

BRIEFING

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION (NTIA) NOTICE OF FUNDS AVAILABILITY AND SOLICITATION OF APPLICATIONS FOR THE BROADBAND TECHNOLOGY OPPORTUNITIES PROGRAM (BTOP)

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I. INTRODUCTION.

President Obama signed the American Recovery and Rehabilitation Act (ARRA) into law on February 17, 2009. The Act, also known as the "Economic Stimulus" legislation appropriates \$7.2 billion for two major broadband initiatives, an expansion of the RUS telecommunications loan program into broadband, and the creation of a new Broadband Technology Opportunity Program (BTOP). The NTIA and the RUS issued their Notice of Funds Availability and Solicitation of Applications (NOFA) on Thursday, July 2, 2009. The document was heavily anticipated for many reasons. First, it sets forth the criteria under which grant applications will be evaluated. Second, it sets forth several key definitions that have important broadband policy implications both at the state and federal levels.

II. BIP GROUND RULES. (\$2.5 billion)

- To be eligible for BIP funding, 75% of the funded area must be in a rural area that lacks sufficient access to high-speed broadband service to facilitate economic development.
- BIP grants can only fund projects in remote, unserved, rural areas.
- BIP loans and loan/grant combinations can fund non-remote and underserved rural areas.
- Grantees may provide services other than broadband services over funded facilities.
- Grant amount cannot exceed loan amount.
- Overlapping service areas are disfavored. If two proposals have overlapping service areas, application with the highest score wins.
- There is a presumption the applicant will provide service to the entire territory of each census block included in the proposed funded service area, unless waiver is approved.
- Financial Feasibility and Sustainability Required:
 - Loans - Projects deemed financially feasible when:
 - Revenues cover expenses;
 - Sufficient cash flow to service debts when due;
 - TIER = 1 by end of forecast period, as determined by RUS.

- Grants - Project deemed financially sustainable when:
 - Applicant is able to generate minimum current ratio = 1 by end of forecast period;
 - Demonstrate positive cash balance for each year of the forecast period.
- Proposals must convincingly demonstrate ability for project to sustain beyond the funding period.
- Any income generated by a proposed project must be retained by grant recipient and reinvested.
- Federal government retains an interest in assets funded in the event assets are sold.
- Funds for Last Mile Projects - \$1.2 million.
 - \$400 million in grants for Remote Area projects.
 - \$800 million in loans/grants for Non-Remote Area projects.
- Funds for Middle Mile projects - \$800 million loans/grants

III. BTOP GROUND RULES. (\$4.7 Billion appropriated in total under ARRA)

A. \$1.6 billion is being allocated to the BTOP program in this NOFA. There are three (3) categories of funding under the BTOP program:

1. Broadband Infrastructure. (\$1.2 billion)

- Will fund broadband infrastructure projects in "unserved and "underserved" areas.
- There is a presumption the applicant will provide service to the entire territory of each census block included in the proposed funded service area, unless waiver is approved.
- There are two subcategories of Broadband Infrastructure funding:
 - a. Last Mile.
 - b. Middle Mile.
- Funds can only be used to construct or make improvements to facilities required to provide broadband service. Contrast, BIP program, which allows the provision of non-broadband services over funded facilities.
- Capital leases (under GAAP) may be funded for up to five (5) years.
- Pre-application expenses in amount not to exceed 5% of award may be funded.
- Ineligible project expenses:
 - Operating expenses, including fixed and recurring costs;
 - Costs incurred prior to the date on which application is submitted, except for eligible pre-application expenses (noted above).
 - Acquisition funding (asset or stock purchase)
 - Purchase or lease of vehicle, except those primarily used in construction or system improvements.

- To fund broadband facilities leased under the terms of an operating lease.
- Merger or consolidation of entities.
- Spectrum acquisition.

2. Public Computer Centers. (\$50 million)

- Will fund projects that expand public access to broadband service, or for vulnerable populations, such as low-income, aged, children, minorities and the disabled.
- Will also fund projects that enhance broadband capacity at entities that serve the general public, such as community colleges and public libraries that permit the use of public computing centers.
- At least \$200 million to be allocated.
- Eligible Costs:
 - Acquiring broadband related equipment, instrumentation, networking capability, hardware, software, and digital network technology for broadband services.
 - Training, education, support and awareness, web resources.
 - Facilitating access to broadband services (e.g. access for the disabled).

