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THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

OPPORTUNITIES FOR FEDERAL GRANTS, LOANS AND OTHER SUPPORT FOR BROADBAND PROJECTS

February 19, 2009

I. INTRODUCTION

The American Recovery and Reinvestment Act of 2009 (ARRA), a massive spending bill signed by President Obama on February 17, 2009, represents perhaps the largest federal government economic stimulus effort since the New Deal. Allocated among an array of investment priorities and tax credits, with the near-term objective of creating jobs and a longer-term objective of improving national infrastructure, the Act provides for \$787 billion of new direct expenditures by the federal government.

Of that \$787 billion, \$7.2 billion was allocated for grant and loan programs to stimulate the development of broadband infrastructure and services, to be administered by two federal agencies: The National Telecommunications and Information Administration (NTIA), an agency within the U.S. Department of Commerce, was appropriated \$4.7 billion, with the USDA's Rural Utilities Service (RUS) receiving \$2.5 billion. Most of these funds will be made available in the form of competitive grants to qualifying government, nonprofit, and private-sector entities across the nation.

In addition to the amounts dedicated specifically to broadband, other provisions in the Act may present substantial opportunities for indirect broadband-related partnerships. For example, a significant amount of funding is devoted to improvements for transportation infrastructure, including highways and rail improvements. If effectively coordinated ahead of time, this work could enable further improvement to broadband infrastructure through use of associated rights of way and other means. Other provisions of the Act, such as electricity grid upgrades, may present similar opportunities.

The \$7.2 billion dedicated directly to broadband represents less than one percent of the stimulus bill's total appropriation, and falls well short of what some broadband advocates were hoping for. It is, however, a productive first step, and the Obama Administration has made clear that the nation's broadband future will require much more than what the ARRA provides. (As described below, the final bill calls for the FCC, within one year, to produce a report on a national broadband plan.)

In the meantime, the ARRA provides local and state governments, nonprofits, broadband advocates, and private-sector providers an opportunity to receive substantial federal funding to hasten the deployment of broadband. This memorandum is intended to provide such entities with the basic information necessary

to take advantage of the opportunity and begin structuring proposals, outlining the key requirements of the NTIA and RUS broadband programs (so far as they are currently known) and other important aspects of the American Recovery and Reinvestment Act.

II. BROADBAND PROVISIONS

A. Broadband Grant and Loan Provisions: NTIA and RUS

The ARRA appropriates \$7.2 billion for broadband grant and loan programs, including \$4.7 billion to NTIA for competitive grants, and \$2.5 billion to the RUS for rural broadband grants and loans. Note that a particular project is not permitted to receive funds from both NTIA *and* RUS.

1. NTIA: “Broadband Technology Opportunities Program” (BTO) -- \$4.2B

- \$3.75B for competitive grants, focusing on community-oriented networking needs:
 - “provide access to broadband service to consumers residing in **unserved areas**”
 - “provide improved access to broadband service to consumers residing in **underserved areas.**”
 - **high-value targets:** “provide access to broadband education, awareness, training, access, equipment, and support to --- (A) schools, libraries, medical and healthcare providers, community colleges and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband service by or through these organizations ...”
 - improve “access to, and use of, broadband service by **public safety agencies.**”
- \$200M: grants for “expanding **public computer center** capacity, including at community colleges and libraries”
- \$250M: grants for “innovative programs to encourage **sustainable adoption** of broadband service” (Historically, the sustainability of projects after the expiration of grant funding has been very important for NTIA.)
- \$150M for program administration
- \$350M for broadband mapping (see section B).

Eligible entities:

- Virtually any entity may apply for BTO grants, including states, county and municipal governments, nonprofits, and purely private entities. Private-sector entities may receive grants only upon a determination by NTIA that the grant

award would be in the public interest. Public-sector and nonprofit entities are clearly among the primary targeted recipients of grant funds under the BTO.

- The terms “unserved” and “underserved” are not defined in the ARRA. NTIA will likely consult with the FCC, and may seek public comment on the definitions as it prepares guidelines for the grant program.

Eligible services:

- Awards are to be made on a “technologically neutral” basis. The program makes no distinction as to wireline, wireless, satellite, etc. (unlike a prior House version of the bill).
- Eligible services are not limited to end-user broadband services. Backhaul, middle-mile, wholesale transit, tower services, etc. are apparently all eligible.
- Funds may be used for hardware, equipment, software, and other capital expenditures.
- Operating expenditures are NOT eligible for funding.
- BTO grant recipients must comply with FCC policy statement concerning network nondiscrimination (see section B).

Federal grant share – 80% limit:

- Generally, the program will limit grant funds to 80 percent of a project’s cost. However, the NTIA is authorized to waive the cost-sharing requirement, and may do so for particularly worthy public-sector projects.

