

1 SENATE BILL NO. 297

2 INTRODUCED BY J. ELLSWORTH

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR BROADBAND INFRASTRUCTURE
 5 DEPLOYMENT LAWS; ESTABLISHING THE MONTANA BROADBAND INFRASTRUCTURE ACCOUNT;
 6 ESTABLISHING THE MONTANA BROADBAND DEPLOYMENT GRANT PROGRAM; PROVIDING AN
 7 APPLICATION PROCESS; PROVIDING DEFINITIONS; AMENDING SECTION 2-17-603, MCA; AND
 8 PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A TERMINATION DATE."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11

12 NEW SECTION. Section 1. Short Title. [Sections 1 through 10] may be cited as the "ConnectMT
 13 Act".

14

15 NEW SECTION. Section 2. Definitions. As used in [sections 1 through 10], unless the context
 16 clearly indicates otherwise, the following definitions apply:

17 (1) "Broadband service" means any wireline or ~~fixed~~ wireless technology, NOT INCLUDING SATELLITE
 18 TECHNOLOGY, having the capacity to transmit data from or to the internet at minimum speeds of at least 100
 19 megabits a second downstream and 20 megabits a second upstream AT LOW LATENCY.

20 (2) "Broadband service infrastructure" means the signal transmission facilities and associated network
 21 equipment proposed to be deployed in a project area used for the provision of broadband service to residential,
 22 BUSINESS, AND GOVERNMENT customers.

23 (3) "Department" means the department of commerce.

24 (4) "Eligible applicant" means an entity that:

25 (a) has authorization to do business in the state; and

26 (b) has demonstrated that it has the technical, financial, and managerial resources and experience to
 27 provide broadband service or other communications service to customers in the state.

28 (5) "FCC" means the federal communications commission.

1 (6) "LOW LATENCY" MEANS LATENCY THAT IS SUFFICIENTLY LOW TO ALLOW REAL-TIME INTERACTIVE
 2 APPLICATIONS.

3 ~~(6)(7)~~ "Project" means a proposed deployment of broadband service infrastructure set forth in an
 4 application for grant funding authorized under [sections 1 through 10].

5 ~~(7)(8)~~ "Project area" means a shapefile area in an unserved OR UNDERSERVED area where the
 6 proposed broadband service infrastructure would be built as described in an application for grant funding
 7 authorized under [sections 1 through 10].

8 ~~(8)(9)~~ "Shapefile" means a GIS file format for storing, depicting, and analyzing geospatial data
 9 depicting broadband coverage. It is made up of several component files, such as a main file (.shp), an index file
 10 (.shx), and a dBASE table (.dbf).

11 ~~(9)(10)~~ "Unserved area" means a project area without access to broadband service with THE INTERNET
 12 AT minimum speeds of at least 25 megabits a second downstream and 3 megabits a second upstream.

13 (11) "UNDERSERVED AREA" MEANS A PROJECT AREA WITHOUT ACCESS TO BROADBAND SERVICE.

14
 15 NEW SECTION. Section 3. Establishment of program -- administration and funding. (1) The
 16 department shall establish the broadband infrastructure deployment grant program and shall administer and act
 17 as the fiscal agent for the grant program and shall be responsible for receiving and reviewing grant applications
 18 and awarding grants.

19 (2) Funding for the grant program established under this section is subject to appropriations from
 20 general fund revenue or from bonds issued by the department, OR FEDERAL BROADBAND STIMULUS FUNDS
 21 APPROPRIATED BY CONGRESS AND ALLOCATED TO THE STATE FOR FUNDING OF BROADBAND COMMUNICATIONS
 22 PROJECTS.

23
 24 NEW SECTION. Section 4. Eligible projects. (1) An eligible applicant may seek funding under this
 25 section for a project in a project area that, as of the date the application is filed, constitutes an unserved OR
 26 UNDERSERVED area as defined in [section 2]. Funds may not be used to support noncapital expenses, including
 27 general operations of an eligible applicant, nonbroadband services, marketing, or advertising.

28 (2) The project area to be served by a project funded under the program must be described on a

1 shapefile basis.

