie.} Okay. My understanding in your  
1586 testimony, I think your written indicated there was a map  
1587 that you were--you looked at of the application for the  
1588 person who has received their award that didn't have Hays in  
1589 the map?

1590 Mr. {Shorman.} The initial map that came out had--and I  
1591 will call them donut holes around Hays and some of the other  
1592 areas and when we looked at that map we really had trouble.  
1593 We tried to ask the RUS about this and even though we had a  
1594 donut hole that looked like Hays was not included, we  
1595 contacted them, told them what we were doing. We also told  
1596 them that there were other competitors, AT&T and RTS's own  
1597 affiliate Nex-Tech that were also providing services in that  
1598 little area. So we tried to do that and frankly when the  
1599 word came out we were really surprised that it even covered  
1600 that because of that donut hole. We went back and after a  
1601 lot of work and a lot of time, the next map that we finally  
1602 got out of the RUS showed Hays was all included.

1603 Mr. {Guthrie.} But the map that was submitted with the  
1604 application did not have--

1605 Mr. {Shorman.} The first map that came out on the  
1606 Website showing where the application, where it was attended  
1607 to to be had a donut hole--

1608 Mr. {Guthrie.} Had Hays--

1609 Mr. {Shorman.} --over the Hays area.

1610 Mr. {Guthrie.} Okay. And then Ms. Fong, you said  
1611 earlier, well in your testimony and actually Mr. Gingrey  
1612 asked the question that said in the 2005 audit. I know that  
1613 was not Recovery Act. You had 60 percent of the projects  
1614 were in pre-existing access even though the law requires  
1615 funds not to do that? And you said that you have different  
1616 language between Recovery Act and the agriculture. Is the  
1617 Recovery Act more restrictive or more or less restrictive on  
1618 overbuild--the language in the Recovery Act?

1619 Ms. {Fong.} It is less restrictive. It allows Recovery  
1620 Act projects to be funded where there are providers already.  
1621 It just--and I think the way RUS has implemented this is to  
1622 in its application process to give credit for certain kinds  
1623 of factors. But yes, the Recovery Act is a little more  
1624 flexible than the law that was in effect.

1625 Mr. {Walden.} We would now go to the gentlelady from  
1626 California, Ms. Matsui.

1627 Ms. {Matsui.} Thank you, Mr. Chairman, and thank the  
1628 witnesses for being here today. While no program of this  
1629 magnitude can be perfect, the broadband recovery program,  
1630 particularly the BTOP program will expand broadband access to  
1631 more and more Americans. Like many of my colleagues on both

1632 sides of the aisle a few projects in my home District of  
1633 Sacramento were awarded to improve broadband adoption  
1634 capabilities. Anchor institutions like community colleges  
1635 such as the Las Rios Community College District is my  
1636 district were awarded grants to provide training and digital  
1637 literacy skills for local residents in my district. Last  
1638 September, I along with Ranking Member Eshoo and Congressman  
1639 Markey sent a letter to NTIA urging them to prioritize anchor  
1640 institutions during the second round of funding and I applaud  
1641 the administration for doing just that. I have heard from  
1642 the Sacramento Public Library and the number one issue they  
1643 face is a lack of capacity in suitable bandwidth or speeds to  
1644 serve their customers in this time of economic stress. I  
1645 have a question for Dr. Welch. Will Merit networks be  
1646 providing direct fiber connections to schools, libraries,  
1647 health care providers, or will it be providing ``middle  
1648 mile'' capacity or both?

1649 Mr. {Welch.} Yes, ma'am, both.

1650 Ms. {Matsui.} Both, okay.

1651 Mr. {Welch.} And we are also linked in with the public  
1652 computing center award for Michigan State. We will be  
1653 directly connecting many of those sites that were funded by  
1654 the BTOP program.

1655 Ms. {Matsui.} Okay. If it wasn't for the ARRA grants

1656 would the localities have the resources to connect anchor  
1657 institutions?

1658 Mr. {Welch.} No, ma'am. Well, so definition of  
1659 connecting being dark fiber, and no ma'am they would not.

1660 Ms. {Matsui.} Okay. Mr. Zinser, do you believe that  
1661 the BTOP program has adequately served the anchor institution  
1662 community?

