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House Panels OK \$6B in Broadband Stimulus (& \$650M for DTV); Senate Bill Looms

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- House committees this week approved \$6 billion in broadband funding as part of the economic stimulus/recovery package. A few tweaks were made to the broadband piece, but the Democratic majority appears intent on passing the stimulus bill next week without major changes.
- We believe the broadband stimulus measures could benefit some telcos, wireless carriers, cable companies, equipment manufacturers, and Internet application/content providers, but the magnitude so far is relatively modest and the details will be key to the network service providers.
- The next big step appears likely to be when Senate draft measures are circulated, which is expected in coming days. We suspect the Senate legislation will include at least the \$6 billion in broadband funding, albeit with some changes, but the big question for us is whether it will include broadband tax incentives, which were not included in the House bill.
- We note the House bill also contains \$650 million for the broadcast digital television (DTV) converter-box coupons and related activities, and Democrats are trying to try to move a separate bill to delay the February DTV conversion deadline to June.
- Finally, we note that FCC Democratic Commissioner Michael Copps was named acting chairman of the agency by President Obama. Julius Genachowski is still expected to be nominated at the eventual chairman, but he will have to be confirmed by the Senate.

HOUSE APPROPRIATIONS LEGISLATION

The House Appropriations Committee on Wednesday, Jan. 21, approved its portion of the economic stimulus bill (the American Recovery and Reinvestment Act) that is being driven by new President Barack Obama. Republicans complained about the hurried process and some of the measure's substance, but we are not aware of any changes, at least of significance, made by the Appropriations Committee to the bill's broadband parts. Those provisions would appropriate \$6 billion to spur broadband deployment: \$2.825 billion in broadband (and some wireless voice) grants through the Department of Commerce's National Telecommunications and Information Administration (NTIA), which also would receive \$350 million to run a State Broadband Data and Development Grant Program and create a national broadband inventory map; and \$2.825 billion for broadband grants, loans, and loan guarantees through the Department of Agriculture's Rural Utilities Service (RUS).

We believe the broadband stimulus measures could benefit some telcos, wireless carriers, cable companies, broadband equipment manufacturers, and Internet applications/content providers, but the magnitude so far is relatively modest and the details will be key.

Among the key provisions of the NTIA appropriations piece are the following:

- **Broadband and Wireless Grants.** The measure would appropriate \$1.825 billion for broadband deployment grants and \$1 billion for wireless deployment grants, all of which are covering non-recurring costs of eligible entities.
- **Initial Sept. 30 Push.** Fifty percent of the "grants" (we suspect that term will be interpreted or clarified to mean grant money) must be made available by Sept. 30, 2009, but the program involves various bureaucratic steps along the way that we believe will complicate the task.
- **State Grants, Role.** At least one grant is to go to each state, with states given 75 days from enactment to tell NTIA which areas they believed to have the greatest priority, though no more than 20% of the state can be targeted as unserved or underserved.
- **25/75 Unserved/Underserved Target Splits.** The NTIA "shall seek to distribute grants, to the extent possible" so

that 25% of the wireless grants fund wireless *voice* service in unserved areas and 75% fund advanced wireless *broadband* service in underserved areas, and so that 25% of the broadband grants fund basic broadband service in unserved areas and 75% fund advanced broadband service in underserved areas (again, we suspect "grants" will be interpreted or clarified as grant money).

- **Recipient Mandates, Including Open Access.** NTIA is to adopt rules to head off "unjust enrichment" and ensure that grant recipients meet build-out duties, operate networks on an open access basis, and adhere to the Federal Communications Commission's principles in its 2005 broadband policy statement.
- **Some Definitions (Service Speeds) Spelled Out ...** Definitions will be key, and the bill defines "advanced broadband service" as having data speeds of at least 45 megabits per second (Mbps) downstream and 15 Mbps upstream, "advanced wireless broadband" as at least 3 Mbps down and 1 Mbps up, and "basic broadband service" as at least 5 Mbps down and 1 Mbps up.
- **... Some Definitions (Unserved, Underserved) Left to FCC.** The FCC is to define "underserved area," "unserved area," "open access" and "wireless open access" within 45 days.

Among the key provisions of the RUS appropriations piece are the following:

- **Grant Preference.** Although RUS money can fund grants, loans, and loan guarantees, report language says funding will be "strongly oriented towards grants."
- **75% Rural Mandate.** At least 75% of an area served by a project receiving RUS funding "shall be in a rural area without sufficient access to high speed broadband service to facilitate rural economic development, as determined by the Secretary of Agriculture."
- **Priority for Rural Unserved Areas and REA Loan Recipients.** Priority is to be given to projects serving the most rural areas without broadband service, and to applications from or including borrowers and former borrowers under the Rural Electrification Act's (REA) Title II provisions, which we understand to be the telephone loan program.
- **Initial Sept. 30 Push.** As in the NTIA piece, 50% of the grants, loans, and loan guarantees (again, we suspect it will be interpreted or clarified as funding) are to be awarded by Sept. 30, 2009.
- **Anti-Duplication Provision.** No area receiving RUS project backing can receive funding under the NTIA's broadband grant program.

