



The Committee on Energy and Commerce
MEMORANDUM

May 14, 2012

To: Members, Subcommittee on Communications and Technology

From: Committee Staff

Subject: Hearing on "Broadband Loans and Grants"

The Subcommittee will hold a hearing May 16, 2012, at 10:00 a.m. in room 2123 of the Rayburn House Office Building on "Broadband Loans and Grants." One panel of witnesses will testify:

The Honorable Larry Strickling
Assistant Secretary for Communications and Information and Administrator
National Telecommunication and Information Administration (NTIA)
U.S. Department of Commerce

The Honorable Jonathan Adelstein
Administrator
Rural Utility Service (RUS)
U.S. Department of Agriculture

The Honorable Todd Zinser
Inspector General
U.S. Department of Commerce

Mr. David Gray
Deputy Inspector General
U.S. Department of Agriculture

More than three years after the American Recovery and Reinvestment Act of 2009 (ARRA) allocated \$7.2 billion for broadband grants and loans, the jury is still out whether taxpayers are getting their money's worth. Despite claims of ARRA projects being "shovel ready," recipients of 233 National Telecommunications and Information Administration awards

worth \$4 billion have spent just \$1.6 billion of it so far. Less than a dozen of the projects have been completed. Six of the awards worth \$124.5 million have been returned or revoked. Recipients of 320 Rural Utility Service Awards worth \$2.4 billion have spent \$968 million. Five projects have been completed. As of July 2011, \$124 million in grants and \$35 million in loans have been rescinded or revoked. Allegations also persist that NTIA and RUS funds are not bringing broadband to unserved areas but instead are subsidizing competitors to overbuild privately financed networks.

The NTIA says that by the end of 2011, its grant recipients had deployed 45,196 new or upgraded network miles in 47 States and territories; connected or improved service to 6,374 “anchor institutions” across 35 States; and installed more than 29,500 new workstations in public computing centers across 36 States. The NTIA also says that training and adoption projects led 259,446 households and 1,276 businesses to subscribe to broadband services. The Rural Utility Service 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. Demonstrating a direct cause between these projects and increases in broadband access or adoption is difficult, however. Indeed, even without the benefit of ARRA funding, 95 percent of the country already had access to broadband and two-thirds of households already subscribed, according to the National Broadband Plan, and those numbers were already trending upward.

I. Background

The Recovery Act charged the NTIA with creating the \$4.7 billion Broadband Technology Opportunities Program. 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.

Similarly, the Recovery Act charged the RUS with creating the \$2.5 billion Broadband Initiatives Program. RUS dedicated \$2.28 billion to broadband grants and used \$87 million to guarantee \$1.26 billion in broadband loans. The RUS used the rest for administration and oversight. Altogether the RUS issues 320 awards. The Rural Utility Service also conducts several other programs aimed at increasing the availability of telecommunications and broadband services in rural areas. The programs include the \$10 million Community Connect Grant Program, the \$90 million Rural Broadband Access Loan and Loan Guarantee program, the \$30 million Distance Learning and Telemedicine grant program, and the Telecommunications Infrastructure Loan Program.

Performance of Broadband Loans and Grants

The Recovery Act instructed the NTIA and the 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.” From among the 233 grants, a number of projects have finished their work, including awards for Williamstown, Kentucky; Michigan State University; North Carolina; and projects by Level 3 in Oregon, California, Florida, Georgia, Kansas, Tennessee, and Texas. Between those projects and others still in progress, however, just \$1.6 billion has been put to use so far, even though all \$4

billion has been obligated. Additionally, a number of projects never got off the ground or have been halted. 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 million to the NTIA. The NTIA has revoked the \$80.6 million grant to the State of Louisiana Board of Regents for material non-compliance and has also terminated three grants totaling \$4.2 million to Digital Bridge Communications for last-mile broadband in Idaho. And the NTIA only last month lifted the suspension of a \$30.1 million grant to the North Florida Broadband Authority.

As of May 8, 2012, the RUS reports it had disbursed \$968 million to BIP recipients. Fifty-five projects are at least partially complete and providing broadband service. Five projects were listed as fully complete as of Oct. 13, 2011. The RUS also reports, however, that 22 projects have not yet received a disbursement. As of July 2011, \$124 million in BIP grants and \$35 million in BIP loans have been rescinded or revoked for projects by 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, and Utopian Wireless Corporation in 8 states.

Separate from the BIP, the RUS's largest recipient under its broadband loan program—Open Range Communications—filed for bankruptcy in 2011. Of the \$267 million RUS loaned Open Range in 2008, \$73.5 million of taxpayer funding is at risk of default. Among the reasons for the bankruptcy was Open Range's reliance on the satellite network of GlobalStar, which was not fully in compliance with its license, and which the FCC eventually revoked.

More problems may lie ahead. The FCC has recognized the need to reform the USF's high-cost program for a decade, with proposals in 2008 and a reiteration of that view in the 2010 National Broadband Plan. The RUS nonetheless apparently guaranteed loans under the BIP and its Telecommunications Infrastructure Loan Program on the assumption that applicants would continue to receive the same level of high-cost USF funding for the life of each loan. Now that the Commission is reforming the high-cost program, the RUS has asked loan recipients to revise and resubmit their financial projections to demonstrate sustainability.

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 and 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.”

Administrator Strickling testified at the April 1, 2011, subcommittee hearing that he did not think overbuilding was a problem because the BTOP “focused on middle-mile projects, which are open network projects and available to anybody to take advantage of, including the incumbents as well as new entrants.” Administrator Adelstein testified that the RUS “ended up really making every effort I think we could to avoid overlap, to make sure that there was service to those who didn’t have it, and in fact we did get service out to the most rural areas.”

Nevertheless, industry observers have suggested that the BTOP’s and the BIP’s infrastructure loans and grants have been used to overbuild existing systems rather than extend service to unserved areas. The Government Accountability Office confirmed these suggestions at the Feb. 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. Indeed, the Energy and Commerce Committee’s Subcommittee on Oversight and Investigations is already investigating recently publicized 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 committed fraud by misleading the RUS in its application.

Public Safety Grants

The NTIA awarded seven of its grants, totaling \$382 million, for interoperable public safety broadband projects in California (two grants), Colorado, Mississippi, New Jersey, New Mexico, and North Carolina. Subsequently, however, the NTIA and the Commerce IG have investigated the \$50.6 million San Francisco Bay Area Wireless Enhanced Broadband project, also known as BAYWEB, for alleged misrepresentations and misinformation in its application. Moreover, despite presumably awarding the seven grants because the NTIA felt they would help move the country toward a nationwide, interoperable public safety network, the NTIA sent letters May 11 partially suspending the awards. In doing so, the NTIA cited the possibility that the projects might be incompatible with whatever actions FirstNet takes to build an interoperable public safety network under the recently enacted spectrum legislation. The NTIA has made similar but informal requests to public safety officials that have received FCC waivers to use 700 MHz spectrum for their own interoperable initiatives.

II. Contacts

If you need more information, please call Neil Fried or Brian McCullough at 5-2927.