1663 Mr. {Zinser.} I--Congresswoman, I know that the second  
1664 round did put emphasis on connecting to anchor institutions  
1665 and I would agree that I think that the second round did  
1666 accomplish that.

1667 Ms. {Matsui.} Okay. Dr. Welch again. One of the  
1668 requirements of the goals at BTOP was to encourage  
1669 collaborative projects in a wide range--array of participants  
1670 that might benefit from the effort. So cooperation with  
1671 State and local officials as well as local institutions was  
1672 highly encouraged. I know that the State of California was  
1673 very active on this because we heard from them a lot during  
1674 the grant process. What kind of collaboration did you engage  
1675 in for your project?

1676 Mr. {Welch.} Ma'am, we collaborated both at the state  
1677 level with State agencies. We collaborated with other people  
1678 who were applying so that we would interlink our projects and  
1679 make sure that they were synergistic. We collaborated with

1680 commercial providers who are sub recipients and then of  
1681 course we collaborated with all the local governments, the  
1682 community anchor institutions, the State 911 agency to try  
1683 and make sure that we could meet everybody's needs. And as  
1684 you know it is an optimization problem so you try and move a  
1685 little bit here and there but get the best result for the  
1686 region.

1687 Ms. {Matsui.} Did you actually do outreach to do that?

1688 Mr. {Welch.} Yes, ma'am.

1689 Ms. {Matsui.} Okay. So do you think that your project  
1690 is stronger because of this?

1691 Mr. {Welch.} Yes, ma'am.

1692 Ms. {Matsui.} Okay. And you are willing to go on  
1693 record saying that this is something should have happened all  
1694 over the country in essence in order to extend the reach  
1695 particularly for anchor institutions?

1696 Mr. {Welch.} Yes, ma'am. I am extremely proud of what  
1697 we are doing in Michigan and I think it is going to be a  
1698 great thing for Michigan.

1699 Ms. {Matsui.} Okay. Thank you. Mr. Chairman, I yield  
1700 back.

1701 Mr. {Walden.} Thank you gentlelady and now we will go  
1702 to the Vice Chair of the committee, Mr. Terry.

1703 Mr. {Terry.} Who will be on time next time. The--I

1704 want to follow up a little bit on what Mr. Doyle was talking  
1705 about and Mr. Shorman, as you may know we have worked on USF  
1706 a little bit, a few draft bills. The last couple draft bills  
1707 has focused on more of a micro look at rural companies and  
1708 excluding from USF places like Hays that has competition from  
1709 being able to receive USF funds. So while one area of  
1710 government is trying to make sure that areas, those pockets  
1711 of 20,000 and Nebraska's in the same way, most rural will  
1712 have pockets of 15-20,000 that are well served. What we are  
1713 trying to find is though are those towns of 200, 300 that are  
1714 not. Maybe no access or they called broadband 250 kilobytes  
1715 and don't have the infrastructure to get to 10 or even in  
1716 today's world 30 maybe, what is needed. So the point that I  
1717 want to bring up, my kid on this is I understand from you  
1718 opponents in this they said well you only have 3 percent of  
1719 the project area, therefore, it is all rural. You would  
1720 disagree I assume with that assessment that you should just  
1721 if the project area is large enough that a town of 20,000 is  
1722 only three percent of the geographical area we shouldn't  
1723 worry about it.

1724       Mr. {Shorman.} Well, I am only a farm boy, but it seems  
1725 silly to me that we are not serving square miles. We are  
1726 serving customers in these areas outside of here and to take  
1727 and grow a map big enough--I assume at some point you get a

1728 bit enough map you could make LA a rural town. That doesn't  
1729 make sense.

1730 Mr. {Terry.} So I want to go then to Mr. Goldstein, Ms.  
1731 Fong, in--well first of all is GAO or inspector general then  
1732 offer reports back to RUS and NTIA that says you should have  
1733 a deeper level, a more of a granule definition of unserved  
1734 where larger communities that have two or three providers  
1735 should be excluded? Do you make those type of  
1736 recommendations?

