



**WEST VIRGINIA SECRETARY OF STATE**

**MAC WARNER**

**ADMINISTRATIVE LAW DIVISION**

**eFILED**

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Office of West Virginia  
Secretary Of State

**NOTICE OF PUBLIC COMMENT PERIOD**

AGENCY: Economic Development WV Department of TITLE-SERIES: 145-18  
RULE TYPE: Procedural Amendment to Existing Rule: No Repeal of existing rule: No  
RULE NAME: Cable and Fiber Broadband Funding Assistance  
CITE STATUTORY AUTHORITY: W.Va. Code 31G-1A-6

COMMENTS LIMITED TO:

Written

DATE OF PUBLIC HEARING:

LOCATION OF PUBLIC HEARING:

DATE WRITTEN COMMENT PERIOD ENDS: 11/26/2021 5:00 PM

COMMENTS MAY BE MAILED OR EMAILED TO:

NAME: James Bailey  
ADDRESS: Building 3, Suite 800  
1900 Kanawha Blvd. E. Charleston, WV 25305  
EMAIL: james.m.bailey@wv.gov

PLEASE INDICATE IF THIS FILING INCLUDES:

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

INCORPORATED BY REFERENCE: No

(IF YES, PLEASE UPLOAD IN THE SUPPORTING DOCUMENTS FIELD)

PROVIDE A BRIEF SUMMARY OF THE CONTENT OF THE RULE:

Establishes procedures for the application for and awarding of funding for broadband projects.

SUMMARIZE IN A CLEAR AND CONCISE MANNER CONTENTS OF CHANGES IN THE RULE AND A STATEMENT OF CIRCUMSTANCES REQUIRING THE RULE:

n/a

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

Will facilitate economic development through the expansion of broadband access.

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

n/a

C. ECONOMIC IMPACT OF THE RULE ON THE STATE OR ITS RESIDENTS:

Will positively impact the state's economic opportunities through the expansion of access to the quality broadband.

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost			
Personal Services			
Current Expenses			
Repairs and Alterations			
Assets			
Other			
2. Estimated Total Revenues			

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

James Bailey -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

**TITLE 145**  
**PROCEDURAL RULE**  
**DEPARTMENT OF ECONOMIC DEVELOPMENT**

**SERIES 18**  
**CABLE AND FIBER BROADBAND FUNDING ASSISTANCE**

**§145-18-1. General.**

1.1. Scope. -- This procedural rule establishes guidelines to be used by the Secretary of Economic Development, the Broadband Enhancement Council, and the Office of Broadband in evaluating requests from project sponsors for funding assistance for the planning, design, installation, or construction of cable or fiber broadband extension and improvement projects and the funding of all or any part of the projects using American Rescue Plan Act of 2021 (“ARPA”) Capital Projects funds or State funds. These procedural rules may be revised after the United States Department of Treasury issues regulations on ARPA Capital Projects funds, and if any additional federal or state funding legislation is adopted which disburses funds for broadband expansion to state governments.

1.2. Authority. -- W.Va. Code §§31G-1A-6, 29A-3-3.

1.3. Filing Date. --

1.4. Effective Date. –

**§145-18-2. Definitions**

2.1. “American Rescue Plan Act of 2021” means H.R. 1319 of the 170th Congress of the United States.

2.2. “Council” means the Broadband Enhancement Council operating under its authority pursuant to W.Va. Code §31G-1-1 *et seq.*

2.3. “Department” means the Department of Economic Development.

2.4. “Line Extension Advancement & Development (“LEAD”) Program” means the program designed to fund extension of existing last-mile cable modem and fiber-to-the-premises broadband networks that can be constructed quickly.

2.5. “Office” means the Office of Broadband operating under its authority pursuant to W.Va. Code Ch. 31G, Article 1A.

2.6. “Passed addresses” means a residential, commercial, or public authority address alongside a proposed project route where facilities along the route will be capable of providing last-mile services to those addresses. Addresses within 250 feet of such a route shall be considered passed.

2.7. “Secretary” means the Secretary of Economic Development.

2.8. “Secretary of Economic Development Broadband Funding Plan” means the plan to be prepared by the Secretary proposing intended uses of ARPA Capital Project Funds for broadband expansion in the state in compliance with guidance issued by the United States Department of the Treasury.

2.9. “Targeted address” means a residential, commercial, or public authority address with an improved structure with no current access to terrestrial internet service with at least 25 MBps download and 3 Mbps

upload, and excluding such addresses which are proposed to be served by an existing state, federal, or locally funded project to deliver mass-market broadband service with at least 25 Mbps download and 3 Mbps upload, as determined by the Target Area map issued by the Secretary.

2.10. “Terrestrial” means internet service provided by fiber-to-the-premises or cable modem, digital subscriber line (DSL), and fixed wireless broadband and excludes internet service provided by satellite.

### §145-18-3. Application Requirements for Line Extension Advance & Development (“LEAD”) Program Projects.

#### 3.1. Applicant Eligibility Requirements

3.1.1. Internet service providers with an existing fiber-to-the-premises or existing cable network in West Virginia or a neighboring state offering service on a mass market basis of at least 100 Mbps download and 20 Mbps upload;

3.1.2. A current statement of existence from the West Virginia Secretary of State;

3.1.3. No prior default or significant violations under any federal, state, or local broadband expansion funding program; and

3.1.4. No suspension or debarment as a vendor by the State of West Virginia or any Federal agency within three years prior to filing an application with the Department for Program funding.

3.1.5. Projects proposed by Eligible Applicants are subject to review and possible approval, denial, or modification under the Review Guidelines.

#### 3.2. Project Eligibility Requirements

3.2.1. Project Purpose. An eligible project must have as its primary purpose the extension of service to unserved areas, however facilities which also incidentally pass served addresses are reimbursable.

3.2.1.1. A project may propose to serve multiple non-contiguous areas.

3.2.1.2. Applicants are encouraged to propose projects which contain 50 or more targeted addresses.

3.2.2. Project Plan. Applications must include a proposed project plan and timeline with a description of the proposed project, major milestones related to engineering, pole make-ready (including timely submission of pole attachment applications), permitting (including timely submission of required permits) construction of routes, and activation of customers, showing that the proposed project can be completed within 12 months of award. The Project Plan must address contingencies which could lead to delay in achieving identified milestones.

3.2.3. Project budget. Applications must include a project budget with major cost categories and maximum project cost using the Secretary’s spreadsheet template. Project budgets must detail the proposed sources of funding and terms, including funding from other governmental broadband expansion programs, if any.

3.2.3.1. Detail the proposed sources of funding for the project, the sum of which must equal the total proposed project cost. The application must identify the amount of grant funding sought from the program, and the amount of other funding from other sources including match from the applicant and any

other sources of grant funds. The application must identify if any matching funds are from loans or backed by loan guarantees specifically backed or secured by the assets or revenues of the proposed project.

3.2.4. Applicant investment. Applicants must propose to invest not less than \$500 in allowed expenditures per address passed by the proposed project, whether served or unserved, with a credible, non-contingent source of funding.

3.2.4.1. Customer drops, installations, and equipment for served addresses are not allowed expenditures.

3.2.4.2. In kind or force account contributions are not counted towards the applicant investment requirement.

3.2.5. Service Tiers. Applications must include the proposed service tier offerings by upload and download speed, latency, data caps if any, regular monthly fees, and incidental fees (for equipment, service activation, service calls, and the like) expected to be offered upon completion of the Project, and the same information regarding the Applicant's current service tier offerings in West Virginia or adjacent states. Applicants must offer broadband on a stand-alone basis, but Applicants may also offer bundled services. Applicants must be currently delivering proposed service tiers in West Virginia or a neighboring state. Prices provided should include charges for common equipment, applicable fees and surcharges, and data overages. The application should identify any non-recurring charges for service activation, and describe policies and charges governing non-standard installations, including standard drop lengths and charges for long drops. The application should identify any discounts offered by the applicant or through government programs to low-income households.

3.2.5.1. If an applicant has no facilities in West Virginia but does have facilities in a neighboring state, the application should describe service tiers and charges in the state nearest to the proposed project.

3.2.5.2. Comparable rates. Projects must propose to offer service tiers to addresses to be served by the project which do not exceed the service tier charges (excluding local taxes) the applicant offers to its other mass-market customers in West Virginia or neighboring states.

3.2.6. Minimum service speed. Project should propose to offer service in the extension area of at least 100 Mbps download, 20 Mbps upload, and less than 100 ms latency, with at least one service tier offered on a mass-market basis which exceeds the minimum service speeds. Applicants proposing projects that cannot reliably provide upload speeds of 100 Mbps as proposed must describe how their proposed project will be scalable to a minimum of 100 Mbps symmetrical speed in the future. Such applicants must also describe the reasons why it would not be practicable at the present time to deliver 100 Mbps symmetrical through the proposed project. Where practicable, applicants are encouraged to offer higher speed service tiers, including Gigabit service (1000 Mbps download / 500 Mbps upload).

