

111TH CONGRESS
1ST SESSION

H. R. 760

To amend the Internal Revenue Code of 1986 to provide an income tax credit to holders of bonds financing new advanced broadband infrastructure, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 28, 2009

Ms. ESHOO (for herself, Mr. THOMPSON of California, and Mr. MARKEY of Massachusetts) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Internal Revenue Code of 1986 to provide an income tax credit to holders of bonds financing new advanced broadband infrastructure, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Advanced Broadband
5 Infrastructure Bond Initiative of 2009”.

1 **SEC. 2. CREDIT TO HOLDERS OF QUALIFIED ADVANCED**
 2 **BROADBAND INFRASTRUCTURE BONDS.**

3 (a) IN GENERAL.—Subpart I of part IV of sub-
 4 chapter A of chapter 1 (relating to qualified tax credit
 5 bonds) is amended by adding at the end the following new
 6 section:

7 **“SEC. 54F. CREDIT TO HOLDERS OF QUALIFIED ADVANCED**
 8 **BROADBAND INFRASTRUCTURE BONDS.**

9 “(a) QUALIFIED ADVANCED BROADBAND INFRA-
 10 STRUCTURE BOND.—For purposes of this subpart the
 11 term ‘qualified advanced broadband infrastructure bond’
 12 means any bond issued as part of an issue if—

13 “(1) 100 percent of the available project pro-
 14 ceeds of such issue are to be used for any or a series
 15 of designated qualified advanced broadband infra-
 16 structure projects, and

17 “(2) the bond is issued by a qualified issuer.

18 “(b) LIMITATION ON AMOUNT OF BONDS DES-
 19 IGNATED.—

20 “(1) NATIONAL LIMITATION.—There is a na-
 21 tional advanced broadband infrastructure bond limi-
 22 tation for each calendar year. Such limitation for
 23 each calendar year, 2009, 2010, and 2011, is—

24 “(A) in the case of qualified issuers which
 25 are States or local governments,
 26 \$1,000,000,000, and

1 “(B) in the case of all other issuers,
2 \$10,000,000,000,
3 and, except as provided in paragraph (4), zero there-
4 after.

5 “(2) ALLOCATION OF LIMITATION.—The na-
6 tional advanced broadband infrastructure bond limi-
7 tation for a calendar year shall be allocated by the
8 Secretary among the qualified advanced broadband
9 infrastructure projects designated for such year to
10 ensure an equitable distribution among the States
11 and to maximize the number of jobs and economic
12 output.

13 “(3) DESIGNATION SUBJECT TO LIMITATION
14 AMOUNT.—The maximum aggregate face amount of
15 bonds issued during any calendar year which may be
16 designated under subsection (a) with respect to any
17 qualified advanced broadband infrastructure project
18 shall not exceed the limitation amount allocated to
19 such project under paragraph (2) for such calendar
20 year.

21 “(4) CARRYOVER OF UNUSED LIMITATION.—

22 “(A) IN GENERAL.—If for any calendar
23 year—

24 “(i) the national advanced broadband
25 infrastructure limitation amount, exceeds

1 “(ii) the amount of bonds issued dur-
2 ing such year which are designated under
3 subsection (a) with respect to qualified ad-
4 vanced broadband infrastructure projects,
5 the national advanced broadband infrastructure limi-
6 tation amount for the following calendar year shall
7 be increased by the amount of such excess.

8 “(B) LIMITATION OF CARRYOVER.—Any
9 carryforward of a limitation amount may be
10 carried only to the first 3 years following the
11 unused limitation year. For purposes of the pre-
12 ceding sentence, a limitation amount shall be
13 treated as used on a first-in first-out basis.

14 “(c) QUALIFIED ADVANCED BROADBAND INFRA-
15 STRUCTURE PROJECT.—For purposes of this section—

16 “(1) IN GENERAL.—The term ‘qualified ad-
17 vanced broadband infrastructure project’ means a
18 project approved by the Secretary to construct ad-
19 vanced broadband infrastructure that—

20 “(A) provides residential or small business
21 consumers with access to the internet in the
22 normal course of operations at transmission
23 speeds that comply with the requirements of
24 paragraph (3) for the provision of advanced
25 broadband communications services; and

1 “(B) operates advanced broadband service
2 networks on an open access basis, as defined by
3 the Federal Communications Commission.