REA Borrower Eligibility, Open Access, Speed Controversies. There are many issues and questions raised by these provisions, including over who precisely would benefit by the RUS program provision giving priority to REA Title II borrowers/ex-borrowers, which apparently, at least in the past, excluded the largest carriers. Our sense is that small and mid-size rural local exchange carriers/RLECs (e.g., **EQ, CTL**) -- could be the main beneficiaries of that priority, though it would depend on precisely who was, or had been, such a borrower. We note that ITTA, a midsize telco group, has asked key House members to remove the REA provision, even though we suspect a number of its members would qualify for the prioritization, but we understand that at least one ITTA member, Qwest (**Q**), would not (though we note Qwest did urge lawmakers to use the grant approach). Our sense is the two big Bells, Verizon (**VZ**) and AT&T (**T**), would probably not qualify for the prioritization, but we have heard mixed speculation and it's possible they might qualify through some of their acquisitions. We suspect most cable companies (e.g., **CMCSA, TWC**) and other publicly traded industry parties would also not qualify, but, again, uncertainty remains.

We note there is also pushback from various parties over the open-access provisions and the data-speed definitions for certain categories of services, among other areas, but so far they remain in the House stimulus legislation.

We believe such details are particularly key for network service providers, but we believe the size and scope of the program are more important for broadband equipment manufacturers (e.g., **GLW, CSCO, ALU**) and Internet/content application providers (e.g., **GOOG, YHOO, MSFT, EBAY, AMZN, IACI**).

HOUSE ENERGY AND COMMERCE LEGISLATION

The House Energy and Commerce Committee yesterday approved its piece of the stimulus bill, authorizing the NTIA broadband and wireless programs under the panel's jurisdiction. (Congress has both appropriations and authorization processes for funding measures in order to guard against single committees and their chairman from having too much control over spending under their authority -- with the authorizers creating a legal mandate and the appropriators making funding available -- though the dual process sometimes is not strictly followed.)

The Energy and Commerce Committee's legislation closely tracks the appropriations bill, but the panel did make modest changes yesterday that we suspect will be incorporated into the final House stimulus package. Chairman Henry Waxman's (D-CA) underlying draft modified some language, including by expressly noting that satellite

providers were eligible for grants if they provided qualifying services and by requiring an annual NTIA report on the effectiveness of the grants.

As in the Appropriations Committee, Energy and Commerce Republicans complained about the rushed process and some of the measure's provisions, but they had only limited success in making changes, given the Democratic majority's desire to meet the objectives and timetable of House Democratic leadership. Of most significance, the majority rejected Republican amendments (1) to give first priority to grants targeting unserved areas before grants are used for boosting service or speeds in underserved areas, and to (2) adjust the 25/75 target splits between unserved and underserved areas after the NTIA completes its broadband mapping/inventory task. The Republicans argued for the changes as a matter of fairness and programmatic efficiency, but Democrats noted the separate RUS program targeted almost \$3 billion at rural unserved areas and they noted the 25/75 split was "aspirational" not mandatory.

Defining Unserved and Underserved Areas. Republicans also said the committee should not leave it to the FCC to spell out certain key definitions, particularly "unserved areas" and "underserved areas." The Democrats rejected that approach, but did adopt an amendment requiring the FCC to define "unserved areas" and "underserved areas" 135 days after the NTIA makes its broadband inventory map available, which he said would be completed relatively soon (at one point he suggested within three months). Some Republicans questioned the amendment's sequence of events, particularly in light of the mandate for states to give the NTIA their priorities within 75 days of enactment. One said the NTIA/FCC timetable could "move the goal posts" for the states. We wouldn't be surprised if the sequencing issue is modified further, particularly in light of the NTIA charge to award 50% of the grants (or grant money) by Sept. 30, 2009.

The committee adopted a few other amendments: (1) to require an FCC report within one year that sets out a national broadband plan; (2) to direct the NTIA to consider whether applicants were socially or economically disadvantaged, among other factors, in a bid to boost participation by small businesses owned by minorities and women; and (3) to modify the meaning of a provision limiting the areas in a state that can be served by NTIA grants to 20% of the state's population, thus dropping language that would have applied the 20% limitation by geography as well.

The committee did not attempt to eliminate or modify the network open access requirements for grant recipients, though some members appear to have concerns.

OTHER HOUSE PANELS, FLOOR ACTION, SENATE SPECULATION

House Agriculture Committee? The RUS broadband program falls under the authorizing jurisdiction of the House Agriculture Committee. It's unclear if that panel will meet to expressly approve the \$2.825 billion in new RUS grants, loans, and loan guarantees, but to date, we are not aware of any plans by that committee to act.

