



The Committee on Energy and Commerce

Memorandum

February 25, 2013

To: Members and Staff, Subcommittee on Communications and Technology

From: Majority Committee Staff

Re: Broadband Stimulus Hearing

The Subcommittee on Communications and Technology will hold a hearing Wednesday, February 27, 2013, at 10:00 a.m. in 2322 Rayburn House Office Building entitled "Is the Broadband Stimulus Working?"

I. Witnesses

Two panels of witnesses will testify:

Panel 1

The Honorable Lawrence E. Strickling
Assistant Secretary for Communications and Information & Administrator
National Telecommunications and Information Administration (NTIA)
U.S. Department of Commerce

John Padalino
Acting Administrator
Rural Utilities Service (RUS)
U.S. Department of Agriculture

Panel 2

Pete Kirchhof
Executive Vice President
Colorado Telecommunications Association

Ann Eilers
Principal Assistant Inspector General for Audit and Evaluation
Office of Inspector General
U.S. Department of Commerce

Michael K. Smith
State President-Vermont
FairPoint Communications

Bruce Abraham
Board of Directors
North Georgia Network

Joe Freddoso
President and CEO
MCNC

II. Overview

Whether taxpayers are getting their money's worth four years after the American Recovery and Reinvestment Act of 2009 (ARRA) allocated \$7 billion for broadband grants and loans is questionable. Approximately \$611 million of the funding covering 42 projects has been revoked, relinquished, or suspended. Advocates of the law said it needed to be rushed through Congress to infuse money into the troubled economy and that the funding would go to shovel-ready projects. Yet only 60 percent of the broadband funds have been put to use so far even though all \$7 billion was awarded by September 30, 2010. And of the 553 projects funded, only 58 are finished or in the finishing stages, even though all were originally supposed to be completed by September 30, 2013.

Although the NTIA and RUS say they have made great strides, demonstrating a direct link between this ARRA spending and increases in broadband access or adoption is difficult. The Government Accountability Office (GAO) recently concluded that data limitations make it hard to assess the impact of the NTIA and RUS programs. Moreover, even without the benefit of ARRA funding, 95 percent of the population already had access to fixed broadband service by 2010, two-thirds of households subscribed, and the number of people with broadband at home had grown from 8 million to 200 million in the prior decade. That does not even count wireless service. As of mid-2012, wired broadband access had ticked up to 96 percent of the population. By the end of 2011, subscribership had reached 71 percent of households and the number of people with broadband at home had climbed to 220 million subscribers. Private investment is likely the source of this continued growth since the stimulus money is only recently entering the pipeline.

Indeed, private-sector wired and wireless broadband providers have invested an average of \$65 billion a year between 2002 and 2011, as compared to the one-time investment of \$7 billion in public funding nationwide. Moreover, parties that invest their own money are understandably more likely to scrutinize any economic analysis or strategic plan, since they bear the risk; conversely, the broadband stimulus projects using taxpayer dollars have attracted numerous allegations of waste and overbuilding. This is not to say there is no good coming from these stimulus programs. The question is whether they have failed to minimize costs, maximize benefits, and generate adequate return on investment, especially in the current fiscal climate. Better directing the money to areas where there was no economic business case for the private sector to deploy service would have helped. That, at least, would have focused government intervention on market failures and been more targeted to the ostensible goal of expanding broadband access to people for whom service was not available.

III. Background

The ARRA charged the NTIA with creating the \$4.7 billion Broadband Technology Opportunities Program (BTOP). Of that money, the NTIA used approximately \$300 million for the National Broadband Map and approximately \$4 billion to award 233 broadband grants.

Congress rescinded approximately \$300 million in 2010 for other spending. NTIA used the rest for administration and oversight.

The ARRA similarly charged the RUS with creating the \$2.5 billion Broadband Initiatives Program (BIP). RUS dedicated \$2.28 billion to broadband grants and used \$87 million to back \$1.26 billion in broadband loans. The RUS used the rest for administration and oversight. Altogether the RUS issued 320 BIP awards.

