

By: Senator(s) Carter

To: Energy

SENATE BILL NO. 2604

1 AN ACT TO CREATE THE MISSISSIPPI BROADBAND EXPANSION ACT; TO
 2 DEFINE TERMS USED IN THE ACT; TO CREATE THE AMERICAN RESCUE PLAN
 3 ACT (ARPA) BROADBAND COMMISSION FOR THE PURPOSE OF REVIEWING
 4 APPLICATIONS FOR FUNDING BROADBAND INFRASTRUCTURE PROJECTS AND
 5 MAKING RECOMMENDATIONS TO THE LEGISLATURE OF THE PROJECTS TO BE
 6 FUNDED USING ARPA FUNDS; TO PROVIDE FOR THE MEMBERS OF THE
 7 COMMISSION AND TO PRESCRIBE POWERS AND DUTIES; TO PROVIDE THAT THE
 8 COMMISSION SHALL CONSIDER CERTAIN FACTORS IN MAKING ITS
 9 RECOMMENDATIONS; TO REQUIRE THE COMMISSION TO ESTABLISH AND
 10 PUBLISH ON ITS WEBSITE ITS CRITERIA FOR COMPETITIVELY SCORING
 11 APPLICATIONS; TO REQUIRE AN APPLICANT TO PROVIDE CERTAIN
 12 INFORMATION AT A MINIMUM ON THE APPLICATION; TO REQUIRE THE
 13 COMMISSION TO MAKE PRELIMINARY RECOMMENDATIONS; TO REQUIRE THE
 14 COMMISSION TO ACCEPT COMMENTS AND OBJECTIONS CONCERNING EACH
 15 PRELIMINARY RECOMMENDATION; TO REQUIRE THE COMMISSION TO MAKE ITS
 16 FINAL RECOMMENDATIONS TO THE LEGISLATURE AFTER CONSIDERING ALL
 17 COMMENTS AND OBJECTIONS AND INVESTIGATING THEM AS NEEDED; AND FOR
 18 RELATED PURPOSES.

19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

20 **SECTION 1.** This act shall be known and may be cited as the
 21 "Mississippi Broadband Expansion Act."

22 **SECTION 2.** As used in this act:

23 (a) "Applicant" means a private provider that has
 24 authorization to do business in this state and has demonstrated
 25 that it has the technical, financial, and managerial resources and



26 experience to provide broadband services in the state to retail
27 end users.

28 (b) "Broadband service" means a retail fixed
29 terrestrial service capable of delivering high-speed internet
30 access at speeds of at least one hundred (100) megabits per second
31 downstream and twenty (20) megabit per second upstream.

32 (c) "Commission" means the American Rescue Plan Act
33 (ARPA) Broadband Commission created in Section 3 of this act.

34 (d) "Deployed" means, with respect to availability of
35 broadband service at a location, that a broadband service provider
36 currently has a broadband service connection at the location or
37 could provide an broadband service connection to a customer that
38 requests broadband service at the location not later than ten (10)
39 business days after the customer requests broadband service and
40 without extraordinary commitment of resources or construction
41 charges or fees exceeding an ordinary service activation fee.
42 Broadband service is considered to be deployed at a location
43 regardless of whether a person or entity subscribes to the
44 broadband service at the location.

45 (e) "Eligible broadband service provider" means any
46 company, firm, corporation, partnership, or association that
47 either has been providing broadband service to at least one
48 hundred (100) residences and businesses in Mississippi for at
49 least three (3) consecutive years, or is an electric power
50 association's broadband affiliate operating pursuant to Section



51 77-17-1 et seq.; and has demonstrated financial, technical, and
52 operational capability in building and operating a broadband
53 network.

54 (f) "Eligible project" means a discrete and specific
55 project located in an unserved area of the state seeking to
56 provide broadband services to residences, businesses, and
57 community institutions not currently available for service as
58 defined herein. Eligible projects do not include middle mile,
59 backhaul, or other similar projects not providing broadband
60 services to end users. Projects in proposed areas in which there
61 is already at least one provider of fixed terrestrial broadband
62 services are not eligible.

63 (g) "Shapefile" means a digital storage format
64 containing geospatial or location-based data and attribute
65 information regarding the availability of broadband internet
66 access service, and that can be viewed, edited, and mapped in
67 geographic information system software.

68 (h) "Unserved area" means an area lacking access to
69 broadband service from at least one (1) provider of fixed
70 terrestrial broadband service according to the Federal
71 Communications Commission's most current broadband deployment
72 data.

