



First Stimulus Oversight Hearing: Mostly Listening, But A Few Important Points.

By [Harold Feld](#) on April 2, 2009 - 5:01pm

One of the standard ways in Washington to influence administrative processes is via Congressional Oversight Hearings. Mind you, Congress is *supposed* to exercise reasonable oversight over the Administration, so this is a feature rather than a bug. But it also means that professional tea-leaf readers focus on these hearings to see what witnesses get called, who says what, and how vigorously they say it. Often, triangulating backwards, it gives insight into what industry is pressing as the most critical points — with Members then digging in to the issues (or, if one is cynical, doing the bidding of their corporate masters).

The hearing only had audio webcast going, so it was often difficult for me to tell who was saying what. But by and large, it seemed that Members were primarily in listening mode rather than heavily pressing for this or that particular outcome. Everyone stressed the need to get money spent quickly, but also prudently, transparently, and with accountability (most acknowledged the difficulty in that). No one chose to lecture the witnesses on what they were doing wrong or how some industry sector or other was being ignored (although there was some discussion after opening statements around this during the question period).

Still, discussion tended to crystallize around a few key points:

Unserved v. Underserved or Unserved AND Underserved?

NTIA's [Broadband Technologies Opportunity Program \(BTOP\)](#), which has \$4.7 Bn of the \$7.2 Bn of broadband stimulus to spend, gives five purposes of the program: 1) Getting broadband to “unserved” areas, 2) Improving service in “underserved,” 3) Nobody else remembers, because everyone is utterly convinced that this money is only going for unserved or underserved areas, so who cares what else Congress said are the other criteria. The statute leaves the definitions of “unserved” and “underserved” to the NTIA (assisted by the FCC and — at NTIA's discretion — the states). But before even getting that far, we have a major flashpoint on whether we can further reduce the five purposes from two down to just one - serving the unserved.

This has become one of the major flash points in debates around stimulus money. A number of folks, including the [National Cable Telecommunications Association \(NCTA\)](#),

have pushed the idea that we should only spend stimulus money on areas with no broadband access (the unserved) before we even think about getting to the underserved. It has the potential to pit urban poor against rural (rich and poor), ideas of universal service against ideas of economic and social justice, and — just as icing on the cake — the rather cynical observation that NCTA’s deep and abiding concern for rural America would have the no-doubt unintended consequence of showing folks in urban areas that 5 mbps is not so “blazingly fast” after all.

Former FCC-Commissioner, now California PUC Commissioner Rachel Chong got many questions about her [testimony](#), which described California’s mapping initiative (more on this later) and the California Emerging Technology Fund (CETF). CETF made a decision to fund unserved first, then go back and underserved. But Chong also said a number of times that you needed to do both unserved and underserved. Nicole Turner Lee of One Economy [staunchly defended funding underserved/inner city urban](#), providing a lengthy list of benefits, successful programs, and the need to do broadband outreach. [Mark Seifert](#) (Senior Adviser to the Assistant Secretary/Administrator of NTIA and generally acknowledged as the guy running BTOP) made the usual noises agency folks make when no decisions have been made and the issue is highly controversial. (“We’re getting lots of comments on this and we are carefully considering all these arguments and our mandate to spend the money wisely” etc.)

Broadband Mapping Again, Chong got many questions about California’s mapping plan and both Mark Seifert and [Scott Deutchman](#), acting senior legal advisor to acting Chairman Copps, got lots of questions along the line of “how do you plan to do mapping? What are you mapping? What level of granularity? Why does it take so long? Can you get it done in time?” Again, both men answered about as well as possible given the ongoing open proceedings and the fact that these are very complicated questions.

Of tremendous relevance here, Rep. Bart Stupak (I think it was Stupak, I only had audio) pressed Connected Nation CEO [Brian Mefford](#) on the issue of [using carrier supplied data with non-disclosure agreements](#). Stupak particularly pressed Mefford on the issues raised in [our recent report on Connected Nation](#), but hit Mefford most strongly on whether Connect Nation shares the underlying data with government agencies. Mefford kept trying to make “no” sound like “yes,” but Stupak was having none of it.

The exchange ended with perhaps the most important quote of the day by Boucher: “Mr. Seifert, Mr. Deutchman, and [Mr. Villano](#) (Assistant Administrator for RUS), I expect that any data collected with public money will be available to the public.”

Other Issues There were a handful of other issues raised. Villano came under criticism for RUS’s previous handling of the rural broadband loan program (which now has \$2.5 Bn of stimulus money). There was a question about the eligibility of cable operators and other private entities. And folks talked about wanting faster speed and higher capacity pipes. But, other than the two issues mentioned above, no single issue appeared to attract a lot of attention or a lot of heat.

Which brings us to a most curious absence: network neutrality/interconnection was *not* a major issue. I do not recall any question on the subject, but could have missed it. There was no chorus of “do not keep industry out by heavy handed regulation.” By the same token, there was no “you must take rigorous steps to protect the openness of the internet.” Given how much controversy this issue has generated in the past, it’s general absence from the discussion is rather noteworthy.

This goes along with the absence of any of the usual Washington suspects, either pro or con. With the exception of the NTIA, RUS and FCC witnesses, the remaining witnesses were all from out of town. It was almost as if there were an agreement among the Members of “hey, lets not bring up the net neutrality stuff or we’ll never get anything done.” Whether this is a detente or a delay to some future hearing remains to be seen.

So What Do The Hearing Tea Leaves Teach Us

Not a lot, except by negative implication. There were no obvious signs of a concerted lobbying effort by industry (or by the public interest groups for that matter) to use the hearing as a pressure point and push a particular agenda — other than the unserved/underserved issues. But it does not take industry lobbying to get Cliff Stearn (R. Rural Florida) pushing for rural first while Bobby Rush (D. Chicago) pushes for underserved inner city urban.

This doesn’t foreclose lots of lobbying of Congress in the future, especially on the hot-button issues and especially as the agencies move closer to decisions. Given that neither NTIA or RUS still have acting heads, and we are still early in the process Members may simply have decided to hold their fire for now. Or the industry lobbying may be very splintered and not generating a lot of interest or consensus with folks on the Hill.

For now, at least, it would appear that the relevant House Subcommittee is pleased to let NTIA, RUS and the FCC go about its business and get on with the process. We may see some insight into the Senate side of things [when Larry Strickling \(future head of NTIA\), Jonathan Adelstein \(future head of RUS\) and Jules Genachowski \(future FCC Chair\) have confirmation hearings](#) (keeping in mind that Adelstein’s hearing will be in front of the Agriculture Committee and not the Commerce Committee).

Nor did any of the government witnesses drop any hints as to the direction of their thinking. Again, with both NTIA and RUS waiting for their respective agency heads, this is hardly surprising. Indeed, given the complexity of the issues, odds are good that most of the major decisions remain fairly fluid. This process has attracted a huge response from the public — which seems to have surprised some folks but seems fairly predictable in light of the amount of money at stake and the general economic climate. But as a result, neither NTIA or RUS can reasonably be expected to have their heads wrapped around the major issues yet.

Bottom line, everything remains in play, with no obvious Hill pressure shaping the decision and focusing the debate. Rather weak tea, I'm afraid, and murkier tea leaves. But I expect things will clarify with the next cup.