3.2.7. Customer Growth Level. A project may not increase an applicant's total number of customers in West Virginia and neighboring states by more than 10%. An applicant may propose several projects which collectively would increase the applicant's total number of customers in West Virginia and neighboring states by more than 10%, however in evaluating such applications the Secretary may reject one or more proposed project or approve projects after requiring such an Applicant to submit additional information demonstrating the Applicant's financial and managerial capacity to undertake the proposed projects simultaneously.

3.2.8. Construction period. The applicant must be able to complete construction of the proposed project within 12 months from the date of award.

3.2.8.1. At the discretion of the Secretary, awardees may receive an extension of completion deadlines of up to six months for good cause.

3.2.8.2. Notwithstanding project completion requirements, customer drops at targeted addresses requesting new service may be considered part of project costs within 24 months from the date of award and completed in a timely manner upon customer request.

### 3.3. Application process

3.3.1. Applications should be submitted online using the Secretary's form through the Secretary's portal, <https://broadband.wv.gov>.

3.3.2. In addition to other required information, applications must include:

3.3.2.1. Applicant's legal name and dba;

3.3.2.2. Applicant's contact information, including a person who is knowledgeable about the proposed project to answer questions;

3.3.2.3. Identification of targeted addresses to be served by the project which are identified on the Secretary's Target Area map;

3.3.2.4. Identification of already served addresses expected to be passed to reach unserved addresses;

3.3.2.5. Identification of the route via electronic formatted map to reach the proposed unserved addresses, including all new routes needed to connect to the applicant's existing network;

3.3.2.6. Presentation of applicant's existing fiber or cable network routes in electronic formatted map within the municipality, or if in an unincorporated area the county magisterial district, in or from which the applicant is proposing to extend its network;

3.3.2.7. Description of network technology standard or standards to be used in the proposed network;

3.3.2.8. Applications must include a proposed budget and maximum project cost using a Microsoft Excel spreadsheet template provided as a download within the grants portal. The proposed project cost must be broken down by major cost categories provided in the template;

3.3.2.9. Applications must detail the proposed sources of funding for the project, the sum of which must equal the total proposed project cost. The application must identify the amount of grant funding sought from the program, and the amount of other funding from other sources including match from the applicant and any other sources of grant funds. The application must identify if any matching funds are from loans or backed by loan guarantees specifically backed or secured by the assets or revenues of the proposed project;

3.3.2.10. Applications must include a proposed project plan and timeline with major milestones showing that the proposed project can be completed within 12 months of award. The plan should include any major contingencies in the plan. It should include at a minimum major milestones related to engineering, pole make-ready (including timely submission of pole attachment applications), permitting (including timely submission of required permits) construction of routes, and activation of customers;

3.3.2.11. Applications must include a list of common service tiers, including upload and download speeds, data caps, and prices currently offered to residential and small business customers in West Virginia on the applicant's existing network. If an applicant has no facilities in West Virginia but does have facilities in a neighboring state, the application should describe services in the state nearest to the proposed project. The application should describe typical latency experienced by users on the network.

3.3.2.12. Prices provided should include charges for common equipment, applicable fees and surcharges, and data overages. Bundled and promotional pricing may be provided, but in addition to, not instead of non-promotional pricing and pricing for stand-alone internet service. The application should identify any non-recurring charges for service activation, and describe policies and charges governing non-standard installations, including standard drop lengths and charges for long drops. The application should identify any existing discounts offered by the applicant or through government programs to low-income households.

3.3.2.13. Verification from an officer or authorized employee attesting that the statements and information within the application are true to the extent known.

#### 3.4. Supplemental Information

3.4.1. The Secretary may request supplemental information from an applicant based upon regulations regarding American Rescue Plan Act Capital Project funds issued by the United States Treasury or due to questions which arise in the course of reviewing an application.

#### 3.5. Application due dates

3.5.1. The due dates for filing applications will be posted on the Secretary's application portal.

3.5.2. The Secretary will review on a monthly basis all applications received within the prior period application due date.

#### 3.6. Reimbursable Expenditures

3.6.1. Projects receiving funding may be reimbursed for actual capital expenses up to a maximum project cost identified in the award. Costs must be directly related upfront investment associated with installing and/or upgrading existing broadband facilities on the proposed project on a one-time, capital improvement basis.

3.6.2. Eligible project activities and costs include:

3.6.2.1. Network and access equipment costs;

3.6.2.2. Outside plant costs;

3.6.2.3. Reasonable make-ready and one-time pole licensing costs, excluding recurring pole attachment payments;

3.6.2.4. Equipment shelter, land, site preparation, and site restoration costs;

3.6.2.5. Customer premises equipment: Funding only covers up to the network demarcation point (e.g., NID or ONT);

3.6.2.6. Professional services: Includes engineering and project management costs involved in designing and constructing the proposed project;

3.6.2.7. Testing;

3.6.2.8. Other upfront costs: Includes any other upfront costs not covered in other categories, such as site preparation, permits, required licenses, sales tax applicable to new equipment purchases, shipping and warehousing expenses, and miscellaneous minor material; and

3.6.2.9. Long-term leases, defined as leases for a duration longer than 1 year, of facilities required to provide broadband service on the proposed project.

3.6.3. Internal labor costs incurred as part of eligible project activities are only reimbursable up to the proportion of employees' time spent exclusively on project activities during the period for which reimbursement is sought. When seeking reimbursement, applicants must submit such costs as line-items and provide supporting documentation for the expense. Supporting documentation shall include time spent by each employee on project activities, total time spent by each employee during the period for which reimbursement is sought, and an hourly cost that may include employee salary, itemized payroll taxes and benefits. Indirect costs are not reimbursable.

3.6.4. Costs that appear excessive and/or without justification and costs not considered eligible will not be reimbursed.

3.6.5. Ineligible costs include:

3.6.5.1. Internal administrative activities.

3.6.5.2. Fundraising activities.

3.6.5.3. Computers or office equipment.

3.6.5.4. Vehicles.

3.6.5.5. Equipment owned or leased by the customer, including routers and modems, and any other costs beyond the network interface point.

3.6.5.6. Operating expenses.

3.6.5.7. Expenses incurred prior to the date of the grant award announcement.

3.6.5.8. Short-term operating leases.

3.6.5.9. Payment of interest or principal on outstanding debt instruments, or other debt service costs.

3.6.5.10. Fees or issuance costs associated with the issuance of new debt.

3.6.5.11. Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding; or

3.6.5.12. To support or oppose collective bargaining.

3.6.6. Expenditures or ineligible costs cannot be used as match.

3.6.7. Projects must primarily target targeted addresses. Facilities that are needed to deliver last-mile broadband service to targeted addresses and incidentally cover served addresses are reimbursable, but expenditures solely to benefit served addresses are not reimbursable. Customer drops, installations, and equipment at served addresses are not eligible for reimbursement.

**§145-18-4. Review Guidelines for LEAD Program Project Applications.**

4.1. Applications will be initially reviewed for completeness. Incomplete applications may be returned to applicants for additional information. Responses to requests for additional information will become part of the application.

4.1.1. Applicants submitting proposals requesting more than \$5,000,000 in grant funding may be asked to divide the proposal.

4.2. Applications will be categorized as either Preferred or Non-Preferred. Preferred applications will be prioritized for review and funding decisions. Non-Preferred applications may be funded, but may also be tabled, and subject to additional informational requests.

4.2.1. Applications will be categorized as Preferred if they meet all of the following criteria:

4.2.1.1. The Project proposes to extend service to a terminus point beyond which there are no targeted addresses within a reasonable distance.

4.2.1.2. The Project proposes to extend service to areas that are unserved.

4.2.1.3. The Application requests a grant of \$10,000 or less per targeted address.

4.2.1.4. The Applicant proposes to contribute at least \$750 per passed address of its own funds for the Project.

4.2.2. Applications will be categorized as Non-Preferred that have any of the following characteristics:

4.2.2.1. The Project proposes to extend service to a terminus point beyond which there are additional targeted addresses within a reasonable distance.

4.2.2.2. The Applications requests a grant of \$10,000 or more per targeted address.

4.2.2.3. The Applicant proposes to contribute at least \$500 but less than \$750 per address passed.

4.3. Project Prioritization:

4.3.1. Awards will be prioritized among proposals and applicants meeting program eligibility requirements (“Eligible Proposals”). Evaluation will score the Eligible Proposal in three areas: Technical, Financial and Broadband Development Impact.

4.3.2. Fifty points may be awarded in the Technical evaluation based on the following prioritization factors:

4.3.2.1. Project Readiness, the degree to which the proposed project demonstrates (i) the commitment of proposed match sources, (ii) the completion of preliminary engineering, (iii) the attainment of necessary permits, right-of-way access, and easements, and (iv) the completion of necessary pole and conduit licenses.