3. Sustainable Broadband Adoption. (\$150 million)

- Will fund "innovative" projects that promote broadband demand, including projects focused on providing broadband education, awareness, training, access, equipment or support, particularly among vulnerable population groups where broadband technology has traditionally been underutilized.
- Applications must demonstrate a sustainable increase in demand for and subscribership to broadband services.
- Projects should meet a "specific public need for broadband service," including education, employment, economic development, and enhanced service for health-care delivery, children, and vulnerable populations.
- Innovative and persuasive solutions to encourage adoption.
- Eligible Costs:
 - Acquiring broadband related equipment, instrumentation, networking capability, hardware, software, and digital network technology for broadband services.
 - Training, education, support and awareness, web resources.
 - Broadband education, outreach, support and awareness campaigns.
 - "Innovative" programs to facilitate greater access to broadband service, devices, and equipment.

B. Matching Funds.

1. BTOP grantees must provide matching funds of at least 20% toward the total eligible project cost.
2. In-kind contributions will count if the in-kind donation counts as allowable project expenses.

C. Applicants Must Demonstrate Necessity of Federal Assistance.

1. Grant applicants must document that project would not have been implemented during the grant period without federal grant assistance.
2. Example showings:
 - a. Denial of loan request from private bank;
 - b. Denial of loan or grant request from RUS.
 - c. Current fiscal year budget showing lack of available revenue options for funding project;
 - d. Business case that demonstrates project would not be economically feasible without grant financing.

D. Project Sustainability.

1. Proposals must convincingly demonstrate ability for project to sustain beyond the funding period.
2. Any income generated by a proposed project must be retained by grant recipient and reinvested.

IV. SELECTION PROCESS (Unified Application for BIP and BTOP).

The NOFA states that grant recipients will be selected using a two-step process. However, there are intermediate steps within that two-step process. Below is a basic outline of the process to be followed by the NTIA.

Initial Screening of Applications. (Applications Window July 14 - August 14)

- Completeness of application
 - Among other requirements, applications must describe:
 - Proposed service offerings
 - Pricing plans
 - Advertised prices of service offerings for competitors in same area.
 - Description of nondiscrimination, interconnection, and network management plans
 - Explanation of why proposed service offerings are affordable
 - Cost per household calculation (BTOP only)
 - Detailed engineering plans
 - Description of proposed funding service area

- Technical description of services to be offered. If over \$1M requested, network design plans must be certified by a professional engineer
 - Project timeline
 - Construction schedule
 - Key milestones
 - Required licenses and regulatory approvals
 - Reliance on contractors
 - Resumes of key management
 - Legal opinion addressing:
 - Applicant's ability to enter into award documents
 - All pending litigation matters
 - For loan applicants, applicant's ability to pledge security as required by award documents.
 - Partnerships with other entities.
 - Itemized budget
 - Loan/grant ratio
 - Outside funding sources
 - Reasonableness of total unit price and total number of units required for project
 - Pro forma financial analysis
 - Subscriber estimates
 - Proposed service offerings in addition to broadband
 - Annual financial projections for 5-year forecast period
 - Balance sheet
 - Income statement
 - Cash flow statement
 - List of committed sources of capital funding
 - Historical financial statements, audited financial statements for prior two (2) years (if applicable).
- Eligibility requirements
 - NTIA determined that it is the public interest for non-profit and for-profit corporations to be eligible for BTOP funding.

Notice of Proposed Funded Service Areas.

- RUS and NTIA will post a Public Notice of each Broadband Infrastructure project at: www.broadbandusa.gov for a 30-day period.
- The purpose of the notice is for existing service providers serving a proposed funded area an opportunity to submit information regarding their service offerings to the funding agency.
- If information submitted by existing provider demonstrates that the applicant's proposed funded service area is not unserved, both RUS and NTIA reserve the right to reclassify the proposed area as being underserved.

- If information provided by existing service provider demonstrates a proposed funding area is not underserved, RUS and NTIA may reject the application.

Step 1 - Review by 3-Member Panel.