No minimum speed requirement:

- Unlike a prior House version of the bill, the Act does not specify a minimum data speed for eligible projects. It is, however, still important, and the NTIA is likely to favor projects with higher broadband speeds. The higher the speed, the better.
- “Broadband” is undefined in the Act, but the NTIA is to consult with the FCC for definition of this and other undefined terms (including “unserved” and “underserved”).

Rapid commencement and completion:

- A preference is to be given for projects that can be started and completed expeditiously. The original House version included a specific objective of using at least 50 percent of funds for activities that can be initiated within 120 days after enactment of the Act, but this provision was eliminated in the conference committee.
- All grant awards must be made before Sept. 30, 2010, to projects that can be completed within two years. BTO grants reportedly will be made on a “use it or

lose it” basis: if a project is not completed within two years, ongoing funds will not be available.

Grant application procedures in development:

- According to a presentation by NTIA personnel on February 17 before a meeting of the National Association of Regulatory Utility Commissioners (NARUC), the NTIA is currently developing draft guidelines for BTO grant application and awards, to be implemented in a rulemaking process. An initial draft may be released within two weeks, with final rules and grant procedures expected by April.

State role:

- Sources indicate that the NTIA will seek to rely heavily on input from state-level organizations (Governor’s offices, state broadband and economic development offices, etc.) in its identification of unserved/underserved areas, and in its ultimate allocation of grant funds. States have been encouraged to play an active role in coalescing stakeholders and partners.
- Despite the potentially major state role in advising the NTIA’s allocation of funds, grant funds will not be awarded by the states themselves. All BTO grant funds will come directly from the federal government.

Application Deadline:

- All grant awards under BTO must be made before September 30, 2010. Additional information concerning deadlines and timeframes is likely forthcoming in the NTIA guidelines.

2. RUS – Community Connect Grant Program, Rural Development Broadband Loan Program (\$2.5B)

The ARRA appropriates \$2.5 billion to the USDA Rural Utilities Service to be awarded through programs that are likely to resemble the existing RUS Community Connect Grant Program and the Rural Development Broadband Loan and Loan Guarantee Program, which originally appeared as pilot programs in 2001 and 2002. The amount received by RUS under the ARRA triples the entire RUS FY2008 budget.

Eligible entities:

- Government entities, nonprofits, cooperatives, and incorporated organizations, private corporations and limited liability companies are eligible for RUS grant and loan programs. Individuals, partnerships, and large phone companies are generally not eligible for Community Connect grants.

- RUS programs have a decidedly rural focus: 75 percent of the area to be served “shall be in a rural area¹ without sufficient access to high-speed broadband service to facilitate rural economic development.”
- Priority is to be given to prior recipients of RUS funds.

Eligible services:

- RUS program funds generally can be used for broadband infrastructure, somewhat more broadly defined than for the NTIA BTO program. The Community Connect program, for example, can be used to fund some end-user equipment, and includes provision for some operating expenses (up to \$250,000).
- The existing Community Connect grant program requires awardees to provide a community computing center. It is not clear whether this will remain a requirement for programs funded by ARRA.
- The existing Community Connect grant program does not permit awards for service that would duplicate an existing broadband service. The existing RUS loan and loan guarantee programs permit more flexibility than the Community Connect grant program.
- The Rural Broadband Access Loan and Loan Guarantee program provides funds for the costs of construction, improvement, and acquisition of facilities and equipment for broadband service in eligible rural communities.
- Loan programs include 4% loans (maximum loan amount of \$7.5M), and treasury-rate loans (no maximum amount). The minimum level for all loans is \$100,000. Loans are made for the term equal to the expected service life of financed facilities.
- The ARRA does *not* specify that RUS-funded projects are subject to the FCC’s policy statement concerning network nondiscrimination. However, priority is to be given to “projects that provide services that will deliver end-users a choice of more than one service provider.”

Application procedures:

- The RUS, like the NTIA, apparently is in the process of developing application procedures for programs funded by the ARRA. Unlike the NTIA, the RUS is expected to skip a rulemaking proceeding, and proceed directly to publishing a “Notice of Funding Availability” (e.g., seeking proposals). This is expected to be available within the next two months.

¹ A rural area is defined as “any area of the United States not included within the boundaries of any incorporated or unincorporated city, village, or borough having a population in excess of 20,000 inhabitants.” 7 CFR § 1739.3.

- An earlier Senate version of the stimulus bill only allocated \$100 million to RUS, apparently due to concerns by some that the agency tended to move too slowly and that its application processes were too complex. As a result, we expect the RUS programs funded by the ARRA to be significantly more streamlined than its prior programs.
- Further information on existing program application guidelines and processes is available at <http://www.usda.gov/rus/telecom/commconnect.htm> (for Community Connect grant program) and <http://www.usda.gov/rus/telecom/broadband/htm> (for Rural Broadband Loan programs).

Deadline:

- Unlike the NTIA's BTO program, the ARRA does not stipulate a hard deadline for use of RUS funds. However, timing will be a factor in evaluating grant and loan applications, with preference given to those projects that "can commence promptly following approval."

