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TELECOM REGULATORY NOTE

Broadband funding provisions of ARRA

A joint meeting was held yesterday by the Federal Communications Commission (FCC), the U.S. Department of Commerce's National Telecommunications and Information Administration (NTIA), and U.S. Department of Agriculture's (USDA) Rural Utility Service (RUS) to provide information and seek comment on the broadband provisions of the American Recovery and Reinvestment Act of 2009 (ARRA).

What this means to investors:

- **There is a total of \$7.2 billion in budget authority in ARRA for NTIA and RUS. NTIA's \$4.7 billion portion is absolute, but RUS' \$2.5 billion can and will be leveraged into a larger amount by using some of the funding for loans. Other portions of ARRA--dealing with energy, transportation, education, and healthcare--are also likely to result in spending on broadband deployment or on equipment and services that stimulate the use of broadband.**
- **NTIA and RUS, in cooperation with the FCC, are moving very quickly to implement the ARRA. The detailed rules should become clear in the next two to three months.**
- **The first funding cycle--which will occur this summer--is likely to require a very steep learning curve from applicants and agencies alike. It may be difficult to take full advantage in this first cycle of opportunities to align NTIA and RUS funding with funding of other parts of ARRA, such as Smart-Grid, HIT, transportation, etc. By the next two cycles, however--this winter and next summer--such coordination across all parts of ARRA may become realistic.**

- Some of the funding, especially at NTIA, is likely to go to entities that compete with incumbents, but we also expect incumbents—other than the largest ones—to participate, especially in rural areas. Equipment vendors—both network and edge—are likely to benefit from ARRA.
- As part of the ARRA implementation, the FCC will develop a national broadband strategy by next February. By May of this year, it will provide a report to Congress on a rural broadband strategy. Universal service reform is clearly a topic likely to arise in each of these contexts, and that in turn brings up intercarrier compensation reform. We would be surprised to see universal service/intercarrier compensation reform implemented this May, but would be less surprised to see it become part of the national plan next February.

Discussion:

- Remarks by Secretary Tom Vilsack of the USDA, Acting-Chairman Michael Capps of the FCC, and Ms. Anna Gomez and Mr. Rick Wade of the NTIA highlighted that broadband is a priority for President Obama and the Administration. They noted that the \$7.2 billion provided by ARRA specifically for broadband is only part of the picture, because there is also funding for Smart-Grid and other energy efforts, education, transportation, and health information technologies (HIT). The FCC, NTIA and RUS will work cooperatively to create a national broadband plan and to implement ARRA. Chairman Capps also highlighted that ARRA funding must be seen within the broader context of a national broadband strategy. The FCC will work with RUS and NTIA as it develops a report to Congress on a rural broadband strategy (by May of 2009) and a national broadband strategy (by February 2010). The cross-agency effort might ultimately also encompass energy, healthcare, education, and transportation.
- Mark Seifert and Dr. Bernadette McGuire-Rivera of the NTIA, David Villano of the RUS, and Scott Deutchman of the FCC dealt with some of the specifics of ARRA-broadband implementation both via initial comments and a very efficiently run Q&A period. It was clear that the agencies at this point are still very much thinking through their policies, are in comment-seeking mode, and have made very few decisions. However, they are positioning to make the necessary decisions rapidly.
- There will be a series of six public meetings during the March 16-24 period, four in D.C. and one each in Las Vegas and Flagstaff. NTIA and RUS have issued a joint request for information, outlining 15 areas on which NTIA seeks comment and 5 areas on which RUS seeks comment. Comments are due 30 days after this request is published in the Federal Register. Both the meeting schedule and the

requests for comment are posted on the NTIA's web-site and the meetings will be web-streamed (as was yesterday's meeting).

- **Specific areas on which the agencies seek comment include:**
 - **Among other things, NTIA seeks comment on ways to allocate funding between various purposes outlined in ARRA for this funding, on whether and how grants and loans could be coordinated with RUS, on eligibility and selection criteria, and on grant mechanics. It also seeks comment on key definitions: “unserved area,” “underserved area,” “broadband,” “nondiscrimination,” and “network interconnection.”**
 - **Among other things, RUS seeks comment on the most effective ways to offer broadband funding, and ways to align the RUS and NTIA programs most effectively. It seeks comment on the priorities for funding that are outlined in ARRA, as well as on ways to evaluate whether areas need funding under the ARRA criteria, i.e., whether an area lacks “sufficient high speed broadband service to facilitate rural economic development.”**
- **Some takeaways from yesterday's meeting were:**
 - **As we have indicated in prior Notes, the NTIA has \$4.7 billion in budget authority which will translate to \$4.7 billion in awards. The RUS has \$2.5 billion in budget authority, but that could translate to far more via loans that do not score against the budget dollar-for-dollar. The RUS made it clear that it is interested in leveraging its authorized funds via loans, and that it will do a combination of grants and loans. The loans have the advantage that they can leverage the funding provided by ARRA, but they take considerable time because the application must be evaluated for loan-repayment potential. Grants can move more quickly because there is no repayment issue, but they score against the ARRA funding on a dollar-for-dollar basis [please see our January 29th Note for an explanation of the RUS loan vs. grant processes].**
 - **NTIA will be providing grants only, unlike RUS. However, it might be possible to combine NTIA grants with bank loans, as well as with RUS funding. NTIA can only fund 80% of a project. It may be possible to count in-kind contributions (such as rights-of-way) toward the other 20%, but the NTIA is still seeking comment on how non-cash contributions should be measured.**