1737 Mr. {Goldstein.} No, sir, we don't. We make  
1738 recommendations related specifically to audit findings based  
1739 on criteria that an agency has established or that were in  
1740 law.

1741 Mr. {Terry.} All right. Ms. Fong, how about with the  
1742 inspector general's report?

1743 Ms. {Fong.} We would go in and look at the language of  
1744 the Recovery Act that authorizes this program and attempt to  
1745 assess how RUS implemented that and whether the criteria they  
1746 applied made sense and comply with the statute. And I think  
1747 what I am hearing today is a very interesting discussion  
1748 about how do you define rural area. Is it square feet? Is  
1749 it number of users? It is a very interesting issue that I  
1750 have not focused on, but I appreciate you raising that.

1751 Mr. {Terry.} And we are doing it in the drafting of the

1752 USF bill, so I know it can be done. But anyway, just--Ms.  
1753 Fong and Mr. Goldstein on rescissions of contracts or loans,  
1754 pools of money out there, have any been rescinded do you know  
1755 of from our US under the Stimulus act?

1756 Ms. {Fong.} I don't know. The awards were all made by  
1757 September 30 of 2010, so it is unlikely that anything has  
1758 been rescinded. It is now February. But I don't know that  
1759 for sure.

1760 Ms. {Eshoo.} Would the gentleman yield?

1761 Mr. {Terry.} Sure.

1762 Ms. {Eshoo.} I think there is one under BTOP.

1763 Mr. {Terry.} Okay.

1764 Ms. {Fong.} Okay.

1765 Mr. {Terry.} Would that be your understanding, too, Mr.  
1766 Zinser?

1767 Mr. {Zinser.} Yes, sir, about \$300 million I think was  
1768 rescinded at one point.

1769 Mr. {Terry.} All right and I think during the first  
1770 line of questioning or opening with Mr. Walden, you meant--  
1771 Ms. Fong, you said that when it is rescinded that 300 million  
1772 goes back to the agency and then it is used in at their  
1773 discretion. Is that a fair statement?

1774 Ms. {Fong.} I am going to defer to my colleague.

1775 Mr. {Zinser.} In the case of the BTOP program the

1776 Congress directed that it be used for a different program.  
1777 They took it away from BTOP and used it for a different  
1778 program. That was an act of Congress.

1779 Mr. {Terry.} Okay.

1780 Mr. {Zinser.} I think the way the Recovery Act is set  
1781 up for BTOP if for whatever reason grant money does get  
1782 returned to the agency, the Recovery Act I think at this  
1783 point does provide the administrator with the discretion of  
1784 reissuing that money to another grantee.

1785 Mr. {Terry.} So it doesn't go back to the Treasury. So  
1786 we--

1787 Mr. {Zinser.} Well, it is complicated. As I mentioned  
1788 the Dodd-Frank legislation about de-obligated money and what  
1789 happens to that. And there are provisions for the  
1790 administrator to actually transfer the grants to another  
1791 grantee before they would become de-obligated, so you really  
1792 have to drill down into those issues.

1793 Mr. {Walden.} Thank you.

1794 Mr. {Terry.} Thank you.

1795 Mr. {Walden.} Now we go to Mr. Towns of New York.

1796 Mr. {Towns.} Thank you very much, Mr. Chairman, and of  
1797 course Ranking Member for having this hearing and of course  
1798 let me indicate to you I am happy to be back as well. Mr.  
1799 Zinser, perhaps you can help us figure out what an

1800 appropriate level of funding might be for such oversight  
1801 going forward. I don't expect you to provide us with a  
1802 dollar amount, but give us some general views and feelings in  
1803 terms of what a model should be in terms of oversight. And I  
1804 am going to ask you too, Ms. Fong.

1805       Mr. {Zinser.} Well, the budget request for NTIA for  
1806 fiscal year 2011 was about \$24 million at the end. I think  
1807 they had originally asked for more than that and eventually  
1808 the request from the President for fiscal year 2011 was about  
1809 \$25 million. And that would have funded a number of staff at  
1810 NTIA to actually be charged with overseeing specific grants.  
1811 For our work, the Recovery Act appropriated about \$10 million  
1812 for my staff. If you look at my overall budget compared to  
1813 the department it is a little less than that proportion, but  
1814 my view is that I am going to deliver the best oversight I  
1815 can with whatever resources I get.

