

tronic form, to aggregate data collected by the Commission based on the Form 477 submissions of broadband service providers.

**(2) Limitation**

Notwithstanding any provision of Federal or State law to the contrary, an eligible entity shall treat any matter that is a trade secret, commercial or financial information, or privileged or confidential, as a record not subject to public disclosure except as otherwise mutually agreed to by the broadband service provider and the eligible entity. This paragraph applies only to information submitted by the Commission or a broadband provider to carry out the provisions of this chapter and shall not otherwise limit or affect the rules governing public disclosure of information collected by any Federal or State entity under any other Federal or State law or regulation.

**(i) Definitions**

In this section:

**(1) Commission**

The term “Commission” means the Federal Communications Commission.

**(2) Eligible entity**

The term “eligible entity” means—

(A) an entity that is either—

(i) an agency or instrumentality of a State, or a municipality or other subdivision (or agency or instrumentality of a municipality or other subdivision) of a State;

(ii) a nonprofit organization that is described in section 501(c)(3) of title 26 and that is exempt from taxation under section 501(a) of such title; or

(iii) an independent agency or commission in which an office of a State is a member on behalf of the State; and

(B) is the single eligible entity in the State that has been designated by the State to receive a grant under this section.

**(j) No regulatory authority**

Nothing in this section shall be construed as giving any public or private entity established or affected by this chapter any regulatory jurisdiction or oversight authority over providers of broadband services or information technology.

(Pub. L. 110-385, title I, §106, Oct. 10, 2008, 122 Stat. 4099.)

**§ 1305. Broadband Technology Opportunities Program**

**(a) Establishment**

The Assistant Secretary of Commerce for Communications and Information (Assistant Secretary), in consultation with the Federal Communications Commission (Commission), shall establish a national broadband service development and expansion program in conjunction with the technology opportunities program, which shall be referred to as the Broadband Technology Opportunities Program. The Assistant Secretary shall ensure that the program complements and enhances and does not conflict with other Federal broadband initiatives and programs.

**(b) Purposes**

The purposes of the program are to—

(1) provide access to broadband service to consumers residing in unserved areas of the United States;

(2) provide improved access to broadband service to consumers residing in underserved areas of the United States;

(3) provide broadband education, awareness, training, access, equipment, and support to—

(A) schools, libraries, medical and health-care providers, community colleges and other institutions of higher education, and other community support organizations and entities to facilitate greater use of broadband service by or through these organizations;

(B) organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by low-income, unemployed, aged, and otherwise vulnerable populations; and

(C) job-creating strategic facilities located within a State-designated economic zone, Economic Development District designated by the Department of Commerce, Renewal Community or Empowerment Zone designated by the Department of Housing and Urban Development, or Enterprise Community designated by the Department of Agriculture;

(4) improve access to, and use of, broadband service by public safety agencies; and

(5) stimulate the demand for broadband, economic growth, and job creation.

**(c) Consultation with States**

The Assistant Secretary may consult a State, the District of Columbia, or territory or possession of the United States with respect to—

(1) the identification of areas described in subsection (b)(1) or (2) located in that State; and

(2) the allocation of grant funds within that State for projects in or affecting the State.

**(d) Duties of Assistant Secretary**

The Assistant Secretary shall—

(1) establish and implement the grant program as expeditiously as practicable;

(2) ensure that all awards are made before the end of fiscal year 2010;

(3) seek such assurances as may be necessary or appropriate from grantees under the program that they will substantially complete projects supported by the program in accordance with project timelines, not to exceed 2 years following an award; and

(4) report on the status of the program to the Committees on Appropriations of the House of Representatives and the Senate, the Committee on Energy and Commerce of the House of Representatives, and the Committee on Commerce, Science, and Transportation of the Senate, every 90 days.

**(e) Eligibility**

To be eligible for a grant under the program, an applicant shall—

(1)(A) be a State or political subdivision thereof, the District of Columbia, a territory

or possession of the United States, an Indian tribe (as defined in section 450b of title 25) or native Hawaiian organization;

- (B) a nonprofit—
- (i) foundation,
  - (ii) corporation,
  - (iii) institution, or
  - (iv) association; or

(C) any other entity, including a broadband service or infrastructure provider, that the Assistant Secretary finds by rule to be in the public interest. In establishing such rule, the Assistant Secretary shall to the extent practicable promote the purposes of this section in a technologically neutral manner;

(2) submit an application, at such time, in such form, and containing such information as the Assistant Secretary may require;

(3) provide a detailed explanation of how any amount received under the program will be used to carry out the purposes of this section in an efficient and expeditious manner, including a showing that the project would not have been implemented during the grant period without Federal grant assistance;

(4) demonstrate, to the satisfaction of the Assistant Secretary, that it is capable of carrying out the project or function to which the application relates in a competent manner in compliance with all applicable Federal, State, and local laws;

(5) demonstrate, to the satisfaction of the Assistant Secretary, that it will appropriate (if the applicant is a State or local government agency) or otherwise unconditionally obligate, from non-Federal sources, funds required to meet the requirements of subsection (f);

(6) disclose to the Assistant Secretary the source and amount of other Federal or State funding sources from which the applicant receives, or has applied for, funding for activities or projects to which the application relates; and

(7) provide such assurances and procedures as the Assistant Secretary may require to ensure that grant funds are used and accounted for in an appropriate manner.