- Eligibility Factors
- Evaluation Criteria
 - Scoring criteria categories for BIP Projects.
 - Project Purpose (25 points)
 - Proportion of Rural Residents Served in Unserved Areas (5 points)
 - Rural Area Targeting (5 points) - Exceeding the 75% rural area service requirement. One point awarded for every 5% above 75% requirement.
 - Remote Area Targeting (5 points) - One point for every 50 miles away from non-rural area.
 - Previous or Existing RUS borrowers (5 points)
 - Governmental collaboration (5 points) (e.g. DOE's Smart Grid Investment Program, HUD's Public Housing Capital Fund, DOT's Capital Assistance for High Speed Rail Corridors and Intercity Passenger Service.
 - Project Benefits (25 points)
 - Performance of offered service (10 points)
 - 20 Mbps or higher (upstream + downstream) for wired technologies.
 - 2 Mbps or higher (upstream + downstream) for wireless technologies.
 - Middle mile - 100 Mbps to all end points.
 - Affordability (5 points)
 - Additional choice of provider (5 points)
 - Critical community facilities (5 points) - Projects offering discounted rates at least 25% lower to critical community facilities (public safety, hospitals, clinics, libraries, schools).
 - Project Viability (25 points)
 - Organizational capability (12 points)
 - Community support (2 points)
 - Shovel-ready (10 points)
 - Disadvantaged small business (1 point)
 - Project Budget and Sustainability (25 points)
 - Reasonableness of budget (5 points)
 - Leverage of outside resources (10 points) - Sliding scale based on based on higher use of outside resources
 - Extent of grant funding (10 points) - Sliding scale based on lower use of grant funding compared to loan financing.

- Scoring Criteria for BTOP Grants.
 - Project Purpose (30 points)
 - Fit with statutory purposes
 - Governmental collaboration
 - Enhanced services for health care delivery, education, children
 - Socially and economically disadvantaged business
 - Project Benefits (25 points)
 - Last Mile Projects
 - Cost-effectiveness
 - Service performance
 - Affordability
 - Nondiscrimination, interconnection, and choice of provider
 - Middle Mile Projects
 - Impact on area
 - Level of need in area
 - Network capacity
 - Affordability
 - Nondiscrimination, interconnection, and choice of provider
 - Public Computer Center Projects
 - Availability to public
 - Training and educational programs offered
 - Availability and qualifications of consulting and teaching staff
 - Sustainable Broadband Adoption
 - Number of new users
 - Cost per user
 - Innovation
 - Project Viability (25 points)
 - Technical feasibility
 - Organizational capability
 - Level of community involvement
 - Shovel-ready
 - Budget and Sustainability (20 points)
 - Reasonableness of budget
 - Sustainability of project (for BTOP - beyond funding period)
 - Leverage of outside resources
- Each of the three members independently reviews and scores each application. No consensus advice will be given. The three scores are averaged.
- Highest scores advance to Step 2.

Step 2 - "Due Diligence" Phase. (To begin no later than September 14, 2009)

- Surviving applicants asked to submit additional information (i.e. more detailed project plans and supporting documents) to substantiate representations made in application.
- Due diligence information supplied by applicants will be reviewed by NTIA staff with support of external engineering, business, and other subject matter experts.
- NTIA will assign a rating on a 1-5 (five being highest) scale assessing the consistency of the information supplied with the representations made in the application.
- Environmental questionnaire, or environmental impact analysis (if required under applicable federal law);
- Service Level Objectives (for BIP projects only)

State Consultations.

- Governor's Office of each state will receive list of Step 2 applications under consideration.
- States may provide list and prioritization of recommended projects, along with an explanation of why the selected proposals meet the greatest needs of the state.
- States are strongly encouraged to provide mapping and planning data to support recommendations.
- States will have 20 calendar days from date of notification to submit recommendations to NTIA.

Proposal Modifications.

- NTIA may contact grant applicants to discuss modifications to resolve differences between applicant's original request and what NTIA is willing to fund.
- Not all applicants contacted to discuss modifications will necessarily receive an award.

Award Decision.

