

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 1228

Short Title: Satellite Broadband Grants. (Public)

Sponsors: Representatives Saine, B. Jones, Wray, and Szoka (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Appropriations, if favorable, Rules, Calendar, and Operations of the House

May 27, 2020

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A GRANT PROGRAM AT THE DEPARTMENT OF
3 INFORMATION TECHNOLOGY TO ENCOURAGE THE EXPANSION OF
4 SATELLITE-BASED BROADBAND SERVICE TO UNSERVED PORTIONS OF THE
5 STATE.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** Part 6 of Article 15 of Chapter 143B of the General Statutes is amended
8 by adding a new section to read:

9 "**§ 143B-1374. Satellite-Based Broadband Grant Program.**

10 (a) The following definitions apply in this section:

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

33 (b) The Satellite-Based Broadband Grant Fund is created as a special revenue fund in the
34 Department of Information Technology. Monies in the Fund do not revert but remain available



1 to the Department for the purposes provided in this section. State funds appropriated to this Fund
2 shall be considered an information technology project within the meaning of G.S. 143C-1-2.

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

10 (1) The identity of the applicant.

11 (2) An illustration or description of the project area to be served and the estimated
12 number of unserved households in that area that will gain access to broadband
13 service at the conclusion of deployment.

14 (3) The proposed construction and deployment time line.

15 (4) A description of the services to be provided, including the proposed upstream
16 and downstream broadband speeds to be delivered and any applicable data
17 caps. Any applicant proposing a data cap below 150 Gigabytes of usage per
18 month shall also provide justification to the satisfaction of the Office that the
19 proposed cap is in the public interest and consistent with industry standards.

20 (5) A plan to mitigate barriers to adoption by households.

21 (6) The proposed advertised speed to be marketed to end users in the project area.

22 (7) The proposed cost to be charged to an unserved household in the project area
23 for subscribing to the broadband service.

24 (8) Any other information or supplementary documentation requested by the
25 Office.

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

44 Eligibility for a grant award is dependent upon the household maintaining broadband service
45 with the grantee for at least eighty-three percent (83%) of the year in which the grantee seeks an
46 award. No single subscription or full-year equivalent subscription may be used to calculate a
47 grant award for more than the three-year term identified in the agreement. The total grant award
48 for a single unserved household under this section shall not exceed five hundred dollars
49 (\$500.00). A grantee shall submit documentation to the Office annually that will provide
50 information sufficient for the Office to verify eligibility of subscriptions.

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

- 3 (1) A detailed description of the anticipated area where the grantee will deploy
4 broadband service.
- 5 (2) The current number of unserved households situated within the anticipated
6 area.
- 7 (3) The total number of unserved households the grantee anticipates subscribing
8 to its broadband service.
- 9 (4) A method for the grantee to report annually to the Office the number of
10 households subscribing to broadband service offered by the grantee.
- 11 (5) A plan for the grantee to address barriers to adoption by households situated
12 within the project area.
- 13 (6) A provision that requires the grantee to maintain its service for the area, or
14 another area approved by the Office, for at least five years.
- 15 (7) A provision establishing the conditions under which the grant agreement may
16 be terminated and under which grant funds may be recaptured by the Office.
- 17 (8) A provision stating that unless the agreement is terminated pursuant to its
18 terms, the agreement is binding and constitutes a continuing contractual
19 obligation of the State and the grantee.
- 20 (9) A provision that establishes any allowed variation in the terms of the
21 agreement that will not subject the grantee to grant reduction, amendment, or
22 termination of the agreement.
- 23 (10) A provision describing the manner in which the amount of the grant will be
24 measured and administered to ensure compliance with the agreement and this
25 section.
- 26 (11) A provision stating that any recapture of a grant and any reduction in the
27 amount of the grant or the term of the agreement must, at a minimum, be
28 proportional to the failure to comply measured relative to the condition or
29 criterion with respect to which the failure occurred.
- 30 (12) A provision describing the methodology the Office will use to verify
31 subscriptions and the types of information required to be submitted by the
32 grantee.
- 33 (13) A provision prohibiting a grantee from receiving a payment or other benefit
34 under the agreement at any time when the grantee has received a notice of an
35 overdue tax debt, as defined in G.S. 105-243.1, and the overdue tax debt has
36 not been satisfied or otherwise resolved.
- 37 (14) A provision stating that any disputes over interpretation of the agreement shall
38 be submitted to binding arbitration.
- 39 (15) A provision encouraging the business to contract with small businesses
40 headquartered in the State for goods and services.
- 41 (16) A provision encouraging the business to hire North Carolina residents.
- 42 (17) A provision encouraging the business to use the North Carolina State Ports.
- 43 (18) Any other provision the Office deems necessary.

44 The Attorney General shall review the terms of all proposed agreements entered into pursuant
45 to this section. To be effective against the State, an agreement entered into pursuant to this section
46 must be signed personally by the Attorney General. An agreement entered into pursuant to this
47 section is a binding obligation of the State and is not subject to State funds being appropriated
48 by the General Assembly.

49 (f) If the grantee fails to meet or comply with any condition or requirement set forth in
50 an agreement, the Office shall reduce the amount of the grant or the term of the agreement, may
51 terminate the agreement, or both. The reduction in the amount or the term must, at a minimum,

1 be proportional to the failure to comply measured relative to the condition with respect to which
2 the failure occurred. If the Office finds that the grantee has manipulated or attempted to
3 manipulate data with the purpose of increasing the amount of a grant, the Office shall
4 immediately terminate the agreement and take action to recapture any grant funds disbursed in
5 any year in which the Office finds the grantee manipulated or attempted to manipulate data with
6 the purpose of increasing the amount of a grant.

7 (g) The grantee shall certify and provide to the Office evidence consistent with a Federal
8 Communications Commission attestation that the proposed minimum upstream and minimum
9 downstream broadband speeds identified in the application guidelines are and will be available
10 throughout the project area during the term of the agreement prior to any end user connections.
11 A grantee may receive an annual disbursement of a grant only after the Office has certified that
12 the grantee has met the terms and conditions of the agreement. A grantee shall annually submit
13 a certification of compliance with the agreement to the Office. The Office shall require the
14 grantee to provide any necessary evidence of compliance to verify that the terms of the agreement
15 have been met.

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

22 (i) The Office shall require that a grantee offer the proposed advertised minimum
23 download and minimum upload speeds and subscription cost identified in the application for the
24 duration of the five-year service agreement. At least annually, a grantee shall provide to the
25 Office evidence consistent with a Federal Communications Commission attestation that the
26 grantee is making available the proposed advertised speed, or a faster speed, as contained in the
27 grant agreement. For the duration of the agreement, a grantee shall disclose any changes to data
28 caps for the project area that differ from the data caps listed in the grant application to the Office.

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

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

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

49 **SECTION 2.** There is appropriated from the General Fund to the Satellite-Based
50 Broadband Grant Fund the sum of two million five hundred thousand dollars (\$2,500,000) in
51 recurring funds for the 2020-2021 fiscal year.

1 **SECTION 3.** Section 2 of this act becomes effective July 1, 2020. The remainder of
2 this act is effective when it becomes law.