**(f) Federal share**

The Federal share of any project may not exceed 80 percent, except that the Assistant Secretary may increase the Federal share of a project above 80 percent if—

- (1) the applicant petitions the Assistant Secretary for a waiver; and
- (2) the Assistant Secretary determines that the petition demonstrates financial need.

**(g) Authorization to make grants; purposes**

The Assistant Secretary may make competitive grants under the program to—

- (1) acquire equipment, instrumentation, networking capability, hardware and software, digital network technology, and infrastructure for broadband services;
- (2) construct and deploy broadband service related infrastructure;
- (3) ensure access to broadband service by community anchor institutions;
- (4) facilitate access to broadband service by low-income, unemployed, aged, and otherwise

vulnerable populations in order to provide educational and employment opportunities to members of such populations;

(5) construct and deploy broadband facilities that improve public safety broadband communications services; and

(6) undertake such other projects and activities as the Assistant Secretary finds to be consistent with the purposes for which the program is established.

**(h) Factors considered in award of grants**

The Assistant Secretary, in awarding grants under this section, shall, to the extent practical—

- (1) award not less than 1 grant in each State;
- (2) consider whether an application to deploy infrastructure in an area—

(A) will, if approved, increase the affordability of, and subscribership to, service to the greatest population of users in the area;

(B) will, if approved, provide the greatest broadband speed possible to the greatest population of users in the area;

(C) will, if approved, enhance service for health care delivery, education, or children to the greatest population of users in the area; and

(D) will, if approved, not result in unjust enrichment as a result of support for non-recurring costs through another Federal program for service in the area; and

- (3) consider whether the applicant is a socially and economically disadvantaged small business concern as defined under section 637(a) of title 15.

**(i) Reporting and information requirements; deobligation of awards; Internet disclosure**

The Assistant Secretary—

(1) shall require any entity receiving a grant pursuant to this section to report quarterly, in a format specified by the Assistant Secretary, on such entity's use of the assistance and progress fulfilling the objectives for which such funds were granted, and the Assistant Secretary shall make these reports available to the public;

(2) may establish additional reporting and information requirements for any recipient of any assistance made available pursuant to this section;

(3) shall establish appropriate mechanisms to ensure appropriate use and compliance with all terms of any use of funds made available pursuant to this section;

(4) may, in addition to other authority under applicable law, deobligate awards to grantees that demonstrate an insufficient level of performance, or wasteful or fraudulent spending, as defined in advance by the Assistant Secretary, and award these funds competitively to new or existing applicants consistent with this section; and

(5) shall create and maintain a fully searchable database, accessible on the Internet at no cost to the public, that contains at least a list of each entity that has applied for a grant under this section, a description of each application, the status of each such application, the name of each entity receiving funds made

available pursuant to this section, the purpose for which such entity is receiving such funds, each quarterly report submitted by the entity pursuant to this section, and such other information sufficient to allow the public to understand and monitor grants awarded under the program.

**(j) Publication of contractual conditions**

Concurrent with the issuance of the Request for Proposal for grant applications pursuant to this section, the Assistant Secretary shall, in coordination with the Commission, publish the non-discrimination and network interconnection obligations that shall be contractual conditions of grants awarded under this section, including, at a minimum, adherence to the principles contained in the Commission’s broadband policy statement (FCC 05-15, adopted August 5, 2005).

**(k) National broadband plan**

(1) Not later than 1 year after February 17, 2009, the Commission shall submit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate, a report containing a national broadband plan.

(2) The national broadband plan required by this section shall seek to ensure that all people of the United States have access to broadband capability and shall establish benchmarks for meeting that goal. The plan shall also include—

(A) an analysis of the most effective and efficient mechanisms for ensuring broadband access by all people of the United States;

(B) a detailed strategy for achieving affordability of such service and maximum utilization of broadband infrastructure and service by the public;

(C) an evaluation of the status of deployment of broadband service, including progress of projects supported by the grants made pursuant to this section; and

(D) a plan for use of broadband infrastructure and services in advancing consumer welfare, civic participation, public safety and homeland security, community development, health care delivery, energy independence and efficiency, education, worker training, private sector investment, entrepreneurial activity, job creation and economic growth, and other national purposes.

(3) In developing the plan, the Commission shall have access to data provided to other Government agencies under the Broadband Data Improvement Act [47 U.S.C. 1301 et seq.].

**(l) Map of service availability and capability**

The Assistant Secretary shall develop and maintain a comprehensive nationwide inventory map of existing broadband service capability and availability in the United States that depicts the geographic extent to which broadband service capability is deployed and available from a commercial provider or public provider throughout each State. Not later than 2 years after February 17, 2009, the Assistant Secretary shall make the broadband inventory map developed and maintained pursuant to this section accessible by the public on a World Wide Web

site of the National Telecommunications and Information Administration in a form that is interactive and searchable.

**(m) Regulations**

The Assistant Secretary shall have the authority to prescribe such rules as are necessary to carry out the purposes of this section.

(Pub. L. 111-5, div. B, title VI, §6001, Feb. 17, 2009, 123 Stat. 512.)

REFERENCES IN TEXT

The Broadband Data Improvement Act, referred to in subsec. (k)(3), is title I of Pub. L. 110-385, Oct. 10, 2008, 122 Stat. 4096, which is classified generally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of this title and Tables.

CODIFICATION

Section was enacted as part of the American Recovery and Reinvestment Act of 2009, and not as part of the Broadband Data Improvement Act which comprises this chapter.

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