

224A.1121 Purpose of broadband deployment account -- Grant program -- Funding criteria and prioritization schedules -- Guidelines and standards for grants -- Applications available to public -- Challenge -- Partial funding -- Administrative regulations.

- (1) (a) The purpose of the broadband deployment fund set forth in KRS 224A.112 shall be to:
 1. Assist governmental agencies and private sector entities to construct infrastructure for the deployment of broadband service to underserved or unserved areas of the Commonwealth; and
 2. Provide supplemental funding for recipients of federal government awards specifically to support the deployment or expansion of broadband networks.
- (b) The office shall manage the fund and may accept and receive appropriations from the General Assembly or other funds or gifts from both public and private sources, including but not limited to local governments and federal agencies.
- (2) The office shall establish a grant program that allocates funds from the broadband deployment fund in accordance with this section.
- (3) (a) The office shall issue grant applications for all projects awarded grant funds on or after April 5, 2022.
- (b) Grant funds may be used by government or private sector entities for broadband deployment projects.
- (4) The office shall develop funding criteria and prioritization schedules for broadband deployment projects in accordance with this section.
- (5) (a) The office shall establish guidelines and standards for applying for and approving grants from the broadband deployment fund according to the minimum requirements in this section. No additional requirement shall be added which could delay broadband deployment.
- (b) An eligible applicant shall submit an application to the office.
- (c) An application for a grant shall contain any information the office requires, including but not limited to:
 1. A shapefile of the broadband deployment project area and a list of addresses in the broadband deployment project area;
 2. A description of the broadband deployment project, including facilities, equipment, total cost, timeframe for completion, and network capabilities, including minimum speed thresholds;
 3. Documentation of the applicant's technical, financial, and managerial resources and experience to build, operate, and manage broadband networks serving citizens, households, and businesses in Kentucky, including a detailed project management plan identifying staff, contractors, and key responsibilities;
 4. Documentation of the economic and commercial feasibility of the proposed broadband deployment project, including a detailed project budget and documentation of availability of supplies;
 5. The number of addresses within the broadband deployment project

area that would have new access to broadband as a result of the grant;

6. The amount of matching funds the eligible applicant will contribute and a certification that no portion of the matching funds is derived from any state or federal grant received for the purpose of funding broadband infrastructure within the project area; and
 7. A certification that none of the funds provided by the program for the project in the application will be used to extend or deploy facilities to any currently served addresses.
- (6) The office shall make all information within each application available to the public within five (5) business days following the deadline for submission of applications, provided the information contained within an application is not exempt from disclosure under the provisions of the Open Records Act, KRS 61.870 to 61.884. The description of the geographic scope of the broadband deployment project area shall not be exempt under the Open Records Act, KRS 61.870 to 61.884, and shall be made available to the public within five (5) days after submission of the application.
- (7) (a) As part of the grant application process under subsection (5) of this section, the office shall include an opportunity for a challenging broadband service provider to challenge an application within fifteen (15) business days of making all information available to the public under subsection (6) of this section.
- (b) A challenging provider shall provide the office with proof that:
1. The broadband deployment project area is:
 - a. Currently served; or
 - b. Under construction for provision of broadband service within twelve (12) months of the challenge; or
 2. The applicant has received funds from another state or federally funded grant program designed to encourage broadband deployment in the broadband deployment project area that covers more than fifty percent (50%) of the eligible project expenses.
- (c) As part of the challenge process and in order to meet the burden of proof in paragraph (b) of this subsection, the challenging provider shall submit:
1. A shapefile and a list of addresses containing all addresses within the broadband deployment project area that the challenging broadband service provider currently serves and the maximum megabits per second downstream speed and the maximum megabits per second upstream speed provided to each challenged address;
 2. A feasibility study, construction plan, or other relevant documentation that clearly and convincingly demonstrates that the challenging broadband service provider will be under construction within twelve (12) months of the application date for the broadband deployment fund grant, which may be extended by the office an additional six (6) months because of undue construction delays; or
 3. Loan documents, grant award receipts, or other financial information

that clearly and convincingly demonstrates to the office that the challenging broadband service provider has received adequate funds from another state or federally funded grant program designed to encourage broadband deployment in the area.

- (d) Within five (5) business days of a challenge being submitted to the office, the provider submitting the application which is challenged shall be provided copies of all challenge material.
 - (e) The office shall treat any information submitted as part of a challenge as confidential and exempt from disclosure under the Open Records Act, KRS 61.870 to 61.884, upon the challenging provider's request for confidential treatment.
 - (f) Within fifteen (15) business days of receipt of the copies under paragraph (d) of this subsection, the applicant shall respond to the challenge.
 - (g) Once the response to the challenge is submitted to the office by the applicant, the office shall have fifteen (15) business days to resolve the dispute.
 - (h) Upon a determination that a challenge is unsuccessful because the challenging provider is unable to prove, within the timeframe provided under this section, that the provider currently serves a broadband deployment project area, the office shall move forward with the funding process provided in this section.
- (8) (a) Upon a determination that an application meets the funding criteria, but the proposed project area is found to be partially served, the applicant may amend and resubmit the application within fifteen (15) business days and the office may grant partial funding based on the partial service provided in order to ensure that grant funds are used to only provide broadband service to addresses deemed underserved or unserved.
- (b) In the event of a challenge that involves subsection (7)(c)2. of this section and those addresses are not under construction within twelve (12) months, or eighteen (18) months if extended by the office, the challenging provider shall pay a civil penalty to the broadband deployment fund in an amount equal to the amount of grant funding for those addresses plus ten percent (10%).
- (9) When awarding grant funds, the office shall award funding to addresses with no service first, then to addresses that are unserved, and then lastly to addresses that are underserved. The office shall:
- (a) Score the unserved and underserved grant applications based on the following criteria, giving priority consideration in the order listed:
 - 1. Projects in unserved and underserved areas that reach the customers that are the least economical to serve, in the following order:
 - a. Projects that average zero to five (5) locations per route mile;
 - b. Projects that average five (5) to ten (10) locations per route mile; and
 - c. Projects that average eleven (11) locations or more per route mile;

