



G A O

Accountability * Integrity * Reliability

United States Government Accountability Office
Washington, DC 20548

B-319131

January 13, 2010

The Honorable John D. Rockefeller IV
Chairman
The Honorable Kay Bailey Hutchison
Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate

The Honorable Henry A. Waxman
Chairman
The Honorable Joe L. Barton
Ranking Minority Member
Committee on Energy and Commerce
House of Representatives

Subject: *Department of Commerce, National Telecommunications and Information Administration: State Broadband Data and Development Grant Program*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Commerce, National Telecommunications and Information Administration (NTIA), entitled “State Broadband Data and Development Grant Program” (RIN: 0660-ZA29). We received the rule on July 8, 2009. It was published in the *Federal Register* as a “notice of funds availability (Notice) and solicitation of applications” on July 8, 2009. 74 Fed. Reg. 32,545.

The notice announces the availability of funds pursuant to the American Recovery and Reinvestment Act of 2009 and the Broadband Data Improvement Act, and provides guidelines for the State Broadband Data and Development Grant Program. The State Broadband Data and Development Grant Program is a competitive, merit-based matching grant program that funds projects that collect comprehensive and accurate state-level broadband mapping data, develops state-level broadband maps, aids in the development and maintenance of a national broadband map, and funds statewide initiatives directed at broadband planning.

Enclosed is our assessment of NTIA’s compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule.

Our review of the procedural steps taken indicates that NTIA complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Lawrence E. Strickling
Assistant Secretary for Communications
and Information
Department of Commerce

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
DEPARTMENT OF COMMERCE,
NATIONAL TELECOMMUNICATIONS AND
INFORMATION ADMINISTRATION
ENTITLED
"STATE BROADBAND DATA AND
DEVELOPMENT GRANT PROGRAM"
(RIN: 0660-ZA29)

(i) Cost-benefit analysis

NTIA did not prepare a cost-benefit analysis in conjunction with this final rule. However, the final rule states that the program will make approximately \$240 million available for eligible entities to develop and implement statewide initiatives to identify and track the availability and adoption of broadband services within each state.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Regulatory Flexibility Act requires agencies to prepare an analysis in conjunction with any notice of proposed rulemaking or any final rule for which a notice of proposed rulemaking was promulgated. 5 U.S.C. § 604. NTIA did not issue a notice of proposed rulemaking in conjunction with this notice; therefore, NTIA was not required to prepare a Regulatory Flexibility Act analysis.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare an analysis before promulgating any notice of proposed rulemaking or any final rule for which a notice of proposed rulemaking was promulgated. 2 U.S.C. § 1532(a). NTIA did not issue a notice of proposed rulemaking in conjunction with this notice; therefore, NTIA was not required to prepare an Unfunded Mandates Reform analysis.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The Administrative Procedure Act generally requires an agency to issue a notice of proposed rulemaking and an opportunity for public comment. However, an agency may find good cause to issue a final rule without rulemaking procedures where

withholding action would be impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. § 553. In this instance, NTIA determined that making these funds available under the notice for broadband development as mandated in the Recovery Act is in the public interest, and that notice and comment procedures would unduly delay the provision of benefits associated with these broadband initiatives and be contrary to the public interest.

Additionally, the Administrative Procedure Act generally requires an agency to have a 30-day delay in effectiveness for a final action. An agency may waive the 30-day delay if it finds good cause. 5 U.S.C. § 553(d). NTIA found good cause to waive the 30-day delay for the same reasons discussed above.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

This final rule contains information collection requirements under the Act that have been approved by the Office of Management and Budget (OMB). Applicants are requested to submit applications using Standard Form 424, Program Abstract/Program Narrative; Standard Form 424, Application for Federal Assistance; Standard Form 424A, Budget Information–Non-Construction Programs; Standard Form 424B, Assurances–Non-Construction Programs; and Standard Form LLL, Disclosure of Lobbying Activities.

In addition, awardees are required to comply with the OMB requirements implementing the Recovery Act, including submitting to NTIA 10 days after the quarter in which an award is made, and each subsequent quarter thereafter until a final report is made, the total amount of Recovery Act funds received, the amount of Recovery Act funds received that were obligated to projects or activities, a detailed list of the all projects or activities for which funds were expended or obligated, including the name of the project or activity, a description, and evaluation of the completion status, and an estimate of the number of jobs created and the number of jobs retained by the project or activity, and detailed information on any subcontracts or subgrants awarded by the awardee.

All awardees will also be required to provide quarterly reports on the achievement of project goals, objectives, and milestones as set forth by the applicant in their application timeline, expenditure of grant funds and how much of the award remains, amount of non-federal cash or in-kind investment that is being added to complete the project, and whether the awardee is on schedule to provide broadband-related data in accordance with the mapping project timeline. Upon completion of state-level broadband map, each awardee is required to provide NTIA with a hypertext link to such map for display on a Web page on the Department of Commerce Web site.

Statutory authorization for the rule

The notice is authorized by Title II, Division A of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (Feb. 17, 2009) and the Broadband Data Improvement Act, Title I of Public Law 110-385, 122 Stat. 4096 (Oct. 10, 2008).

Executive Order No. 12,866 (Regulatory Planning and Review)

The notice was deemed economically significant under Executive Order No. 12,866 and was reviewed by the Office of Management and Budget.

Executive Order No. 13,132 (Federalism)

NTIA determined that the notice does not contain policies with federalism implications.