2 (3) An eligible project area may not include any location for which federal government funding has
3 been awarded specifically to support the expansion of broadband networks by the federal communications
4 commission through the rural digital opportunity fund.

5 (4) IN ADVANCE OF OPENING THE SUBMISSION WINDOW PURSUANT TO [SECTION 6], THE DEPARTMENT MAY
6 ISSUE REQUESTS FOR PROPOSALS TO SOLICIT APPLICATIONS FOR SPECIFIC ELIGIBLE PROJECTS, WHICH WOULD BE
7 SUBMITTED AS APPLICATIONS PURSUANT TO THIS ACT.

8

9 NEW SECTION. Section 5. Eligible applicants. (1) Applicants for grants:

10 (a) may not receive funds under any other federal or state government grant or loan program
11 specifically for the broadband project covered by an application;

12 (b) may not receive funds to support a project in an area where broadband service is already offered;

13 (c) (i) shall commit to paying a minimum of 20% of the project costs and may not provide a minimum
14 matching amount from any funds derived from government grants, loans, or subsidies. Priority will be given to
15 the applicant who contributes the largest percentage of costs from its own funds.

16 (ii) POLITICAL SUBDIVISIONS AND TRIBAL GOVERNMENTS, IN PARTNERSHIP WITH AN APPLICANT, MAY PROVIDE
17 FUNDING FOR BROADBAND INFRASTRUCTURE PROJECTS CONSISTENT WITH THE PROVISIONS OF [SECTIONS 1 THROUGH
18 10], EXCEPT THAT THE FUNDS MAY NOT BE COUNTED TOWARD THE MINIMUM 20% MATCHING AMOUNT FROM AN
19 APPLICANT.

20 (d) may only be a nongovernment entity with demonstrated experience in providing broadband
21 service or other communications services to end-user residential or business customers in the state.

22

23 NEW SECTION. Section 6. Applications. (1) The department shall establish an annual timeframe
24 commencing an open process for submission of applications for funding under the grant program established in
25 [sections 1 through 10]. The window for submission may not be less than 60 days and not more than 90 days.

26 (2) An eligible applicant shall submit an application to the department on a form prescribed by the
27 department. An application for a grant must include the following information:

28 (a) evidence demonstrating the applicant's technical, financial, and managerial resources and

1 experience to provide broadband service or other communications services to customers in the state, and the
2 ability to build, operate, and manage broadband service networks serving residential customers in the state;

3 (b) a description of the project area, including shapefiles, that the eligible applicant proposes to build
4 or serve;

5 (c) a description of the broadband service infrastructure that is proposed to be deployed, including
6 facilities, equipment, and network capabilities that include minimum speed thresholds;

7 (d) evidence, including a certification from the application signatory, demonstrating the unserved OR
8 UNDERSERVED nature of the project area to the best of the applicant's knowledge;

9 (e) the number of households, businesses, and public institutions or entities that would have new
10 access to broadband service as a result of the grant;

11 (f) the total cost of the proposed project and the timeframe in which it will be completed;

12 (g) the amount of matching funds the eligible applicant proposes to contribute, THE AMOUNT OF FUNDS
13 THAT LOCAL OR TRIBAL GOVERNMENTS PROPOSE TO CONTRIBUTE, and a certification that no portion of the funds are
14 derived from any federal or state grant or loan program; and

15 (h) a preliminary list of all government authorizations, permits, and other approvals required in
16 connection with the proposed deployment, and an estimated timetable for the acquisition of the approvals and
17 the completion of the proposed project.

18 (3) The department shall treat any information that is not publicly available as confidential and subject
19 to the trade secrets protections of state law on an applicant's request for confidential treatment, except that the
20 SHAPEFILE INFORMATION DEPICTING THE proposed project area must be publicly disclosed in sufficient detail to
21 enable a challenging provider to identify the area covered by the applicant.

22

23 NEW SECTION. Section 7. Review of application challenges -- approval. (1) Five business days
24 following the closing of the submission window, the department shall make the applications available for review
25 in a publicly available electronic file, subject to the confidentiality provisions of [section 6(3)].