The ARRA instructed the NTIA and RUS to give precedence to shovel-ready projects that could be “substantially complete” within “project timelines, not to exceed 2 years following an award,” and to “activities that can commence promptly following approval.” To be substantially complete, a project must have received two-thirds of its award. NTIA projects were supposed to be completed within three years of the grant. The RUS started with the same requirement but in October 2011 extended the deadline to June 30, 2015. The NTIA and RUS made awards in two rounds, with the first round beginning in June 2009 and ending in April 2010, and the second round beginning in January 2010 and ending in September 2010.

From among the 233 NTIA grants, four have been closed out and 30 are in the closeout process. A grant is closed out when all of the project finances are reconciled, final reports are submitted, and the government has a full accounting of the property paid for with taxpayer funds. An awardee that has closed out, however, may not necessarily have completed 100 percent of the work described in the initial grant, but then may be required to relinquish some of the original funding. The NTIA has received more than 35 deadline extension requests and approved more than 20, with the others still pending. Approximately \$2.8 of the \$4 billion has been spent as of July 2012. Twelve of the awards worth \$343 million have been returned, revoked, or are currently suspended. The Leech Lake Reservation Business Committee in Minnesota declined its \$1.7 million grant on the grounds that it would not be able to meet its grant requirements. Three BTOP participants—the State of Wisconsin Department of Administration, the Education Networks of America in Indiana, and the City of Tallahassee of Florida—have returned their grants totaling \$38.5 million. The NTIA has revoked the \$80.6 million grant to the State of Louisiana Board of Regents and the \$59.3 billion grant to Trillion Communications in Alabama for material non-compliance and has also terminated three grants totaling \$4.2 million to Digital Bridge Communications for last-mile broadband in Idaho. The \$18.9 million Buggs Island project in Virginia, the \$100.6 million EagleNet project in Colorado, and the \$39.2 million GovNet project in Arizona are all currently under suspension for performance reasons. In April 2012, the NTIA lifted the suspension of a \$30.1 million grant to the North Florida Broadband Authority.

From among the 320 RUS awards, 24 were listed as fully complete as of December 2012. One hundred and sixteen projects are at least partially complete and providing broadband service. As of February 12, 2013, the RUS reports it had disbursed \$1.6 billion to BIP recipients. Five projects have yet to receive a disbursement. As of February 2013, \$191 million in BIP grants and \$77 million in BIP loans have been rescinded or revoked from 30 projects: Lifestream Holdings in Florida, Cellular Properties in Illinois, Norlight in Illinois, Digital Bridge Communications in Indiana and Mississippi, Mid-Hudson Cablevision in Massachusetts and New York, Dell Telephone Cooperative in New Mexico, Nelsonville TV Cable in Ohio, Panhandle Telephone Cooperative in Oklahoma, Pioneer Long Distance in Oklahoma, Five Area Telephone Cooperative in Texas, Telecom Cable in Texas, South Central Utah Telephone Association in Utah, Lenowisco Planning District in Virginia, Public Utility District 1 of Chelan County in Washington, Utopian Wireless Corporation in 8 states, Eastlight in Iowa, Finally

Broadband in Missouri, Gateway Telecom in West Virginia, Kenyon Communications in Nevada, Pueblo de San Ildefonso in New Mexico, and Rivada Sea Lion in Alaska.

The NTIA says that by September 2012, its grant recipients had deployed more than 78,000 new or upgraded network miles in 51 states and territories; connected or improved service to 11,200 “anchor institutions” across 45 states and territories; and installed more than 38,600 new workstations in public computing centers across 38 states. The NTIA also says that training and adoption projects led 510,000 households and 12,000 businesses to subscribe to broadband services. The RUS says that its awards will provide access to 2.8 million households, 364,000 businesses, and 32,000 anchor institutions across more than 300,000 square miles. The GAO concluded in a September 2012 report, however, that “[d]ata limitations make it difficult to fully measure the effect of BTOP and BIP on expanding access to and adoption of broadband.” According to the GAO, the “RUS initially did not collect [broadband access] data for BIP projects, and the data it has are not reliable.” And on the broadband adoption side, the GAO said that “both NTIA and RUS have faced difficulties collecting reliable data from awardees on subscribership for BTOP and BIP projects” and the data “may not be accurate.”

