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3 CONFERENCE COMMITTEE REPORT FOR SB90
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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 broadband
11 services for its own purposes and does not resell such
12 broadband services to other entities. An internet service
13 provider (ISP) and mobile wireless service provider are not an
14 end user for the purposes 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 the lesser
10 of seven~~three~~ percent ~~(3%)~~ (7%) of the total amount
11 appropriated for the program in any fiscal year or seven
12 hundred fifty thousand dollars (\$750,000). Moneys in the fund
13 shall be invested by the State Treasurer for the sole benefit
14 of the fund.

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

18 "a. ~~Twenty~~ Thirty-five percent (35%) of the project
19 costs; or

20 "b. One million five hundred thousand dollars
21 (\$1,500,000) for projects that will be capable of transmitting
22 broadband signals at or above the minimum service threshold.

23 ~~"Seven hundred fifty thousand dollars (\$750,000) for~~
24 ~~projects that will result in transmitting broadband signals at~~
25 ~~speeds of at least 10 megabits per second of download speed~~
26 ~~and one megabit per second of upload speed.~~

1 ~~"c. One million four hundred thousand dollars~~
2 ~~(\$1,400,000) for projects that will result in transmitting~~
3 ~~broadband signals at speeds of at least 25 megabits per second~~
4 ~~of download speed and three megabits per second of upload~~
5 ~~speed.~~

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

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

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

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

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

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

24 "d. Demonstrate the applicants' necessary financial
25 resources.

26 "e. Are most cost effective and technically
27 efficient in that they propose to serve the highest number of

1 unserved homes, businesses and community anchor points for the
2 least cost and best level of service, emphasizing projects
3 including the highest broadband speeds.

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

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

11 "(5) For the purposes of awarding grants, ADECA
12 shall take into consideration the average pole attachment
13 rates that a grant applicant charges to an unaffiliated
14 entity, provided that this subdivision (5) shall not apply to
15 a utility as defined under Section 37-4-1 (7)a.

16 "(6) In order to promote the deployment of grant
17 funds in an inclusive manner that is consistent with the
18 racial, gender, geographic, urban, rural, and economic
19 diversity of the state, ADECA may give additional
20 consideration to an applicant that provides documentation that
21 it has been certified by the ADECA Office of Minority Business
22 Enterprise or otherwise as a Disadvantaged Business
23 Enterprise. For projects funded under this act, ADECA shall
24 encourage grant applicants to use vendors and subcontractors
25 that have been certified by the Office of Minority Business
26 Enterprise or that are Disadvantaged Business Enterprises.
27 ADECA shall include in its report to the Alabama Rural

1 Broadband Oversight Committee a list of entities certified by
2 the Office of Minority Business Enterprise and Disadvantaged
3 Business Enterprises that have been awarded grants since the
4 prior report.

5 "~~(e) The first annual commencement date to submit~~
6 ~~grant applications shall be by May 27, 2018, and shall be~~
7 ~~March 1 in each subsequent year.~~ For each fiscal year in which
8 grant funds are available, ADECA shall accept applications
9 within a ~~150-day~~ 90-day grant window ~~after the annual~~
10 ~~commencement date~~ that it shall establish. Applications for
11 eligible projects will be evaluated according to a scoring
12 system developed by ADECA that incorporates the priorities
13 listed in this section, with grant awards published within 90
14 days after expiration of the filing window. Grant applications
15 shall be published by ADECA on the Internet at the end of the
16 filing window, and existing service providers shall have 30
17 business days from the date of publication to file objections
18 to the eligibility of a proposed project. ADECA shall address
19 any objections within 30 days of submission and shall make any
20 appropriate changes to grant awards based on a finding of
21 ineligibility resulting from such protest. Subject to such
22 protest procedure, grants issued by ADECA shall be conditioned
23 upon compliance with the terms of the grant but shall not
24 otherwise be revocable. Providers' grants shall be paid within
25 30 days upon ADECA receiving written certification of the
26 completion of the project and evidence of compliance with the
27 terms of the grant as prescribed by ADECA.