- BTOP Director will prepare and present a package of recommended grant awards to the Associate Administrator of the Office of Telecommunications and Information Applications (Dr. Bernadette McGuire-Rivera) for review and approval. The BTOP Director's recommendation and OTIA Associate Administrator's recommendations will take into account the following selection factors:
 - 3 member panel scores;
 - Due diligence review scores
 - Satisfaction with program purpose and priorities.
 - Geographic distribution of proposed grant awards.
 - Range of technologies included in proposed grant awards.
 - Avoidance of redundancy and avoidance of unjust enrichment.
 - Availability of funds.

- Recommendations of states.
- Final decisions made by Assistant Secretary of the NTIA (Larry Strickling) starting on or about November 7, 2009.
- Agencies will protect data contained in applications marked confidential and proprietary to full extent allowed under federal law.

V. KEY DEFINITIONS.

Broadband means providing two-way data transmission with advertised speeds of at least 768 Kbps downstream and 200 Kbps (upstream), or providing sufficient capacity in a middle mile project to support the provision of broadband service to end users.

Last Mile Project means any infrastructure project the predominant purpose of which is to provide broadband service to end user devices (including households, businesses, community anchor institutions, public safety entities, and critical community facilities).

Last Mile Non-Remote Project means any broadband infrastructure project (or group of projects) that is not exclusively a last mile remote area project, and that provides broadband service to the end user or end-user devices in a service area eligible for BIP (RUS) funding.

Last Mile Remote Area Project means any broadband infrastructure project that provides broadband service to the end user or to end-user devices only in remote area(s) eligible for BIP funding.

Middle Mile Project means a broadband infrastructure project that does not predominantly provide broadband service to end users or to end user devices, and may include interoffice transport, backhaul, Internet connectivity, or special access.

Remote Area means an unserved, rural area 50 miles from the limits of a non-rural area.

Rural Area means any area, as confirmed by the latest decennial census of the Bureau of the Census, which is not located within:

1. a city, town, or incorporated area that has a population of greater than 20,000 inhabitants; or
2. an urbanized area contiguous and adjacent to a city or town that has a population of greater than 50,000 inhabitants.

An urbanized area means a densely populated territory as defined by Census Bureau.

Underserved Area means a proposed funded service area, composed of one or more contiguous census blocks meeting certain criteria that measure the availability of broadband service and the level of advertised broadband speeds. A proposed funded service area may qualify as underserved for last mile projects if at least one of the following factors is met, though the presumption will be that more than one factor is present:

1. No more than 50% of the households in the proposed funded service area have access to facilities-based, terrestrial broadband service at greater than the minimum broadband transmission speed (set forth in the definition of broadband above);

2. no fixed or mobile broadband service provider advertises broadband transmission speeds of at least 3 Mbps downstream in the proposed funded service area; or

3. the rate of broadband subscribership for the proposed funded service area is 40% of households or less.

A proposed funded service area may qualify as underserved for Middle Mile projects if one interconnection point terminates in a proposed funded service area that qualifies as unserved or underserved for Last Mile projects.

Unserved Area means a proposed funded service area, composed of one or more contiguous census blocks, where at least 90% of households in the proposed funded service area lack access to facilities-based, terrestrial broadband service, either fixed or mobile, at 768/200 Kbps. A household has access to broadband service if the household can readily subscribe to that service upon request.

VI. NON-DISCRIMINATION AND INTERCONNECTION REQUIREMENTS.

A. All BIP and BTOP applicants must commit to the following nondiscrimination and interconnection obligations:

1. FCC Internet Policy Statement (copy attached).
2. Do not favor any lawful internet applications over others.
3. Display network management policies in prominent location on provider's web page, and provide notice to customers of changes. Grantees must describe any business practices or technical mechanisms they employ, other than standard "best efforts" internet delivery, to:
 - a. Allocate capacity;
 - b. Differentiate among applications, providers, or sources;
 - c. Limit usage;
 - d. Manage illegal or harmful content.
4. Connect to the public internet directly or indirectly, such that the project is not an entirely private closed network.
5. Offer interconnection, where technically feasible without exceeding current or reasonably anticipated capacity limitations, on reasonable rates and terms to be negotiated with requesting parties. Interconnection includes both:
 - a. The ability to connect to the public Internet; and

b. Physical interconnection for the exchange of traffic.

Applicants for grants and loans must disclose proposed interconnection, nondiscrimination and network management practices in application.