4 “(2) APPROVAL REQUIREMENTS.—

5 “(A) IN GENERAL.—A project may not be
6 approved as a qualified advanced broadband in-
7 frastructure project unless—

8 “(i) the issuer with respect to such
9 project certifies that the NTIA Adminis-
10 trator has approved such project in writ-
11 ing, and

12 “(ii) the project—

13 “(I) in the case of a qualified
14 issuer which is a State or local gov-
15 ernment, meets the requirements of
16 subparagraph (B), and

17 “(II) in the case of any other
18 qualified issuer, meets the require-
19 ments of subparagraph (C).

20 “(B) REQUIREMENTS FOR STATE OR
21 LOCAL GOVERNMENT PROJECTS.—The require-
22 ments of this subparagraph are met if—

23 “(i) the project is nominated by a
24 State or local government for approval as

1 a qualified advanced broadband infrastruc-
2 ture project,

3 “(ii) such State or local government
4 has provided private sector entities with
5 notice of the opportunity during a 30-day
6 period to bid to provide the services offered
7 by such nominated project, and

8 “(iii) such project is approved by the
9 Secretary, upon recommendation of the
10 Secretary of Commerce, as a qualified ad-
11 vanced broadband infrastructure project or
12 a series of qualified advanced broadband
13 infrastructure projects.

14 “(C) REQUIREMENTS FOR OTHER
15 PROJECTS.—The requirements of this subpara-
16 graph are met if—

17 “(i) the project—

18 “(I) in the case of a qualified
19 issuer described in subsection
20 (d)(1)(B), is with respect to such pro-
21 vision of services within the des-
22 ignated operating area of the jurisdic-
23 tion of the State or local governing
24 authority from which such qualified
25 issuer has obtained a certificate of

1 public convenience and necessity (or
2 the equivalent), or, in the case of a
3 qualified issuer described in sub-
4 section (d)(1)(C), is with respect to
5 such provision of services within the
6 area for which such qualified issuer is
7 licensed to provide commercial mobile
8 service by the Federal Communica-
9 tions Commission, or

10 “(II) is nominated by a State
11 Public Utility Commission or local
12 governing authority for approval as a
13 qualified advanced broadband infra-
14 structure project, or by the Federal
15 Communications Commission under
16 paragraph (5), and

17 “(ii) such project is approved by the
18 Secretary, upon receipt of such a nomina-
19 tion, as a qualified advanced broadband in-
20 frastructure project or a series of qualified
21 advanced broadband infrastructure
22 projects.

23 “(3) TRANSMISSION SPEED REQUIREMENTS.—

24 “(A) IN GENERAL.—A project complies
25 with the requirements of this subparagraph if it

1 provides each subscribing residential or small
2 business consumer with access to the internet in
3 the normal course of operations at transmission
4 speeds of at least—

5 “(i) 50 megabits per second down-
6 stream and 20 megabits per second up-
7 stream, or

8 “(ii) 10 megabits per second down-
9 stream and 2 megabits per second up-
10 stream for the provision of advanced
11 broadband communications services using
12 commercial mobile services.

13 “(B) TRANSMISSION SPEED ADJUST-
14 MENTS.—The Secretary shall adjust the trans-
15 mission speeds required under clause (i) to re-
16 flect the most recent increase in the trans-
17 mission speed requirements prescribed by the
18 NTIA Administrator under section 159(c) of
19 the National Telecommunications and Informa-
20 tion Administration Organization Act. Any ad-
21 justment under the preceding sentence shall
22 apply to bonds issued later than 60 days after
23 the date such increase is prescribed by the
24 NTIA Administrator.

1 “(4) TECHNOLOGY NEUTRALITY.—The Sec-
2 retary shall approve projects as qualified advanced
3 broadband infrastructure projects on a technology
4 neutral basis.

5 “(5) ALTERNATE NOMINATING PROCEDURE.—If
6 a State Public Utility Commission or local governing
7 authority that receives, from an entity holding a cer-
8 tificate of public convenience and necessity (or the
9 equivalent) described in paragraph (2)(C)(i)(I), a
10 formal request for nomination under paragraph
11 (2)(C)(i)(II) does not act on the nomination within
12 30 days of the submission of such request, the Fed-
13 eral Communications Commission shall act on such
14 request for nomination within 30 days the submis-
15 sion of a notice from such entity of the inaction by
16 such State Public Utility Commission or local gov-
17 erning authority on such formal request.