4.3.2.1.a. Demonstration of full readiness on all factors – up to 30 points.

4.3.2.1.b. Demonstration of substantial readiness on the majority of factors – up to 20 points.

4.3.2.1.c. Demonstration of substantial readiness on some factors – up to 10 points.

4.3.2.2. The ability of the proposed project to serve customers at a gigabit speed (1000/500 Mbps) – 20 points.

4.3.3. Fifty points may be awarded in the Financial evaluation based on the following prioritization factors.

4.3.3.1. Cost-efficiency relative to the difficulty of the project proposed. Evaluation will include as key metrics the proposed grant amount per unserved premise passed by the project and proposed grant amount per mile of new cable or fiber plant proposed. The Department may also consider factors that may make certain areas more difficult and costly to serve, such low density, extensive make-ready costs or unavoidable underground construction, to the extent that the applicant is able to provide evidence for such conditions.

4.3.3.1.a. Very high efficiency, meaning a very low grant cost per mile and per unserved premise passed, relative to the difficulty of the proposed project – up to 40 points.

4.3.3.1.b. High efficiency, meaning a low grant cost per mile and per unserved premise, relative to the difficulty of the proposed project – up to 30 points.

4.3.3.1.c. Moderate efficiency, meaning a moderate grant cost per mile and per unserved premise passed, relative to the difficulty of the proposed project – up to 20 points.

4.3.3.1.d. Low efficiency, meaning a high moderate grant cost per mile and per unserved premise passed, relative to the difficulty of the proposed project – up to 10 points.

4.3.3.2. The amount of matching funding proposed by the applicant – one point for every \$100 in matching funding provided over \$500 per passed address, up to a maximum of 10 points (which equals \$1500 per passed address).

4.3.4. Fifty points may be awarded in the Broadband Development Impact evaluation based on the following prioritization factors:

4.3.4.1. Affordability –

4.3.4.1.a. Price of the lowest generally available non-promotional residential service tier with speeds not less than 25/3 Mbps and no data cap – one point for every \$10 under \$85/month, up to a maximum of 5 points.

4.3.4.1.b. Offering a discounted service tier to low-income customers with speeds not less than 25/3 Mbps and no data cap for a cost that is fully subsidized by the FCC's Emergency Broadband Benefit Program and subsequent affordability programs identified by the U.S. Treasury as a requirement of ARA Capital Projects Fund funding – 5 points.

4.3.5. Community impact factors – up to 40 points based on impact within the community, for reasons such as:

4.3.5.1. The project's location in an area of low or moderate income, high unemployment, high poverty, or economic distress;

4.3.5.2. The project supports a credible plan to increase broadband adoption and improve digital literacy in the affected communities, especially among populations that have experienced inequities in access to work, education, and health care or health information that resulted from, was made apparent or was exacerbated by the COVID-19 public health emergency;

4.3.5.3. The project would provide service that supports a major economic development initiative identified by a regional planning or development council or economic development authority;

4.3.5.4. The project supports or implements a recent broadband planning initiative within a county or region;

4.3.5.5. The project is coordinated with or builds upon other nearby projects that will provide greater regional benefit;

4.3.5.6. The project has strategic partnerships involved in the proposed project, for example, electric utilities, universities, and federal, state, or local agencies;

4.3.6. The project addresses unserved premises in a region of the state with high need but relatively few funded projects; The project supports adopted state plans or priorities not otherwise addressed by other prioritization factors. An Eligible Project will be evaluated relative to other projects submitted on or before the application deadline by which the project was submitted. Projects with a high point value in all three areas, Technical, Financial, and Broadband Development Impact, will be the highest priorities for available funding. The Department may consider other proposed projects to the extent that funds are available and may carry projects over for consideration into subsequent rounds.

Project Overlaps. If multiple Eligible Projects contain overlapping Proposed Service Areas, the Department may request one or more applicants revise their proposals to eliminate the overlaps. The Department may also request modifications to eliminate overlaps with projects proposed under other broadband programs run concurrently by the Department. The Department may defer a project's final scoring and prioritization pending submission of revisions.

4.4. The Secretary will issue written decisions on applications to applicants within ten days of the Secretary's completion of its final review of an application. Grants are awarded on a reimbursement basis.

4.4.1. Construction Timeline. Construction must be able to be completed and ready to serve customers within 12 months from award; this may be extended up to an additional 6 months for delays not caused by the applicant. Customer drops at targeted addresses requesting new service are eligible for reimbursement within 24 months of award.

Cost Reasonableness. Proposed costs must be reasonable and proportional to the density and difficulty of the proposed project.

4.4.2. Projects selected for award will receive a Preliminary Approval Announcement, which will be published on <http://broadband.wv.gov>. Internet Service Providers other than the applicant will receive an opportunity to submit data demonstrating that the ISP currently offers broadband service at 25/3 Mbps or greater to addresses within the Proposed Project Funded Service Area. Data submitted must meet all the requirements described in the Process for Soliciting Information Regarding Unserved Areas, which the Department published on July 12, 2021. Notwithstanding the response deadline stated in the Process for Soliciting Information Regarding Unserved Areas, which the Department published on July 12, 2021. Notwithstanding the response deadline stated in the Process for Soliciting Information Regarding Unserved Areas, ISPs providing data must submit to the Department data related to projects receiving Preliminary Approval Announcement not later than 14 days after the publication of the Announcement. Based on

submitted data, the Department may request that a preliminary awardee submit a revised project removing parts that solely benefit some or all addresses identified as served, the Department may withdraw the preliminary approval, or the Department may allow the preliminary award to proceed without changes. ISP-submitted data alone will not be dispositive. In making its determination, the Department will also consider:

4.4.2.1. Previous opportunities that the ISP submitting information has had to provide data to the Department;

4.4.2.2. Any data provided by the preliminary awardee about availability of services in the proposed service area;

4.4.2.3. The extent of overlap between the proposed project and existing services, and the impact that modification of the proposed project would have on the ability of the proposed project to serve targeted addresses;

4.4.2.4. Whether the proposed project will offer services superior to the existing available services, and especially if existing services offer speeds less than 100/20 Mbps;

4.4.2.5. Information about user experiences on the current network, to the extent available, such as whether users actually receive internet service at or above speed thresholds at all hours of the day, or whether factors other than speed such as latency or jitter, or deterioration of the existing connections make their user experience unreliable;

4.4.2.6. Whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier); and

4.4.2.7. Other available data including but not limited to documentation of existing broadband internet service performance, federal and/or state collected broadband data, user speed test results, and interviews with community members and business owners, and reports from community organizations.

#### **§145-18-5. Application Requirements for Major Broadband Project Strategies (“MBPS”) Program Projects.**

##### **5.1. Applicant Eligibility Requirements.**

5.1.1. Applicants may be private for-profit or non-profit corporations, partnerships (including public-private partnerships), municipalities, counties, or affiliated organizations, such as economic development corporations, regional planning and development councils, etc. Regional consortia of local governments may participate.

5.1.1.1. Applicants which are local governments or affiliated organizations must identify in their applications partners which are private for-profit or non-profit companies with experience in the development and operation of broadband networks and services. If awarded, such partners shall be considered subrecipients of grant funds. Proposals must describe the experience of the applicant and its selected partners and vendors sufficient to successfully build and operate the proposed network.

5.1.2. Documents demonstrating the applicant (including any partners or joint venturers) is a legal entity, such as a municipal charter, a statement of existence from the West Virginia Secretary of State, or a public-private partnership agreement.

5.1.3. No prior default or significant violations under any federal, state, or local broadband expansion funding program; and

5.1.4. No suspension or debarment as a vendor by the State of West Virginia or any Federal agency within three years prior to filing an application with the Department for Program funding.

5.1.5. Projects proposed by Eligible Applicants are subject to review and possible approval, denial, or modification under the Review Guidelines.

## 5.2. Project Eligibility Requirements

5.2.1. An eligible project must have as its primary purpose to transform broadband availability across a significant part of West Virginia. The MBPS Program will fund larger scale projects designed to serve large numbers of targeted addresses, however facilities which also incidentally cover served addresses are reimbursable.

5.2.1.1. A project may propose to serve multiple non-contiguous areas. Proposals will be required to offer service to all targeted addresses when the facilities along the route will be capable of providing last-mile services to those addresses. in awarded Eligible Service Areas.

5.2.1.2. Applicants are encouraged to propose projects which contain 200-5,000 targeted addresses.

5.2.1.2.a. Applicants must include in the count of the project's potential subscriber locations both the number of targeted addresses within the proposed Eligible Service Area(s) in the proposed project, as estimated by the Department for those Service Areas, and the number of served addresses that the proposal identifies will be passed by the proposed project.