73 **SECTION 3.** (1) There is hereby created an American Rescue
74 Plan Act (ARPA) Broadband Commission for the purpose of reviewing
75 applications for projects to provide broadband access in unserved



76 areas using American Rescue Plan (ARPA) funds. The commission
77 shall be composed of the following five (5) members:

78 (a) Three (3) members to be appointed by the Governor;
79 and

80 (b) Two (2) members to be appointed by the Lieutenant
81 Governor.

82 The commission shall review applications and shall provide
83 recommendations on which projects should be funded to the
84 Legislature on or before December 31, 2022. Members of the
85 commission shall serve without compensation for their services.

86 (2) Appointments to the commission shall be made within
87 thirty (30) days of the effective date of this act. At the first
88 meeting, the commission shall elect from among its membership a
89 chairman, a vice chairman and any other officers determined to be
90 necessary, and shall adopt rules for transacting business and
91 keeping records.

92 (3) A majority of the members of the commission shall
93 constitute a quorum. In the adoption of rules, resolutions and
94 reports, and in the election of a chairman, vice chairman and any
95 other officers determined to be necessary, an affirmative vote of
96 a majority of the members present shall be required.

97 (4) The Public Utilities Staff shall provide the staff and
98 other support necessary for the commission to perform its duties.

99 (5) To effectuate the purposes of this act, any department,
100 division, board, bureau, committee, institution or agency of the



101 state, or any political subdivision thereof, shall, at the request
102 of the chairman of the commission, provide the facilities,
103 assistance, information and data needed to enable the commission
104 to carry out its duties.

105 **SECTION 4.** In making its recommendations, the commission
106 shall consider the following:

107 (a) Funds for the grant program shall only be used by
108 applicants for projects that exclusively extend broadband service
109 into unserved areas in this state.

110 (b) Funds shall not be directly or indirectly awarded
111 to a governmental entity or educational institution or an
112 affiliate, to own, purchase, construct, operate or maintain a
113 communications network, or to provide service to any residential
114 or commercial premises.

115 (c) As a condition of funding, an applicant must not
116 obtain financing from any other government grants, loans or
117 subsidies that is offered to support deployment of broadband
118 service in the same unserved areas.

119 (d) The commission shall not recommend more than Five
120 Million Dollars (\$5,000,000.00) to any one (1) project.

121 **SECTION 5.** The criteria for recommending to the Legislature
122 an appropriation of funds shall include the following:

123 (a) The applicant's experience and financial
124 wherewithal to deploy, operate and manage the proposed project and



125 broadband service offerings, including evidence of the applicant's
126 successful operations of broadband services to retail end users.

127 (b) The readiness to build, operate and maintain the
128 project.

129 (c) Projects that will deploy broadband service to the
130 most unserved areas for the lowest grant amount per location.

131 (d) The scalability of the proposed project network to
132 support the deployment of higher broadband speeds over time.

133 (e) The likelihood that the unserved area will not be
134 served with broadband service without state grant funding.

135 (f) The applicant's ability to demonstrate the
136 community's support for the project and a collaborated plan to
137 leverage broadband services for community needs and economic
138 development, such as rural development, education, tourism, new
139 investment, or business attraction or retention.

140 (g) The commission shall grant a preference for those
141 applications seeking to deploy and provide broadband services to
142 areas in which there is currently no fixed terrestrial internet
143 access service available.

144 (h) The ability of the applicant to commit to providing
145 at least twenty percent (20%) of the cost to deploy the proposed
146 broadband infrastructure. When multiple applications for a grant
147 to provide broadband services to the same geographic area are
148 submitted, the commission may establish a greater preference for



149 recommending the applications with a greater commitment of funding
150 by the applicant.

151 (i) The commission shall not discriminate or give any
152 preferences to applications on the basis of the type of technology
153 proposed by any applicant to be used to provide broadband
154 services.

155 **SECTION 6.** Within sixty (60) days after the effective date
156 of this act and after notice and opportunity to comment, the
157 commission shall establish and publish on its website its criteria
158 for competitively scoring applications. Specific criteria to be
159 considered when weighing or scoring an application are as follows:

160 (a) The size and scope of the unserved area to be
161 deployed.

162 (b) The experience, technical ability, and financial
163 capability of the applicant to successfully deploy broadband
164 service infrastructure and provide high-speed broadband service.

165 (c) Length of time which the applicant has been
166 providing broadband service.

167 (d) The extent to which federal, state or local
168 government funding support is necessary to deploy broadband
169 service network infrastructure in an economically feasible manner
170 in the proposed project area.