B. Interconnection requirements subject to needs of law enforcement and reasonable network management, including:

1. Employing generally accepted technical measures to provide acceptable service levels to all customers, such as caching and application-neutral bandwidth allocation.
2. Spam prevention.
3. Denial of service attacks.
4. Illegal content and other harmful activities.

C. Grantees may offer managed services over private networks for applications such as telemedicine, public safety communications and distance learning.

D. Interconnection obligation is met by negotiating in good faith with all parties making a bona fide request.

E. If impasse is reached, parties may voluntarily seek interpretation by FCC of any FCC rules implicated in the dispute. If FCC chooses to take no action, parties may notify RUS or NTIA in writing.

F. Entities that reach interconnection agreement with BIP funded service provider may not use interconnection agreement to provide services that duplicate services provided by projects funded by outstanding telecommunications REA loans.

G. Entities that reach interconnection agreement with BIP funded service provider may not use interconnection agreement for ineligible purposes under ARRA.

H. Interconnection and nondiscrimination conditions apply for the life of the facilities used in the ARRA funded project, but not to existing network arrangements.

VII. AWARD CONDITIONS

A. Sale or Lease of Project Assets. Project assets may not be sold or leased unless:

1. Adequate consideration;
2. Purchaser or lessee agrees to fulfill all terms and conditions of the grant or loan after sale or lease is executed;
3. One of the following two conditions is met:
 - a. The sale or lease is set forth in initial loan/grant application; or
 - b. the NTIA/RUS waives the requirement for any sale or lease occurring after the 10th year from the date of issuance of the grant/loan.

B. For BTOP only, Inspector General or NTIA shall have access to and the right to inspect:

1. The broadband system and any other property funded by the grant;
2. All books, records, etc. for the purposes of auditing the project.

C. Broadband Data Collection.

1. All BTOP Broadband Infrastructure awardees must agree to participate in the State Broadband Data and Development Grant Program.
2. Regarding BIP awardees, RUS collects data from awardees and provides to NTIA.

D. ARRA Reporting Requirements. The following data must be provided quarterly to the NTIA/RUS for three years:

1. Total award received;
2. Amount of ARRA funds expended or obligated;
3. List of projects or activities funded, including, among other items:
 - a. evaluation of the completion status of the project;
 - b. estimate of number of jobs created and retained
 - c. for infrastructure investments made by state/local governments, the purpose, total cost, and rationale of the agency for funding the infrastructure investment with ARRA funds.
4. Detailed information on subcontractors or subgrants.

E. BIP-Specific Reporting Requirements. (Annual)

1. Financial statements;
2. Rate package studies;
3. Number of customers taking broadband service on a community basis, including:
 - a. Number of households and businesses subscribing to broadband service;
 - b. Number of households and businesses subscribing to broadband service that receive improved access;
 - c. Number of educational, library, health care, and public safety institutions receiving new or improved broadband access.
4. Awardees must report when they have received 67% of the award funds. Reaching this threshold constitutes substantial compliance.

F. BTOP Specific Reporting Requirements. (Quarterly)

1. All BTOP Awardees.
 - a. Progress report;
 - b. Grant funds expended;
 - c. Amount of non-federal investment;
 - d. Whether on schedule to substantially complete project within two years after award, and fully complete within three (3) years;

e. Number and type of entities receiving improved access to broadband services

2. BTOP Infrastructure Awardees.

- a. Terms of interconnection agreements;
- b. Traffic exchange relationships (e.g. peering) and terms;
- c. Total and peak utilization of access links;
- d. Total and peak utilization of interconnection links to other networks;
- e. Internet protocol address utilizations and Ipv6 implementation;
- f. Any changes or updates to network management practices;
- g. Average end-user and middle mile megabit per second increase;
- h. Availability of broadband offering, including technology used, location of infrastructure, area served, and number of households passed.
- i. Number of households and businesses subscribing to new broadband service;
- j. Number of households and businesses subscribing to broadband service that receive improved access;
- k. Advertised and averaged broadband speeds
- l. Price of broadband service.

