

Alabama Broadband Accessibility Act

Section 41-23-210

Short title.

This article shall be known and may be cited as the Alabama Broadband Accessibility Act.

(Act 2018-395, § 1.)

Section 41-23-211

Legislative findings.

The Legislature finds that the availability of high-speed broadband services, with the preference of speeds of 100 megabits per second of download speed and 100 megabits per second of upload speed or greater, in unserved rural Alabama is important for economic development, education, health care, and emergency services in Alabama, and that grants and other incentives set forth in this article will further those objectives by encouraging new investment in broadband infrastructure.

(Act 2018-395, § 2; Act 2022-138, § 1.)

Section 41-23-212

Definitions.

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

- (1) ADECA. The Alabama Department of Economic and Community Affairs.
- (2) END USER. A residential, business, institutional, or government entity that uses broadband services for its own purposes and does not resell such broadband services to other entities. An Internet service provider (ISP) and mobile wireless service provider are not an end user for the purposes of Sections 41-23-212, 41-23-213, and 41-23-214.
- (3) MIDDLE MILE PROJECT. A broadband infrastructure project that does not provide broadband service to end users or to end-user devices.
- (4) MINIMUM SERVICE THRESHOLD. A connection to the Internet that provides capacity for transmission at an average speed per customer of at least 100 megabits (100 Mbps) per second downstream and at least 20 megabits (20 Mbps) per second upstream.

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

(6) UNSERVED AREA. Any rural area in which there is not at least one provider of terrestrial broadband service that is either: (1) offering a connection to the Internet meeting the minimum service threshold; or (2) required under the terms of another state or federal grant to provide a connection to the Internet at speeds meeting the minimum service threshold within the same or similar timeframe of projects of similar complexity or scale awarded during each grant cycle.

(Act 2018-395, § 3; Act 2019-327, § 1; Act 2022-138, § 1.)

Section 41-23-213

Grant program; rulemaking authority; Alabama Broadband Accessibility Fund.

(a) The Director of ADECA may establish and administer the broadband accessibility grant program for the purpose of promoting the deployment and adoption of broadband Internet access services to unserved areas. The director shall adopt rules and policies to administer the program and begin to accept applications for grants, and shall adopt such rules as may be necessary to meet the future needs of the grant program.

(b) The program shall be administered pursuant to policies developed by ADECA in compliance with this article. The policies shall provide for the awarding of grants to entities that are cooperatives, corporations, limited liability companies, partnerships, or other private business entities, or units of government, which provide broadband services. An entity is not eligible for a grant under this article unless the entity has submitted, within the one-year period preceding the awarding of the grant, the entity's broadband service availability information to Alabama's broadband mapping program. Nothing in this article shall expand the authority under state law of any entity to provide broadband service.

(c) There is hereby created the Alabama Broadband Accessibility Fund in the State Treasury. The fund is subject to appropriations by the Legislature and gifts, grants, and other donations received by ADECA for the broadband accessibility grant program or fund. All state and federal grant monies deposited in the fund shall be expended by ADECA in accordance with the statewide connectivity plan and any legal requirements applicable to those grant monies, including their program eligibility, deployment, and reporting requirements. ADECA may not spend appropriations for the program for purposes other than those listed in this section. Any monies appropriated to ADECA for broadband grants that are unspent at the end of a fiscal year shall be carried over for use by the program in the next fiscal year. ADECA shall develop rules ensuring that expenses incurred to administer the program must not exceed the lesser of seven percent of the total amount appropriated for the program in any fiscal year or seven hundred fifty thousand dollars (\$750,000). Monies in the fund shall be invested by the State Treasurer for the sole benefit of the fund.

(d)(1) Individual grants awarded by ADECA under this section may only be awarded for projects in unserved areas that will be capable of transmitting broadband signals at or above 100 megabits per second of download speed and 100 megabits per second of upload speed, and may not exceed the lesser of:

a. Eighty percent of the project costs.

b. Five million dollars (\$5,000,000).

(2) Grants may be given to any qualified entity pursuant to subsection (b) that meets the service criteria for expenditures.

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

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

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

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

c. Demonstrate the operator's technical and managerial capabilities to complete the project within the required timeframe.

d. Demonstrate the applicants' necessary financial resources.

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

f. Provide material broadband enhancement to hospitals, clinics, and other medical facilities located in rural areas.

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

h. Provide support for the deployment of infrastructure to be owned and operated exclusively by Internet service providers serving subscribers in Alabama for at least three years or organizations incorporated, headquartered, or with a principal place of business in Alabama.

i. Commit to improving the adoption rate of broadband services by offering programs to households that meet guidelines established by ADECA or the funding source, including, but not

limited to, special service rates, Internet-enabled devices that meet the needs of the user, and digital skills training.

