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An Act To Encourage Broadband Deployment in Unserved Areas

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 35-A MRS §9202, as amended by PL 2015, c. 284, §2, is further amended to read:

§ 9202. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Advanced communications technology infrastructure. "Advanced communications technology infrastructure" means any communications technology infrastructure or infrastructure improvement that expands the deployment of, or improves the quality of, broadband availability and wireless service coverage.

2. Authority. "Authority" means the ConnectME Authority established in section 9203.

2-A. Broadband service. "Broadband service" means a mass-market retail service using wireline or fixed wireless technology that provides the capability to transmit data from or to all or substantially all Internet devices.

2-B. Broadband service provider. "Broadband service provider" means a communications service provider that provides broadband service, but does not include a provider of commercial mobile service as defined under 47 United States Code, Section 332(d)(1) (2018).

3. Communications service. "Communications service" means any wireline voice, satellite, data, fixed wireless data or video retail service.

4. Communications service provider. "Communications service provider" means:

A. Any entity offering communications service to customers in the State; or

B. Any facilities-based provider of wireless voice or data retail service ~~that voluntarily chooses to be assessed by the authority pursuant to section 9211~~ that is granted funds pursuant to section 9211-B.

5. Unserved or underserved area. ~~"Unserved or underserved area" means an area that the authority pursuant to section 9204-A, subsection 1 determines to meet criteria established by the authority by rule adopted pursuant to section 9205, subsection 3.~~

6. Household. "Household" means a house and its occupants, regarded as a unit.

7. Infrastructure. "Infrastructure" means a physical component or collection of physical components that provide the basic support for distributing communications service.

8. Underserved area. "Underserved area" means a census block as described by the United States Department of Commerce, Bureau of the Census or aggregation of adjacent census blocks where broadband service exists but less than 10% of the households within that area have access to broadband service with minimum speeds of at least 50 megabits per second from the broadband service provider to the customer and at least 5 megabits per second from the customer to the broadband service provider.

9. Unserved area. "Unserved area" means a census block as described by the United States Department of Commerce, Bureau of the Census or aggregation of adjacent census blocks without access to broadband service with minimum speeds of at least 25 megabits per second from the broadband service provider to the customer and at least 3 megabits per second from the customer to the broadband service provider.

Sec. 2. 35-A MRSA §9203, sub-§7 is enacted to read:

7. Limitations on activities of authority. Notwithstanding any other provision of this chapter to the contrary, the authority may not provide any wireline, wireless, satellite, voice, data or video service at retail or wholesale.

Sec. 3. 35-A MRSA §9204-A, sub-§1, as enacted by PL 2015, c. 284, §7, is repealed.

Sec. 4. 35-A MRSA §9204-A, sub-§4, as enacted by PL 2015, c. 284, §7, is amended to read:

4. Support broadband infrastructure investment. The authority shall expand the availability of broadband service to residential and small business customers in unserved or underserved areas by identifying, developing and providing funding for broadband infrastructure investments in unserved and underserved communities exclusively as provided in section 9211-B. Such investments may include infrastructure that is used by a single provider or by multiple providers.

Sec. 5. 35-A MRSA §9211, as enacted by PL 2005, c. 665, §3, is amended to read:

§ 9211.ConnectME Fund

1. ConnectME Fund established. The ConnectME Fund, referred to in this section as "the fund," is established as a nonlapsing fund administered by the authority for the purposes of supporting the activities and projects of the authority under this chapter.

2. Assessment. ~~After receiving authorization pursuant to Title 5, section 8072 to finally adopt major substantive rules under section 9205, subsection 3 or after January 15, 2007, whichever is later, the authority may require every communications service provider to contribute on a competitively neutral basis to the fund. The assessment may not exceed 0.25% of the revenue received or collected for all communications services provided in this State by the communications service provider. A facilities-based provider of wireless voice or data retail service may voluntarily agree to be assessed by the authority as a communications service provider under this subsection.~~

3. Explicit identification on customer bills. ~~A communications service provider assessed pursuant to subsection 2 may recover the amount of the assessment from the provider's customers. If a provider recovers the amount from its customers, it must explicitly identify the amount owed by a customer on the customer's bill and indicate that the funds are collected for use in the ConnectME Fund.~~

4. Bond authorization. The authority may provide by resolution for the issuance of bonds for the purpose of providing funding and support for the construction of advanced communications technology infrastructure as provided in section 9211-B and for the fulfillment of other undertakings that the authority may assume. All money received from any bonds issued by the authority must be applied for the support of construction of advanced communications technology infrastructure in accordance with section 9211-B and for the fulfillment of other undertakings that are within the power of the authority, except that not more than 5% of money received from any bonds issued by the authority may be used to support community broadband planning grants distributed pursuant to section 9217. A lien is created upon the money until so applied in favor of the bondholders or any member of the authority as may be provided for the bonds.

