

§ 143B-1374. Satellite-Based Broadband Grant Program.

(a) The following definitions apply in this section:

- (1) Broadband service. – Internet access service, regardless of the technology or medium used to provide the service, with transmission speeds that are equal to or greater than the requirements for the minimum performance tier and with latency equal to or lesser than the requirements for low latency, as both metrics are provided by the Federal Communications Commission in Paragraph 39 of the report and order adopted January 30, 2020, and released February 7, 2020.
- (2) Grantee. – A satellite-based provider that has been awarded a grant pursuant to this section.
- (3) Office. – The Broadband Infrastructure Office in the Department of Information Technology.
- (4) Project area. – An area identified by a grantee and defined in a grant agreement entered into pursuant to this section that contains unserved households. A project area may also cover areas that have broadband service.
- (5) Satellite-based provider. – A broadband service provider that provides Internet access directly to consumers via satellite technology.
- (6) Unserved household. – A household located in this State that does not have access to broadband service from a wireline or wireless service provider. A household that is included in an area where a grant from the Growing Rural Economies with Access to Technology (GREAT) program pursuant to G.S. 143B-1373 has been awarded is not eligible for a grant under this section.

(b) The Satellite-Based Broadband Grant Fund is created as a special revenue fund in the Department of Information Technology. Monies in the Fund do not revert but remain available to the Department for the purposes provided in this section. State funds appropriated to this Fund shall be considered an information technology project within the meaning of G.S. 143C-1-2.

(c) Applications for grants will be submitted at times designated by and on forms prescribed by the Secretary. Notwithstanding any other provision of law, if the Secretary deems some of the information in an application to contain proprietary information, the Secretary may provide that such information is not a public record, as that term is defined in G.S. 132-1, subject to public records or other laws requiring the disclosure of such information and have that portion of the application redacted. An application shall include, at a minimum, the following information:

- (1) The identity of the applicant.
- (2) An illustration or description of the project area to be served and the estimated number of unserved households in that area that will gain access to broadband service at the conclusion of deployment.
- (3) The proposed construction and deployment time line.
- (4) A description of the services to be provided, including the proposed upstream and downstream broadband speeds to be delivered, latency metrics, and any applicable data caps. Any applicant proposing a data cap below 150 Gigabytes of usage per month shall also provide justification to the satisfaction of the Office that the proposed cap is in the public interest and consistent with industry standards.
- (5) A plan to mitigate barriers to adoption by households.
- (6) The proposed advertised speed to be marketed to end users in the project area.
- (7) The proposed cost to be charged to an unserved household in the project area for subscribing to the broadband service.
- (8) Any other information or supplementary documentation requested by the Office.

(d) The Office shall determine eligibility for a grant pursuant to this section based upon the information provided in the application of a satellite-based provider, and any other information or supplementary documentation requested by the Office, and shall award grants to applicants that will provide access to the greatest number of unserved households. Applications of satellite-based providers that propose the provision of broadband service to the greatest number of unserved households situated in census tracts that have been identified as significantly unserved by the Office shall be given priority. The maximum aggregate amount of total liability for all grants awarded under this section is four million dollars (\$4,000,000). The maximum amount of total annual liability for grants awarded in any single calendar year under this section is two million five hundred thousand dollars (\$2,500,000). No agreement may be entered into that, when considered together with other existing agreements governing grants awarded during a single calendar year, could cause the State's potential total annual liability for grants awarded in a single calendar year to exceed the applicable amount. The amount of award per household for each grant year shall be equal to the product of two hundred fifty dollars (\$250.00) multiplied by a fraction, the numerator of which is the total number of full months all unserved households subscribed to and received broadband service from the grantee in the grant year and the denominator of which is 12. No broadband service to an unserved household beyond 24 months of service may be included in the calculation of an award.

Eligibility for a grant award is dependent upon the household maintaining broadband service with the grantee for at least eighty-three percent (83%) of the year in which the grantee seeks an award. No single subscription or full-year equivalent subscription may be used to calculate a grant award for more than the three-year term identified in the agreement. The total grant award for a single unserved household under this section shall not exceed five hundred dollars (\$500.00). A grantee shall submit documentation to the Office annually that will provide information sufficient for the Office to verify eligibility of subscriptions, including that the household was unserved. Payment of grant funds is subject to documentation showing eligibility of subscriptions.

