



Understanding the current resources for expanding broadband connectivity

August 12, 2021

The expansion in federal and state funding coupled with low interest rate financing options now promise to make the goal of “middle mile” and “last mile” broadband connectivity a reality for local communities. Whether your community is underserved in terms of internet speed and reliability or lacks broadband service altogether, structuring a solution to deliver service to your community is now within reach. The landscape is complex and the clock is ticking in terms of accessing some of the funding resources. For those committed to using these resources to make long-term, high-impact investments in broadband infrastructure, here is your step-by-step guide to lighting up your community.

The federal funding landscape

The American Rescue Plan Act of 2021

The American Rescue Plan Act of 2021 (ARPA), enacted on March 11, 2021, will funnel \$5.68 billion in direct assistance to the state, \$2.24 billion in direct assistance to Ohio’s metro cities, another \$843.7 million to so-called *nonentitlement units of local government* (i.e., other Ohio cities and villages, and townships under recent General Assembly-enacted legislation), and \$2.27 billion to Ohio counties. Allocations of ARPA funds for Ohio school districts will be indirectly allocated via the state from the state’s funding, with \$4.5 billion to be distributed to Ohio school districts through Elementary and Secondary School Emergency Relief (ESSER) funds. Among other uses associated with pandemic response needs, these funds can be used to “make necessary investments in water, sewer, or broadband infrastructure.” The stated objective of funding for broadband infrastructure is to

provide access to high-quality broadband service and facilitate necessary investments in projects that “establish or improve broadband service to unserved or underserved populations to reach an adequate level to permit a household to work or attend school, and that are unlikely to be met with private sources of funds” (Interim Final Rule, p. 62). The breadth of this category allows for flexible and creative projects that build on existing resources to expand broadband internet capabilities.

There is not a specific deadline by which direct recipients of ARPA funds must apply, although ARPA does require costs to have been incurred by December 31, 2024, for this category of recipients. School districts, being indirect recipients via the state through ESSER, must submit plans for the intended use of funds (and post those plans to the school district’s website) by August 20, 2021.

ARPA’s Emergency Connectivity Fund

In recent years, internet access within school facilities has been advanced through E-Rate, the federal funding program responsible for facilitating internet connectivity. Through this program, schools have been able to fund acquisition of equipment and services to enhance internal connectivity and to bring broadband internet access into, and provide it throughout, instructional buildings that comprise a school campus. However, the E-Rate program did not contemplate the remote learning needs that arose during the pandemic. For example, E-Rate does not provide funding to facilitate off-campus internet access for students and staff.

To address the remote access shortfall, ARPA included a federal Emergency Connectivity Fund (ECF). The ECF is a \$7.17 billion program within ARPA to help schools and libraries support and facilitate remote learning. The program will provide funding to schools and libraries for the reasonable costs of eligible equipment and services that can be provided to students, teachers and library patrons who lack broadband access or lack connected devices, such as laptops or tablet computers. The ECF application filing window opened June 29, 2021, and **will close on August 13, 2021**, so school districts and libraries must act quickly to secure funding through this program. Eligible schools, libraries and consortia of eligible schools and libraries can request funding to purchase eligible equipment and services during an expenditure period running from July 1, 2021, to June 30, 2022. Entities that are eligible for support under the E-Rate program are eligible to request and receive support through the ECF program, but school districts do not need to be current E-Rate participants in order to apply.

In addition to the purchase of eligible equipment and services, the ECF program can be used to directly fund the construction of new networks and the purchase of equipment needed for datacasting services in certain circumstances where a school or library can demonstrate that there are no available service options sufficient to support remote learning for its students, school staff or library patrons. In those situations where service is available, but could be further bolstered, there are also strategies that can be used to help enhance the existing infrastructure.

Federal infrastructure bill

On August 10, 2021, the U.S. Senate approved the \$1 trillion physical infrastructure improvement plan, with a 69-30 vote demonstrating a rare bipartisan comity among senators. The 2,700-page legislation now proceeds to the House. Included in this bill, the Senate directs that \$40 billion in broadband funding go to individual states to offset the costs of expanding broadband to unserved or underserved areas. Each state would receive at least \$100 million in such funding. The Senate targets funding to areas lacking service at speeds of at least 25 mbps download/3 mbps upload (i.e., those areas in which only 20 percent or less of locations attain such service speeds), with funding to provide service at speeds of at least 100 mbps download/20 mbps upload.

Known as the Broadband Equity, Access and Deployment Program, it would be administered by the Department of Commerce.

