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H.P. 1241

House of Representatives, May 16, 2019

An Act To Encourage Broadband Deployment in Unserved Areas

Reference to the Committee on Energy, Utilities and Technology suggested and ordered printed.

A handwritten signature in cursive script that reads "R B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative WADSWORTH of Hiram.
Cosponsored by President JACKSON of Aroostook and
Representatives: MARTIN of Eagle Lake, McCREA of Fort Fairfield, STEWART of Presque
Isle, Senators: LUCHINI of Hancock, ROSEN of Hancock.

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

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

4 **§9202. Definitions**

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

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

11 **2. Authority.** "Authority" means the ConnectME Authority established in section
12 9203.

13 **2-A. Broadband service.** "Broadband service" means a mass-market retail service
14 using wireline or fixed wireless technology that provides the capability to transmit data
15 from or to all or substantially all Internet devices.

16 **2-B. Broadband service provider.** "Broadband service provider" means a
17 communications service provider that provides broadband service, but does not include a
18 provider of commercial mobile service as defined under 47 United States Code, Section
19 332(d)(1) (2018).

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

22 **4. Communications service provider.** "Communications service provider" means:
23 A. Any entity offering communications service to customers in the State; or
24 B. Any facilities-based provider of wireless voice or data retail service ~~that~~
25 ~~voluntarily chooses to be assessed by the authority pursuant to section 9211~~ that is
26 granted funds pursuant to section 9211-B.

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

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

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

34 **8. Underserved area.** "Underserved area" means a census block as described by the
35 United States Department of Commerce, Bureau of the Census or aggregation of adjacent
36 census blocks where broadband service exists but less than 10% of the households within

1 that area have access to broadband service with minimum speeds of at least 50 megabits
2 per second from the broadband service provider to the customer and at least 5 megabits
3 per second from the customer to the broadband service provider.

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

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

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

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

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

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

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

25 **§9211. ConnectME Fund**

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

29 ~~**2. Assessment.** After receiving authorization pursuant to Title 5, section 8072 to~~
30 ~~finally adopt major substantive rules under section 9205, subsection 3 or after January 15,~~
31 ~~2007, whichever is later, the authority may require every communications service~~
32 ~~provider to contribute on a competitively neutral basis to the fund. The assessment may~~
33 ~~not exceed 0.25% of the revenue received or collected for all communications services~~
34 ~~provided in this State by the communications service provider. A facilities-based~~
35 ~~provider of wireless voice or data retail service may voluntarily agree to be assessed by~~
36 ~~the authority as a communications service provider under this subsection.~~

37 ~~**3. Explicit identification on customer bills.** A communications service provider~~
38 ~~assessed pursuant to subsection 2 may recover the amount of the assessment from the~~

1 provider's customers. If a provider recovers the amount from its customers, it must
2 explicitly identify the amount owed by a customer on the customer's bill and indicate that
3 the funds are collected for use in the ConnectME Fund.

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

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

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

17 **§9211-B. Broadband Infrastructure Grant Program**

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

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

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

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

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

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

- 1 **4. Eligible applicants.** An applicant for a grant under the program:
- 2 A. May not receive a grant for a project covered by an application under a federal
- 3 universal service fund as established pursuant to 47 United States Code, Section 254
- 4 (2018) or any state government grant or loan program;
- 5 B. Must commit to paying a minimum of 20% of the project costs out of the
- 6 applicant's own funds and may not provide this minimum matching amount from any
- 7 funds derived from government grants, loans or subsidies; and
- 8 C. May be any entity with demonstrated experience in providing broadband service
- 9 or other communications service to residential customers within the State.
- 10 **5. Applications.** The following provisions govern applications under the program.
- 11 A. The authority shall establish an annual period, which may not be less than 60 days
- 12 or more than 90 days, for submission of applications for a grant under the program.
- 13 B. An eligible applicant shall submit an application to the authority on a form
- 14 prescribed by the authority. An application for a grant to fund a project must include
- 15 the following information:
- 16 (1) Evidence demonstrating the applicant's experience and ability in building,
- 17 operating and managing broadband service networks serving residential
- 18 customers;
- 19 (2) A description of the project area, including a list of census blocks covered by
- 20 the proposed project. If a census block included in an application already is
- 21 partially served by a provider of broadband service, the application must describe
- 22 the portions of the census block that are already served and the portions of the
- 23 census block that constitute an unserved area or underserved area and must
- 24 include a certification that none of the grant funding provided by the program for
- 25 the project proposed in the application will be used to extend or deploy facilities
- 26 to a household that is already served by a provider of broadband service;
- 27 (3) A description of the advanced communications technology infrastructure that
- 28 is proposed to be deployed, including facilities, equipment and network
- 29 capabilities, including minimum speed thresholds;
- 30 (4) Evidence, including a certification from the application signatory,
- 31 demonstrating the unserved or underserved nature of the project area;
- 32 (5) The number of households that would have new access to broadband service
- 33 as a result of the grant;
- 34 (6) The total cost of the proposal and the time frame in which it will be
- 35 completed;
- 36 (7) The amount of matching funds the applicant proposes to contribute and a
- 37 certification that no portion of such funds are derived from a federal universal
- 38 service fund or any state government grant or loan program;
- 39 (8) Evidence demonstrating the economic and commercial feasibility of the
- 40 proposed project;

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

4 (10) Any other information required by the authority.

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

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

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

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

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

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

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

34 E. The authority shall award grants for projects set forth in applications based upon a
35 scoring system. The scoring system must be released to the public at least 30 days
36 prior to the period for submission of applications established pursuant to subsection
37 5, paragraph A. The scoring system must give the highest weight or priority to the
38 following factors:

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

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

- 1 (3) The length of time the applicant has been providing broadband service in the
2 State;
- 3 (4) The extent to which government funding support is necessary to deploy
4 advanced communications technology infrastructure in an economically feasible
5 manner in the proposed project area;
- 6 (5) The amount and proportion of the matching funds proposed to be committed
7 by the applicant;
- 8 (6) Whether the proposed project area is an unserved area, rather than an
9 underserved area;
- 10 (7) The service speed thresholds proposed in the application and the scalability
11 of the advanced communications technology infrastructure proposed to be
12 deployed to speeds higher than 25 megabits per second from the broadband
13 service provider to the customer and 3 megabits per second from the customer to
14 the broadband service provider;
- 15 (8) The applicant's ability to leverage nearby or adjacent advanced
16 communications technology infrastructure to facilitate the proposed project and
17 provision of service to households;
- 18 (9) The extent to which the proposed project does not duplicate any existing
19 advanced communications technology infrastructure in the proposed project area;
20 and
- 21 (10) Such other factors the authority determines to be reasonable and
22 appropriate, consistent with the purpose of facilitating the economic deployment
23 of advanced communications technology infrastructure to unserved areas.

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

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

34 **7. Implementation.** The following provisions govern the implementation of the
35 program.

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

41 B. Rules that implement this section must include reasonable oversight and reporting
42 provisions to ensure that grants are used as intended. Such rules may not include 3rd-

1 party audit requirements, letter of credit or performance bond obligations or financial
2 penalty or liquidated damages provisions or provisions that are not reasonably related
3 to the deployment of advanced communications technology infrastructure by an
4 applicant in accordance with the purposes and provisions of this section. Nothing in
5 this paragraph precludes the authority from requiring disgorgement of grant funds in
6 response to an applicant's pattern of failure, following notice and an opportunity to
7 cure, to build out a project area in accordance with the time frames and timetables set
8 forth in its application.

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

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

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

20 **SUMMARY**

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