1816       Mr. {Towns.} In other words you are sort of saying that  
1817 might not be enough?

1818       Mr. {Zinser.} It might not be enough, sir. If we start  
1819 getting a lot of complaints and a lot of allegations of fraud  
1820 for example it could get very expensive to go out and  
1821 actually investigate each one of those with 230 plus grants  
1822 out there.

1823       Mr. {Towns.} Ms. Fong?

1824 Ms. {Fong.} The RUS has an oversight program in place  
1825 because as you may know the broadband program has pre-existed  
1826 the Recovery Act for about 10 years. And we understand that  
1827 they have a system whereby they have contracted out with an  
1828 external contractor to help them for the next two years.  
1829 They also have in place employees who are onsite across the  
1830 nation to look at auditing the receipts that come in against  
1831 the grants and also to do compliance reviews of recipients.  
1832 It is our understanding that RUS believes that this framework  
1833 will work well for them. I do not have a sense of whether  
1834 they believe that they need more resources or not. Their  
1835 request for fiscal year 2011 is about \$300 million to run the  
1836 whole program and that would include both grant and loan  
1837 authority as well as oversight. At this point I would  
1838 suggest that perhaps someone ask the RUS administrator their  
1839 view on that in terms of oversight funding.

1840 Mr. {Towns.} My concern is that you know we talk about  
1841 waste, fraud, and abuse, and even stupidity. You know we  
1842 even add that, but the point is that many times though we are  
1843 not prepared to fund you know and be able to go and to look  
1844 and to see and that is really my concern. And that is really  
1845 why I raise this question. Because I think that we make a  
1846 mistake when we don't have the resources to go out and do it  
1847 because that is waste and I don't think that--we cannot

1848 afford the luxury of waste in any kind of way today. So on  
1849 that note, Mr. Chairman, and again, I am delighted to be back  
1850 and I yield back.

1851 Mr. {Walden.} We are delighted to have you back and we  
1852 will take back the time and give it to Mr. Latta. Mr. Latta,  
1853 you are recognized for 5 minutes.

1854 Mr. {Latta.} Thank you, Mr. Chairman, and I want to  
1855 thank all the folks who are here today. It has been very,  
1856 very enlightening today on your testimony. Boy, I have a lot  
1857 of questions I would like in such a short period of time, but  
1858 if I could, Mr. Shorman, let me just go back to what Mr.  
1859 Shimkus was saying a little bit earlier. I just want to make  
1860 sure that we are clear for the record that your application  
1861 was to serve those in unserved areas and that the award that  
1862 was given was given to RTS and that was going to serve about--  
1863 --at least 50 percent of an area that has already been served.  
1864 Is that correct?

1865 Mr. {Shorman.} That is close to correct, yes.

1866 Mr. {Latta.} Okay. And something else in your  
1867 testimony I thought that it was also interesting that--  
1868 unfortunately we don't have time to have you give the entire  
1869 testimony but you have 277 employees?

1870 Mr. {Shorman.} Yes.

1871 Mr. {Latta.} And you have 212 which are employee owners

1872 through your employee stock ownership plan, but I also found  
1873 it interesting in your testimony on page two. And this  
1874 really goes to a crux of a lot of things that happen with a  
1875 lot of companies in our areas. And what happens sometimes  
1876 when government puts people out of business sometimes, it  
1877 says here in your paragraph that your Eagle Cares program  
1878 that you have a partnership with the Salvation Army that you  
1879 help needy individuals with their telephone, Internet, and  
1880 cable payments. You have helped deliver meals on wheels to  
1881 retirees when there is bad weather that has kept their  
1882 drivers off the road. You donated an emergency heart  
1883 defibrillator units to the community schools. You raised  
1884 hundreds of thousands of dollars for children by sponsoring  
1885 an annual telethon. What happens when government puts you to  
1886 a point that you can't compete and what happens to your  
1887 employees and what happens to all of your community work?