3. No Broadband-Specific Tax Credits or Incentives

While prior versions of the Act included provisions creating substantial tax credits and incentives for deployment of high-speed broadband facilities, they were eliminated in the conference committee. There are no broadband-specific tax credits or tax incentives in the final version of the bill.

B. Broadband: Other Provisions

In addition to its terms establishing direct funding for broadband projects, the ARRA also includes a few other very important broadband-related provisions:

1. Network nondiscrimination for grant recipients

The ARRA requires grants made under the BTO program to include a contractual condition that recipients will adhere to the FCC's 2005 broadband policy statement concerning non-discrimination and interconnection obligations (included in appendix).

2. National Broadband Plan

The ARRA directs the FCC, within one year, to issue a report containing a national broadband plan.

3. Broadband mapping

The ARRA authorizes "up to" \$350M – more than ten times the amount included in earlier drafts -- for the development and maintenance of a broadband inventory map pursuant to the previously-enacted Broadband Data Improvement Act (P.L. 110-385; 47 U.S.C. § 1301 note). NTIA is to make such a map available within two years.

III. INDIRECT BROADBAND OPPORTUNITIES

In addition to the ARRA's provisions that provide direct opportunities for funding of broadband projects, the Act includes a vast amount of funding in areas that may produce opportunities for creative partnerships to facilitate broadband development:

- **Transportation infrastructure funds:** (approx. \$46.5B) Highway/rail/transit infrastructure improvements may provide fresh opportunities to deploy broadband facilities in rights of way. Significant funding for high speed rail and intercity rail projects. Generally administered by state Departments of Transportation.
- **Public housing infrastructure:** (approx. \$12B) Funds to local public housing agencies to rehabilitate public housing, and neighborhood stabilization, could provide opportunity to address connectivity issues, community computing centers, etc.
- **Energy efficient housing retrofits:** (\$0.25B) Competitive grants to upgrade HUD low-income housing to increase energy efficiency. Broadband could enable smart meters and smart homes.
- **School construction:** (\$21B) For renovation, modernization, energy efficiency, and technology improvements. Includes \$6B for higher education institutions.
- **Smart Grid Investment Program:** (\$11B) For R&D and pilot projects to modernize electricity grid.
- **Health Information Technology:** (\$19B) For widespread adoption and use of interoperable health information technology, including e-health records, etc.

IV. RECOMMENDED NEXT STEPS

As noted in the introduction, the funding programs established by the ARRA will require potential applicants to move quickly. While details on how to apply for funds under the particular NTIA and RUS broadband programs may not yet be available, enough information is available to enable potential applicants to begin structuring a grant or loan proposal, addressing the details of basic topics such as:

1. Who will be participating in the project? Is it, or can it be, a coalition or public-private partnership? What legal entity will receive funds and distribute them to other partners?
2. What services are proposed? Do they correspond well to the objectives of the program under consideration? Who will be served? How is broadband service currently lacking?
3. Can other funding programs be leveraged in the effort (such as transportation infrastructure, electricity grid upgrades, etc)?
4. What is the expected cost and timeframe of the project? How will it be sustained after federal funding expires?

5. Who will provide service? Are service contracts or negotiations required? Who will staff the project?

As a final comment, please note that the information provided above is subject to change as the details of ARRA-funded programs become clearer, and we urge potential funding applicants to closely track these developments to ensure that potential opportunities will not be missed, and that any proposal will have the greatest chance of success.

Questions or comments? Please contact:

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APPENDIX

Recommended Resources

- Access to full, final text of ARRA:
http://www.whitehouse.gov/the_press_office/ARRA_public_review/
- Recovery.gov: Federal government website created for education and accountability with regard to the stimulus bill. Will track federal agency expenditures as they become available.
www.recovery.gov
- National Telecommunications and Information Administration, information on grant programs:
<http://www.ntia.doc.gov/otiahome/otiahome.html>
- USDA Rural Utilities Service: existing Community Connect grant program
<http://www.usda.gov/rus/telecom/commconnect.htm>; Rural Broadband Loan program
<http://www.usda.gov/rus/telecom/broadband/htm>.
- United States Broadband Coalition: A coalition of 100+ entities from across the political spectrum, who have agreed to work toward the common goal of providing recommendations for the development of a national broadband plan. www.bb4us.net

FCC 2005 POLICY STATEMENT ON NETWORK NONDISCRIMINATION

[T]o ensure that broadband networks are widely deployed, open, affordable, and accessible to all consumers, the Commission adopts the following principles:

- *To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet*, consumers are entitled to access the lawful Internet content of their choice.
- *To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet*, consumers are entitled to run applications and use services of their choice, subject to the needs of law enforcement.
- *To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet*, consumers are entitled to connect their choice of legal devices that do not harm the network.
- *To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet*, consumers are entitled to competition among network providers, application and service providers, and content providers.

In the Matters of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services..., Policy Statement, FCC 05-151, released September 25, 2005, ¶ 4.