Sec. 6. 35-A MRSA §9211-A, as enacted by PL 2015, c. 323, §1, is repealed.

Sec. 7. 35-A MRSA §9211-B is enacted to read:

§ 9211-B. Broadband Infrastructure Grant Program

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Program" means the Broadband Infrastructure Grant Program established in subsection 2.

B. "Project" means a proposed deployment of advanced communications technology infrastructure used to provide broadband service at speeds meeting or exceeding the minimum thresholds described in section 9202, subsection 9 or 10 that is set forth in an application for grant funding authorized under this section.

C. "Project area" means a census block as described by the United States Department of Commerce, Bureau of the Census or aggregation of adjacent census blocks proposed to be covered in an application for grant funding of a project authorized under this section.

2. Establishment; administration. The Broadband Infrastructure Grant Program is established. The authority shall administer and act as the fiscal agent for the program and is responsible for receiving and reviewing grant applications and awarding grants.

3. Eligible projects. Assistance under this section may be used to carry out a project in a project area only if, as of the date on which the application of the eligible applicant is submitted, the area to be served by the project for which a grant is sought constitutes an unserved area or underserved area. A grant may not be used to support any project involving the upgrade of existing broadband infrastructure by an applicant to the minimum speed thresholds set forth in section 9202, subsections 9 and 10. The use of a grant granted pursuant to this section is limited to only the unserved portions of the project area.

4. Eligible applicants. An applicant for a grant under the program:

- A. May not receive a grant for a project covered by an application under a federal universal service fund as established pursuant to 47 United States Code, Section 254 (2018) or any state government grant or loan program;
- B. Must commit to paying a minimum of 20% of the project costs out of the applicant's own funds and may not provide this minimum matching amount from any funds derived from government grants, loans or subsidies; and
- C. May be any entity with demonstrated experience in providing broadband service or other communications service to residential customers within the State.

5. Applications. The following provisions govern applications under the program.

- A. The authority shall establish an annual period, which may not be less than 60 days or more than 90 days, for submission of applications for a grant under the program.
- B. An eligible applicant shall submit an application to the authority on a form prescribed by the authority. An application for a grant to fund a project must include the following information:

(1) Evidence demonstrating the applicant's experience and ability in building, operating and managing broadband service networks serving residential customers;

(2) A description of the project area, including a list of census blocks covered by the proposed project. If a census block included in an application already is partially served by a provider of broadband service, the application must describe the portions of the census block that are already served and the portions of the census block that constitute an unserved area or underserved area and must include a certification that none of the grant funding provided by the program for the project proposed in the application will be used to extend or deploy facilities to a household that is already served by a provider of broadband service;

(3) A description of the advanced communications technology infrastructure that is proposed to be deployed, including facilities, equipment and network capabilities, including minimum speed thresholds;

(4) Evidence, including a certification from the application signatory, demonstrating the unserved or underserved nature of the project area;

(5) The number of households that would have new access to broadband service as a result of the grant;

(6) The total cost of the proposal and the time frame in which it will be completed;

(7) The amount of matching funds the applicant proposes to contribute and a certification that no portion of such funds are derived from a federal universal service fund or any state government grant or loan program;

(8) Evidence demonstrating the economic and commercial feasibility of the proposed project;

(9) A list of all government authorizations, permits and other approvals required in connection with the proposed project and a timetable for the applicant's acquisition of such approvals; and

(10) Any other information required by the authority.

6. Review of applications; approval. The following provisions govern the review and approval of applications under the program.

A. Within 5 business days following the end of the period for submission of applications established pursuant to subsection 5, paragraph A, the authority shall make the applications available for review in a publicly accessible electronic file.

B. A broadband service provider that provides service within or directly adjacent to a proposed project area may submit, within 45 days of the release of the applications pursuant to paragraph A, a written challenge to an application. Such a challenge may include information:

(1) Disputing an applicant's certification that a proposed project area is unserved or underserved or that a federal universal service fund or any state programs do not provide funding for a project for which program support is sought; or

(2) Attesting to the challenging provider's existing, or planned, provision of broadband service within the applicant's proposed project area.