18 “(d) OTHER DEFINITIONS.—For purposes of this
19 section—

20 “(1) QUALIFIED ISSUER.—The term ‘qualified
21 issuer’ means—

22 “(A) a State or local government,

23 “(B) an entity that has obtained from a
24 State Public Utility Commission or local gov-

erning authority a certificate of public convenience and necessity (or the equivalent),

“(C) an entity that has a project that is nominated by a State Public Utility Commission or local governing authority for approval as a qualified advanced broadband infrastructure project, or

“(D) a commercial mobile service provider which is licensed to provide mobile service by the Federal Communication Commission.

“(2) NTIA ADMINISTRATOR.—The term ‘NTIA Administrator’ means the Administrator of the National Telecommunications and Information Administration within the Department of Commerce, who is the Assistant Secretary of Commerce for Communications and Information.

“(3) STATE REGULATORY UTILITY COMMISSION.—The term ‘State Regulatory Utility Commission’ means the government agency in a State that regulates the entry into and provision of telecommunications services.

“(e) DESIGNATION PREFERENCES.—

“(1) IN GENERAL.—With respect to designations under this section, preferences shall be given—

1 “(A) to nominations reflecting expeditious
2 deployment of advanced broadband infrastruc-
3 ture,

4 “(B) to approved projects serving areas in
5 the following order: unserved areas, underserved
6 areas, and served areas, and

7 “(C) in the case of a project with respect
8 to a qualified issuer which is a State or local
9 government, to nominations reflecting partner-
10 ships and comprehensive planning between
11 State and local governments and the private
12 sector or existing governmental entities that
13 provide telecommunications services, with con-
14 struction and operation performed by the pri-
15 vate sector entity or the existing governmental
16 entity.

17 “(2) DEFINITIONS.—For purposes of this sub-
18 section—

19 “(A) SERVED AREA.—The term ‘served
20 area’ means an area served by at least 2
21 wireline broadband service providers.

22 “(B) UNDERSERVED AREA.—The term
23 ‘underserved area’ means an area served by 1
24 wireline broadband service provider.

1 “(C) UNSERVED AREA.—The term
2 ‘unserved area’ means an area not served by
3 any wireline broadband service provider.

4 “(f) FAILURE TO MAINTAIN TRANSMISSION SPEED
5 REQUIREMENTS.—For purposes of subsection (a)(1), the
6 proceeds from the sale of an issue shall not be treated
7 as used for a qualified advanced broadband infrastructure
8 project to the extent that it is certified to the Secretary
9 by the NTIA Administrator under section 159 of the Na-
10 tional Telecommunications and Information Administra-
11 tion Organization Act that the project has failed to meet
12 the applicable transmission speed requirements. The Sec-
13 retary shall, in consultation with the NTIA Administrator,
14 prescribe regulations specifying remedial actions that may
15 be taken (including conditions to taking such remedial ac-
16 tions) to prevent such a failure from causing a bond to
17 fail to be a qualified advanced broadband infrastructure
18 bond.

19 “(g) REPORTING.—Issuers of qualified advanced
20 broadband infrastructure bonds shall submit reports simi-
21 lar to the reports required under section 149(e) and shall
22 maintain a file for public inspection that contains quar-
23 terly certifications by an officer of the entity operating the
24 advanced broadband infrastructure that it is providing in
25 the course of normal operations advanced broadband com-

1 munication services to each consumer served by the quali-
 2 fied advanced broadband infrastructure project. Such re-
 3 ports and certifications shall be made available on the
 4 issuer’s website and shall include a description of the use
 5 of the proceeds of issues by such issuer.”.

6 (b) CONFORMING AMENDMENTS.—

7 (1) Paragraph (1) of section 54A(d) is amended
 8 by striking “or” at the end of subparagraph (C), by
 9 inserting “or” at the end of subparagraph (D), and
 10 by inserting after subparagraph (D) the following
 11 new subparagraph:

12 “(E) a qualified advanced broadband infra-
 13 structure bond.”.

