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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

No. **835** Session of  
2019

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INTRODUCED BY LANGERHOLC, PITTMAN, STEFANO, ARGALL, MENSCH,  
J. WARD, STREET AND BREWSTER, AUGUST 26, 2019

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REFERRED TO COMMUNICATIONS AND TECHNOLOGY, AUGUST 26, 2019

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AN ACT

1 Providing for funding of high-speed broadband service  
2 infrastructure deployment in unserved areas of this  
3 Commonwealth and for powers and duties of the Department of  
4 Community and Economic Development.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Short title.

8 This act shall be known and may be cited as the Unserved  
9 High-Speed Broadband Funding Pilot Program Act.

10 Section 2. Declaration of policy.

11 The General Assembly finds and declares as follows:

12 (1) The purpose of this act is to facilitate the  
13 deployment of high-speed broadband service infrastructure in  
14 unserved areas of this Commonwealth.

15 (2) The economic and business incentives to deploy high-  
16 speed broadband service infrastructure may be insufficient to  
17 ensure full access to high-speed broadband services in low-  
18 density, rural locations and other areas of this Commonwealth  
19 where the unit costs of providing service may not provide an

1 adequate return on investment for private companies.

2 (3) Access to high-speed broadband services in unserved  
3 areas of this Commonwealth will enhance economic development,  
4 education, health care and emergency services in this  
5 Commonwealth.

6 (4) Establishing a grant program to facilitate the  
7 deployment of high-speed broadband services infrastructure in  
8 unserved areas will further these objectives through new  
9 private sector investments and is in the policy interest of  
10 this Commonwealth.

11 Section 3. Definitions.

12 The following words and phrases when used in this act shall  
13 have the meanings given to them in this section unless the  
14 context clearly indicates otherwise:

15 "Department." The Department of Community and Economic  
16 Development of the Commonwealth.

17 "High-speed broadband service." Any wireline or fixed  
18 wireless technology having the capacity to transmit data from or  
19 to the Internet at minimum speeds of at least 25 megabits per  
20 second downstream and 3 megabits per second upstream.

21 "High-speed broadband service infrastructure." The signal  
22 transmission facilities and associated network equipment  
23 proposed to be deployed in a project area used for the provision  
24 of high-speed broadband service.

25 "Overbuild." The deployment of high-speed broadband service  
26 infrastructure in an area where high-speed broadband service  
27 infrastructure has been deployed and high-speed broadband  
28 services are offered to the public at the time of submitting a  
29 grant application.

30 "Program." The Unserved High-Speed Broadband Funding Pilot

1 Program established under section 4(a).

2 "Project." The proposed deployment of high-speed broadband  
3 service infrastructure in an unserved area of this Commonwealth  
4 as set forth in an application for grant funding authorized  
5 under this act.

6 "Unserved area." A project area without access to broadband  
7 service with minimum speeds of at least 25 megabits per second  
8 downstream and 3 megabits per second upstream.

9 Section 4. Establishment.

10 (a) Program established.--The Unserved High-Speed Broadband  
11 Funding Pilot Program is established. The department, in  
12 consultation with the Governor's Office of Broadband  
13 Initiatives, shall administer and act as the fiscal agent for  
14 the program and shall be responsible for receiving and reviewing  
15 all grant applications and awarding grants.

16 (b) Funding.--Funding for the program shall be no less than  
17 \$10,000,000.

18 Section 5. Grant awards generally.

19 (a) General rule.--Grant awards shall be at the discretion  
20 of the department, in consultation with the Governor's Office of  
21 Broadband Initiatives, and shall be limited to amounts annually  
22 allocated to the department for the program.

23 (b) Eligible entities.--A nongovernmental entity with the  
24 technical, managerial and financial expertise to design, build  
25 and operate a high-speed broadband service infrastructure within  
26 this Commonwealth is eligible to receive grant funding for the  
27 deployment of high-speed broadband service infrastructure. The  
28 nongovernmental entity must commit to using a minimum of 25% of  
29 the entity's private capital to finance a proposed project.

30 (c) Other funding sources.--Federal, State or local

1 government grants, loans or subsidies received by a  
2 nongovernmental entity to finance a project shall not be counted  
3 toward the capital investment requirement under subsection (b).  
4 In addition to any grant award under the program, a  
5 nongovernmental entity may use funds from a Federal, State or  
6 local government grant or loan program to finance a proposed  
7 project as long as the nongovernmental entity satisfies the  
8 capital investment requirement under subsection (b).

9 (d) Ineligible projects.--Projects that result in overbuild  
10 or are proposed to be managed or operated by a Federal, State or  
11 local government entity are ineligible to receive grant funding  
12 for the deployment of high-speed broadband service  
13 infrastructure.

14 Section 6. Application process.

15 (a) Application period.--The department shall establish an  
16 annual application period during which applications for grant  
17 funding under the program may be submitted. The annual  
18 application period shall be no fewer than 90 days and no longer  
19 than 150 days.

20 (b) Form and contents.--An application shall be submitted to  
21 the department on a form prescribed by the department in  
22 consultation with the Governor's Office of Broadband  
23 Initiatives. An application shall include the following  
24 information:

25 (1) Evidence demonstrating the applicant's experience  
26 and ability in building, operating and managing high-speed  
27 broadband service infrastructure networks serving households  
28 and businesses.

29 (2) A description of the project area, including a list  
30 of census blocks covered by the proposed deployment. If a

1 census block included in an application is currently  
2 partially served by a provider of high-speed broadband  
3 service, the application must describe the portions of the  
4 census block that are already served and which constitute an  
5 unserved area.

