

THE DAILY RECORD

WESTERN NEW YORK'S SOURCE FOR LAW, REAL ESTATE, FINANCE AND GENERAL INTELLIGENCE SINCE 1908

Telecom**LAW**

Rural broadband and the stimulus

One phrase being bandied about with as much frequency and interest as the latest organic weed killer is “rural broadband deployment.”

As stimulus money begins to trickle out of Washington, and the opportunities created by that funding grow, there is a great buzz surrounding how the funding can and will help areas of the country (including New York) where high speed Internet heretofore simply has been unavailable.

Even before the stimulus plan — technically the ARRA, or the American Recovery and Reinvestment Act — identified rural broadband deployment as a priority, the U.S. Department of Agriculture recognized that, without government assistance, rural areas would remain on the wrong side of the digital divide, without access to vast resources for information and opportunities.

Through its Rural Utilities Service, the USDA has put millions of pre-ARRA dollars into the development of high speed networks, which, in many cases, will be wireless. With millions more in stimulus money available, the RUS — a successor to the Rural Electrification Administration, which was a product of the New Deal — has stepped into the spotlight.

A total of \$7.2 billion for broadband, in the form of grant and loan programs, has been approved for the effort, which will be administered by the U.S. Department of Commerce, through its arm at the National Telecommunications and Information Administration, and the RUS.

The FCC is involved as well, although its position is secondary to those entities that actually are doing the building and deployment. The issue is important enough, however, that FCC Commissioner Jonathan Adelstein has announced plans to leave the commission to head the RUS. Adelstein's departure from the FCC is on hold pending the appointment and confirmation of his successor.

Specifically, for stimulus funding, according to the terms of the ARRA, funds must be distributed by Sept. 30, 2010, and projects must be completed within two years. (For more information on the inner-workings of the stimulus, visit www.publicknowledge.org/issues/bbstimulus-2009).

While the push is on to find suitable projects where government spending — that is, our money — can be monitored and carefully controlled, a number of definitions must be considered carefully and, promptly, decided.

One of the most critical of those concerns an “unserved” area vs. an “underserved” one. More than 1,400 comments were received by the NTIA and RUS. Because those words' precise

definitions will have a critical impact on how funds are allocated and networks are built, definitions ultimately will determine what communities will receive funding, and how much.

Is an “unserved” area one that has absolutely no high speed provider, or one where a provider offers only slow access — 200 kilobits per second. Or, should “unserved” define a function of the number of households with access to some high speed service divided by the total number of households in the community. While it certainly sounds mind-numbing, in fact such decisions — which will be made within the next three months — will have a profound impact on how funds are allocated, and what networks will be built.

Who decides what constitutes “underserved?”

A couple of books could be written about the issue, let alone op-ed columns, but the New York State Wireless Association is using its upcoming trade show and conference at the Turning Stone Resort and Casino in Verona to address many of these timely issues. The conference, set for May 6 and 7, will include discussion of topics central to the issue, including environmental compliance, tower siting and zoning. Municipal and other governmental officials as well as other interested New Yorkers will be in attendance.

NYSWA Chairman Doug Dimitroff, a partner at Phillips Lytle LLP, told me last week that “a major focus for NYSWA is outreach to municipal and government officials,” in order “to provide information about the wireless industry, and to further create opportunities for dialogue about wireless issues.” (For more information about the show, visit www.newyorkstatewireless.com.)

As wireless technologies become more robust and sophisticated, they are being put to good use to bring access to communities for which such access traditionally made little good sense — either in terms of cost or functionality. The emphasis on rural broadband deployment nationwide will bring us another step closer to reducing the size of the gap between the “haves” and “have nots” in terms of access to information. For rural schools, libraries, health care facilities and homes, that is very good news.

Martha Buyer is an attorney concentrating in the practice of telecommunications law. Her clients range from Fortune 500 companies to small family-owned businesses where she has provided a range of telecommunications consulting and legal services, primarily geared to support corporate end-users working with carriers and equipment providers. She can be reached at martha@marthabuyer.com.



By **MARTHA BUYER**

Daily Record
Columnist