14 (2) Subparagraph (C) of section 54A(d)(2) is
 15 amended by striking “and” at the end of clause (iii),
 16 by striking the period at the end of clause (iv) and
 17 inserting “, and”, and by adding at the end the fol-
 18 lowing new clause:

19 “(v) in the case of a qualified ad-
 20 vanced broadband infrastructure bond, a
 21 purpose specified in section 54F(a)(1).”.

22 (c) CLERICAL AMENDMENT.—The table of sections
 23 for subpart I of part IV of subchapter A of chapter 1 is
 24 amended by adding at the end the following new item:

“Sec. 54F. Credit to holders of qualified advanced broadband infrastructure
 bonds.”.

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to obligations issued after the date
3 of enactment of this Act.

4 (e) NTIA RESPONSIBILITIES.—The National Tele-
5 communications and Information Administration Organi-
6 zation Act (47 U.S.C. 901 et seq.) is amended by adding
7 at the end of part C the following new section:

8 **“SEC. 159. ADVANCED BROADBAND INFRASTRUCTURE**
9 **BOND PROGRAM.**

10 “(a) INITIAL CERTIFICATION.—The NTIA shall re-
11 ceive requests for approval of qualified advanced
12 broadband infrastructure projects with respect to qualified
13 advanced infrastructure bonds under section 54F of the
14 Internal Revenue Code of 1986, and, within 30 days of
15 receipt, issue a written decision as to whether such project
16 meets the requirements of such section relating to quali-
17 fied advanced broadband infrastructure projects.

18 “(b) MONITORING.—The NTIA shall develop a pro-
19 gram to monitor the implementation of qualified advanced
20 broadband infrastructure projects under section 54F of
21 such Code—

22 “(1) to ensure that such projects meet the ap-
23 plicable transmission speed requirements under such
24 section;

1 “(2) to provide notification to any issuer with
2 respect to a project not in compliance with such
3 speed requirements and include in such notice an ex-
4 planation that if such project fails to satisfy such re-
5 quirements not later than 60 days after the date of
6 such notice—

7 “(A) the certification described in para-
8 graph (3) shall be made, and

9 “(B) the bond with respect to such project
10 risks failing to be a qualified advanced
11 broadband infrastructure bond; and

12 “(3) in the case of a project which does not sat-
13 isfy such requirements before the expiration of such
14 60-day period, to certify to the Secretary of the
15 Treasury that such a project has not met such re-
16 quirements.

17 “(c) AUTHORITY TO INCREASE TRANSMISSION
18 SPEED REQUIREMENTS.—On December 31, 2009, and
19 December 31, 2010, the NTIA shall, after providing pub-
20 lic notice and an opportunity for comment, issue a decision
21 determining whether and by what amount to increase the
22 transmission speed requirements of the advanced
23 broadband infrastructure bond program under section
24 54F(c)(3) of the Internal Revenue Code of 1986. In reach-
25 ing the determination, the Assistant Secretary shall ensure

1 that the transmission speed requirements reflect the fast-
2 est speeds currently being offered in a generally available
3 service in the normal course of operations to residential
4 and small business consumers by wireline broadband serv-
5 ice providers.

6 “(d) ANNUAL REPORT.—The NTIA shall, in con-
7 sultation with the Secretary of the Treasury, transmit to
8 Congress an annual report describing the progress in
9 achieving the goals of the advanced broadband infrastruc-
10 ture bond program, including for the year upon which the
11 report is based—

12 “(1) the monetary value of the bonds issued;

13 “(2) the transmission speeds being deployed by
14 bond issuers;

15 “(3) a description of the qualified advanced
16 broadband infrastructure projects using proceeds
17 from bonds issued under section 54F of such Code;
18 and

19 “(4) the results of any rule-making proceedings
20 carried out under the authority provided in sub-
21 section (b), including any changes to the trans-
22 mission speed requirements of the program.”.

23 (f) FCC RESPONSIBILITIES.—Not later than 45 days
24 after the date of enactment of this Act, the Federal Com-
25 munications Commission shall complete a rule-making

1 proceeding to define “operates advanced broadband serv-
2 ice networks on an open access basis”, as used in section
3 54F(c)(1)(B) of the Internal Revenue Code of 1986 (as
4 amended by subsection (a) of this Act).