1888 Mr. {Shorman.} I am so proud of our employees. We are  
1889 employee owned. Our 277 employees of which 212 are employee  
1890 owners, they participate in the upside and the downside of  
1891 the company. When we have a competitive overbill like what  
1892 has happened and happened in other communities it affects  
1893 each one of their-our employees and their ability to go out  
1894 and do these types of things. And I am proud of what they  
1895 do.

1896           Mr. {Latta.} Let me just follow up real quick on that.  
1897 Do you foresee that you might with the competition you know  
1898 that is coming through this grant that you might end up  
1899 having to lose employees?

1900           Mr. {Shorman.} We have to survive as a company and when  
1901 customers go away or are taken away by a government overbuild  
1902 then we have to make adjustments there and that would cost us  
1903 employees and would cost our company and the shareholders  
1904 which are once again the employee owner.

1905           Mr. {Latta.} Okay. Thank you very much. If Ms. Fong,  
1906 if I could ask you. I also found your written testimony very  
1907 interesting. You report, you say on page three of your  
1908 testimony that in 2005 you made the report that there are 14  
1909 recommendations and in the response RUS did not agree with  
1910 how the OIG portrayed the broadband grant and loan params and  
1911 for the next several years the OIG worked with RUS to resolve  
1912 those recommendations. And then in 2009, you revisited  
1913 broadband programs and you saw that eight of the 14  
1914 recommendations had not been taken--had not had corrective  
1915 adequate, or should say adequate corrective action at that  
1916 time. You go on to state in your testimony that from '05  
1917 through '09, RUS continued providing questionable loans to  
1918 providers near very large cities or in areas of pre-existing  
1919 service. And that you go on to state that they had--RUS

1920 delayed in responding because of the '08 Farm bill. But you  
1921 also state that as January of 2011 the office of the Chief  
1922 Financial Officer has not accepted RUS as actions as adequate  
1923 to close 10 of those four recommendations from '05. I guess  
1924 it really comes down to my question is this. You know when  
1925 all these things are going on and all these years are passing  
1926 what is your--what action can you be taking especially based  
1927 on your experience of what percentage of the grants, of these  
1928 grant awards can be expected to have problems with waste,  
1929 fraud, and abuse and how much--how many of those might go--be  
1930 unused and be reclaimed?

1931 Ms. {Fong.} Well, that would be the focus of our  
1932 planned audit work for later this spring. What we plan to do  
1933 is to go back and take a look at how RUS is implementing the  
1934 Recovery Act in the context of the recommendations that we  
1935 had made in the previous audits. And we recognize that some  
1936 of those recommendations have been overtaken by events, but  
1937 we are also very concerned about a number of them that go to  
1938 the management of the program. In a nutshell we are  
1939 concerned that it appears RUS does not yet have final  
1940 regulations to implement as broadband program. It lacks  
1941 written staff guidance to help the staff make decisions on  
1942 how to award service and deal with loans and de-obligate and  
1943 cancel loans. And so we are very interested in going in and

1944 looking at the management controls of that program to see if  
1945 that program could really run a lot more effectively. While  
1946 we do that we will be looking at individual grants and loans  
1947 to see if there are instances where some of those funds could  
1948 be gotten back. And we will let RUS know about that.

1949 Mr. {Latta.} Thank you. Mr. Chairman, I yield back.

1950 Mr. {Walden.} Thank the gentleman. We now recognize  
1951 the gentleman from Massachusetts, Mr. Markey. Yeah, I  
1952 believe I will go to the gentlelady from California for a  
1953 unanimous consent request.

1954 Ms. {Matsui.} Thank you. I do have a unanimous consent  
1955 request, Mr. Chairman, to place some things in the record.  
1956 There are two letters in support of the Rural Telephone and  
1957 Nex-Techs broadband expansion proposals from Lynn Jenkins and  
1958 from Jerry Morand, Congressman Morand. These were reference  
1959 earlier. And then these are a letters of support for the RTS  
1960 project from the First national Bank of Hays, Kansas, the  
1961 Ellis County Commission of Hays, Kansas, the Ellis County  
1962 Coalition for Economic Development, the Hays Medical Center,  
1963 the Hays Public Library, the North Central Kansas Technical  
1964 College of Hays, Kansas, and the Fort Hays State University  
1965 of Hays, Kansas. So I appreciate this and I would like to  
1966 place these in the record.

