

**BROADBAND STIMULUS:
WELL INTENDED BUT IMPLEMENTATION CHALLENGES**

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East Lansing, February 16, 2009

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On Tuesday, February 17, 2009, President Obama will sign the American Recovery and Reinvestment Act of 2009. Whereas the impacts of the revised Bill remain to be seen, inaction would have been more risky. The Administration and Congress need to be congratulated for moving the Act along expeditiously. However, as will be discussed in more detail in this note, the Act also contains weaknesses and potential flaws that will need to be overcome during implementation.

The Act includes a series of measures targeted to improve access to broadband, most importantly \$7.2 billion in appropriations for a Distance Learning, Telemedicine and Broadband Program to be administered by the Department of Agriculture's Rural Utility Service (RUS) and a Broadband Technology Opportunities Program to be managed by the National Telecommunications Information Administration (NTIA). These funds are to be used to provide grants, loans, loan guarantees, and various ancillary support programs such as the development of a nationwide inventory map of existing broadband service capability and availability.

RUS funds are available for grants, loans, and loan guarantees for broadband infrastructure in any area of the United States, provided that certain conditions are met. These include (1) a requirement that 75 percent of the area to be served by a project be in a rural area; (2) prioritization of projects that give users a choice of more than one service provider; (3) prioritization of applications from borrowers or former borrowers under title II of the Rural Electrification Act of 1936; and (4) projects that are economically viable.

In contrast, the purpose of NTIA grant funding is to provide access to unserved areas, improve access in underserved areas, provide broadband education and awareness training, improve access to and use of broadband by public safety agencies, and stimulate the demand for broadband, economic growth, and job creation. NTIA will have to coordinate its definition of the terms "unserved" and "underserved" with the Federal Communications Commission (FCC). Grants need to be made before the end of September 2010 and projects need to be completed no later than two years after an award. Eligibility is delineated very broadly to include wireless carriers, wireline carriers, backhaul providers, satellite carriers, public-private partnerships, and tower companies.

NTIA is required to consider whether a grant applicant is a socially and economically disadvantaged small business and whether an application will deliver the greatest possible broadband speed. The default federal funding share is 80 percent of total costs although exceptions are possible. Concurrent with the request for proposal for grant applications the

Assistant Secretary of Commerce in coordination with the FCC shall publish the non-discrimination and network interconnection obligations that bind awardees. At a minimum, they must conform to the openness principles contained in the FCC's broadband policy statement. Lastly, no later than one year after the date of enactment, the FCC shall submit to Congress a report containing a national broadband policy.

The final Act contains improvements over some of the earlier drafts. For example, the House version had made funding contingent upon a speed threshold whereas the final version only refers to the "highest possible" speed. Although well intended, a minimal speed provision would have had serious downsides, for example, by inadvertently reducing the incentive to invest, thus undermining the intentions of the stimulus bill.

At the same time, provisions that would have had a stronger short-term stimulus effect, such as investment tax credits, which had been proposed by the House, were also eliminated. Whereas investment tax credits are not without downsides, this compromise in the conference committee eliminated the one measure that would have had an immediate impact on broadband roll-out by accelerating the timeline of ongoing investment projects.

The Act contains other poor compromises although some might be mitigated by the government agencies entrusted with implementing the Act. For one, the Act mixes short-term stimulus considerations with longer-term structural concerns about the status of US broadband deployment and access, two policy matters that would have better kept separate.

In the present situation, there is a trade-off between achieving short and long-term goals. Pursuing the longer-term goals requires conditions on funding that weaken the stimulus effect. Thus, while it is laudable to channel grants, loans, and loan guarantees to unserved and underserved areas, this also will delay the effect of the program.

Furthermore, there is a risk that short-term measures may set undesirable precedents for a more comprehensive broadband policy. The NTIA will have to quickly specify network openness and interconnection obligations that will bind recipients of grants. The agency may be tempted to impose requirements on service providers that go beyond the FCC's current broadband policy statement.

For several reasons, this would be ill-advised policy. The link between innovation and network openness is less evident than commonly believed. In fact, too much openness may well reduce the overall innovation rate in the information and communication industries. Moreover, such a step would create two tiers of service providers: those operating under the present FCC rules and recipients of grants working under more stringent conditions. Given the urgency of moving forward, the best policy, as permitted by the Act, would be to not deviate from the FCC's current approach. This would buy more time to reconsider principles of reasonable network management on a broader basis later on.

Another weakness of the Act is that it is based on a "build-it-and-they-will-come" mentality. Although funds are earmarked for educating the public and small business leaders to take advantage of broadband and there are references to the economic viability of projects, no explicit

assessment of demand conditions is required in the Act. Hopefully, demand-side factors will play a role as grant applications are reviewed by the agencies involved in administering the packet.

Lastly, although the Act contains reporting requirements, it does not require a formal analysis of the effectiveness of the adopted policies. NTIA, RUS, and the FCC would be well advised to develop such programs.

Thus, the broadband provisions have the potential to contribute to the overall goals of the stimulus package but only if the built-in pitfalls are avoided successfully.

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A detailed discussion of the effects of regulation and public policy on communications infrastructure investment is available in a recent paper by Johannes M. Bauer, "Regulation, Public Policy, and Investment in Communications Infrastructure", Quello Center Working Paper 09-01, downloadable from <http://www.quello.msu.edu/images/uploads/qc-wp-09-01.pdf> or <http://ssrn.com/abstract=1339043>.

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