5.2.1.2.b. Served addresses will be considered "passed" if they are within 250 feet of a proposed project fiber or cable route and the facilities along the route will be capable of providing last-mile services to those addresses. Applicants may include in their count additional served addresses set back further than 250 feet from the proposed project route. All targeted addresses within the proposed Eligible Service Area must be passed or covered by the proposed project, including those set back more than 250 feet from the proposed project route.

5.2.1.3. For the purposes of the MBPS Program, "targeted addresses" are those with no current access to internet service with at least 25 Mbps download and 3 Mbps upload (25/3 Mbps), and not in an area with an existing state, federal, or locally funded project to deliver mass-market broadband service with services of at least 25/3 Mbps. Addresses with current or future access to service only by satellite providers or mobile wireless networks are not considered served if they are not also served by a terrestrial broadband provider of fixed home broadband service offering services with a speed of at least 25/3 Mbps.

5.2.2. Project Plan. Applications must include a proposed project plan and timeline with a description of the proposed project, showing major milestones related to engineering, pole make-ready (including timely submission of pole attachment applications), permitting (including timely submission of required permits) construction of routes, and activation of customers, such that the proposed project can be completed within 24 months of award. The plan should include any major contingencies in the plan which could lead to delay in achieving identified milestones.

5.2.2.1. Overlaps. For each Proposal, the applicant must submit the percent of the Proposal that the applicant would accept to be eliminated due to overlaps with competing Proposals, measured by the estimated targeted addresses in the Proposal's Eligible Service Areas. The percent overlap will be assessed based on the estimated unserved locations within the Eligible Service Areas. Applicants must

accept up to 20% reduction in their project due to overlaps, with a reduction in grant funding proportional to the reduction in targeted addresses in the project. Applicants may specify a higher percentage reduction that they would be willing to accept. At its option, The Department may request an applicant make modifications greater than this percentage to eliminate overlaps with projects proposed under other broadband programs run concurrently by the Department, while submitting a revised budget. The Department may defer a project's final scoring and prioritization pending submission of revisions.

5.2.2.2. Project Plans must identify the network technology standard or standards to be used in the proposed network, such as DOCSIS 3.x, GPON, EPON, NG-PON2, XGSPON, and Active Ethernet. Networks using a PON architecture must identify the split ratio(s) to be used on the proposed facilities.

5.2.2.3. Projects must identify the Eligible Service Areas included in the proposed project. Proposals must include the proposed broadband infrastructure utilized to reach the targeted addresses within the proposed Eligible Service Areas. This should include the proposed network technology and standard or standards to be used in the proposed network, and the proposed high-level network design.

5.2.2.4. High-level designs for networks utilizing fiber or cable technology must include but not be limited to the proposed fiber or cable route to reach the proposed targeted addresses. Proposed routes submitted must include any new routes needed to connect to the applicant's existing network. If interconnected with an existing network, proposals must also show the applicant's existing fiber or cable network routes within the municipalities (or if in an unincorporated area the county magisterial district) in or from which the applicant is proposing to extend its network. Existing routes may be either actual cable or fiber line routes, or the roads along which the applicant has existing network in the municipality or municipalities.

5.2.2.5. Proposals utilizing wireless technology must include a projected propagation plot of coverage from the proposed access points for point-to-multipoint networks and links for point-to-point elements, and an accompanying description of key assumptions used. The key assumptions shall include the prediction tool used, terrain and clutter resolution used to generate the plot, the signal strength (RSSI or RSRP for an LTE network) threshold at which areas are considered covered or uncovered, and the assumed height above ground level of subscriber equipment. Propagation plots may show multiple levels of service, but at a minimum should clearly identify signal strength at which users could expect to receive service in excess of 100/100 Mbps and 100/20 Mbps.

5.2.2.6. Respondents utilizing wireless technology must identify the sites used in the coverage projection. For each access point, the response must identify:

5.2.2.6.a. The latitude and longitude of the site;

5.2.2.6.b. Base station antenna information including manufacturer, model, azimuth, down tilt, and center line;

5.2.2.6.c. Base station equipment information with manufacturer, model number, and EIRP; and

5.2.2.6.d. Whether the support structure at the site is existing or planned, whether the applicant intends to lease or own the structure, and whether the applicant has already acquired rights to use the site.

5.2.2.7. Information must be provided by sector for sectorized sites. If a proposal includes point-to-point wireless links, the proposal shall identify the points linked, the frequency to be used, data transmission rate supported, and link budget.

5.2.2.8. Proposals must include manufacturer data sheets for key radio equipment and antennas that are consistent with the projected coverage or reach shown on the planned network, including for point-to-point links, point-to-multipoint access points and end user equipment.

5.2.2.9. Proposals utilizing wireless technology must provide the same information for any adjacent sites in the applicant's existing network (sites which may provide overlapping coverage from the proposed sites). Upgrades to existing sites must provide site information before and after the proposed upgrade. If the use of licensed spectrum is proposed information must be provided demonstrating applicants' permitted use of the spectrum.

5.2.2.10. Map information must be provided in electronic format. Proposed and existing fiber or cable routes may be submitted as either an ESRI shapefile or a KMZ/KML file.

5.2.3. Governance and Management. Proposals from local governments and affiliated organizations must describe how the project will be managed by one or more public entities or by a private partner, and the governance structure overseeing the management and operations of the resulting projects. All applicants must demonstrate that they will have the technical and managerial experience required to successfully operate the proposed project.

5.2.4. Project budget. Applications must include a project budget with major cost categories and maximum project cost using the Secretary's spreadsheet template. Project budgets must detail the proposed sources of funding and terms, including funding from other governmental broadband expansion programs, if any.

5.2.4.1. Detail the proposed sources of funding for the project, the sum of which must equal the total proposed project cost. The application must identify the amount of grant funding sought from the program, and the amount of other funding from other sources including match from the applicant and any other sources of grant funds. The application must identify if any matching funds are from loans or backed by loan guarantees specifically backed or secured by the assets or revenues of the proposed project.

5.2.5. Applicant investment. Applicants must propose to invest not less than \$500 in allowed expenditures per address passed by the proposed project, whether served or unserved, with a credible, non-contingent source of funding. The minimum \$500 of matching fund per passed or covered address must be provided by the applicant, or if the applicant is a municipality, county, or an affiliated organization, from its private partner. Public partners or other grant funds may provide additional match.

5.2.5.1. Customer drops, installations, and equipment for served addresses are not allowed expenditures.

5.2.5.2. In kind or force account contributions are not counted towards the applicant investment requirement.

5.2.6. Applicant and Project Financials. Applicants who propose a project that would cover targeted addresses greater than 10% of the count of their existing subscribers in West Virginia must provide its audited financial statements covering the most recent two years completed prior to the application deadline and a pro forma cash flow for the proposed project. If an applicant does not have audited financial statements, it may provide unaudited statements, but must complete an audit prior to receipt of grant funds.

5.2.6.1. The pro forma cash flow should include:

5.2.6.1.a. Expected revenues, detailing assumptions about revenue sources and/or customer classes and projected customer numbers, take rates, and average revenue per customer in each customer class;

5.2.6.1.b. Expected operating costs, detailing assumptions about major cost categories;

5.2.6.1.c. Expected initial capital costs, detailing assumptions about major cost categories;

5.2.6.1.d. Expected capital refresh/reinvestment in the network, detailing assumptions about major cost categories;

5.2.6.1.e. Assumed capital funding sources, including grants, partner contributions, cash reserves, debt, and equity; and

5.2.6.1.f. Assumed debt and capital lease servicing costs.

5.2.6.2. The pro forma analysis should be for not less than a 10-year period, or the length of any expected debt or capital leases, whichever is longer. Applicants must identify any periods during which the project is expected to have a net operating revenue loss and identify the expected source of funds to cover those losses.

5.2.7. Service Tiers. Applications must include the proposed service tier offerings by upload and download speed, latency, data caps if any, regular monthly fees, and incidental fees (for equipment, service activation, service calls, and the like) expected to be offered upon completion of the Project. For Applicants with a private partner that is an existing internet service provider, the same information regarding the partner internet service provider's current service tier offerings in West Virginia or adjacent states. Applicants must offer broadband on a stand-alone basis, but Applicants may also offer bundled services. Prices provided should include charges for common equipment, applicable fees and surcharges, and data overages. The application should identify any non-recurring charges for service activation, and describe policies and charges governing non-standard installations, including standard drop lengths and charges for long drops. The application should identify any discounts offered by the applicant or through government programs to low-income households.

5.2.7.1. If an applicant's private partner internet service provider has no facilities in West Virginia but does have facilities in a neighboring state, the application should describe service tiers and charges in the state nearest to the proposed project.

5.2.7.2. Comparable rates. Projects with a private active internet service provider must propose to offer service tiers to addresses to be served by the project which do not exceed the service tier charges (excluding local taxes) the applicant offers to its other mass-market customers in West Virginia or neighboring states.