1967 Mr. {Walden.} Without objection.

1968 [The information follows:]

1969 \*\*\*\*\* COMMITTEE INSERT \*\*\*\*\*

|  
1970           Mr. {Walden.} And now I would like to recognize the  
1971 gentleman from Massachusetts, Mr. Markey. You are the last  
1972 one so it is hard to pass at this point.

1973           Mr. {Markey.} Thank you very much. Thank you. If  
1974 there is a proxy for economic development in a country it is  
1975 the deployment of broadband. And 2 days ago we celebrated  
1976 the 15th anniversary of the signing of the Telecommunications  
1977 Act of 1996. February 8, 1996. Fifteen years ago today, not  
1978 one home in America had broadband. Fifteen years ago today,  
1979 not one home in America had broadband. Fifteen years later,  
1980 Google, eBay, Amazon, Hulu, YouTube, on and on and on. Two  
1981 million jobs, branded, made in America. We won. We are not  
1982 doing that in clean energy yet. China is trying to do that.  
1983 We don't have a plan, but that is a great economic  
1984 opportunity for us. That is another committee right now that  
1985 is even not here. In the Stimulus bill I was able to add  
1986 language which required that each of these grants got open  
1987 access as a part of the condition. Mr. Shorman, is that  
1988 important to have open access as a part of insuring--as a  
1989 part of the deployment of broadband in our country?

1990           Mr. {Shorman.} If open access is available and is  
1991 easily usable that can be important.

1992           Mr. {Markey.} So what challenges would your business

1993 face if we had to--if open access was a part of receiving  
1994 funds into the Recovery Act?

1995 Mr. {Shorman.} You have to be able to work--have a  
1996 workable plan with the company that you would be getting  
1997 access from and what we have found in some other experiences  
1998 is that has been difficult to make happen.

1999 Mr. {Markey.} And why is it difficult?

2000 Mr. {Shorman.} It appears there is a boatload of rules  
2001 that you have to go through to make things happen which is a  
2002 great barrier.

2003 Mr. {Markey.} A boatload of rules that the other  
2004 companies have?

2005 Mr. {Shorman.} That is correct.

2006 Mr. {Markey.} The companies, sir, a lot of companies  
2007 that don't really believe in open access.

2008 Mr. {Shorman.} That is exactly right.

2009 Mr. {Markey.} You create those rules as the obstacles.

2010 Mr. {Shorman.} And so in the pure sense having open  
2011 access is very important.

2012 Mr. {Markey.} Oh, it is so--

2013 Mr. {Shorman.} In reality it becomes a lot more  
2014 difficult to make happen.

2015 Mr. {Markey.} It is so important. You know because as  
2016 you know Verizon and AT&T turned down the contract to build

2017 the Internet and then they--at each juncture they have turned  
2018 the opportunity to go into the Internet until we did the '96  
2019 Act, you know and then they sued. They called it a Bill of  
2020 Attainder in the Supreme Court and they tried to stop it, you  
2021 know, after we passed the '96 Act--Verizon and PacBell. So  
2022 there are problems without question. Could you--can you  
2023 provide, Mr. Goldstein, a specific example where the Recovery  
2024 Act does not provide the authority for the return to the  
2025 Treasury of unused or reclaimed broadband funding with this  
2026 draft bill would?

2027 Mr. {Goldstein.} We haven't looked at that  
2028 specifically, sir. I will take a look and get back to your  
2029 office. I would be happy to.

2030 Mr. {Markey.} Yeah, please, thank you. And on the  
2031 issue of total percent of Americans which now do not have  
2032 broadband. I know that those numbers came up earlier. Could  
2033 you tell me what those numbers are? Ms. Fong, do you know  
2034 the answer to that?

