

2
3 SENATE FR&ED COMMITTEE SUBSTITUTE FOR SB90
4
5
6
7

8 SYNOPSIS: This bill would amend the Alabama Broadband
9 Accessibility Act to expand the definition of an
10 "unserved area" eligible for grant funding,
11 increase the percentage of project costs eligible
12 for grant funding, and to broaden the permitted use
13 of other federal and state support, including loans
14 and grants, in projects receiving grants under the
15 Act.
16

17 A BILL
18 TO BE ENTITLED
19 AN ACT
20

21 To amend sections 41-23-212, 41-23-213 and
22 41-23-214, Code of Alabama 1975, to change the definition of
23 an "unserved area", increase the percentage of project costs
24 that may be funded through the Act, and to broaden the
25 permitted use of other federal and state support, including
26 loans and grants, in projects receiving grants under the Act.
27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 41-23-212, 41-23-213 and
2 41-23-214, Code of Alabama 1975, are amended to read as
3 follows:

4 "§41-23-212.

5 For the purposes of this article, the following
6 words have the following meanings:

7 "(1) ADECA. The Alabama Department of Economic and
8 Community Affairs.

9 "(2) END USER. A residential, business,
10 institutional, or government entity that uses services for its
11 own purposes and does not resell such services to other
12 entities. An internet service provider (ISP) and mobile
13 wireless service provider are not an end user for the purposes
14 of this act.

15 "(3) MIDDLE MILE PROJECT. A broadband infrastructure
16 project that does not provide broadband service to end users
17 or to end-user devices.

18 "~~(2)~~ (4) MINIMUM SERVICE THRESHOLD. A connection to
19 the Internet that provides capacity for transmission at an
20 average speed per customer of at least ~~10~~ 25 megabits (~~10~~ 25
21 Mbps) per second downstream and at least ~~one~~ three megabits (~~1~~
22 3 Mbps) per second upstream.

23 "~~(3)~~ (5) RURAL AREA. Any area within this state not
24 included within the boundaries of any incorporated city or
25 town having a population in excess of 25,000 inhabitants,
26 according to the last federal census.

1 "~~(4)~~ (6) UNSERVED AREA. Any rural area in which
2 there is not at least one provider of terrestrial broadband
3 service that is either: (1) offering a connection to the
4 Internet meeting the minimum service threshold; or (2) is
5 required, under the terms of the Federal Universal Service
6 Fund or other federal or state grant, to provide a connection
7 to the Internet at speeds meeting the minimum service
8 threshold by March 28, 2023.

9 "§41-23-213.

10 "(a) The Director of ADECA may establish and
11 administer the broadband accessibility grant program for the
12 purpose of promoting the deployment and adoption of broadband
13 Internet access services to unserved areas. By June 26, 2018,
14 the director shall adopt rules and policies to administer the
15 program and begin to accept applications for grants, and shall
16 adopt such rules as may be necessary to meet the future needs
17 of the grant program.

18 "(b) The program shall be administered pursuant to
19 policies developed by ADECA in compliance with this article.
20 The policies shall provide for the awarding of grants to
21 non-governmental entities that are cooperatives, corporations,
22 limited liability companies, partnerships, or other private
23 business entities that provide broadband services. Nothing in
24 this article shall expand the authority under state law of any
25 entity to provide broadband service.

26 "(c) There is hereby created the Alabama Broadband
27 Accessibility Fund in the State Treasury. The fund is subject

1 to appropriations by the Legislature and gifts, grants, and
2 other donations received by ADECA for the broadband
3 accessibility grant program or fund. ADECA may not spend
4 appropriations for the program for purposes other than those
5 listed in this section. Any monies appropriated to ADECA for
6 broadband grants that are unspent at the end of a fiscal year
7 shall be carried over for use by the program in the next
8 fiscal year. ADECA shall develop rules ensuring that expenses
9 incurred to administer the program must not exceed ~~three~~ eight
10 percent (8%) of the total amount appropriated for the program
11 in any fiscal year. Moneys in the fund shall be invested by
12 the State Treasurer for the sole benefit of the fund.

13 "(d) (1) Individual grants awarded by ADECA under
14 this section may only be awarded for projects in unserved
15 areas, and may not exceed the lesser of:

16 "a. ~~Twenty~~ Fifty percent (50%) of the project
17 costs; or

18 "b. 1. Two million five hundred thousand dollars
19 (\$2,500,000) for projects that will be capable of transmitting
20 broadband signals at the minimum service threshold.