171 (e) The proportion of the private capital pledged by
172 the applicant to finance the proposed project.



173 (f) The broadband service speed thresholds proposed in
174 the application and the scalability of the broadband service
175 network infrastructure proposed to be deployed to provide
176 broadband service to households and businesses.

177 (g) An affidavit that no project grant funds are to be
178 used to overbuild an area that is already served with broadband
179 service.

180 **SECTION 7.** (1) An applicant for funding under this act
181 shall provide the following information at a minimum on the
182 application:

183 (a) The location of the project by use of a shapefile.

184 (b) The kind and amount of broadband infrastructure to
185 be deployed for the project, including the amount the applicant
186 intends to invest in the project from private funds.

187 (c) Evidence regarding the unserved nature of the
188 community in which the project is to be located.

189 (d) The number of households that will have access to
190 broadband service as a result of the project, or whose internet
191 access service will be upgraded to broadband service as a result
192 of the project.

193 (e) The significant community institutions that will
194 benefit from the proposed project.

195 (f) Evidence of community support for the project with
196 a narrative on the impact that the investment will have on
197 community and economic development efforts in the area.



198 (g) The total cost of the project and a detailed budget
199 and schedule for the project, including the submission of a
200 business plan that provides for the sole use of funds provided
201 under this act are to be used solely for the nonrecurring expenses
202 of constructing network facilities, and such funds shall not be
203 used to support the operational expenses of the network or to
204 subsidize any other service provided by the applicant.

205 (h) The broadband service provider's experience and
206 financial capabilities, including that the provider must be
207 operating existing network facilities of a similar size and scope
208 providing broadband services and can demonstrate that such
209 operations are financially sound.

210 (i) An affidavit that no project grant funds are to be
211 used to overbuild an area that is already served with broadband
212 service.

213 (2) After scoring and considering all applications, the
214 commission shall make its preliminary recommendations. Within
215 thirty (30) days after the preliminary recommendations have been
216 made, the commission shall publish on its website the
217 applications, the proposed geographic broadband service area
218 illustrated by a shapefile, and the proposed broadband service
219 speeds for each application that receives a recommendation.

220 (3) Within sixty (60) days from the date the preliminary
221 recommendations are published on the commission's website, the
222 commission shall accept comments or objections concerning each



223 application. The commission shall consider all comments or
224 objections received and investigate them as needed, in deciding
225 whether an applicant is eligible for a final recommendation. If
226 an objection submitted by a provider contains information that
227 requires an investigation and the objection is found to be
228 inaccurate, the provider shall reimburse the commission for the
229 cost of verifying the information.

230 (4) The commission shall not recommend to the Legislature an
231 applicant if verifiable information is made available that shows
232 any of the following:

233 (a) The proposed project includes an area that is
234 already being served by at least one (1) provider offering
235 broadband service or who has deployed broadband facilities to an
236 area.

237 (b) The proposed project includes an area where
238 construction of a network to provide broadband service is
239 underway, and the construction is scheduled to be completed within
240 one (1) year after the date of the application.

241 (c) The proposed project includes an area where the
242 construction of a network to provide broadband service is to be
243 completed no later than three (3) years after the date of an
244 application.

245 (d) The project includes an area that has been selected
246 to receive, provisionally or otherwise, federal funding, including
247 but not limited to, the Connect America Fund or Rural Digital



248 Opportunity Fund from the Federal Communications Commission and
249 the ReConnect Loan and Grant Program or Rural Utilities Service
250 Program from the United States Department of Agriculture. If a
251 recommendation is rejected because of an objection pertaining to
252 paragraph (c) of this subsection, the internet service provider
253 installing the broadband service in lieu of the improper recipient
254 shall provide notice to the commission when the construction of
255 the broadband service is completed. If no notice is received, or
256 if the completion date is later than the three (3) years allowed
257 for in this section, the internet service provider shall reimburse
258 the commission for the cost of verifying the status of the
259 provider's construction.

260 (5) An applicant's or challenging party's trade secrets,
261 financial information, and proprietary information submitted under
262 this act as part of an application or challenge are exempt from
263 disclosure under the Mississippi Public Records Act, Section
264 25-61-1 et seq.

265 (6) After considering all comments or objections and
266 investigating them as needed, the commission shall report on or
267 before December 31, 2022, to the Legislature with its final
268 recommendations of applicants that should be funded.

269 **SECTION 8.** This act shall take effect and be in force from
270 and after July 1, 2022.