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

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

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

11 "(2) operational testing, when possible, to confirm
12 the level of service proposed in the grant application. Such
13 regulations shall not exceed in degree or differ in kind from
14 testing and reporting requirements imposed on the grant
15 recipient by the Federal Communications Commission, as
16 adjusted for the service specifications in the ADECA grant
17 agreement.

18 "~~(g)~~ (h) Notwithstanding any other provision of this
19 section, eligible projects shall include ~~projects~~ any of the
20 following:

21 "(1) Projects to serve unserved areas in which the
22 grant applicant is either or both: (i) an existing or future
23 service provider which has or will receive support through
24 federal universal service funding programs designed
25 specifically to encourage broadband deployment in an area
26 without broadband access; or (ii) an existing or future
27 service provider which has or will receive other forms of

1 federal or state financial support or assistance, such as a
2 grant or loan from the United States Department of
3 Agriculture; provided, however, that any award of state funds
4 under this act, when combined with other forms of state or
5 federal support or assistance dedicated to the project, other
6 than interest-bearing loans, may not exceed sixty percent
7 (60%) of the total project costs. Nothing in this section
8 shall prohibit a grant applicant who has not previously
9 received any federal or state funds, grants, or loans for
10 broadband deployment from applying for and receiving grant
11 funds under this act. ~~that have received funds through other~~
12 ~~federal universal service funding programs designed~~
13 ~~specifically to encourage broadband deployment in an area~~
14 ~~without broadband access in an amount not exceeding 50 percent~~
15 ~~of the total project cost; provided, however, that any award~~
16 ~~of state funds may only be utilized to either (i) fund project~~
17 ~~components that extend beyond the specifications supported by~~
18 ~~the federal funding, the eligible components being an~~
19 ~~extension of service to unserved rural areas not otherwise~~
20 ~~served by the federally supported project, or (ii) ensure that~~
21 ~~areas being served by the federal funding at speeds less than~~
22 ~~25 megabits per second of download speed and three megabits~~
23 ~~per second of upload speed will, in fact, receive faster~~
24 ~~speeds of not less than 25 megabits per second of download~~
25 ~~speed and three megabits per second of upload speed. Grants~~
26 ~~issued under this subsection shall not exceed 40 percent of~~

1 ~~total grant funding, with such grants not exceeding 20 percent~~
2 ~~of total project costs.~~

3 "(2) Middle Mile Projects, where the applicant
4 demonstrates that the project will connect other service
5 providers eligible for grants under this section with
6 broadband infrastructure further upstream in order to enable
7 such providers to offer broadband service to end users;
8 provided that eligible projects under this subdivision may
9 include projects in (i) an unserved area or (ii) a rural area
10 that does not meet the definition of an unserved area but
11 otherwise meets the requirements of this section, for which
12 the grant applicant demonstrates, by specific evidence, the
13 need for greater broadband speeds, capacity, or service which
14 is not being offered by an existing service provider.

15 "(3) Projects to provide broadband service to a
16 specific hospital, public school, public safety, or economic
17 development site in a rural area that does not meet the
18 definition of an unserved area but otherwise meets the
19 requirements of this section, for which the grant applicant
20 demonstrates, by specific evidence, the need for greater
21 broadband speeds, capacity, or service which is not being
22 offered by an existing service provider.

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

26 "§41-23-214.

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

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

15 "(c) For any year in which grants are distributed
16 under the program, ADECA shall produce a ~~quarterly~~ report on
17 the status of grants under the program to the Oversight
18 Committee, including progress toward increased access to and
19 adoption of broadband services. The report shall be provided
20 at the oversight committee's first meeting of the year and
21 also be published on ADECA's website. ADECA shall provide a
22 copy of the report to the Governor, the Alabama Senate
23 President Pro Tempore, the Alabama Senate Minority Leader, the
24 Speaker of the Alabama House of Representatives, and the
25 Alabama House of Representatives Minority Leader. By March 28,
26 2019, ADECA shall produce a report on the availability of
27 broadband within the state."

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

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

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