21 "2. Five million dollars (\$5,000,000) for projects
22 that will be capable of transmitting broadband signals with an
23 average speed per customer of at least fifty megabits per
24 second (50 Mbps) downstream and at least fifty megabits per
25 second (50 Mbps) upstream. ~~Seven hundred fifty thousand~~
26 dollars (~~\$750,000~~) for projects that will result in
27 transmitting broadband signals at speeds of at least 10

1 ~~megabits per second of download speed and one megabit per~~
2 ~~second of upload speed.~~

3 ~~"c. One million four hundred thousand dollars~~
4 ~~(\$1,400,000) for projects that will result in transmitting~~
5 ~~broadband signals at speeds of at least 25 megabits per second~~
6 ~~of download speed and three megabits per second of upload~~
7 ~~speed.~~

8 "(2) Grants may be given to any qualified entity
9 pursuant to subsection (b) that meets the service criteria for
10 expenditures after March 28, 2018.

11 "(3) ADECA shall ensure that not less than 40
12 percent of funds appropriated for grants be utilized in
13 unincorporated areas of the state.

14 "(4) Subject to the limitations in this subsection,
15 grants shall be awarded pursuant to the service criteria
16 developed by ADECA, with priority given to projects that meet
17 any of the following:

18 "a. Seek to leverage grant funds through private
19 investment and extension of existing infrastructure.

20 "b. Serve locations with demonstrated community
21 support, including, but not limited to, documented support
22 from local government.

23 "c. Demonstrate the operator's technical and
24 managerial capabilities to complete the project within two
25 years of the grant.

26 "d. Demonstrate the applicants' necessary financial
27 resources.

1 "e. Are most cost effective and technically
2 efficient in that they propose to serve the highest number of
3 unserved homes, businesses and community anchor points for the
4 least cost and best level of service, emphasizing projects
5 including the highest broadband speeds.

6 "f. Provide material broadband enhancement to
7 hospitals located in rural areas ~~as defined in Section~~
8 ~~22-21-20~~.

9 "g. Support local libraries in this state for the
10 purpose of assisting the libraries in offering digital
11 literacy training pursuant to state library and archive
12 guidelines.

13 "~~(e) The first annual commencement date to submit~~
14 ~~grant applications shall be by May 27, 2018, and shall be~~
15 ~~March 1 in each subsequent year. For each fiscal year in which~~
16 ~~grant funds are available, ADECA shall accept applications~~
17 ~~within a ~~150-day~~ 90-day grant window ~~after the annual~~~~
18 ~~commencement date that it shall establish. Applications for~~
19 eligible projects will be evaluated according to a scoring
20 system developed by ADECA that incorporates the priorities
21 listed in this section, with grant awards published within 90
22 days after expiration of the filing window. Grant applications
23 shall be published by ADECA on the Internet at the end of the
24 filing window, and existing service providers shall have 30
25 business days from the date of publication to file objections
26 to the eligibility of a proposed project. ADECA shall address
27 any objections within 30 days of submission and shall make any

1 appropriate changes to grant awards based on a finding of
2 ineligibility resulting from such protest. Subject to such
3 protest procedure, grants issued by ADECA shall be conditioned
4 upon compliance with the terms of the grant but shall not
5 otherwise be revocable. Providers' grants shall be paid within
6 30 days upon ADECA receiving written certification of the
7 completion of the project and evidence of compliance with the
8 terms of the grant as prescribed by ADECA.

9 "(f) Grants shall be conditioned on project
10 completion within two years of awarding of the grant. If a
11 recipient fails to complete a project within the two-year
12 deadline due to reasons other than delay caused by a
13 government entity, ADECA may revoke the grant in its entirety
14 and rededicate the funds to a new recipient.

15 "(g) ADECA shall condition the release of any grant
16 funds awarded under this chapter on:

17 "(1) the progressive completion, as measured on not
18 more than a quarterly basis, of the approved project; and

19 "(2) operational testing, when possible, to confirm
20 the level of service proposed in the grant application. Such
21 regulations shall not exceed in degree or differ in kind from
22 testing and reporting requirements imposed on the grant
23 recipient by the Federal Communications Commission, as
24 adjusted for the service specifications in the ADECA grant
25 agreement.