3. Public Computer Center Awardees.

- a. Number of work stations available to the public;
- b. Total hours of operation per week;
- c. Speed of service;
- d. Primary uses;
- e. Average number of users per day;
- f. Total hours per week of training provided;
- g. Number and cost of any broadband equipment deployed.

4. Sustainable Broadband Adoption.

- a. Technology being fostered;
- b. Efforts to aggregate demand for each location, including role of local community;
- c. Increase in number of households, businesses, and community anchor institutions subscribing to broadband service;
- d. Number and cost of any broadband customer premises equipment or end-user devices deployed.

G. Audit Requirement.

1. Awardees expending \$500,000 or more in a single fiscal year must submit an organization-wide compliance audit report.
2. Audit must be compliant with GAO, Government Auditing Standards.

H. State Certification. For ARRA funds provided to state and local governments for infrastructure investments, the chief executive of the applicant governmental unit (i.e. governor or mayor) must certify that the infrastructure investment has received the full

review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of tax payer dollars.

I. Applicability of Federal Communications Law. Broadband infrastructure awardees will be required to comply with all applicable federal and state communications laws and regulations as applicable, including 47 U.S.C. §151 et seq.

J. Estimated Public Reporting Burdens.

1. BIP

a. Public reporting burden: 116 hours per response.

b. Estimated Number of Respondents: 500

2. BTOP

a. Broadband Infrastructure:

i. Public reporting burden: 117 hours per response.

ii. Estimated Number of Respondents: 1,500

b. Public Computing Centers:

i. Public reporting burden: 47.6 hours per response.

ii. Estimated Number of Respondents: 2,500

c. Sustainable Adoption.

i. Public reporting burden: 23.9 hours per response.

ii. Estimated Number of Respondents: 2,500

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matters of)	
)	
Appropriate Framework for Broadband)	CC Docket No. 02-33
Access to the Internet over Wireline Facilities)	
)	
Review of Regulatory Requirements for)	CC Docket No. 01-337
Incumbent LEC Broadband Telecommunications)	
Services)	
)	
Computer III Further Remand Proceedings: Bell)	CC Docket Nos. 95-20, 98-10
Operating Company Provision of Enhanced)	
Services; 1998 Biennial Regulatory Review –)	
Review of Computer III and ONA Safeguards and)	
Requirements)	
)	
Inquiry Concerning High-Speed Access to the)	GN Docket No. 00-185
Internet Over Cable and Other Facilities)	
)	
Internet Over Cable Declaratory Ruling)	
)	
Appropriate Regulatory Treatment for Broadband)	CS Docket No. 02-52
Access to the Internet Over)	
Cable Facilities)	

POLICY STATEMENT

Adopted: August 5, 2005

Released: September 23, 2005

By the Commission:

I. INTRODUCTION

1. The availability of the Internet has had a profound impact on American life. This network of networks has fundamentally changed the way we communicate.¹ It has increased the speed of

¹ The Internet is “the international computer network of both Federal and non-Federal interoperable packet switched data networks.” 47 U.S.C. § 230(f)(1). The Internet is also described as “the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that employ the Transmission Control Protocol/Internet Protocol or any successor protocol to transmit information.” 47 U.S.C. § 231(e)(3). The Supreme Court has described the Internet as a “network of interconnected computers.” *National Cable & Telecommunications Ass’n v. Brand X Internet Services*, 125 S. Ct. 2688, slip op. at 2 (2005) (*NCTA v. Brand X*); see also *Reno v. ACLU*, 521 U.S. 844, 849-50 (1997). No single entity controls the Internet; rather it is a “worldwide mesh or matrix of hundreds of thousands of (continued . . .)

communication, the range of communicating devices and the variety of platforms over which we can send and receive information.² As Congress has noted, “[t]he rapidly developing array of Internet . . . services available to individual Americans represent an extraordinary advance in the availability of educational and informational resources to our citizens.”³ The Internet also represents “a forum for a true diversity of political discourse, unique opportunities for cultural development, and myriad avenues for intellectual activity.”⁴ In addition, the Internet plays an important role in the economy, as an engine for productivity growth and cost savings.⁵

2. In section 230(b) of the Communications Act of 1934, as amended (Communications Act or Act), Congress describes its national Internet policy. Specifically, Congress states that it is the policy of the United States “to preserve the vibrant and competitive free market that presently exists for the Internet”⁶ and “to promote the continued development of the Internet.”⁷ In section 706(a) of the Act, Congress charges the Commission with “encourag[ing] the deployment on a reasonable and timely basis of advanced telecommunications capability” – broadband – “to all Americans.”⁸

3. In this Policy Statement, the Commission offers guidance and insight into its approach to the Internet and broadband that is consistent with these Congressional directives.