2035 Ms. {Fong.} I do not know.

2036 Mr. {Markey.} Does anyone out there know the answer to  
2037 that question?

2038 Mr. {Goldstein.} We can get back to you, sir. We will  
2039 take a look.

2040 Mr. {Markey.} Okay. I think that is important. We

2041 need a--this is all part of a plan for the future for our  
2042 country so that we are capturing all of the opportunities  
2043 which broadband presents for economic development in rural  
2044 America and inner city America so that everyone is  
2045 participating. The E rate, which I was able to include in  
2046 the 1996 Act and it ensured that all schools, the poorest  
2047 schools all have access to it so that the kids get the skill  
2048 set. It really doesn't divide along regional lines. It is  
2049 for every kid in America so that they have it in their  
2050 schools. But this broadband plan actually helps them to get  
2051 it in their homes as well and I just can't think of a more  
2052 important thing that we could be doing to ensure that our  
2053 economic growth continues unabated without this kind of a  
2054 program in place. It ensures that it is uniform and that it  
2055 captures the future. It captures what our country has to be  
2056 all about in the 21st century. And on a bipartisan basis I  
2057 think we should all work towards that goal of empowering  
2058 every human being, children especially to be able to maximize  
2059 their God-given abilities by having access to broadband.  
2060 Because it is the indispensable skill set that will make them  
2061 competitive with a portable skill set that they can use  
2062 anywhere in our country or the world in their lives here in  
2063 the 21st century on this planet. And that is really what  
2064 that provision was all about in the Stimulus bill and I thank

2065 you, Mr. Chairman, for holding this important hearing.

2066 Mr. {Walden.} Thank you, Mr. Markey. We appreciate it.

2067 We now go to Mr. Scalise for 5 minutes.

2068 Mr. {Scalise.} Thank you, Mr. Chairman. Mr. Shorman,

2069 does your company use your private investment to make the

2070 investments that you have made to build out the network in

2071 rural communities?

2072 Mr. {Shorman.} Yes, in a sense we have a traditional

2073 banking relationship where we go and put our plan together

2074 and they in turn fund our projects.

2075 Mr. {Scalise.} So you are risking your private capital

2076 to go build up a network and then of course as you risk that

2077 it is--the business model is that you are investing that

2078 capital so that you can ultimately create this infrastructure

2079 that ultimately people would be able to use and then you can

2080 get that money back instead of having taxpayer money go to

2081 build it out.

2082 Mr. {Shorman.} It is kind of the American way to be

2083 able to take money, build something, build a product, sell

2084 it, and then get the money back and pay off your loan.

2085 Correct.

2086 Mr. {Scalise.} Seems like a--for too long that model

2087 has worked so well and you know in the last few years it

2088 seems like government wants to come along and take the place

2089 of what the private sector did and of course from all the  
2090 results the government's not doing a real good job of it and  
2091 we are drowning in a sea of red ink in the process. When you  
2092 look at what happened with, you know, with these RUS grants  
2093 does taxpayer money being used to in essence fund your  
2094 competitor serve as an incentive or disincentive to you--for  
2095 you to make future investments?

2096 Mr. {Shorman.} Well, it certainly disincentive in our  
2097 areas where that--where there is an over builder that is  
2098 using--again, it is my tax dollars also that are being used  
2099 to compete against me along with our other employee owners.  
2100 So exactly to that point it does cause us to have to look at  
2101 where we spend our money and what we can do with that money.

2102 Mr. {Scalise.} What kind of jobs are related to the  
2103 investments you have made so far? How many jobs have you  
2104 created along the way with this private investment, the risk  
2105 that you have taken as a company? What kind of jobs has that  
2106 equated to?

2107 Mr. {Shorman.} Well, our company has not quite doubled  
2108 in size with some of the acquisitions that we have had. We  
2109 also do our own fiber install. We do our own technology  
2110 training. We do things throughout our company that continues  
2111 to grow. And because of our employee owners live in those  
2112 same communities it is not like we are a big cooperation. We

2113 are a small company based in Hays, Kansas that covers that  
2114 area in North central and Northwest Kansas.

2115 Mr. {Scalise.} How many people work for your company?

2116 Mr. {Shorman.} Two hundred seventy-seven give or take  
2117 you know a few along the line and we have 212 of those are  
2118 employee owners that own stock in the company and the  
2119 employees own 63 percent of our company.