6 (3) A certification that none of the grant money  
7 provided by the program for the proposed project will be used  
8 to extend or deploy high-speed broadband service  
9 infrastructure to areas with access to high-speed broadband  
10 service at the time of submitting a grant application.

11 (4) A description of the high-speed broadband service  
12 infrastructure that is proposed to be deployed, including  
13 facilities, equipment and network capabilities and minimum  
14 speed thresholds.

15 (5) The number of households and businesses that would  
16 have new or improved access to high-speed broadband service  
17 as a result of the grant award.

18 (6) The total cost of the proposed project and the  
19 proposed completion date of the project.

20 (7) The amount of private capital pledged to finance the  
21 proposed project and a certification that no portion of the  
22 private capital pledged is derived from any Federal, State or  
23 local government grant or loan program.

24 (8) Evidence demonstrating the economic and commercial  
25 feasibility of the proposed project.

26 (9) A list of all government authorizations, permits and  
27 other required approvals to deploy high-speed broadband  
28 service infrastructure and a timetable for the applicant's  
29 acquisition of the approvals.

30 (10) Any other information required by the department.

1 (c) Publication.--Within five business days following the  
2 close of the application period, the department shall make the  
3 applications received available for review on the department's  
4 publicly accessible Internet website.

5 (d) Overbuild challenge.--Within 45 days of the department  
6 making the applications available on the department's Internet  
7 website, a broadband service provider providing high-speed  
8 broadband service to households and businesses within a proposed  
9 project area may challenge an application on the grounds that  
10 granting an award to the applicant will result in an overbuild.  
11 The challenge must be submitted in writing to the department and  
12 include the following:

13 (1) A declaration disputing that a proposed project area  
14 is unserved.

15 (2) An affidavit of the broadband service provider  
16 challenging the application of the provider's existing or  
17 planned provision of high-speed broadband service within the  
18 applicant's proposed project area.

19 (e) Review.--In reviewing an application and any  
20 accompanying challenge, the department, in consultation with the  
21 Governor's Office of Broadband Initiatives, shall conduct a  
22 review of the proposed project areas to ensure that all grants  
23 awarded are used to deploy high-speed broadband service  
24 infrastructure to unserved areas. The department may not award a  
25 grant to fund deployment of high-speed broadband service  
26 infrastructure for any project area that results in an  
27 overbuild.

28 (f) Criteria.--The department shall award grants for  
29 projects based upon a scoring system, which shall be released to  
30 the public at least 30 days prior to the beginning of the

1 application period. Specific criteria to be considered when  
2 weighing or scoring an application are as follows:

3 (1) The size and scope of the unserved area to be  
4 deployed.

5 (2) The experience, technical ability and financial  
6 capability of the applicant to successfully deploy high-speed  
7 broadband service infrastructure and provide high-speed  
8 broadband service.

9 (3) Length of time which the applicant has been  
10 providing high-speed broadband service.

11 (4) The extent to which Federal, State or local  
12 government funding support is necessary to deploy high-speed  
13 broadband network infrastructure in an economically feasible  
14 manner in the proposed project area.

15 (5) The proportion of the private capital pledged by the  
16 applicant to finance the proposed project.

17 (6) The high-speed broadband service speed thresholds  
18 proposed in the application and the scalability of the high-  
19 speed broadband service infrastructure proposed to be  
20 deployed to provide high-speed broadband service to  
21 households and businesses.

22 (7) An affidavit that no project grant awards are to be  
23 used to overbuild an area that is already served with high-  
24 speed broadband service.

25 (8) Other factors which the department, in consultation  
26 with the Governor's Office of Broadband Initiatives,  
27 determines to be reasonable and appropriate, consistent with  
28 the purposes of this act.

29 (g) Limitation.--In awarding grants, except as required  
30 under applicable law, the department shall not consider any

1 additional regulatory obligations, including, but not limited  
2 to, open access network requirements or any rate, service or  
3 other obligation beyond the speed requirements set forth in the  
4 definition of "high-speed broadband service" in section 3.

5 (h) Time for project completion.--Applicants shall be  
6 afforded a reasonable length of time to complete projects  
7 selected for grant funding approval.

#### 8 Section 7. Implementation.

9 (a) Regulations.--The department shall adopt regulations to  
10 implement this act within 180 days of the effective date of this  
11 act. The regulations shall include provision for submission,  
12 review and approval of applications, award of grants and  
13 administration of projects funded under the program, including  
14 provision for reasonable oversight and reporting to ensure that  
15 project grant awards are used as intended.

16 (b) Prohibition.--The department may not provide, by  
17 regulation or otherwise, for third-party audit requirements,  
18 liquidated damages provisions or provisions that are not  
19 reasonably related to the deployment of high-speed broadband  
20 service infrastructure by an applicant in accordance with the  
21 purposes and provisions of this act.

22 (c) Construction.--Nothing in this section shall be  
23 construed to preclude the department from considering an  
24 applicant's financial ability to complete a proposed project or  
25 making reasonable requests for information necessary for the  
26 oversight and administration of projects awarded grant funding.

#### 27 Section 8. Effect on grant recipients.

28 Nothing in this act is intended to subject a grant recipient,  
29 solely by virtue of receipt of the grant award, to a statutory  
30 or regulatory requirement not provided for under this act if,

1 absent the receipt of the grant award, the requirement would not  
2 otherwise apply to the grant recipient.  
3 Section 9. Effective date.  
4 This act shall take effect immediately.