Unlike the Ohio General Assembly’s ban on government participants in House Bill 2’s Residential Broadband Expansion Program, the federal bill would not allow states to exclude co-ops, nonprofit organizations, public-private partnerships, private companies, public or private utilities, public utility districts or local governments from funding under the Deployment Program.

The funding includes \$2.5 billion for so-called “middle mile” networks, digital equity and affordability programs. These program funds would reduce the cost of connecting such unserved and underserved areas to the larger internet backbone. Areas served by such “middle mile” infrastructure would be those lacking service at speeds of at least 100 mbps download/20 mbps upload.

This program component would be budgeted \$500 million per federal fiscal year during 2022 to 2026, with priority to projects connecting “middle mile” infrastructure to “last mile” networks in unserved areas.

The state funding landscape

The Ohio Residential Broadband Expansion Grant Program, adopted under House Bill 2 of the 134th General Assembly (effective May 17, 2021), will award grants to internet service providers (ISP) to fund construction of broadband projects in unserved and underserved areas of the state. The Ohio Department of Development, the program administrator, recently published scoring criteria and an application guidebook to assist ISPs in the application process. The application period opens Monday, September 6, 2021. As we discuss in more detail below, these grants to ISPs, alone or when combined with other funding resources garnered and deployed by local political subdivisions, hold the promise of building broadband infrastructure projects that support the needs of the local and regional community well into the future.

Collaboration with other political subdivisions and ISPs – Thinking big (and fast)

The funding resources and structured financing options described above can be further leveraged when combined with similar funding resources and tools of other political entities in your community. The state, counties and municipalities across Ohio and all manner of collaborations and consortia of these entities, are working together to leverage resources and structure comprehensive solutions to achieve “middle mile” and “last mile” connectivity, through use of co-development, co-location and various funding agreements. Cities and counties make available the networks of rights-of-way and existing pole rights. School districts and other public landowners in the region make available existing conduit and tall structures for collocation of fiber and broadcast equipment. Port authorities or other public issuers are facilitating financing of infrastructure improvements, using the funding resources of other benefiting public entities and opening up a competitive environment for internet service providers to operate in previously underserved regions.

While individual political subdivisions may have new resources to help meet their immediate connectivity needs, many are finding that collaboration with larger, community- and region-wide projects promise to deliver more bang for their buck. Indeed, taking advantage of the short windows for application and/or spending allocations under the ECF program and ESSER may require teaming up with existing initiatives to save time and money.

Structuring projects in a way that meet the eligibility requirements can be approached in a number of ways, depending on specific project needs. The first step is to evaluate the needs of your community and region and assess whether those needs meet the eligibility criteria for the various programs. Where the answer to that question is no, or where there are time constraints, consider whether other leaders in your community are already out of the gate on projects that will help you meet your needs. Just like the various technologies that go into building a reliable, robust broadband system, coverage of a district may be best achieved by piecing together various resources from and among many participating entities.

Public entities that build internet infrastructure assets can collaborate with one or multiple ISPs to operate a robust network system. A successful partnership between public entities and participating ISPs will align each side’s needs and capabilities by allocating risks and responsibilities efficiently. ISPs are better suited to take on the risk of market competition, customer acquisition obligations and day-to-day network performance. On the other hand, school districts and other public landowners can more efficiently construct the necessary infrastructure due to their experience with large-scale public work projects and their access to public rights-of-way.

When designing a potential project and partnership model, public entities should decide whether they will own the conduit and the fiber strands. The conduit and the fiber is installed by the public entity, and then the assets are allocated and leased to ISPs to provide internet to the community. Under some public-private partnership models, the public infrastructure provider constructs and maintains the conduit, but allows the ISPs to install and maintain the fiber within the conduit. Under this model, the ISP is responsible for pulling fiber through the conduit, lighting the fiber and providing internet services.

To select potential ISP partners, public entities should consider using an RFP or RFQ process. Additionally, once the network

system is constructed, the public entity may want to foster competition by allowing multiple service providers to compete over the same infrastructure. This may help avoid overreliance on a single ISP and provide for better service for customers (i.e., better quality and lower cost service). However, local government entities should keep in mind that they may have certain duties to be competitively neutral and nondiscriminatory. As such, it will be important to confer with counsel regarding how to properly manage access to public infrastructure and right-of-ways.

Authors



M. Shannon Martin

Partner

Dayton
937.224.1841
smartin@bricker.com



Jeffry D. Harris

Of Counsel

Columbus
614.227.4860
jharris@bricker.com



Devin D. Parram

Partner

Columbus
614.227. 8813
dparram@bricker.com