26 (2) A broadband service provider that provides BROADBAND service within ~~or directly adjacent to a~~
27 proposed project area may submit, within 45 days of the release of the applications, a written challenge to the
28 applications. This challenge may include:

1 (a) (i) information disputing an applicant's certification that a proposed project area is an unserved OR
 2 UNDERSERVED area;

3 (ii) that no other federal funding has been awarded to support broadband deployment in the project
 4 area pursuant to [section 5(3)]; or

5 (iii) that no federal funding has been awarded to support the specific deployment proposed in the
 6 application pursuant to [section 9(1)(a)]; and

7 (b) evidence of broadband network deployment in the project area.

8 (3) Public shapefile data that includes the project area created under the federal communications
 9 commission's rules for shapefiles must constitute evidence of broadband deployment sufficient to show that a
 10 challenged project area is served.

11 (4) On a challenging provider's request for confidential treatment, the department shall treat any
 12 information that is not publicly available as confidential and subject to the trade secrets protections of state law
 13 as provided in 30-14-401 through 30-14-409.

14 (5) ~~If a broadband service provider submits a challenge to a proposed project area that is directly~~
 15 ~~adjacent to its service area but that it does not currently serve, the challenging broadband service provider shall~~
 16 ~~commit to complete construction of broadband infrastructure without the use of funding through [sections 1~~
 17 ~~through 10] and provide broadband service in the proposed project area at speeds equal to or greater than the~~
 18 ~~speeds proposed in the application no later than 36 months after the funding determinations are to be made~~
 19 ~~under this section for the application submitted. The department may extend this deadline. A broadband service~~
 20 ~~provider that fails to offer broadband service by that deadline shall be ineligible for a grant under [sections 1~~
 21 ~~through 10] for a period of 5 years. A BROADBAND SERVICE PROVIDER THAT IS AN ELIGIBLE APPLICANT AND THAT
 22 PROVIDES SERVICE DIRECTLY ADJACENT TO A PROPOSED PROJECT AREA MAY SUBMIT, WITHIN 25 DAYS OF THE RELEASE
 23 OF THE APPLICATIONS, A RESPONSIVE APPLICATION. A RESPONSIVE APPLICATION MUST MEET THE CRITERIA IN [SECTION
 24 6] AND MUST BE CONSIDERED AN APPLICATION UNDER [SECTION 1 THROUGH 10]. THE DESCRIPTION OF A PROJECT AREA
 25 IN A RESPONSIVE APPLICATION PURSUANT TO [SECTION 6(2)(B)] NEED NOT BE AN EXACT MATCH FOR THE APPLICATION
 26 TO WHICH IT IS RESPONDING. FIVE BUSINESS DAYS FOLLOWING THE CLOSING OF THE SUBMISSION WINDOW FOR
 27 RESPONSIVE APPLICATIONS, THE DEPARTMENT SHALL MAKE THE RESPONSIVE APPLICATIONS AVAILABLE FOR REVIEW IN A
 28 PUBLICLY AVAILABLE ELECTRONIC FILE, SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF [SECTION 6(3)]. WRITTEN~~

1 CHALLENGES TO RESPONSIVE APPLICATIONS MAY BE SUBMITTED WITHIN 15 DAYS OF THE RELEASE OF THE RESPONSIVE
 2 APPLICATIONS AND OTHERWISE ON THE SAME TERMS AS OTHER CHALLENGES PURSUANT TO SUBSECTIONS (2) THROUGH
 3 (4).

4 (6) In reviewing applications, RESPONSIVE APPLICATIONS, and any accompanying challenge, the
 5 department shall conduct its own review of the proposed project areas to ensure that all awarded funds are
 6 used to deploy broadband service infrastructure to unserved OR UNDERSERVED areas. THE DEPARTMENT MAY
 7 REQUIRE AN APPLICANT OR CHALLENGING PROVIDER TO SUBMIT ADDITIONAL INFORMATION CONSISTENT WITH [SECTIONS
 8 1 THROUGH 10] TO ENABLE THE DEPARTMENT TO PROPERLY ASSESS THE APPLICATION OR CHALLENGE. The
 9 department may not award a grant to fund deployment of broadband service infrastructure for a project area
 10 that fails to meet any of the criteria provided in [sections 1 through 10] for being an unserved OR UNDERSERVED
 11 area. THE DEPARTMENT MAY REQUEST AN APPLICANT OR RESPONSIVE APPLICANT MODIFY AN APPLICATION BASED ON
 12 CURRENT BROADBAND ACCESS IN THE PROPOSED PROJECT AREA OR BASED ON A RESPONSIVE APPLICATION BEFORE
 13 AWARDING FUNDING.

