Broadband Expansion Under the Infrastructure Investment and Jobs Act

Rural broadband providers have an opportunity to expand and upgrade their networks using both fiber and wireless technology in unserved and underserved rural areas, with priority given for higher speeds and faster deployment in unserved and poverty-stricken regions.

By Carri Bennet / *Womble Bond Dickinson (US) LLP*

Infrastructure in the 21st century encompasses more than roads, bridges and dams. The Opportunity Economy depends on a vast network of fiber, cable, spectrum, towers and equipment providing a stable, speedy internet connection that future-proofs these wired and wireless networks.

The Infrastructure Investment and Jobs Act recently passed by Congress addresses traditional infrastructure needs and will provide $65 billion to support ubiquitous nationwide broadband coverage and adoption.

At Womble Bond Dickinson, and as general counsel to the Rural Wireless Association, I collaborate closely with rural broadband carriers on the front lines of using fiber and wireless technologies to provide high-speed internet coverage to the most remote U.S. regions. The Infrastructure Investment and Jobs Act is a bipartisan win and a game-changer that will significantly benefit rural residents and the nation's overall economic competitiveness.

WHAT THE ACT INCLUDES

The key number is $42.5 billion – that is how much the Infrastructure Investment and Jobs Act will allocate to upgrade broadband coverage. The money will be sent to states to disburse – initially a minimum of $100 million per state (including the District of Columbia and Puerto Rico, plus a $100 million split among the four other populated U.S. territories) – a sum of $5.3 billion.

After the broadband mapping process is completed, the government will allocate the $37.2 billion to the state entities based on a formula that considers the percentage of the nation's unserved rural locations. The state entities will decide how to distribute the funds via a grant process guided by the National Telecommunications and Information Administration (NTIA). It's similar to broadband funding provided under the American Recovery Act under the Obama administration, which NTIA administered, but with the twist of letting states control who wins the grants with NTIA providing oversight.

Broadband providers will have to match at least 25 percent of the funding they receive from another source or use their own funds for the match. It will be incumbent upon the companies to work with the states and show that the companies can provide the

matching funds. Although there will be limited waivers of the matching fund requirement for the most difficult-to-reach areas, it isn't completely free money. Those willing to kick in more than 25 percent may stand a better shot at getting the funding.

For purposes of broadband funding, "unserved areas" are defined as those with speeds less than 25 download or 3 upload megabits per second. "Underserved areas" are those with speeds slower than 100 download or 20 upload megabits per second. Priority for grants will focus on unserved areas over underserved areas. In addition, states are expected to prioritize high-poverty areas. Applicants will also be judged based on the broadband speed they can provide, the expediency with which they can complete the project, and the amount of the matching funds they contribute.

The second-largest part of the Infrastructure Investment and Jobs Act is an affordability support program with $14.25 billion in initial funding to support a $30 monthly subsidy for low-income consumers over five years. This initial funding will be accomplished by revising and extending the Emergency Broadband Benefit program and renaming it the Affordable Connectivity Program.

The landmark infrastructure bill also includes the Digital Equity Act, which provides an additional $1.5 billion (over five years) for digital literacy. The money will fund programs that increase the ability of individuals and communities to access and use the internet by training people in online skills.

Users take the internet for granted, but many people, including impoverished and older adults, still do not know how to use it. But such knowledge is increasingly necessary to participate in the modern digital economy. Having devices to access the internet is also essential, and the digital equity money covers the cost of devices.

Finally, the Infrastructure Investment and Jobs Act includes an additional $1 billion for middle-mile broadband infrastructure projects – those that do not connect to an end user – and $14.2 billion for the Affordable Connectivity Program. It helps schools and libraries provide remote services and began in response to the COVID-19 pandemic.

President Biden and House Speaker Pelosi worked hard to shore up Democratic support for Biden's other major legislation known as the Build Back Better Plan, which had been paired with the Senate-approved Infrastructure Investment and Jobs Act. In the end, the two pieces of legislation had to be decoupled from each other in order to pass in the House. The administration remains hopeful that the Build Back Better Plan will also be enacted, but it is up to moderate Democrats, who have balked at the overall cost and some of the plan's components, to continue to keep their promise to work with progressive Democrats. Together, they need to work through the expenses of the Build Back Better plan to ensure that it can be paid for without incurring additional debt and passed through the budget reconciliation process. Meanwhile, as we go to press, President Biden is scheduling a bipartisan signing ceremony to enact this historic legislation, nicknamed "The Big Deal."