C. During the 45-day challenge period established under paragraph B, a nongovernmental entity with demonstrated experience in providing broadband service or other communications service to residential customers within the State may submit a competing application for a grant for a project in any proposed project area that is the subject of an application submitted by or on behalf of a municipality. In reviewing competing applications in any such project area, the authority shall give preference to the application submitted by a nongovernmental entity covering the project area, whether during the annual period for submission of applications established pursuant to subsection 5, paragraph A or through the competing application process authorized in this paragraph.

D. In reviewing applications and any accompanying challenges, the authority shall conduct its own review of the proposed project areas to ensure that all awarded grants are used to deploy advanced communications technology infrastructure to unserved areas. The authority may not award any grants to fund a project for any proposed project area that fails to meet the criteria for being unserved.

E. The authority shall award grants for projects set forth in applications based upon a scoring system. The scoring system must be released to the public at least 30 days prior to the period for submission of applications established pursuant to subsection 5, paragraph A. The scoring system must give the highest weight or priority to the following factors:

(1) The size and scope of the unserved area or underserved area proposed to be served;

(2) The experience, technical ability and financial means of the applicant in successfully deploying and providing broadband service;

(3) The length of time the applicant has been providing broadband service in the State;

(4) The extent to which government funding support is necessary to deploy advanced communications technology infrastructure in an economically feasible manner in the proposed project area;

(5) The amount and proportion of the matching funds proposed to be committed by the applicant;

(6) Whether the proposed project area is an unserved area, rather than an underserved area;

(7) The service speed thresholds proposed in the application and the scalability of the advanced communications technology infrastructure proposed to be deployed to speeds higher than 25 megabits per second from the broadband service provider to the customer and 3 megabits per second from the customer to the broadband service provider;

(8) The applicant's ability to leverage nearby or adjacent advanced communications technology infrastructure to facilitate the proposed project and provision of service to households;

(9) The extent to which the proposed project does not duplicate any existing advanced communications technology infrastructure in the proposed project area; and

(10) Such other factors the authority determines to be reasonable and appropriate, consistent with the purpose of facilitating the economic deployment of advanced communications technology infrastructure to unserved areas.

F. In awarding grants, the authority may not include consideration of any new or additional regulatory obligations beyond those required under applicable law, including, but not limited to, open access network requirements or any rate, service or other obligations beyond the speed requirements set forth in section 9202, subsection 10. In awarding grants, the authority may not include consideration of factors that would constrain a recipient from offering or providing broadband service in the same manner as such service is offered without funding support by the broadband service provider in other areas of the State.

G. An applicant must be afforded a reasonable time frame to complete a project selected for funding approval.

7. Implementation. The following provisions govern the implementation of the program.

A. The authority shall adopt rules within 180 days of the effective date of this section consistent with this section that implement the requirements of this section and govern the submission, review and approval of applications and the administration of projects funded under this section, including rules for grant agreements memorializing the award of funds.

B. Rules that implement this section must include reasonable oversight and reporting provisions to ensure that grants are used as intended. Such rules may not include 3rd-party audit requirements, letter of credit or performance bond obligations or financial penalty or liquidated damages provisions or provisions that are not reasonably related to the deployment of advanced communications technology infrastructure by an applicant in accordance with the purposes and provisions of this section. Nothing in this paragraph precludes the authority from requiring disgorgement of grant funds in response to an applicant's pattern of failure, following notice and an opportunity to cure, to build out a project area in accordance with the time frames and timetables set forth in its application.

C. Nothing in this section may be construed to preclude the authority from considering an applicant's financial ability to complete the project proposed in an application or making reasonable requests for information necessary for the oversight and administration of a project funded under this section.

D. Nothing in this section may be construed to empower the authority to adopt rules or to impose any obligations or requirements on funding recipients, through grant agreements or any other mechanism, other than the program implementation rules expressly authorized in paragraph A.

E. The provisions of this section supersede any contrary rules adopted prior to the effective date of this section by the authority to govern the disbursement of funds to support broadband investment.

SUMMARY

This bill facilitates the deployment of broadband infrastructure in unserved areas of this State by establishing the Broadband Infrastructure Grant Program under the ConnectME Authority to award grants to applicants for the purpose of extending deployment of facilities used to provide broadband service to unserved areas of the State and thus to encourage new investment in broadband service infrastructure. The bill eliminates the Municipal Gigabit Broadband Network Access Fund. The bill removes the authority of the ConnectME Authority to require communications service providers to contribute to the ConnectME Fund. It allows the authority to issue bonds for the construction of advanced communications technology infrastructure.