



N A R U C
National Association of Regulatory Utility Commissioners

January 26, 2009

The Honorable John D. Rockefeller
Chairman
Senate Committee on Commerce, Science &
Transportation
253 Russell Senate Office Building
Washington, DC 20510

The Honorable Kay Bailey Hutchison
Ranking Member
Senate Committee on Commerce, Science &
Transportation
560 Dirksen Senate Office Building
Washington, DC 20510

Re: *Recommendations for Broadband Infrastructure Investment in Stimulus Package*

Dear Chairman Rockefeller and Ranking Member Hutchison:

As part of the economic stimulus package, Congress and the Administration are considering investments in broadband infrastructure. The obvious objective is to translate these funds into immediate economic stimulus and assure they are efficiently targeted. The National Association of Regulatory Utility Commissioners (NARUC) convened a working group of our best and brightest to formulate consensus recommendations detailing how Congress can best accomplish this goal.

NARUC represents the public service commissioners from all 50 States, U.S. Territories, and the District of Columbia responsible for oversight of essential energy, water, and telecommunications utility services. Because of their proximity, oversight, and interest in facilitating competition and universal telecommunications services, State commissions have the expertise and the proper incentives to help you direct infrastructure funding to communities that need it most.

The task of efficient and timely distribution of broadband stimulus funds is a daunting prospect for the federal agencies referenced in the House legislation. Both face critical staffing changes in the next few months. Indeed, the Digital Television convertor box coupon program is currently an all-consuming focus for National Telecommunications Information Administration (NTIA). If the DTV deadline is extended, that will significantly limit that agency's resources during what presumably would be the most critical period for handling disbursements. This is not a prescription for either speed or efficiency. As for the Rural Utilities Service, it is no secret that this agency has been the focus of continuing criticism from Congress,¹ industry, and others for the slow and cumbersome distribution of existing broadband loans and grants.

At the State level, those problems do not exist. Moreover, no one can question that: (1) States have intimate knowledge of the communications environment, geography, and demographics within their boundaries; (2) States can assure efficient utilization and targeting of stimulus monies; and (3) States have every incentive to make certain the money is not wasted and properly targeted. That is why NARUC has already urged Congress to assure stimulus monies for broadband deployment program are funneled through States. During discussions with both majority and minority staff, NARUC was asked for suggestions on a formula for distribution of broadband monies in the economic stimulus package. We have attached recommendations from our Broadband Stimulus Working Group for your consideration.

¹ See, e.g., *House Agriculture Subcommittee Hearing on Specialty Crops, Rural Development & Foreign Agriculture: Review of Rural Broadband Programs Operated by the U.S. Department of Agriculture Rural Utility Service*, May 1, 2007.

NARUC can help Congress and the Administration ensure that all communities have access to vital broadband services. If you have any questions about this, or any other NARUC position, please do not hesitate to contact me directly. You can also contact NARUC's Washington-based staff with your questions at 202.898.2207 (or jramsay@naruc.org) for Brad Ramsay, NARUC's General Counsel, or at 202.898.2205 (bohara@naruc.org) for Brian O'Hara, NARUC's Legislative Director for Telecommunications.

Sincerely,

Frederick F. Butler
NARUC President

NARUC RECOMMENDATIONS

FEDERAL FUNDING FOR STATE GRANTS FOR BROADBAND INFRASTRUCTURE

FUND THE BROADBAND DATA IMPROVEMENT ACT

- *We strongly recommend full funding of the Broadband Data Improvement Act, S 1492. Accurate broadband data collection and mapping is critical in order for this broadband appropriation to be effectively targeted to areas that are truly underserved in order to avoid fraud, waste and abuse.*
- *We further recommend that States be specifically delegated the authority to collect broadband data from any broadband provider who operates in their States to make broadband data collection and mapping easier. Absent this authority, States must attempt to get the data on a voluntary basis from broadband providers not regulated by the State agencies.*

PRINCIPLES

1. *Any broadband program should allow for the diversity of State approaches. States are at different stages in broadband rollout. Each State is best situated to know its unique needs and to use funds efficiently by recommending, approving and completing the most necessary projects quickly. Any program should provide States the flexibility to administer the funding with accountability and transparency.*

