

## **TITLE VI – BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM**

### **House Bill**

Section 6001 of the House bill directs the National Telecommunications and Information Administration ("NTIA") to develop and maintain a broadband inventory map of the United States that identifies and depicts broadband service availability and capability and directs the NTIA to make the map accessible on the NTIA's website no later than 2 years after the date of enactment of this Act. It authorizes the creation of grant programs for the deployment of wireless and wireline broadband infrastructure to be administered by the NTIA. It also authorizes a state to submit a priority report to the NTIA that identifies the geographic areas within that state that have greatest need for new or additional telecommunications infrastructure. A state may not identify areas encompassing more than 20% of that state's population.

Section 6002 of the House bill authorizes the NTIA to award wireless deployment grants and broadband deployment grants to eligible entities for the non-recurring costs of deploying broadband infrastructure in qualified urban, suburban, and rural areas. Section 6002 directs the NTIA to seek to distribute wireless grants, to the extent possible, so that 25% of the available funds go to "unserved areas" for basic wireless voice services and 75% to "underserved areas" for advanced wireless broadband services. It also directs that the NTIA shall seek to distribute broadband deployment grants, to the extent possible, so that 25% of the available funds go to "unserved areas" for basic broadband services and 75% to "underserved areas" for advanced broadband services. Section 6002 directs the NTIA to establish certain grant requirements, including that grant recipients are not unjustly enriched by the program, adhere to the FCC's August 5, 2005, broadband internet policy statement, operate networks on an open access basis, and adhere to a build out schedule.

Section 6002 of the House bill sets forth the requirements of the grant application and grant selection criteria. The NTIA is required to consider certain public policy goals (e.g., public safety benefits and enhancement of computer ownership or literacy) before awarding grants. It requires the NTIA to coordinate with the FCC and to consult with other agencies as necessary. Section 6002 requires the NTIA to submit an annual report to Congress assessing the impact of the grants on the policy objectives and criteria contained in this Section and grants the NTIA authority to prescribe rules as necessary to implement this Section. Section 6002 also contains definitions of terms used in this Section, and directs the FCC to develop definitions for the terms unserved, underserved, and open access.

Section 6002 defines "basic broadband service" as a service delivering data to the end user at a speed of at least 5 megabits per second downstream and 1 megabit per second upstream. The term "advanced broadband service" means a service capable of delivering at least 45 megabits per second downstream and 15 megabits per second upstream. The term advanced wireless broadband service means a service capable of delivering at least 3 megabits downstream and 1 megabit upstream.

Section 6003 of the House bill requires the FCC to, not later than one year after the date of enactment of this section, develop and submit to Congress a report containing a national broadband plan and specifies what the plan should include.

### **Senate Bill**

Section 201 of the Senate bill authorizes the NTIA to create a grant program entitled the Broadband Technology Opportunity Program to award competitive grants to State and local governments, nonprofits, and public-private partnerships to: (1) accelerate broadband deployment in unserved and underserved areas and to strategic institutions that are likely to create jobs or provide significant public benefits; (2) increase sustained broadband adoption; and (3) upgrade technology and capacity for public safety entities and at public computing centers, which are a key source of access to the Internet for lower income users, such as libraries and community colleges.

Section 201 gives the NTIA the authority to impose grant conditions with regard to interconnection and nondiscrimination requirements that apply to facilities funded in part by this program, regardless of who operates those facilities.

Section 201 also (1) imposes a 20 percent match requirement for grants, which may be satisfied by the grant applicant or any third-party partnering with the grant applicant, and may be waived only under special circumstances; (2) requires specific commitments from grantees on scheduled progress for meeting the goals of the grant; (3) requires that grant applications show that the proposed broadband deployment would not occur during the grant period without this Federal investment; (4) requires quarterly reporting by any entity receiving funds regarding how funds are spent and progress meeting the schedule, as well as quarterly reporting to Congress by Federal agencies making grants regarding how funds are being spent; (5) requires strong public transparency regarding how funds are spent under the program and grantees' progress fulfilling specific commitments to deploy facilities, increase broadband adoption or deploy computer infrastructure; and (6) empowers the NTIA to revoke funding in any case of misspending, and to recapture funds in certain circumstances.