5.2.7.3. Applicants will be required to participate in federal programs that provide low-income consumers with subsidies on broadband Internet access services within funded areas. Initially, Applicants will be required to participate in the Federal Communications Commission's (FCC) Emergency Broadband Benefit (EBB) program. Once the EBB program has terminated, the U.S. Treasury will identify other program(s) applicants will be required to participate in to meet this requirement. Applicants will be informed of new affordability programs the U.S. Treasury identifies as a requirement of projects receiving Capital Projects Funds. Treasury will not identify affordability programs requiring Eligible Telecommunications Carrier (ETC) designation.

5.2.8. Minimum service speed. Project should propose to offer service in the extension area of at least 100 Mbps download, 20 Mbps upload, and less than 100 ms latency, with at least one service tier offered on a mass-market basis which exceeds the minimum service speeds. Applicants proposing projects that cannot reliably provide upload speeds of 100 Mbps as proposed must describe how their proposed project will be scalable to a minimum of 100 Mbps symmetrical speed in the future. Such applicants must also describe the reasons why it would not be practicable at the present time to deliver 100 Mbps symmetrical through the proposed project. Where practicable, applicants are encouraged to offer higher speed service tiers, including Gigabit service (1000 Mbps download / 500 Mbps upload).

5.2.9. Proof of lack of Service.

5.2.10. Customer Growth Level. A project with a private internet service provider partner may not increase the private internet service provider's total number of customers in West Virginia and neighboring states by more than 10% unless the Applicant submits information demonstrating the Applicant's private internet service provider's financial and managerial capacity to undertake the proposed project.

5.2.11. Construction period. The applicant must be able to complete construction of the proposed project within 24 months from the date of award.

5.2.11.1. At the discretion of the Secretary, awardees may receive an extension of completion deadlines of up to six months for good cause.

5.2.11.2. Notwithstanding project completion requirements, customer drops at targeted addresses requesting new service may be considered part of project costs within 36 months from the date of award and completed in a timely manner upon customer request.

### 5.3. Application process

5.3.1. Applications should be submitted online using the Secretary's form through the Secretary's portal, <https://broadband.wv.gov>

5.3.2. In addition to other required information, applications must include:

5.3.2.1. Applicant's legal name and dba

5.3.2.2. Applicant's contact information, including a person who is knowledgeable about the proposed project to answer questions.

5.3.2.3. Identification of targeted addresses to be served by the project which are identified as unserved on the Secretary's Target Area map.

5.3.2.4. Identification of already served addresses expected to be passed to reach targeted addresses.

5.3.2.5. Identification of the route via electronic formatted map to reach the proposed targeted addresses, including all new routes needed to connect to the applicant's existing network or that of its private internet service provider partner.

5.3.2.6. Presentation of applicant's existing fiber or cable network routes or that of its private internet service provider partner in electronic formatted map within the municipality, or if in an unincorporated area the county magisterial district, in or from which the applicant is proposing to extend its network.

5.3.2.7. Description of network technology standard or standards to be used in the proposed network.

5.3.2.8. Applications must include a proposed budget and maximum project cost using a Microsoft Excel spreadsheet template provided as a download within the grants portal. The proposed project cost must be broken down by major cost categories provided in the template.

5.3.2.9. Applications must detail the proposed sources of funding for the project, the sum of which must equal the total proposed project cost. The application must identify the amount of grant funding sought from the program, and the amount of other funding from other sources including match from the applicant and any other sources of grant funds. The application must identify if any matching funds are from loans or backed by loan guarantees specifically backed or secured by the assets or revenues of the proposed project.

5.3.2.10. Applications must include a proposed project plan and timeline with major milestones showing that the proposed project can be completed within 24 months of award. The plan should include any major contingencies in the plan. It should include at a minimum major milestones related to engineering, pole make-ready (including timely submission of pole attachment applications), permitting (including timely submission of required permits) construction of routes, and activation of customers.

5.3.2.11. Applications must include a list of common service tiers, including upload and download speeds, data caps, and prices. For applicants with a private internet service provider partner, applications must include rates and charges currently offered to residential and small business customers in West Virginia on the applicant partner's existing network. If an applicant or its private internet service provider partner has no facilities in West Virginia but does have facilities in a neighboring state, the application should describe services in the state nearest to the proposed project. The application should describe typical latency experienced by users on the network.

5.3.2.12. Prices provided should include charges for common equipment, applicable fees and surcharges, and data overages. Bundled and promotional pricing may be provided, but in addition to, not instead of non-promotional pricing and pricing for stand-alone internet service. The application should identify any non-recurring charges for service activation, and describe policies and charges governing non-standard installations, including standard drop lengths and charges for long drops. The application should identify any discounts offered by the applicant or through government programs to low-income households.

5.3.2.13. Verification from an officer or authorized employee attesting that the statements and information within the application are true to the extent known.

#### 5.4. Supplemental Information

5.4.1. The Secretary may request supplemental information from an applicant based upon guidelines or regulations issued pursuant to the American Rescue Plan Act Capital Project funds by the United States Treasury or due to questions which arise in the course of reviewing an application.

#### 5.5. Application due date

5.5.1. Due dates for the filing of applications will be posted on the Secretary's application portal.

#### 5.6. Reimbursable Expenditures

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5.6.1. Projects receiving funding may be reimbursed for actual capital expenses up to a maximum project cost identified in the award. Costs must be directly related upfront investment associated with installing and/or upgrading existing broadband facilities on the proposed project on a one-time, capital improvement basis.

5.6.2. Eligible project activities and costs include:

5.6.2.1. Network and access equipment costs.

5.6.2.2. Outside plant costs.

5.6.2.3. Tower and pole costs: Includes the construction of new towers (where required infrastructure does not exist) and costs involved with structural changes to existing towers.

5.6.2.4. Reasonable make-ready and one-time pole licensing costs, excluding recurring pole attachment payments.

5.6.2.5. Equipment shelter, land, site preparation, and site restoration costs.

5.6.2.6. Customer premises equipment: Funding only covers up to the network demarcation point (e.g., NID or ONT).

5.6.2.7. Professional services: Includes engineering and project management costs involved in designing and constructing the proposed project.

5.6.2.8. Testing.

5.6.2.9. Other upfront costs: Includes any other upfront costs not covered in other categories, such as site preparation, permits, required licenses, sales tax applicable to new equipment purchases, shipping and warehousing expenses, and miscellaneous minor material; and

5.6.2.10. Long-term leases, defined as leases for a duration longer than 1 year, of facilities required to provide broadband service on the proposed project.

5.6.3. Internal labor costs incurred as part of eligible project activities are only reimbursable up to the proportion of employees' time spent exclusively on project activities during the period for which reimbursement is sought. When seeking reimbursement, applicants must submit such costs as line-items and provide supporting documentation for the expense. Supporting documentation shall include time spent by each employee on project activities, total time spent by each employee during the period for which reimbursement is sought, and an hourly cost that may include employee salary, itemized payroll taxes and benefits. Indirect costs are not reimbursable.

5.6.4. Costs that appear excessive and/or without justification and costs not considered eligible will not be reimbursed.

5.6.5. Ineligible costs include:

5.6.5.1. Internal administrative activities.

5.6.5.2. Fundraising activities.

5.6.5.3. Computers or office equipment.

5.6.5.4. Vehicles.

5.6.5.5. Equipment owned or leased by the customer, including routers and modems, and any other costs beyond the network interface point.

5.6.5.6. Operating expenses.

5.6.5.7. Expenses incurred prior to the date of the grant award announcement.

5.6.5.8. Acquisition of spectrum licenses.

5.6.5.9. Short-term operating leases.

5.6.5.10. Payment of interest or principal on outstanding debt instruments, or other debt service costs.

5.6.5.11. Fees or issuance costs associated with the issuance of new debt.

5.6.5.12. Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding; or

5.6.5.13. To support or oppose collective bargaining.

5.6.6. Expenditures or ineligible costs cannot be used as match.

5.6.7. Projects must primarily target targeted addresses. Facilities that are needed to deliver last-mile broadband service to targeted addresses and incidentally cover served addresses are reimbursable, but expenditures solely to benefit served addresses are not reimbursable. Customer drops, installations, and equipment at served addresses are not eligible for reimbursement.

#### **§145-18-6. Review Guidelines for MBPS Program Project Applications.**

6.1. Applications will be initially reviewed for completeness. Incomplete applications may be returned to applicants for additional information. Responses to requests for additional information will become part of the application.

6.2. Maximum Grant Award. The Secretary will not award a grant to an application in excess of \$20,000,000.

#### 6.3. Project Prioritization:

6.3.1. Awards will be prioritized among proposals and applicants meeting program eligibility requirements ("Eligible Proposals"). Evaluation will score the Eligible Proposal in three areas: Technical, Financial and Broadband Development Impact.

6.3.2. One hundred points may be awarded in the Technical/Operational evaluation based on the following prioritization factors:

6.3.2.1. Project Readiness, the degree to which the proposed project demonstrates that (i) the completion of preliminary engineering, (ii) the attainment of necessary permits, right-of-way access, and easements, and (iii) the completion of necessary pole and conduit licenses.