2. *Early adopter States should not be penalized. States that have already spent time and money on broadband initiatives should not be disadvantaged. Likewise, States that are behind in stimulating broadband should have equal ability to access federal funds to expand their broadband efforts.*

3. *“Shovel ready” should be defined as a broadband project, not necessarily a capital expenditure, that can be initiated within four months and completed within eighteen to twenty-four months. A shorter timeframe may prove problematic because of State and local zoning and permitting requirements.*

4. *Any action should allow States to pursue their policies with respect to fostering competition.*

5. *Federal legislation aimed at distributing broadband infrastructure funds to the States should also be used as a vehicle to put into place other critical provisions such as broadband data collection and mapping needed to evaluate and manage broadband policies and ensure transparency and accountability.*

6. *Broadband is defined as wired or wireless Internet access at a minimum bandwidth of 3 megabits per second (Mbps) downstream and 1 Mbps upstream. Projects should not be rejected, however, if they do not meet this minimum but do increase existing bandwidth. This bandwidth requirement should be adjusted over time as technology advances.*

7. *Any program should be technology neutral and not favor one communications mode or broadband provider over another. The program should be open to non certificated broadband carriers. Support should be targeted to the most efficient and economical technology that provides the necessary speed. Any analysis should be based on the relative costs/benefits of the technology chosen.*

DISTRIBUTION METHOD

All States should receive some minimal level of funding to ensure a measure of geographic parity such that each State receives some funding for broadband projects (hereinafter referred to as the “base amount”; the balance of funding beyond the base amount is hereinafter referred to as the “additional amount”).

[A] THE “BASE AMOUNT”

- *One-half of the total (representing the base amount) money would be apportioned among the States² on a pro-rata basis. (e.g. each State gets 1/53rd of the base amount)*
- *The base amount would be distributed to all States as a block grant, with limited federal administration, and should be invested in broadband projects that are “shovel ready” as defined above.*
- *The State would define areas of need and allocate the funding.*

[B] THE “ADDITIONAL AMOUNT”

- *The additional amount would be distributed through a process that requires application and review by a designated federal agency, and targets “underserved areas”. We leave it to Congress to define “underserved areas,” a term that we define to include unserved broadband areas.*
- *These grants may be used to provide matching funds (e.g. 80% fed/20% State), and the State portion could be either in cash or in kind. So as not to disadvantage States with less access to capital, a showing of need could also be used as a factor to demonstrate eligibility.³*
- *Evaluation of proposals should prioritize reaching underserved residential households and/or small businesses, either with higher bandwidth (typically represented in units of Mbps) broadband infrastructure (whether wireline or wireless), or for projects relating to “digital divide” issues such as affordability, adoption, accessibility, and applications. The evaluation shall take into consideration past and ongoing State-specific efforts to implement broadband deployment through State-specific funding.*
- *Each State would be allocated a pro rata share of the total additional amount. Any amount not used by a particular State would be put back in the pot of money to be allocated to any State.*
- *We recommend a three month time frame for the federal agency to review and rule on applications for the additional amount.*

[C] AS TO BOTH THE BASE AND ADDITIONAL AMOUNTS:

- *The grant may be used for any of the following: broadband infrastructure, broadband related equipment costs, planning, equipment specific to enabling tele-education and tele-health applications, staffing/personnel costs, training of personnel for tele-education and tele-health purposes, “middle mile” costs of bringing Internet points of presence to underserved communities, and laying fiber in public rights-of-ways to enable broadband in underserved communities.*
- *Congress should formally recognize in any legislation that many State legislatures meet for only a few months every year or two (in the case of biennial sessions). To the degree Congress emphasizes “shovel ready projects” the law should ensure that those States with part-time legislative bodies are not disadvantaged by virtue of their citizen legislatures. Adequate measures must be included to account for the fact that not all States may be structurally able to enact legislative appropriations or policy changes within a few weeks, or months of congressional action.*

² “States” is defined as the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. Congress also should provide an opportunity to participate for territories such as Guam, American Samoa, the Federated States of Micronesia, and the Midway Islands.

³ For example, if base amount funds are used for broadband mapping and the State has documented to the satisfaction of the federal agency that 15% of households and/or small businesses are unserved, and the State has no capability for match, the State would be deemed eligible for additional funds.