IV. Overbuilding

Under the ARRA, the purpose of the BTOP infrastructure grants was to “provide access to broadband service to consumers residing in unserved areas” and “provide improved access to broadband service to consumers residing in underserved areas.” The NTIA defined an area as “unserved” if at least 90 percent of households lacked access to terrestrial broadband service providing at least 768 kbps downstream and 200 kbps upstream. It defined an area as “underserved” if at least 50 percent of households lacked access to such broadband service, if no more than 40 percent of households subscribed to such service, or if no broadband service provider advertised speeds of at least 3 Mbps downstream. The ARRA directed the RUS to focus on unserved and underserved areas, requiring at least 75 percent of the area served by a BIP project to “be in a rural area without sufficient access to high speed broadband service to facilitate rural economic development,” with priority for projects that “provide service to the highest proportion of rural residents that do not have access to broadband service.”

Nevertheless, many carriers have complained that awardees have used BTOP and BIP grants and loans to overbuild existing systems rather than extend service to unserved areas. The GAO confirmed these suggestions at a February 10, 2011, subcommittee hearing, noting that the NTIA and the RUS had performed “due diligence” with respect to overbuilding but “made a decision to go forward nonetheless” with projects that would overbuild existing facilities. One example receiving national attention recently is the \$100 million grant the NTIA awarded to EagleNet in Colorado. According to a February 11, 2013, *New York Times* story, the now-suspended project has built a third fiber connection to an 11-student elementary school in Agate, which the school says it does not need or want, instead of to rural mountain communities desperate for access. The Energy and Commerce Committee’s Subcommittee on Oversight and Investigations has also been investigating allegations by cable company Mediacom that the Lake County government in Minnesota is not only using \$66 million in BIP funding to overbuild Mediacom, but included inaccurate information in its application to the RUS.

Overbuilding is problematic for a number of reasons. First, it provides “seconds or thirds” in terms of broadband access to some customers while others have yet to get “firsts,” an inequitable and inefficient use of taxpayer money in a time of scarce federal dollars. Second, it unfairly subjects to government-subsidized competition businesses that have invested their own

funds. This potentially divides the customer base from which the company can recover costs, jeopardizing its business and the jobs it created. Ironically, some rural businesses have even previously received broadband loans from the Department of Agriculture and say competition with stimulus funding may jeopardize their ability to repay what they borrowed. Third, it puts the federal dollars at greater risk, since the subsidized entity must similarly compete with the existing private businesses.

V. Waste

Because these stimulus projects are large governmental programs administered from Washington, D.C., without the disciplining pressures of having to earn a market return on private investment, potential waste is a concern. Indeed, the Department of Commerce Inspector General (IG) has classified these projects as high risk. A recent allegation of waste concerns a \$126.3 million BTOP grant awarded to West Virginia. At a May 2012 hearing, Communications and Technology Subcommittee Chairman Walden and Rep. John Shimkus raised questions regarding a series of press stories alleging West Virginia had bought expensive, enterprise-grade routers for tiny libraries with only a few computers, and that hundreds of routers were also sitting in warehouses yet to be installed. Following the hearing, they sent letters to West Virginia and the Department of Commerce Inspector General seeking additional information. Audits by the Inspector General and West Virginia each recently concluded that the purchases were excessive, with the IG estimating overspending of between \$500,000 and \$1.2 million and the state auditor estimating the waste at potentially \$9 million. State officials and the NTIA have countered that the purchases were meant to account for future growth and that the decision to buy uniform equipment across sites of various sizes would gain operating efficiencies that save money in the long run. One question, however, is whether adequate assessments of the sites or the use cases took place prior to the grant or the purchases to make that determination. Requiring such analyses might avoid similar controversies in the future, both with regard to money still unspent in these programs or any other programs going forward.

At a time when government is considering cutting meat inspectors and FAA traffic controllers to address the federal spending problem, we might do well to re-examine in the future whether we should be trying to replicate private-sector broadband investment with public money. As evidence mounts that the broadband stimulus programs may have already wasted hundreds of millions of dollars, we should at a minimum be doing a better job targeting taxpayer funds.

For more information, please call Neil Fried or Brian McCullough at (202) 225-2927.