House Ways and Means Committee Tax Provisions. We do note that the Ways and Means Committee yesterday approved its part of the stimulus package, covering tax measures. While the tax piece did not contain broadband-specific provisions, there are some provisions of general applicability that might modestly assist some telecom companies and broadband efforts. In particular, we note proposed general provisions to mandate a "five-year carryback of net operating losses," which was projected to cost the government \$17 billion over 10 years, and an "extension of bonus depreciation," which was projected to cost \$5 billion over 10 years.

House Floor Action. House Democratic leadership wants to move the overall economic stimulus bill to the floor next week, and we suspect they will be able to pass it without a lot of changes, given the ability of the majority to work its will in the House and the desire to act quickly. While the House bill will have to be reconciled with the Senate version, House Speaker Nancy Pelosi (D-CA) wants to finish that process by mid-February, a timetable that some believe is optimistic.

Senate Tea Leaves. The Senate's broadband plans and overall stimulus legislation remain cloaked in a good deal of mystery, but we understand that draft bills could start circulating soon, with committee action possible as early as next Tuesday, Jan. 27. Because of the Senate's more rural bent, we would not be surprised if senators are somewhat more ambitious in their broadband plans, perhaps providing more grant money, though we suspect there will be some changes in the implementation details. The bigger question for us is whether the Senate will include broadband tax incentives, given the House decision to leave them out. If the Senate does not include broadband tax incentives, the chances they would end up in the final reconciled version would drop to very slim, in our opinion. If the Senate does craft broadband tax incentives, we believe they would have a decent chance of making the final cut, particularly if the Obama administration is onboard.

Reports are mixed about the prospects, but we understand that some industry parties have continued to push various tax proposals, including tax credits in various flavors. Tax credits could potentially be used by industry parties to accelerate broadband deployment more quickly than grants because they would not require bureaucratic decision making and processing. However, we understand that some lawmakers and staff are concerned about tax credits on various grounds: that they could only be used by certain Bells, RLECs, cable operators, and some other companies with taxable income to be offset; that they might do more to help such parties lower their tax bills for implementing existing business plans than to spur incremental broadband investment and deployment; and that they are difficult to score for budget purposes because of the uncertainty over the ultimate industry use. We suspect tax credits or related provisions could be written to address at least some of the concerns, including by broadening the scope of eligible parties -- for instance, through "refundable" tax credits or some sort of "expensing" provisions. Sprint (**S**) and Clearwire (**CLWR**) are two parties that might benefit from a broader approach. We also understand that broadband "tax credit bonds" still have their advocates, though there is some concern the bonds could take longer to set up than simple tax credits.

We note that the Democratic majority in the Senate will need greater Republican support than in the House, given the minority's ability to slow down and even block legislation. But we also suspect that senators and their staff are using the extra time in an attempt to reach further deals with the Obama administration. If successful, that could give the Senate greater clout to win more of the showdowns with the House in reconciling the two bills.

DIGITAL DTV FUNDING AND DELAY LEGISLATION

The House Appropriations Committee's stimulus measure also contains \$650 million in additional funding for the broadcast DTV transition's converter box coupon program. The money would largely go toward funding more coupons -- which have generated a waiting list due to a surge in consumer requests and budgetary accounting restrictions on when unredeemed coupons can be recycled -- but would also be available for related activities, such as consumer education, support, and outreach.

The Obama administration and key lawmakers are also seeking to move separate legislation to push back the DTV conversion deadline from Feb. 18, 2009, to June 12, 2009. While efforts to quickly move the DTV delay bill in the House and Senate over the last week ran into snags, there are press reports that Senate Commerce Committee Chairman Jay Rockefeller (D-WV) will soon try again, and we continue to believe that enactment is likely, given the policymakers and industry players now supporting or at least willing to accept a delay. We note that Verizon, which originally opposed a delay, now believes a short delay, as proposed by a Senate bill, would be "appropriate" after receiving greater assurances that a proposed delay would be "limited and specific." AT&T was supportive from the outset. The two Bells paid almost \$16 billion at auction to win the rights to much of the prized 700 MHz band spectrum that is to be reclaimed from broadcasters and turned over for wireless purposes, particularly broadband.

We are skeptical that Senate Republicans will want to use their filibuster power to block a delay, particularly if they are not joined by significant numbers of Democrats so that any consumer/voter backlash due to viewing disruptions does not have partisan fallout. So far that does not seem likely to us, though we understand that there are various implementation details that raise concerns that could need to be further addressed, including on the coupons, public safety demands having their 700 MHz band frequencies exempted from the delay, industry conversion plans and contracts, and additional consumer notification efforts and their costs.

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