1 "~~(g)~~ (h) Notwithstanding any other provision of this
2 section, eligible projects shall include ~~projects~~ any of the
3 following:

4 "(1) Projects to serve unserved areas in which the
5 grant applicant is either or both: (i) an existing or future
6 service provider which has or will receive support through
7 federal universal service funding programs designed
8 specifically to encourage broadband deployment in an area
9 without broadband access; or (ii) an existing or future
10 service provider which has or will receive other forms of
11 federal or state financial support or assistance, such as a
12 grant or loan from the United States Department of
13 Agriculture; provided, however, that any award of state funds
14 under this act, when combined with other forms of state or
15 federal support or assistance, may not exceed ninety percent
16 (90%) of the total project costs. Nothing in this section
17 shall prohibit a grant applicant who has not previously
18 received any federal or state funds, grants, or loans for
19 broadband deployment from applying for and receiving grant
20 funds under this act. ~~that have received funds through other~~
21 ~~federal universal service funding programs designed~~
22 ~~specifically to encourage broadband deployment in an area~~
23 ~~without broadband access in an amount not exceeding 50 percent~~
24 ~~of the total project cost; provided, however, that any award~~
25 ~~of state funds may only be utilized to either (i) fund project~~
26 ~~components that extend beyond the specifications supported by~~
27 ~~the federal funding, the eligible components being an~~

1 ~~extension of service to unserved rural areas not otherwise~~
2 ~~served by the federally supported project, or (ii) ensure that~~
3 ~~areas being served by the federal funding at speeds less than~~
4 ~~25 megabits per second of download speed and three megabits~~
5 ~~per second of upload speed will, in fact, receive faster~~
6 ~~speeds of not less than 25 megabits per second of download~~
7 ~~speed and three megabits per second of upload speed. Grants~~
8 ~~issued under this subsection shall not exceed 40 percent of~~
9 ~~total grant funding, with such grants not exceeding 20 percent~~
10 ~~of total project costs.~~

11 "(2) Middle Mile Projects, where the applicant
12 demonstrates that the project will materially support the
13 provision of broadband service to others eligible for grants
14 under this subsection to provide service to end users;
15 provided that eligible projects under this subdivision may
16 include projects in (i) an unserved area or (ii) a rural area
17 that does not meet the definition of an unserved area but
18 otherwise meets the requirements of this section, for which
19 the grant applicant demonstrates, by specific evidence, the
20 need for greater broadband speeds, capacity, or service which
21 is not being offered by an existing service provider.

22 "(3) Projects to provide broadband service to a
23 specific hospital, public school, public safety, or economic
24 development site in a rural area that does not meet the
25 definition of an unserved area but otherwise meets the
26 requirements of this section, for which the grant applicant
27 demonstrates, by specific evidence, the need for greater

1 broadband speeds, capacity, or service which is not being
2 offered by an existing service provider.

3 "(4) Grants issued under subdivisions (2) and (3)
4 shall not exceed forty percent (40%) of the total funds
5 appropriated for grants on an annual basis.

6 "§41-23-214.

7 "(a) There is created the Alabama Rural Broadband
8 Oversight Committee. The oversight committee shall consist of
9 the Chair of the House Ways and Means Education Committee or
10 his or her designee, the Chair of the Senate Finance and
11 Taxation Education Committee or his or her designee, two
12 members appointed by the Speaker of the House of
13 Representatives, two members appointed by the President Pro
14 Tempore of the Senate, and the Director of ADECA or his or her
15 designee. The oversight committee shall meet at least
16 annually, provide general oversight of the implementation of
17 the article, and recommend further statutory changes to
18 promote rural broadband development.

19 "(b) The committee shall reflect the racial, gender,
20 geographic, urban/rural, and economic diversity of the state.

21 "(c) For any year in which grants are distributed
22 under the program, ADECA shall produce a ~~quarterly~~ report on
23 the status of grants under the program to the Oversight
24 Committee, including progress toward increased access to and
25 adoption of broadband services. The report shall be provided
26 at the oversight committee's first meeting of the year and
27 ~~also~~ be published on ADECA's website. By March 28, 2019, ADECA

1 shall produce a report on the availability of broadband within
2 the state."

3 Section 2. Nothing in this act shall affect the
4 approval and continued funding of grants awarded prior to the
5 effective date of this act.

6 Section 3. If any provision of this act or its
7 application to any person or circumstance is held invalid, the
8 invalidity does not affect other provisions or applications of
9 this act which can be given effect without the invalid
10 provision or application, and to this end, the provisions of
11 this act are severable.

12 Section 4. This act shall become effective
13 immediately following the passage and approval of this act by
14 the Governor, or its otherwise becoming law.