### **Conference Agreement**

#### ***Summary***

The Conference substitute retains the general structure and language of the Senate bill, while incorporating a series of amendments related to the priorities of the House.

Section 6001. Section 6001 establishes the Broadband Technology Opportunities Program within the NTIA. The Conferees intend that the NTIA has discretion in selecting the grant recipients that will best achieve the broad objectives of the program. The Conferees also intend that the NTIA select grant recipients that it judges will best meet the broadband access needs of the area to be served, whether by a wireless provider, a wireline provider, or any provider offering to construct last-mile, middle-mile, or long

haul facilities. The Conferees intend that the NTIA award grants serving all parts of the country, including rural, suburban, and urban areas. The Conferees intend that the NTIA seek to ensure, to the extent practicable, that grant funds be used to assist infrastructure investments that would not otherwise be made by the entity applying, or, secondarily, that might not be made as quickly.

Part of the program is directed towards competitive grants for innovative programs to encourage sustainable adoption of broadband service in particular by vulnerable populations. The Conferees note the success of such programs in several States, and hope that these grantees will be involved in aggregating demand, ensuring community involvement, and fostering useful technology applications, thereby stimulating economic growth and job creation.

*Eligible Entities.* The Conference substitute creates a new, broad definition of entities that are eligible to receive grants. It is the intent of the Conferees that, consistent with the public interest and purposes of this section, as many entities as possible be eligible to apply for a competitive grant, including wireless carriers, wireline carriers, backhaul providers, satellite carriers, public-private partnerships, and tower companies.

*Grant Distribution Considerations and Broadband Speeds.* The Conference substitute inserts a new Section 6001(h) that incorporates several of the grant distribution considerations from the House bill. In particular, new Section 6001(h)(3) requires the NTIA to consider whether a grant applicant is a socially and economically disadvantaged small business, as defined under the Small Business Act.

New Section 6001(h)(2)(Bb) also requires the NTIA to consider whether an application will result in the greatest possible broadband speeds being delivered to consumers. While the House bill had included specific speed thresholds that an applicant must have met to be eligible for a grant, the substitute requires only that the NTIA consider the speeds that would be delivered to consumers in awarding grants. The Conferees are mindful that a specific speed threshold could have the unintended result of thwarting broadband deployment in certain areas. The Conferees are also mindful that the construction of broadband facilities capable of delivering next-generation broadband speeds is likely to result in greater job creation and job preservation than projects centered on current-generation broadband speeds. Therefore, the Conferees instruct the NTIA to seek to fund, to the extent practicable, projects that provide the highest possible, next-generation broadband speeds to consumers.

*Broadband Policy Statement.* The Conference substitute inserts the House language that requires grant recipients to adhere to the principles contained in the Federal Communications Commission's Broadband Policy Statement.

*National Broadband Plan.* The Conference substitute adopts the House language on the creation of a national broadband plan, with some minor modifications.

*Federal/State Cooperation.* Section 6001(c) directs the NTIA to consult with States on: (1) the identification of unserved and underserved areas within their borders; and (2) the allocation of grants funds to projects affecting each State. The Conferees recognize that States have resources and a familiarity with local economic, demographic, and market conditions that could contribute to the success of the broadband grant program. States are encouraged to coalesce stakeholders and partners, assess community needs, aggregate demand for services, and evaluate demand for technical assistance. The Conferees therefore expect and intend that the NTIA, at its discretion, will seek advice and assistance from the States in reviewing grant applications, as long as the NTIA retains the sole authority to approve the awards. The Conferees further intend that the NTIA will, in its discretion, assist the States in post-grant monitoring to ensure that recipients comply fully with the terms and conditions of their grants.

*Definitions.* The substitute does not define such terms as “unserved area” “underserved areas” and “broadband.” The Conferees instruct the NTIA to coordinate its understanding of these terms with the FCC, so that the NTIA may benefit from the FCC’s considerable expertise in these matters. In defining “broadband service,” the Conferees intend that the NTIA take into consideration the technical differences between wireless and wireline networks, and consider the actual speeds that broadband networks are able to deliver to consumers under a variety of circumstances.