14 (7) The department shall award funding support for projects set forth in applications based on a
 15 scoring system that must be released to the public at least 30 days prior to the window for submission of
 16 applications. The weighting scheme employed by the department must give the highest weight or priority to the
 17 following specific criteria:

18 (A) THE SERVICE SPEED THRESHOLDS PROPOSED IN THE APPLICATION AND THE SCALABILITY OF THE
 19 BROADBAND SERVICE INFRASTRUCTURE PROPOSED TO BE DEPLOYED TO SPEEDS HIGHER THAN 100 MEGABITS A
 20 SECOND DOWNSTREAM AND 100 MEGABITS A SECOND UPSTREAM, WITH HIGHER SPEED THRESHOLDS RECEIVING
 21 GREATER WEIGHT;

22 (B) THE APPLICANT'S ABILITY TO LEVERAGE ITS OWN NEARBY OR ADJACENT BROADBAND SERVICE
 23 INFRASTRUCTURE TO FACILITATE THE COST-EFFECTIVE DEPLOYMENT OF BROADBAND SERVICE INFRASTRUCTURE IN THE
 24 PROPOSED PROJECT AREA;

25 (C) WHETHER THE PROPOSED PROJECT AREA IS UNSERVED RATHER THAN UNDERSERVED;

26 ~~(a)~~(D) whether the proposed project area lacks broadband service with maximum speeds of at least
 27 10 megabits a second downstream;

28 ~~(b)~~(E) the size and scope of the unserved area proposed to be served;

1 ~~(e)(F)~~ the experience, technical ability, and financial soundness of the eligible applicant in successfully
2 deploying and providing broadband service;

3 ~~(d)(G)~~ the length of time the applicant has been providing broadband service in the state;

4 ~~(e)(H)~~ the extent to which government funding support is necessary to deploy broadband network
5 infrastructure in the proposed project area;

6 ~~(f)(I)~~ the size and proportion of the matching funds proposed to be committed by the applicant;

7 ~~(g)~~ ~~the service speed thresholds proposed in the application and the scalability of the broadband~~
8 ~~service infrastructure proposed to be deployed to speeds higher than 100 megabits a second downstream and~~
9 ~~20 megabits a second upstream;~~

10 ~~(h)~~ ~~the applicant's ability to leverage its own nearby or adjacent broadband service infrastructure to~~
11 ~~facilitate the proposed deployment and provision of service to households;~~

12 ~~(i)(J)~~ the extent to which the project does not duplicate any existing broadband service infrastructure
13 in the proposed project area; and

14 ~~(j)(K)~~ any other factors the department determines to be reasonable and appropriate, consistent with
15 the purpose of facilitating the economic deployment of broadband service infrastructure to unserved areas.

16 (8) In awarding grants, the department may not include consideration of any new or additional
17 regulatory obligations beyond those required under applicable law, including but not limited to open access
18 network requirements or any rate, service, or other obligations beyond the speed requirements as provided in
19 [sections 1 through 10]. The criteria may not consider factors that would constrain an awardee from offering or
20 providing broadband service in the same manner as the service is offered without funding support by the
21 provider in other areas of the state.

22 (9) The department shall set a reasonable timeframe to complete projects selected for funding
23 approval. The department may, in consultation with the applicant, set reasonable milestones regarding this
24 completion. The department shall create procedures associated with any failure to meet milestones without
25 reasonable cause.

26
27 NEW SECTION. Section 8. Implementation. (1) Consistent with the provisions of [sections 1
28 through 10], the department shall adopt rules within 180 days in accordance with this section that implement

1 the requirements of [sections 1 through 10] and govern the submission, review, and approval of applications
2 and the administration of projects funded by [sections 1 through 10], including rules for grant agreements
3 memorializing the award of funds.