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6.3.2.1.a. Demonstration of full readiness on all factors—up to 30 points.

6.3.2.1.b. Demonstration of substantial readiness on the majority of factors—up to 20 points.

6.3.2.1.c. Demonstration of substantial readiness on some factors—up to 10 points.

6.3.2.2. Operational Readiness, the degree to which the proposed project demonstrates (i) an experienced leadership team and a strong governance model, (ii) the strength of support from key vendors, contractors, and partners, including the degree to which agreements are in place, and (iii) the degree of maturity of operating systems and processes that will support the proposed project—up to 30 points.

6.3.2.3. The ability of the proposed project to serve customers at a gigabit speed (1000/500 Mbps)- up to 40 points.

6.3.3. One hundred points may be awarded in the Financial evaluation based on the on the following prioritization factors:

6.3.3.1. Cost-efficiency relative to the difficulty of the project proposed. Evaluation will include as key metrics the proposed grant amount per unserved premise passed by the project and proposed grant amount per mile of new cable or fiber plant proposed. The Department may also consider factors that may make certain areas more difficult and costly to serve, such low density, extensive make-ready costs or unavoidable underground construction, to the extent that the applicant is able to provide evidence for such conditions.

6.3.3.1.a. Very high efficiency, meaning a very low grant cost per mile and per unserved premise passed, relative to the difficulty of the proposed project—up to 40 points.

6.3.3.1.b. High efficiency, meaning a low grant cost per mile and per unserved premise, relative to the difficulty of the proposed project—up to 30 points.

6.3.3.1.c. Moderate efficiency, meaning a moderate grant cost per mile and per unserved premise passed, relative to the difficulty of the proposed project—up to 20 points.

6.3.3.1.d. Low efficiency, meaning a high moderate grant cost per mile and per unserved premise passed, relative to the difficulty of the proposed project—up to 10 points.

6.3.3.2. Financial resiliency. The Department will consider the financial sustainability of the project under adverse assumptions such as delays in project completion, lower-than-expected take rate or revenue and higher-than-expected initial capital or ongoing operating costs.

6.3.3.2.a. Very high sustainability, meaning financial resiliency under most plausible adverse scenarios—up to 30 points.

6.3.3.2.b. High sustainability, meaning financial resiliency under many common adverse scenarios—up to 20 points.

6.3.3.2.c. Moderate sustainability, meaning financial sustainability under moderately adverse scenarios—up to 10 points.

6.3.3.2.d. The commitment of proposed match sources—up to 10 points

6.3.3.2.e. The amount of matching funding proposed by the applicant—one point for every \$50 in matching funding provided over \$500 per passed address, up to a maximum of 20 points (which equals \$1500 per passed address).

6.3.4. One hundred points may be awarded in the Broadband Development Impact evaluation based on the on the following prioritization factors:

6.3.4.1. Affordability-

6.3.4.1.a. Price of the lowest generally available non-promotional residential service tier with speeds not less than 25/3 Mbps and no data cap—one point for every \$5 under \$85/month, up to a maximum of 10 points.

6.3.4.1.b. Offering a discounted service tier to low-income customers with speeds not less than 25/3 Mbps and no data cap for a cost that is fully subsidized by the FCC's Emergency Broadband Benefit Program and subsequent affordability programs identified by the U.S. Treasury as a requirement of ARPA Capital Projects Fund funding—10 points.

6.3.4.2. Level of demonstrated community support through formation of a public-private partnership, local government land, facilities, or matching funds provided, local agreements to take service, response to presubscription campaigns—up to 30 points.

6.3.4.3. Community impact factors—up to 50 points based on impact within the community, for reasons such as:

6.3.4.3.a. The project's location in an area of low or moderate income, high poverty, high unemployment or economic distress;

6.3.4.3.b. The project supports a credible plan to increase broadband adoption and improve digital literacy in the affected communities, especially among populations that have experienced inequities in access to work, education, and health care or health information that resulted from, was made apparent or was exacerbated by the COVID-19 public health emergency;

6.3.4.3.c. The project would provide service that supports a major economic development initiative identified by a regional planning or development council or economic development authority;

6.3.4.3.d. The project supports or implements a recent broadband planning initiative in a county or region;

6.3.4.3.e. The project is coordinated with or builds upon other nearby projects that will provide greater regional benefit;

6.3.4.3.f. The project has strategic partnerships involved in the proposed project, for example, electric utilities, universities, and federal, state, or local agencies;

6.3.4.3.g. The project addresses unserved premises in a region of the state with high need but relatively few funded projects; or

6.3.4.3.h. The project supports adopted state plans or priorities not otherwise addressed by other prioritization factors.

6.3.5. Projects with a high point value in all three areas, Technical/Operational, Financial, and Broadband Development Impact, will be the highest priorities for available funding. The Department may consider other proposed projects to the extent that funds are available.

6.4. The Secretary will issue written decisions on applications to applicants within ten days of the Secretary's completion of its final review of an application. Grants are awarded on a reimbursement basis.

6.4.1. Construction Timeline. Construction must be able to be completed and ready to serve customers within 12 months from award; this may be extended up to an additional 6 months for delays not caused by the applicant. Customer drops at targeted addresses requesting new service are eligible for reimbursement within 24 months of award.

6.4.2. Cost Reasonableness. Proposed costs must be reasonable and proportional to the density and difficulty of the proposed project.

6.4.3. Projects selected for award will receive a Preliminary Approval Announcement, which will be published on <http://broadband.wv.gov>. Internet Service Providers other than the applicant will receive an opportunity to submit data demonstrating that the ISP currently offers broadband service at 25/3 Mbps or greater to addresses within the Proposed Project Funded Service Area. Data submitted must meet all the requirements described in the Process for Soliciting Information Regarding Unserved Areas, which the Department published on July 12, 2021. Notwithstanding the response deadline stated in the Process for Soliciting Information Regarding Unserved Areas, ISPs providing data must submit to the Department data related to projects receiving Preliminary Approval Announcement not later than 14 days after the publication of the Announcement. Based on submitted data, the Department may request that a preliminary awardee submit a revised project removing parts that solely benefit some or all addresses identified as served, the Department may withdraw the preliminary approval, or the Department may allow the preliminary award to proceed without changes. ISP-submitted data alone will not be dispositive. In making its determination, the Department will also consider:

6.4.3.1. Previous opportunities that the ISP submitting information has had to provide data to the Department;

6.4.3.2. Any data provided by the preliminary awardee about availability of services in the proposed service area;

6.4.3.3. The extent of overlap between the proposed project and existing services, and the impact that modification of the proposed project would have on the ability of the proposed project to serve targeted addresses;

6.4.3.4. Whether the proposed project will offer services superior to the existing available services, and especially if existing services offer speeds less than 100/20 Mbps;

6.4.3.5. Information about user experiences on the current network, to the extent available, such as whether users actually receive internet service at or above speed thresholds at all hours of the day, or whether factors other than speed such as latency or jitter, or deterioration of the existing connections make their user experience unreliable;

6.4.3.6. Whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier); and

6.4.3.7. Other available data including but not limited to documentation of existing broadband internet service performance, federal and/or state collected broadband data, user speed test

results, and interviews with community members and business owners, and reports from community organizations.

### **§145-18-7. Application Requirements for GigReady Incentive Program.**

7.1. Program Purpose and Structure. The GigReady Incentive Program provides an opportunity for local governments and organizations to dedicate funds available through the American Rescue Plan Act (ARPA), or other local funding, to a broadband development initiative with technical and financial assistance from the Department, the Office, and the Council.

7.1.1. The GigReady program has two distinct phases. In the Technical Assistance Phase, communities are provided with assistance to scope projects, initiate processes for the selection of private partners and vendors, and complete other necessary steps in the broadband development process, in an effort to advance a project so the community can apply for Implementation Project funding through the GigReady Program. The Department will review Technical Assistance Applications and designate applications for either early Implementation Funding eligibility or extensive Technical Assistance development.

7.1.1.1. For communities which have already undertaken extensive efforts to define a broadband project, the Technical Assistance phase is expected to be brief, and such communities will be encouraged to apply to receive a commitment of Implementation funding from the Secretary for a project in early 2022.

7.1.1.2. For communities which are less advanced in the planning process, the technical assistance phase is expected to take more time. The GigReady Program expects to have Implementation Funding available when such communities advance to complete an application for Implementation Project funding.

7.1.1.3. In phase two, upon completion of the technical assistance phase, participants may then be eligible for Implementation Funding through the GigReady program or other funding sources.

7.1.2. Applicants that have qualifying, final-designed projects that do not need technical assistance can apply to proceed directly to Implementation Funding by submitting a complete application, including all information listed as “optional” in the funding application.