2120 Mr. {Scalise.} And what is the average pay for these  
2121 jobs?

2122 Mr. {Shorman.} It can vary. It can vary from 20-30,000  
2123 a year to higher than that in certain areas.

2124 Mr. {Scalise.} Again, sounds like the American dream  
2125 creating a lot of jobs and a lot of opportunities for people.  
2126 When the Stimulus bill was going through one of the claims  
2127 that was going to be made was that this would increase  
2128 broadband deployment especially in rural areas and create  
2129 jobs. From your experience is the program reaching the  
2130 unserved or is it just jeopardizing some of the things that  
2131 have already been done by the private sectors.

2132 Mr. {Shorman.} I think in some of the letters that were  
2133 presented earlier this process was proposed to reach unserved  
2134 rural Northwest Kansas people. That is a great project. If  
2135 it reaches unserved customers that is a terrific way for this  
2136 money to be spent. However, in reality the biggest part of

2137 that or a major part of that is overbuilding existing  
2138 operations and existing broadband providers.

2139 Mr. {Scalise.} And that kind of duplication just wasn't  
2140 what was promised to the American people.

2141 Mr. {Shorman.} That is not what we understood it to be.

2142 Mr. {Scalise.} Appreciate that. Mr. Goldstein, you  
2143 state that the RUS plans to use its existing oversight  
2144 framework that it uses for grant and loan program. Given the  
2145 problems the Inspector General Fong has reported on about RUS  
2146 is this an effective oversight plan to prevent the defaults  
2147 and the obligations RUS has experienced in the past?

2148 Mr. {Goldstein.} I think we would have to wait and see,  
2149 sir. We don't know yet.

2150 Mr. {Scalise.} All right, Mr. Fong, do you want to--I  
2151 am sorry, Ms. Fong, do you want to comment on that?

2152 Ms. {Fong.} That will be one of the things that we will  
2153 be looking at most likely in our audit. I will say that in  
2154 the past RUS has in its oversight capacity when it has  
2155 identified instances of wrongdoing in the program they have  
2156 come to us and made referrals to us and those have resulted  
2157 in successful prosecution. So we do know that at least on  
2158 some level their oversight program has been effective.

2159 Mr. {Scalise.} All right, thank you. And Mr. Zinser, I  
2160 understand that auditing grants at this time is very

2161 difficult because even though the money has been awarded the  
2162 grantees have not done much yet. What are planning to do to  
2163 ensure that the taxpayer money is not misspent?

2164 Mr. {Zinser.} We have got a number of steps we have to  
2165 take. Number one, we are going to see how well NTIA is  
2166 overseeing their portfolio of grants. We have got to make  
2167 sure that the program office is doing its job. We are going  
2168 to go through a process of identifying the grants into a risk  
2169 assessment and identify the riskiest grants. NTIA is doing a  
2170 similar process.

2171 Mr. {Scalise.} Do you know how long it will take to  
2172 really get a formula in place to know how well this taxpayer  
2173 money is being spent?

2174 Mr. {Zinser.} We are going to initiating grants. Very  
2175 soon, I don't know that a complete formula will be developed,  
2176 but one of the things we are going to do for example is the  
2177 Recovery Board, the Recovery and Accountability Transparency  
2178 Board has set up a capacity of checking grantees across a  
2179 number of public source databases for risk indicators. We  
2180 are going to use that capacity to identify potential audit  
2181 targets.

2182 Mr. {Scalise.} Thank you, Mr. Chairman. I yield back.

2183 Mr. {Walden.} Thank you and I want to thank our  
2184 panelists for your participation in the hearing today. I

2185 think it has helped us think about this program and look at  
2186 the legislation that has been drafted. If you have comments  
2187 and suggestions about how you--how we can improve the draft  
2188 legislation we would welcome those not only from our  
2189 panelists but others who are observing these proceedings and  
2190 certainly from my colleagues on both sides of the aisle. I  
2191 would like to thank our witnesses and members that  
2192 participated in today's hearing. I would remind members that  
2193 they have 10 business days to submit questions for the record  
2194 and I would ask that the witnesses all agree to respond  
2195 promptly to those questions. I will note for the record your  
2196 head nods in favor of that. And with that the subcommittee  
2197 is adjourned.

2198 [Whereupon, at 11:56 a.m., the Subcommittee was  
2199 adjourned.]