4 (2) These rules must include reasonable oversight and reporting provisions to ensure that project
5 funds are used as intended. These rules may not include third-party audit requirements, a letter of credit or
6 performance bond obligations, financial penalty or liquidated damages provisions, or provisions that are not
7 reasonably related to the deployment of broadband service infrastructure by an applicant in accordance with
8 the purposes and provisions of [sections 1 through 10].

9 (3) This section may not be construed to preclude the department from considering an applicant's
10 financial ability to complete the project proposed in an application or making reasonable requests for
11 information necessary for the oversight and administration of projects funded under this section.

12 (4) This section may not be construed to empower the department to adopt any new rules or
13 additional regulatory obligations or to impose any new or additional regulatory requirements on funding
14 recipients, through grant agreements or any other mechanism, other than the program implementation rules
15 expressly authorized in [sections 1 through 10].

16
17 **NEW SECTION. Section 9. Montana broadband infrastructure account.** (1) There is created a
18 Montana broadband infrastructure account.

19 (a) All money in the account is allocated to the department of commerce to be used solely for the
20 purposes of [sections 1 through 10]. Interest earned on funds in the account must be deposited in the account.

21 (b) The governor may accept, and shall deposit to the account any gifts, contributions, donations,
22 grants, or federal funds specifically designated for broadband infrastructure deployment for use under the
23 provisions of [sections 1 through 10], INCLUDING BY [HOUSE BILL NO. 632] OR SUBSEQUENT FEDERAL BROADBAND
24 STIMULUS FUNDS APPROPRIATED BY CONGRESS.

25 (c) Notwithstanding any other provision of law, funds allocated under this section may not be
26 transferred or expended for any purpose other than to provide funding for projects authorized pursuant to
27 [sections 1 through 10].

28

1 **NEW SECTION. Section 10. Funds transfer.** The state treasurer shall transfer \$2 million from the
2 state general fund to the Montana broadband infrastructure account by August 1, 2021.

3

4 **SECTION 11. SECTION 2-17-603, MCA, IS AMENDED TO READ:**

5 **"2-17-603. Government competition with private internet services providers prohibited --**

6 **exceptions.** (1) Except as provided in subsection (2)(a) or (2)(b), an agency or political subdivision of the state
7 may not directly or through another agency or political subdivision be an internet services provider.

8 (2) (a) An agency or political subdivision may act as an internet services provider if:

9 (i) no private internet services provider is available within the jurisdiction served by the agency or
10 political subdivision; or

11 (ii) the agency or political subdivision provided services prior to July 1, 2001.

12 (b) An agency or political subdivision may act as an internet services provider when providing
13 advanced services that are not otherwise available from a private internet services provider within the
14 jurisdiction served by the agency or political subdivision.

15 (c) If a private internet services provider elects to provide internet services in a jurisdiction where an
16 agency or political subdivision is providing internet services, the private internet services provider shall inform
17 the agency or the political subdivision in writing at least 30 days in advance of offering internet services.

18 (3) Upon receiving notice pursuant to subsection (2)(c), the agency or political subdivision shall notify
19 its subscribers within 30 days of the intent of the private internet services provider to begin providing internet
20 services and may choose to discontinue providing internet services within 180 days of the notice.

21 (4) Nothing in this section may be construed to prohibit an agency or political subdivision from:

22 (a) offering electronic government services to the general public; ~~or~~

23 (b) acquiring access to the internet from a private internet services provider in order to offer electronic
24 government services to the general public; or

25 (c) providing funding for broadband service infrastructure projects consistent with the provisions of
26 [section 1 through 10]."

27

28 **NEW SECTION. Section 12. Codification instruction.** [Sections 1 through 10] are intended to be

1 codified as an integral part of Title 90, chapter 1, and the provisions of Title 90, chapter 1, apply to [sections 1
2 through 10].

3

4 NEW SECTION. **Section 13. Effective date.** [This act] is effective on passage and approval.

5

6 NEW SECTION. **Section 14. Termination.** [This act] terminates 10 years from [the effective date of
7 this act].

8

- END -