THE IMPACT

Under the Infrastructure Investment and Jobs Act, broadband expansion must be completed within four years after receiving funding. But the actual timetable for accurate broadband equity is even longer.

Broadband construction cannot happen quickly, particularly in areas where service providers must install fiber, so four years is not a reasonable expectation for completing every project. But the good news is that building new broadband networks will create new jobs, as part of the construction and through expanded broadband access.

If the timetable is one aspect still in question, broadband industry officials also want greater clarity around operations and maintenance funding for the broadband expansion. The act provides only one-time funding and not ongoing operation and maintenance beyond what can be anticipated in the initial funding proposals.

The federal Universal Service Fund (USF) is set up to potentially fund up to $10 billion a year to support a variety of broadband deployment and affordability programs covering high-cost rural areas, schools and libraries, lifeline support and rural health care. Some funding can cover operation and maintenance costs, but most goes to the new deployment. With the Infrastructure Investment and Jobs Act now law and other broadband deployment initiatives by federal and state agencies continuing, the USF will remain necessary. However, it will need to transition toward providing more support for maintaining broadband in high-cost areas and will likely need to be increased.

The universal service contribution funding mechanism is broken. It needs to be retooled because most of the fees are paid by business and wireless telecommunications services that are being replaced by broadband services currently not included in the assessment. Big tech companies, which reap the benefits of widespread consumer broadband access, may be asked to contribute to the fund, which will require congressional legislation.

In the meantime, there is a push to extend federal USF contributions to consumer broadband, which I expect the FCC to take up once it has a full slate of five commissioners in place. That could be as soon as next year now that President Biden has nominated Jessica Rosenworcel for another term at the FCC and Gigi Sohn as a new commissioner.

WIRELESS BROADBAND WINNERS, OPPORTUNITIES

Most funding in the FCC's Rural Digital Opportunity Fund auction was won by companies looking to deploy gigabit service, particularly over fiber. Given the emphasis on high-speed networks, it's reasonable to expect a similar outcome now that the Infrastructure Investment and Jobs Act is law.

Though the large, national broadband wireless providers may receive some funding, I see this opportunity more for the infrastructure players, including large and small internet service providers such as telcos and cable companies, which can provide fiber-based backhaul incremental service over their gigabit networks. The rural electric companies that have built fiber infrastructure also can expand their footprints both for fiber backhaul and to support mobile and fixed wireless services.

I expect to see a lot of fresh players in the market because much of the rural U.S. is not served by telephone and broadband cooperatives. Serving these regions will take creativity because there is a reason nobody has gone there – it simply is not lucrative. Look for rural electric cooperatives to do some of the buildout where rural telecommunications and broadband companies are not currently in the nearby communities that need service.

Small wireless internet service providers (WISPs) have a real opportunity to make gains under the Infrastructure Investment and Jobs Act. These small businesses are already working to bridge the digital divide by providing service to underserved and unserved areas. The funding the act provides will aid in that mission. From a wireless perspective, additional towers will be required to expand wireless coverage across farms, ranches, vineyards and oil fields. The funding could also support this type of wireless infrastructure, which will be a huge boon to the tower industry since it can get costs paid upfront rather than through long-term lease agreements.

However, current market challenges – including supply shortages and a tight market for construction labor – could be issues, particularly over the next two years. Companies interested in accessing the broadband expansion funds should pay close attention to coverage maps to ensure that the areas they seek to cover are classified as underserved or unserved.

Though the process won't be easy or quick, the prospects for broadband expansion to hard-to-serve areas hold great promise. Economically challenged areas will have new opportunities to attract business with the deployment of high-speed broadband. Many companies and workers may be tempted to move to rural areas because of the lower living costs once they can fully connect to high-speed broadband. Rural economic development is spurred by high-speed broadband connectivity. The U.S. can bring back manufacturing and call-center jobs that were offshored and allow high-tech telecommuting jobs to be performed in rural and less populated regions of the country.

Everything is going to be connected somehow, in some way, to the internet. Broadband is the lifeblood of the new economy. We learned that during the pandemic – now, we must use the funding to get everyone – and everything – connected to it. ❖

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