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Broadband Stimulus: Prudent Minimalism Will Lead to Maximum Impact

by

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This week the National Telecommunications and Information Administration, the Department of Agriculture's Office of Rural Development, and the FCC will hold the first of what the agencies say will be several public meetings to discuss implementing the broadband initiatives funded by American Recovery and Reinvestment Act of 2009, a.k.a. as the \$787 billion stimulus package.

The \$7.2 billion allocated in the stimulus package to broadband *can* be money well spent, at least compared to the uses to which some of the remaining \$780 billion will be spent, if the broadband fund initiatives are implemented in a sensible fashion. Although \$7 billion is by no means a minimal amount of money – even in today's currency -- in approaching their tasks, the government disbursing agencies should act in what I would call a prudential minimalist fashion.

The legislation delegates NTIA broad discretion in implementing the program. (I am going to focus on the NTIA program because, with acknowledgements to Bonnie and Clyde, that is where the bulk of the money resides.) In carrying out its duties, NTIA is going to be faced with a multitude of choices. If NTIA opts for an appropriately minimalist approach, at least in important respects, it is more likely to have maximum

impact – more bang for the buck, to stick with B & C. And maximum impact in spurring broadband deployment and usage must be a principal objective.

Here is what I mean in this context by a prudent minimalist approach.

- As the economic stimulus package moved through the legislative process, there was much discussion concerning whether net neutrality or open access requirements should be included in the legislation. For example, the House-passed bill included a provision mandating that grant recipients operate on an "open access" basis and requiring the FCC to define that term in 45 days. The bill that was passed does not contain the open access requirement. Instead, it requires NTIA, in consultation with the FCC, to publish "non-discrimination and network interconnection obligations that shall be contractual conditions of grants awarded under this section, including, *at a minimum*, adherence to the principles" in the FCC's 2005 broadband policy statement.

The "at a minimum" language is significant. NTIA should quickly announce that grant recipients will be required to comply with the FCC's broadband principles and no more. If NTIA tries to further define a non-discrimination obligation, it risks delaying the disbursement of the broadband funds while it struggles to define what will surely be a contentious new standard. And there is a substantial danger that it will adopt obligations that are more regulatory than those inherent in the existing broadband policy statement. Delay obviously works against one of the central goals of the stimulus legislation: to get funds disbursed quickly so worthwhile projects can get underway. And adoption of regulatory obligations more onerous than those that currently exist, or of conditions sufficiently ambiguous that they subsequently might be interpreted to be so, risks deterring well-qualified providers from participating in the funding process.

- Another choice calling for a minimalist approach relates to the allocation of funds between "unserved" and "underserved" areas. Funds should be targeted predominantly to unserved areas presently lacking any broadband service. This approach is minimalist in the sense that trying to do more is likely to be less impactful and more wasteful. Figuring out which areas meet an "underserved" criterion and how to disburse funds in a way that efficiently addresses such "underservedness" is a much more difficult task than identifying areas without service and directing funds to a provider to serve those areas.
- In context, another minimalist approach would be to implement a simple form of reverse auction to award the funds for unserved areas to the lowest bidder. It generally will be a wasteful expenditure of public funds to award grants to multiple providers to build out facilities in the same area. Just such an approach of subsidizing multiple service providers to build out facilities in the same area has led to the explosive growth in the existing high cost USF fund. The stimulus legislation contemplates "competitive" grants, and NTIA should define and implement a relatively simple competitive bidding process. Besides ensuring that the stimulus money is not used wastefully, NTIA has an opportunity to

demonstrate, even if only on a pilot project basis, the efficacy of competitive bidding mechanisms in a way that may be instructive with respect to improving the efficiency of other government subsidy programs.

- Finally, while states and localities are eligible for grants, NTIA should ensure that most of the funds are directed to private sector companies, especially with respect to funds designated for building out facilities. The state and localities can play important consultative roles in providing information concerning unserved and underserved areas. But recent history has shown that states and localities are not adept at constructing and operating telecommunications networks in an efficient manner. As opposed to private sector companies which possess expertise and experience in the field, when governments become involved in building out and operating communications networks, it is common for them to run into trouble. It is also common for them to pay various significant fees to outside consultants and companies to "plan" and "manage" the projects, funds that otherwise could be used for construction of the actual broadband facilities.

NTIA, the Department of Agriculture, and the FCC have a large job to do if the stimulus funds are going to be used in a way fulfills the primary congressional purposes of helping to stimulate the economy without delay and increasing broadband deployment and usage. In deciding how to implement the legislation, the agencies will face many choices, some difficult.

By no means are the above comments to be a guide for resolving all of those choices. But they are intended to suggest, as the agencies embark on their tasks, that in several respects they recognize the risks inherent in trying to do more rather than less. This is especially true with respect to "net neutrality," where at the end of the day Congress wisely drew back from using the stimulus bill to require any change in existing regulatory policy.

If the government agencies act with a proper degree of prudent minimalism, they are most likely to have the maximum impact and the maximum benefit.

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