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Broadband Update: The Devil is in the Details

Last month the FCC released a Notice of Proposed Rulemaking ("NPRM") requesting comments on one of the most important issues facing the nation—improved healthcare access through affordable broadband. The possible benefits of the so-called Healthcare Connectivity Program are significant, including expanding investment in broadband for medically underserved communities, giving patients in rural areas access to state-of-the-art diagnostic tools, spurring private investment in networks, and creating jobs. But the costs and risks are also significant. This government program would invest up to $400 million annually to enable health care providers to ostensibly deliver world class healthcare to patients no matter where they live.

So how will these goals be met? For the funding year 2011 (July 1, 2011 to June 30, 2012), the FCC proposes to:

- create a health infrastructure program that would support up to 85 percent of the construction costs of new regional or statewide networks to serve public and non-profit health care providers where broadband is unavailable or insufficient;
    - establish a health broadband services program that would subsidize 50 percent of the monthly recurring costs for access to broadband services for eligible public or non-profit rural health care providers;
    - expand the FCC's interpretation of "eligible health care provider" to include acute care facilities that provide services traditionally provided at hospitals, such as skilled nursing facilities and renal dialysis centers; and

- clarify existing recordkeeping requirements to enhance the FCC's ability to protect against waste, fraud and abuse by allowing participating service providers to receive rural health care funds directly from USAC.

How will the program work? Applicants' bids for possible funding must include a funding request, a brief project description and a detailed budget. As proposed, the health infrastructure program would provide support for initial network design studies; engineering, materials and construction of fiber facilities or other broadband infrastructure; and the costs of engineering, furnishing and installing network equipment. Participants may receive support for not more than 85 percent of the membership fees for connecting their networks to the dedicated nationwide backbones, Internet2 or National LambdaRail. As proposed, participants must submit certification of the availability and source of funds, from eligible sources, for at least 15 percent of all eligible costs. The project schedule should be submitted within 90 days after a participant has been notified that, based on its initial application, the project is eligible for funding.
Thereafter, the participant must complete and submit a detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible and reasonably scalable, and describes each specific development phase of the project (*e.g.*, network design phase, construction period, and deployment and maintenance period). Significantly, the FCC does not propose restricting the type of technology participants may use. Eligible health care providers participating in the health infrastructure program may choose any currently available technology that meets the definition of broadband as adopted for purposes of the Rural Health Care program. As proposed, health care providers would have an ownership interest, indefeasible right of use (IRU), or capital lease interest in facilities funded by the program. The project must include a sustainability plan ("10 years is generally appropriate"), commensurate with the investments made from the health infrastructure program, and is subject to quarterly reporting requirements and competitive bidding.

This program, despite its laudable goals, raises many questions. Will these programs and networks be fully utilized? Stated differently, if you build it, will they come? Although nobody can answer this question now, history shows that out of the 9,800 health care providers eligible for support under the telecommunications program and the internet access program, only about 3,000 providers recently participated in these programs. Are the standards adequate? The FCC proposes setting 10 Mbps as the minimum broadband speed for infrastructure deployment supported under the health infrastructure program. Is this adequate? Should there be different minimum speeds depending on the type of health care provider and their intended use of the facilities? What quality of service standards are appropriate? Are the proposed surveys of existing carrier network capabilities, health care provider certifications and broadband mapping studies adequate to demonstrate need by geographic area? Will excluding ineligible costs that are not directly associated with network design, construction, or deployment of a dedicated network for eligible health care providers stifle interest in the program? Does it make sense to have government subsidized, privately-owned networks? Similar to municipal broadband debates, is it fair to existing carriers and service providers that may have already invested resources to extend government-subsidized broadband networks to areas that are underserved or not yet served? If a healthcare network isn't fully utilized, can or should it be made available for non-healthcare related purposes and, if so, at what cost?

The program is not final yet, and the FCC is seeking comments (due August 16, 2010) and replies on its NPRM.

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If you have questions about this issue, or if we may be of assistance to you, please feel free to contact us.

 Craig Dingwall is an attorney with the Technology Law Group, a Washington, D.C.-based law firm specializing in telecommunications transactional matters, complex litigation and intellectual property issues. Craig can be reached at cdingwall@tlgdc.com, at 202-895-1707, or at our website: www.tlgdc.com. *The views in this article are those of the author, and do not necessary represent those of the Technology Law Group.*