

## NONDISCRIMINATION AND INTERCONNECTION

Under the American Recovery and Reinvestment Act (ARRA), funds provided to NTIA and RUS will be used to expand the reach of broadband access and infrastructure and to spur adoption. Accordingly, rules developed for these new programs should reflect the stated purposes of the stimulus package – purposes that are even more critical today than when the legislation was signed into law on February 17. Section 2(a) of the Act makes plain that ARRA programs are intended “[t]o preserve and create jobs,” “[to] promote economic recovery,” and “[t]o assist those most impacted by the recession.” These priorities are reinforced by Congress’ statement in section 2(b), which directs agencies to “commenc[e] expenditures and activities as quickly as possible consistent with prudent management.”

Thus, meeting these priorities requires expeditious progress on implementing rules. To that end, the nondiscrimination and interconnection obligations on BTOP grants should be implemented in a manner that ensures the rapid deployment of stimulus funds. Imposing new and untested nondiscrimination or interconnection requirements as a condition of stimulus funding risks injecting contentiousness, uncertainty, and delay into a process that should rightly focus on creating new jobs and delivering broadband to more Americans as quickly as possible. If NTIA guesses wrong, the most skilled and reliable broadband providers could be deterred from even applying for the funds, much less deploying new broadband infrastructure to areas of the country that are already expensive and difficult to reach.

**Nondiscrimination.** Consistent with these principles, the nondiscrimination condition required by the ARRA should, as the statute permits, be limited to the FCC’s Broadband Policy Statement adopted on August 5, 2005. More than three years of experience under that Policy Statement has demonstrated that it provides a successful balancing of interests among all stakeholders – consumers, broadband service providers, and application and content providers. Including a commitment to the principles in the Policy Statement as a grant condition would serve to reinforce the expectation that all grant recipients should abide by it.

**Interconnection.** The value of the public Internet to all consumers increases as the number of consumers connected to it increases. Moreover, increased adoption of broadband creates demand for new content and applications. Health care, education, and economic development opportunities grow when more businesses, communities, and consumers have online access. The ARRA seeks to expand these opportunities. Thus, any broadband provider receiving funds under ARRA should therefore be required to construct facilities that interconnect directly or indirectly with the public Internet under currently applicable rules and practices and otherwise comply with existing interconnection obligations applicable to networks that transmit voice as well as Internet traffic.