### 7.2. Technical Assistance Eligibility Requirements

7.2.1. Applicants may be municipalities, counties, or affiliated organizations, such as economic development corporations, regional planning and development councils, etc. Regional consortia of local governments may participate.

7.2.1.1. A single geographic area participating in the program may not receive assistance as part of overlapping local efforts. If a municipality and a county containing that municipality both wish to participate in a project covering the municipality, the Secretary may direct the municipality and the county to agree to a joint project as a condition of providing technical assistance. Similarly, counties and municipalities may have technical assistance conditioned upon applicants joining with a regional effort if one exists and is seeking to participate.

7.2.2. Documents demonstrating the applicant is a legal entity, such as a municipal charter.

7.2.3. No prior default or significant violations under any federal, state, or local broadband expansion funding program.

7.2.4. No suspension or debarment as a vendor by the State of West Virginia or any Federal agency within three years prior to filing an application with the Department for Program funding.

7.2.5. Projects proposed by Eligible Applicants are subject to review and possible approval, denial, or modification under the Review Guidelines.

7.2.6. Planning Committee. Applicants must have or create a broadband planning committee made up of citizens, staff, or local elected officials empowered by their local jurisdiction(s) to make planning decisions during the technical assistance process and be responsible for communication with their local governments and communities.

7.2.6.1. The suggested committee size is 3-7 members, or more for larger regional projects. Active participation during the technical assistance process by the committee members will be a requirement of continued participation in the Program.

7.2.7. Size of and Scope Project. There is no minimum size project to participate in the technical assistance program. However, participants will be required to demonstrate through the technical assistance process that their project will have sufficient operating scale to be viable. Small projects may be asked or required to join with nearby projects to receive implementation funding from the Program.

7.2.7.1. Proposed Funded Service Areas, the proposed network technology and standard or standards to be used in the proposed network, and the proposed high-level network design are not required at the time of Technical Assistance application but may be provided if known. Applicants that have not identified these at the time of application for technical assistance will be expected to identify them through the technical assistance process.

### 7.3. Technical Assistance Application process

7.3.1. Applications should be submitted online using the Secretary's form through the Secretary's portal, <https://broadband.wv.gov>

7.3.2. Applicants are encouraged to complete the items in the Implementation Phase application to the extent possible.

7.3.3. Technical Assistance Applications must include:

7.3.3.1. Applicant's legal name.

7.3.3.2. Applicant's contact information, including a person who is knowledgeable about the application to answer questions.

7.3.3.3. Applicant's planning committee members.

7.3.3.4. Applicant's estimated contribution to project implementation cost and the source of the funding, ARPA, or otherwise.

7.3.3.4.a. The estimated contribution amount is not final and binding until a proposed project cost is known, either at the time of Technical Assistance application, or after the completion of the technical assistance process. If known at the time of application, the application should detail the proposed sources of funding for the project.

7.3.4. Verification from an officer or authorized employee attesting that the statements and information within the application are true to the extent known.

7.4. Supplemental Information. The Secretary may request supplemental information from an applicant based upon regulations issued pursuant to the American Rescue Plan Act Capital Project funds by the United States Treasury or due to questions which arise in the course of reviewing an application.

7.5. Technical Assistance Application Deadline. The Secretary will establish application deadlines which will be posted on the Office's web portal.

7.6. Project Implementation Eligibility Requirements

7.6.1. A project may propose to serve multiple non-contiguous areas. Proposals will be required to offer service to all targeted addresses when the facilities along the route will be capable of providing last-mile services to those addresses. in awarded Eligible Service Areas.

7.6.2. Applicants are encouraged to propose projects which contain 50 or more targeted addresses.

7.6.2.1. Applicants must include in the count of the project's potential subscriber locations both the number of targeted addresses within the proposed Eligible Service Area(s) in the proposed project, as estimated by the Department for those Service Areas, and the number of served addresses that the proposal identifies will be passed by the proposed project.

7.6.2.2. Served addresses will be considered "passed" if they are within 250 feet of a proposed project fiber or cable route and the facilities along the route will be capable of providing last-mile services to those addresses. Applicants may include in their count additional served addresses set back further than 250 feet from the proposed project route. All targeted addresses within the proposed Eligible Service Area must be passed or covered by the proposed project, including those set back more than 250 feet from the proposed project route.

7.6.2.3. For the purposes of the GigReady Program, "targeted addresses" are those with no current access to internet service with at least 25 Mbps download and 3 Mbps upload (25/3 Mbps), and not in an area with an existing state, federal, or locally funded project to deliver mass-market broadband service with services of at least 25/3 Mbps. Addresses with current or future access to service only by satellite providers or mobile wireless networks are not considered served if they are not also served by a terrestrial broadband provider of fixed home broadband service offering services with a speed of at least 25/3 Mbps.

7.6.3. Project Plan. Applications must include a proposed project plan and timeline with a description of the proposed project, showing major milestones related to engineering, pole make-ready (including timely submission of pole attachment applications), permitting (including timely submission of required permits) construction of routes, and activation of customers, such that the proposed project can be completed within 24 months of award. The plan should include any major contingencies in the plan which could lead to delay in achieving identified milestones.

7.6.3.1. Project Plans must identify the network technology standard or standards to be used in the proposed network, such as DOCSIS 3.x, GPON, EPON, NG-PON2, XGSPON, and Active Ethernet. Networks using a PON architecture must identify the split ratio(s) to be used on the proposed facilities.

7.6.3.2. Projects must identify the Eligible Service Areas included in the proposed project. Proposals must include the proposed broadband infrastructure utilized to reach the targeted addresses within the proposed Eligible Service Areas. This should include the proposed network technology and standard or standards to be used in the proposed network, and the proposed high-level network design.

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7.6.3.3. High-level designs for networks utilizing fiber or cable technology must include but not be limited to the proposed fiber or cable route to reach the proposed targeted addresses. Proposed routes submitted must include any new routes needed to connect to the applicant's existing network. If interconnected with an existing network, proposals must also show the applicant's existing fiber or cable network routes within the municipalities (or if in an unincorporated area the county magisterial district) in or from which the applicant is proposing to extend its network. Existing routes may be either actual cable or fiber line routes, or the roads along which the applicant has existing network in the municipality or municipalities.

7.6.3.4. Proposals utilizing wireless technology must include a projected propagation plot of coverage from the proposed access points for point-to-multipoint networks and links for point-to-point elements, and an accompanying description of key assumptions used. The key assumptions shall include the prediction tool used, terrain and clutter resolution used to generate the plot, the signal strength (RSSI or RSRP for an LTE network) threshold at which areas are considered covered or uncovered, and the assumed height above ground level of subscriber equipment. Propagation plots may show multiple levels of service, but at a minimum should clearly identify signal strength at which users could expect to receive service in excess of 100/100 Mbps and 100/20 Mbps.

7.6.3.5. Respondents utilizing wireless technology must identify the sites used in the coverage projection. For each access point, the response must identify:

7.6.3.5.a. The latitude and longitude of the site,

7.6.3.5.b. Base station antenna information including manufacturer, model, azimuth, down tilt, and center line,

7.6.3.5.c. Base station equipment information with manufacturer, model number, and EIRP,

7.6.3.5.d. Whether the support structure at the site is existing or planned, whether the applicant intends to lease or own the structure, and whether the applicant has already acquired rights to use the site.

7.6.3.6. Information must be provided by sector for sectorized sites. If a proposal includes point-to-point wireless links, the proposal shall identify the points linked, the frequency to be used, data transmission rate supported, and link budget.

7.6.3.7. Proposals must include manufacturer data sheets for key radio equipment and antennas that are consistent with the projected coverage or reach shown on the planned network, including for point-to-point links, point-to-multipoint access points and end user equipment.

7.6.3.8. Proposals utilizing wireless technology must provide the same information for any adjacent sites in the applicant's existing network (sites which may provide overlapping coverage from the proposed sites). Upgrades to existing sites must provide site information before and after the proposed upgrade. If the use of licensed spectrum is proposed information must be provided demonstrating applicants' permitted use of the spectrum.

7.6.3.9. Map information must be provided in electronic format. Proposed and existing fiber or cable routes or proposed and existing access point sites and propagation plots may be submitted as either an ESRI shapefile or a KMZ/KML file.

7.6.4. Governance and Management. Proposals from local governments and affiliated organizations must describe how the project will be managed by one or more public entities or by a private

partner, and the governance structure overseeing the management and operations of the resulting projects. All applicants must demonstrate that they will have the technical and managerial experience required to successfully operate the proposed project.

7.6.5. Project budget. Applications must include a project budget with major cost categories and maximum project cost using the Secretary's spreadsheet template. Project budgets must detail the proposed sources of funding and terms, including funding from other governmental broadband expansion programs, if any.

7.6.5.1. Detail the proposed sources of funding for the project, the sum of which must equal the total proposed project cost. The application must identify the amount of grant funding sought from the program, and the amount of other funding from other sources including match from the applicant and any other sources of grant funds. The application must identify if any matching funds are from loans or backed by loan guarantees specifically backed or secured by the assets or revenues of the proposed project.