- **Of RUS' funding, 75% must be rural. NTIA does not have a specific urban-rural mix. The agencies are seeking comment on how to deal with projects that include a mix of areas within a single project, e.g. a county that includes a small urban center.**
- **The agencies are moving very quickly to meet the deadlines required by ARRA, but are also doing their best to get as much public input as possible. This means very compressed comment cycles as the agencies develop the rules of the road, as well as very compressed grant- and loan-evaluation cycles.**
- **One way NTIA will deal with the rapid grant-evaluation cycles will be to outsource some of the work to contractors, something it has done in similar circumstances in the past.**
- **RUS and NTIA are trying to streamline the application and administrative processes, but must do so consistent with avoiding waste, fraud, and other abuses. Each agency's Inspector General will ensure proper utilization of funds.**
- **Each agency will have three cycles in which it provides Notice of Funds Availability (NOFA) and then evaluates and funds projects. It is not clear exactly how funding will be divided among the three cycles, given the deadlines in the ARRA, but it is clear that the first cycle will not consume all available funds. NTIA's NOFA cycles will be sometime in the timeframes of: April to June 2009, October to December 2009, and April to June 2010. All NTIA funds must be awarded by September 30, 2010 and projects must be completed within two years from the time funds are awarded.**
- **The first RUS NOFA cycle appears similar to that of NTIA, but no specific dates were given for the other two RUS cycles.**
- **Although one aspect of the ARRA includes long-range planning, much of the ARRA funding must be spent before the planning can be completed. An inventory of broadband facilities will be done through the \$350 million of funding available for mapping, but mapping will be completed after the first funding cycle this summer, and possibly even after the national broadband strategy is developed next February.**
- **It is likely that applicants will be able to seek funds from both the NTIA and RUS programs, as long as they clearly separate the**

portions of their projects that are funded by each. I.e., as long as there is no double-billing for the same item (e.g. a specific piece of equipment is billed on one side, not both), related pieces of the project can be funded out of the two programs.

- It is desirable for projects to also leverage other parts of ARRA—such as Smart-Grid or HIT or transportation. One example given was “let’s only dig a trench once” which we interpret as meaning that if an NTIA or RUS project can share infrastructure with a Smart-Grid, transportation, or HIT project, that will be viewed positively.
- Deal with cross-agency applications will be something of an iterative process. Given that the applicant won’t know ahead what will get funded and when, how should project applications be split between the agencies, if they should be split at all? Even more complex will be coordination with HIT and Smart-Grid or other aspects of ARRA outside the NTIA and RUS portions.
- There is also an issue of aggregation of project applications. It may be helpful to present a package of applications—for example through a state--but it is not clear at this point whether that will help get each project in the package awarded.
- States, municipalities, or others could play a helpful role in helping applicants coordinate efforts, for example by serving as clearinghouses for information about what is being done under various aspects of ARRA. For example, to go back to the dig-a-trench-once concept, a state or county could help all its applicants for all aspects of ARRA funding by keeping a database of projects that are being proposed, so that they could highlight cross-project efficiencies in their applications.
- Having said that, while the NTIA plans to consult with states as ARRA requires, it is not clear what the mechanics of that consultation will be. For example, states have different agencies through which they will deal with ARRA—in some cases state commissions, in other cases the governor’s office, etc. NTIA would find it very helpful to have each state clarify for NTIA who that appropriate contact point is.
- While projects need to be shovel-ready, they also have to be projects that could not be done without ARRA funding. Our interpretation of some dialogue in the Q&A portion of the meeting was that awarding contracts now in hope of getting ARRA funding for a project is not a

good way to demonstrate shovel-readiness, because it is likely to disqualify the project on the grounds that the project could have been done without ARRA funding.

- **While “open access” language does not appear in ARRA as enacted (it appeared in earlier versions of the bill), the RUS appears to be leaning toward granting projects that allow access for more than one service provider.**
- **ARRA is technology neutral, but there appears to be some preference for higher speeds. Thus, while wireless or copper as well as fiber could theoretically qualify, preference might go to the highest speed offered in some cases. Other considerations are cost effectiveness and future potential of an investment. Satellite could also qualify, especially in very rural areas.**
- **Another public notice was posted by the FCC yesterday requesting comment by March 25th in preparation for a report to Congress which is due by May 22d describing a rural broadband strategy. This report was required by the 2008 Farm Bill. The report is expected to recommend ways to promote coordination among government agencies and initiatives, as well as identifying how federal agency programs can best respond to obstacles that impede rural broadband deployment. This May 2009 report could, in theory, become the occasion for action on universal service reform, but we believe that it is more likely at this point—when the FCC itself is in transition--to outline issues rather than implement reform.**
- **The FCC will issue a Notice of Inquiry during its April 8th open meeting to kick off its work on the national broadband strategy that it must present to Congress within a year of the enactment of ARRA (i.e., by February 2010). The process of developing a national broadband strategy could encompass many related issues, including net management/net neutrality, open access, universal service and--as an inevitable accompaniment—intercarrier compensation. Whether the process will be tightly focused or very broad will become clearer once the FCC’s new Chairman takes over and has a chance to establish his own priorities.**

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