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

(6) In order to promote the deployment of grant funds in an inclusive manner that is consistent with the racial, gender, geographic, urban, rural, and economic diversity of the state, ADECA may give additional consideration to an applicant that provides documentation that it has been certified by the ADECA Office of Minority Business Enterprise or otherwise as a Disadvantaged Business Enterprise. For projects funded under this article, ADECA shall encourage grant applicants to use vendors and subcontractors that have been certified by the Office of Minority Business Enterprise or that are Disadvantaged Business Enterprises. ADECA shall include in its report to the Alabama Rural Broadband Oversight Committee a list of entities certified by the Office of Minority Business Enterprise and Disadvantaged Business Enterprises that have been awarded grants since the prior report.

(e) For each year in which grant funds are available, ADECA shall accept applications within a 60-to-90-day grant window that it shall establish. However, when necessary to meet the requirements of other funding sources, a grant window of 30 days may be established by ADECA. ADECA shall review each application for eligibility as determined by the state map. Any applicant submitting a project that includes served areas as documented by the state map shall be given an opportunity to revise the application to eliminate ineligible portions or rescind the application. Applications for eligible projects shall be evaluated according to a scoring system developed by ADECA that incorporates the priorities listed in this section, with grant awards published as soon as possible, but no more than 60 days after expiration of the filing window. Grants issued by ADECA shall be conditioned upon compliance with the terms of the grant but shall not otherwise be revocable. Providers' grants shall be paid within 30 days upon ADECA receiving written certification of the completion of the project and evidence of compliance with the terms of the grant as prescribed by ADECA.

(f) Grants shall be conditioned on project completion within two years of awarding of the grant. Applicants who demonstrate project complexity may request more than two years to complete the project. Recipients who demonstrate that the project is progressing may request an extension for up to one year for project delays beyond the recipient's control. If a recipient fails to complete a project within the two-year deadline, or within the extended deadline, ADECA may revoke the grant in its entirety and rededicate the funds to a new recipient.

(g) ADECA shall condition the release of any grant funds awarded under this chapter on all of the following:

(1) The progressive completion, as measured on not more than a quarterly basis, of the approved project. Grants for projects not showing progress may be rescinded.

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

(3) Continued participation in Alabama's broadband mapping program throughout the entire project period.

(h) Notwithstanding any other provision of this section, eligible projects shall include any of the following:

(1) Projects to serve unserved areas in which the grant applicant is either or both: a. an existing or future service provider which has or will receive support through federal universal service funding programs designed specifically to encourage broadband deployment in an area without broadband access; or b. an entity that currently provides services which has or will receive other forms of federal or state financial support or assistance, such as a grant or loan from the United States Department of Agriculture; provided, however, that any award of state funds under this section, when combined with other forms of state or federal support or assistance dedicated to the project, other than interest-bearing loans, may not exceed 90 percent of the total project costs. Nothing in this section shall prohibit a grant applicant who has not previously received any federal or state funds, grants, or loans for broadband deployment from applying for and receiving grant funds under this section.

(2) Middle mile projects, where the applicant demonstrates that the project will connect other service providers eligible for grants under this section with broadband infrastructure further upstream in order to enable the providers to offer broadband service to end users; provided that eligible projects under this subdivision may include projects in an unserved area or a rural area that does not meet the definition of an unserved area but otherwise meets the requirements of this section, for which the grant applicant demonstrates, by specific evidence, the need for greater broadband speeds, access, capacity, resiliency, or service which is not being offered by an existing service provider.

(3) Projects to provide broadband service to a specific hospital, health care facility, public school, public safety, or economic development site in a rural area that does not meet the definition of an unserved area but otherwise meets the requirements of this section, for which the grant applicant demonstrates, by specific evidence, the need for greater broadband speeds, access, capacity, resiliency, or service which is not being offered by an existing service provider.

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

(i) Nothing in this section shall affect the approval and continued funding of grants awarded prior to May 30, 2019.

(Act 2018-395, § 4; Act 2019-327, §§ 1, 2; Act 2022-138, § 1.)

Section 41-23-214

Alabama Rural Broadband Oversight Committee.

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

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

(c) For any year in which grants are distributed under the program, ADECA shall produce a report on the status of grants under the program to the oversight committee, including progress toward increased access to and adoption of broadband services. The report shall be provided at the oversight committee's first meeting of the year and be published on ADECA's website. ADECA shall provide a copy of the report to the Governor, the Alabama Senate President Pro Tempore, the Alabama Senate Minority Leader, the Speaker of the Alabama House of Representatives, and the Alabama House of Representatives Minority Leader. By March 28, 2019, ADECA shall produce a report on the availability of broadband within the state.

(Act 2018-395, § 5; Act 2019-327, § 1; Act 2022-138, § 1.)