2. Projects in unserved and underserved areas where local, state, or federal funds are not available;
 3. Fiber-to-the-premise projects that will deploy broadband services with a capacity to transmit data from or to the Internet with symmetrical downstream and upstream speeds of at least one (1) gigabit;
 4. Projects deploying infrastructure capable of achieving symmetrical speeds at a minimum of one hundred (100) megabits per second download and upload speeds;
 5. The size and the scope of the unserved and underserved area proposed to be served;
 6. The technical, managerial, and financial capabilities of the applicant, demonstrating the ability to successfully deploy the proposed project and provide broadband service;
 7. A project requesting less than fifty percent (50%) funding from the requested grant;
 8. Projects that will be eligible for the Affordable Connectivity Program for low-income consumers administered by the Federal Communications Commission; and
 9. Projects that plan to encourage adoption of broadband services, including community outreach to promote adoption, technical support, and training on how to connect;
- (b) Award no more than fifty percent (50%) of the total project cost, unless the project meets the following density requirements:
1. Projects that average zero to five (5) locations per route mile, which may be eligible for reimbursement of up to seventy percent (70%) of the cost of the project;
 2. Projects that average five (5) to ten (10) locations per route mile, which may be eligible for reimbursement of up to sixty percent (60%) of the cost of the project; and
 3. Projects that average eleven (11) locations or more per route mile, which may be eligible for reimbursement of fifty percent (50%) of the cost of the project;
- (c) Require the remaining project costs to be paid by matching funds from:
1. A private source, including but not limited to financial institutions that serve distribution cooperatives;
 2. A city, county, urban-county government, or consolidated local government; or
 3. Any combination of matching moneys provided under subparagraphs 1. and 2. of this paragraph;
- (d) Allow eligible project expenses, including those that are incurred starting on or after the date in the written acknowledgement of acceptance issued under paragraph (f) of this subsection and ending at the conclusion of the grant project, or grant project contractual term, whichever is earlier, and may include:

1. Project engineering or design plans;
 2. Permitting;
 3. Pre-construction costs to make ready the project site;
 4. Outside plant materials, including fiber; poles, hardware, conduit or splitters;
 5. Labor, construction management, and equipment; and
 6. Installation and testing of the broadband services;
- (e) Make a determination that an application meets the funding criteria, unless the proposed project area is found to be partially served, in which case the application may be amended and partial funding based on the partial service provided may be granted; and
- (f) 1. Issue within sixty (60) days of receipt of an application for grant funds, except in the case of a challenged application under the timeline in subsection (7) of this section, a written acknowledgement of either:
- a. Acceptance;
 - b. Denial and any reasons for denial of the application; or
 - c. A request for additional information to process the application listing the specific information required; and
2. Issue grant funds to the applicant by the fifteenth day of the month, or the next business day if the fifteenth day falls on a weekend day or state or federal holiday, when a complete requisition of funds packet is received prior to the fifth day of the month.
- (10) The office shall not reimburse applicants for special construction charges, including fees or charges imposed upon the end user as a condition of receiving broadband service at an address.
- (11) The office may provide an incentive for timely completion or a disincentive for not meeting agreed upon timeframes.
- (12) Grant funds awarded to an applicant to supplement the applicant's federal fund award may not be used for costs that will be reimbursed by the other federal funds.
- (13) No funds shall be used:
- (a) To support any broadband deployment project involving the upgrade of an existing facility already delivering broadband services, including an upgrade of existing wireline, or terrestrial infrastructure capable of delivering services greater than twenty-five (25) megabits per second downstream and three (3) megabits per second upstream; or
 - (b) For non-capital expenses, non-broadband services, marketing, or advertising.
- (14) Moneys in this fund shall not be used by or transferred to the Kentucky Communications Network Authority.
- (15) (a) To carry out the purposes of this section, the office may promulgate administration regulations under KRS Chapter 13A.
- (b) The office shall not promulgate any regulations that place obligations on

the applicants that are more restrictive than applicable federal or state law.

- (c) In the event that any state law or administrative regulation affecting the broadband deployment fund conflicts with any federal law or regulation related to federal broadband funding, the federal law or regulation shall govern. The office may adopt state and local program requirements to comply with all federal laws and regulation related to federal broadband funding.

Effective: April 14, 2022

History: Amended 2022 Ky. Acts ch. 202, sec. 4, effective April 14, 2022. -- Amended 2020 Ky. Acts ch. 72, sec. 4, effective July 15, 2020. -- Created 2006 Ky. Acts ch. 134, sec. 3, effective July 12, 2006.