(e) The Office shall require a grantee to enter into an agreement. The agreement shall contain at least all of the following:

- (1) A detailed description of the anticipated area where the grantee will deploy broadband service.
- (2) The current number of unserved households situated within the anticipated area.
- (3) The total number of unserved households the grantee anticipates subscribing to its broadband service.
- (4) A method for the grantee to report annually to the Office the number of households subscribing to broadband service offered by the grantee and for documenting that those households were previously unserved households.
- (5) A plan for the grantee to address barriers to adoption by households situated within the project area.
- (6) A provision that requires the grantee to maintain its service for the area, or another area approved by the Office, for at least five years.
- (7) A provision establishing the conditions under which the grant agreement may be terminated and under which grant funds may be recaptured by the Office.
- (8) A provision stating that unless the agreement is terminated pursuant to its terms, the agreement is binding and constitutes a continuing contractual obligation of the State and the grantee.
- (9) A provision that establishes any allowed variation in the terms of the agreement that will not subject the grantee to grant reduction, amendment, or termination of the agreement.

- (10) A provision describing the manner in which the amount of the grant will be measured and administered to ensure compliance with the agreement and this section.
- (11) A provision stating that any recapture of a grant and any reduction in the amount of the grant or the term of the agreement must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.
- (12) A provision describing the methodology the Office will use to verify subscriptions and the types of information required to be submitted by the grantee.
- (13) A provision prohibiting a grantee from receiving a payment or other benefit under the agreement at any time when the grantee has received a notice of an overdue tax debt, as defined in G.S. 105-243.1, and the overdue tax debt has not been satisfied or otherwise resolved.
- (14) A provision stating that any disputes over interpretation of the agreement shall be submitted to binding arbitration.
- (15) A provision encouraging the business to contract with small businesses headquartered in the State for goods and services.
- (16) A provision encouraging the business to hire North Carolina residents.
- (17) A provision encouraging the business to use the North Carolina State Ports.
- (18) Any other provision the Office deems necessary.

An agreement entered into pursuant to this section is a binding obligation of the State and is not subject to State funds being appropriated by the General Assembly.

(f) If the grantee fails to meet or comply with any condition or requirement set forth in an agreement, the Office shall reduce the amount of the grant or the term of the agreement, may terminate the agreement, or both. The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition with respect to which the failure occurred. If the Office finds that the grantee has manipulated or attempted to manipulate data with the purpose of increasing the amount of a grant, the Office shall immediately terminate the agreement and take action to recapture any grant funds disbursed in any year in which the Office finds the grantee manipulated or attempted to manipulate data with the purpose of increasing the amount of a grant.

(g) The grantee shall certify and provide to the Office evidence consistent with a Federal Communications Commission attestation that the proposed minimum upstream and minimum downstream broadband speeds and latency metrics identified in the application guidelines are and will be available throughout the project area during the term of the agreement prior to any end user connections. A grantee may receive an annual disbursement of a grant only after the Office has certified that the grantee has met the terms and conditions of the agreement, including documentation of eligible subscriptions by unserved households. A grantee shall annually submit a certification of compliance with the agreement to the Office. The Office shall require the grantee to provide any necessary evidence of compliance to verify that the terms of the agreement have been met.

(h) Notwithstanding any other provision of law, grants made pursuant to this section shall be budgeted and funded on a cash flow basis. The Department shall disburse funds in an amount sufficient to satisfy grant obligations to be paid during the fiscal year. It is the intent of the General Assembly to appropriate funds annually to the Satellite-Based Broadband Grant Program established in this section in amounts sufficient to meet the anticipated cash requirements for each fiscal year.

(i) The Office shall require that a grantee offer the proposed advertised minimum download and minimum upload speeds and subscription cost identified in the application for the

duration of the five-year service agreement. At least annually, a grantee shall provide to the Office evidence consistent with a Federal Communications Commission attestation that the grantee is making available the proposed advertised speed, or a faster speed, as contained in the grant agreement. For the duration of the agreement, a grantee shall disclose any changes to data caps for the project area that differ from the data caps listed in the grant application to the Office.

(j) A grantee shall submit to the Office an annual report for the duration of the agreement. The report shall include a summary of, and level of attainment for, the items contained in the grant agreement and shall also include (i) the number of households that have broadband access as a result of the project, (ii) the percentage of end users in the project area who have access to broadband service that actually subscribe to the broadband service, and (iii) the average monthly subscription cost for broadband service in the project area.

(k) The Department of Information Technology shall submit an annual report to the Joint Legislative Oversight Committee for Information Technology and the Fiscal Research Division on or before September 1. The report shall contain at least all of the following:

- (1) The number of grant projects applied for and the number of grant agreements entered into.
- (2) A time line for each grant agreement and the number of households expected to benefit from each agreement.
- (3) The total amount of investment for each agreement.
- (4) A summary of areas receiving grants that are now being provided broadband service and the advertised broadband speeds and subscription prices for those areas.
- (5) Any breaches of agreements, and any grant fund forfeitures or reductions.
- (6) Any recommendations for the grant program, including better data sources and methods for improving outcomes and accountability. (2020-81, s. 7(a).)