II. DISCUSSION

4. The Communications Act charges the Commission with “regulating interstate and foreign commerce in communication by wire and radio.”⁹ The Communications Act regulates telecommunications carriers, as common carriers, under Title II.¹⁰ Information service providers, “by contrast, are not subject to mandatory common-carrier regulation under Title II.”¹¹ The Commission, however, “has jurisdiction to impose additional regulatory obligations under its Title I ancillary

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networks, owned and operated by hundreds of thousands of people.” John S. Quarterman & Peter H. Salus, *How the Internet Works*, <http://www.mids.org/works.html> (visited Dec. 17, 2003) (quoted at *IP-Enabled Services*, WC Docket No. 04-36, Notice of Proposed Rulemaking, 19 FCC Rcd 4863, 4869 n.23 (2004) (*IP-Enabled Services NPRM*)).

² *IP-Enabled Services NPRM*, 19 FCC Rcd at 4869-70, para. 8.

³ 47 U.S.C. § 230(a)(1).

⁴ 47 U.S.C. § 230(a)(3).

⁵ See, e.g., Hal Varian et al., *The Net Impact Study: The Projected Economic Benefits of the Internet in the United States, United Kingdom and Germany*, available at: http://www.netimpactstudy.com/NetImpact_Study_Report.pdf (January 2002) (visited July 31, 2005).

⁶ 47 U.S.C. § 230(b)(2).

⁷ 47 U.S.C. § 230(b)(1).

⁸ 47 U.S.C. § 157 nt. (incorporating section 706 of the Telecommunications Act of 1996, Pub. Law No. 104-104, 110 Stat. 56 (1996)).

⁹ 47 U.S.C. § 151.

¹⁰ See *NCTA v. Brand X*, slip op. at 1.

¹¹ *Id.* at 3.

jurisdiction to regulate interstate and foreign communications.”¹² As a result, the Commission has jurisdiction necessary to ensure that providers of telecommunications for Internet access or Internet Protocol-enabled (IP-enabled) services are operated in a neutral manner. Moreover, to ensure that broadband networks are widely deployed, open, affordable, and accessible to all consumers, the Commission adopts the following principles:

- *To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet*, consumers are entitled to access the lawful Internet content of their choice.
- *To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet*, consumers are entitled to run applications and use services of their choice, subject to the needs of law enforcement.
- *To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet*, consumers are entitled to connect their choice of legal devices that do not harm the network.¹³
- *To encourage broadband deployment and preserve and promote the open and interconnected nature of the public Internet*, consumers are entitled to competition among network providers, application and service providers, and content providers.¹⁴

III. CONCLUSION

5. The Commission has a duty to preserve and promote the vibrant and open character of the Internet as the telecommunications marketplace enters the broadband age. To foster creation, adoption and use of Internet broadband content, applications, services and attachments, and to ensure consumers benefit from the innovation that comes from competition, the Commission will incorporate the above principles into its ongoing policymaking activities.¹⁵

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

¹² *Id.* at 3-4. We also note that the Enforcement Bureau recently entered into a consent decree to resolve an investigation with respect to the blocking of ports used for voice over Internet Protocol (VoIP). See *Madison River LLC and Affiliated Companies*, File No. EB-05-IH-0110, Order, 20 FCC Rcd 4295 (Enf. Bur. 2005).

¹³ See *Hush-A-Phone Corp. v. United States*, 238 F.2d 266, 269 (D.C. Cir. 1956); *Use of the Carterfone Device in Message Toll Telephone Service*, 13 FCC 2d 420 (1968).

¹⁴ See Preamble, Telecommunications Act of 1996, P.L. 104-104, 100 Stat. 56 (1996) (enacting 1996 Act “to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies”).

¹⁵ Accordingly, we are not adopting rules in this policy statement. The principles we adopt are subject to reasonable network management.