7.6.6. Applicant investment. Applicants must propose to invest not less than \$500 in allowed expenditures per address passed by the proposed project, whether served or unserved, with a demonstrated credible, non-contingent source of funding. The minimum \$500 of matching fund per passed or covered address must be provided by the applicant, or if the applicant is a municipality, county, or an affiliated organization, from its private partner. Public partners or other grant funds may provide additional match.

7.6.6.1. Customer drops, installations, and equipment for served addresses are not allowed expenditures.

7.6.6.2. In kind or force account contributions are not counted towards the applicant investment requirement.

7.6.7. Applicant and Project Financials. Applicants who propose a project that would cover targeted addresses greater than 10% of the count of the private partner's existing subscribers in West Virginia must provide the audited financial statements covering the most recent two years completed prior to the application deadline for the private partners and a pro forma cash flow for the proposed project. If the private partner's do not have audited financial statements, it may provide unaudited statements, but must complete an audit prior to receipt of grant funds.

7.6.7.1. The pro forma cash flow should include:

7.6.7.1.a. Expected revenues, detailing assumptions about revenue sources and/or customer classes and projected customer numbers, take rates, and average revenue per customer in each customer class.

7.6.7.1.b. Expected operating costs, detailing assumptions about major cost categories.

7.6.7.1.c. Expected initial capital costs, detailing assumptions about major cost categories.

7.6.7.1.d. Expected capital refresh/reinvestment in the network, detailing assumptions about major cost categories.

7.6.7.1.e. Assumed capital funding sources, including grants, partner contributions, cash reserves, debt, and equity.

7.6.7.1.f. Assumed debt and capital lease servicing costs.

7.6.7.2. The pro forma analysis should be for not less than a 10-year period, or the length of any expected debt or capital leases, whichever is longer. Applicants must identify any periods during which the project is expected to have a net operating revenue loss and identify the expected source of funds to cover those losses.

7.6.8. Service Tiers. Applications must include the proposed service tier offerings by upload and download speed, latency, data caps if any, regular monthly fees, and incidental fees (for equipment, service activation, service calls, and the like) expected to be offered upon completion of the Project. For Applicants with a private partner that is an existing internet service provider, the same information regarding the partner internet service provider's current service tier offerings in West Virginia or adjacent states. Applicants must offer broadband on a stand-alone basis, but Applicants may also offer bundled services. Prices provided should include charges for common equipment, applicable fees and surcharges, and data overages. The application should identify any non-recurring charges for service activation, and describe policies and charges governing non-standard installations, including standard drop lengths and charges for long drops. The application should identify any discounts offered by the applicant or through government programs to low-income households.

7.6.8.1. If an applicant's private partner internet service provider has no facilities in West Virginia but does have facilities in a neighboring state, the application should describe service tiers and charges in the state nearest to the proposed project.

7.6.8.2. Comparable rates. Projects with a private actual internet service provider must propose to offer service tiers to addresses to be served by the project which do not exceed the service tier charges (excluding local taxes) the applicant offers to its other mass-market customers in West Virginia or neighboring states.

7.6.8.3. Applicants will be required to participate in federal programs that provide low-income consumers with subsidies on broadband Internet access services within funded areas. Initially, Applicants will be required to participate in the Federal Communications Commission's (FCC) Emergency Broadband Benefit (EBB) program. Once the EBB program has terminated, the U.S. Treasury will identify other program(s) applicants will be required to participate in to meet this requirement. Applicants will be informed of new affordability programs the U.S. Treasury identifies as a requirement of projects receiving Capital Projects Funds. Treasury will not identify affordability programs requiring Eligible Telecommunications Carrier (ETC) designation.

7.6.9. Minimum service speed. Project should propose to offer service in the extension area of at least 100 Mbps download, 20 Mbps upload, and less than 100 ms latency, with at least one service tier offered on a mass-market basis which exceeds the minimum service speeds. Applicants proposing projects that cannot reliably provide upload speeds of 100 Mbps as proposed must describe how their proposed project will be scalable to a minimum of 100 Mbps symmetrical speed in the future. Such applicants must also describe the reasons why it would not be practicable at the present time to deliver 100 Mbps symmetrical through the proposed project. Where practicable, applicants are encouraged to offer higher speed service tiers, including Gigabit service (1000 Mbps download / 500 Mbps upload).

7.6.10. Construction period. The applicant must be able to complete construction of the proposed project within 24 months from the date of award.

7.6.10.1. At the discretion of the Secretary, awardees may receive an extension of completion deadlines of up to six months for good cause.

7.6.10.2. Notwithstanding project completion requirements, customer drops at targeted addresses requesting new service may be considered part of project costs within 36 months from the date of award and completed in a timely manner upon customer request.

#### 7.7. Implementation Project Application process

7.7.1. Applications should be submitted online using the Secretary's form through the Secretary's portal, <https://broadband.wv.gov>

#### 7.7.2. In addition to other required information, applications must include:

7.7.2.1. Governance and Management. Applications from local governments and affiliated organizations must describe how the project will be managed by one or more public entities or by a private partner, and the governance structure overseeing the management and operations of the resulting projects

7.7.2.2. Applicant's contact information, including a person who is knowledgeable about the proposed project to answer questions.

7.7.2.3. Identification of targeted addresses to be served by the project which are identified on the Secretary's Target Area map.

7.7.2.4. Identification of already served addresses expected to be passed to reach targeted addresses.

7.7.2.5. Identification of the route via electronic formatted map to reach the proposed targeted addresses, including all new routes needed to connect to the applicant's existing network or that of its private internet service provider partner.

7.7.2.6. Presentation of applicant's existing fiber or cable network routes or that of its private internet service provider partner in electronic formatted map within the municipality, or if in an unincorporated area the county magisterial district, in or from which the applicant is proposing to extend its network.

7.7.2.7. Description of network technology standard or standards to be used in the proposed network.

7.7.2.8. Applications must include a proposed budget and maximum project cost using a Microsoft Excel spreadsheet template provided as a download within the grants portal. The proposed project cost must be broken down by major cost categories provided in the template.

7.7.2.9. Applications must detail the proposed sources of funding for the project, the sum of which must equal the total proposed project cost. The application must identify the amount of grant funding sought from the program, and the amount of other funding from other sources including match from the applicant and any other sources of grant funds. The application must identify if any matching funds are from loans or backed by loan guarantees specifically backed or secured by the assets or revenues of the proposed project.

7.7.2.10. Applications must include a proposed project plan and timeline with major milestones showing that the proposed project can be completed within 24 months of award. The plan should include any major contingencies in the plan. It should include at a minimum major milestones related to engineering, pole make-ready (including timely submission of pole attachment applications), permitting (including timely submission of required permits) construction of routes, and activation of customers.

7.7.2.11. Applications must include a list of common service tiers, including upload and download speeds, data caps, and prices. For applicants with a private internet service provider partner, applications must include rates and charges currently offered to residential and small business customers in West Virginia on the applicant partner's existing network. If an applicant or its private internet service provider partner has no facilities in West Virginia but does have facilities in a neighboring state, the application should describe services in the state nearest to the proposed project. The application should describe typical latency experienced by users on the network.

7.7.2.12. Prices provided should include charges for common equipment, applicable fees and surcharges, and data overages. Bundled and promotional pricing may be provided, but in addition to, not instead of non-promotional pricing and pricing for stand-alone internet service. The application should identify any non-recurring charges for service activation, and describe policies and charges governing non-standard installations, including standard drop lengths and charges for long drops. The application should identify any discounts offered by the applicant or through government programs to low-income households.

7.7.2.13. Verification from an officer or authorized employee attesting that the statements and information within the application are true to the extent known.

## 7.8. Supplemental Information

7.8.1. The Secretary may request supplemental information from an applicant based upon regulations issued pursuant to the American Rescue Plan Act Capital Project funds by the United States Treasury or due to questions which arise in the course of reviewing an application.

## 7.9. Application due date

7.9.1. The Secretary will establish application due dates which will be posted on the Secretary's application portal.

## 7.10. Reimbursable Expenditures

7.10.1. Projects receiving funding may be reimbursed for actual capital expenses up to a maximum project cost identified in the award. Costs must be directly related upfront investment associated with installing and/or upgrading existing broadband facilities on the proposed project on a one-time, capital improvement basis.

### 7.10.2. Eligible project activities and costs include:

7.10.2.1. Network and access equipment costs.

7.10.2.2. Outside plant costs.

7.10.2.3. Tower and pole costs: Includes the construction of new towers (where required infrastructure does not exist) and costs involved with structural changes to existing towers.

7.10.2.4. Reasonable make-ready and one-time pole licensing costs, excluding recurring pole attachment payments.

7.10.2.5. Equipment shelter, land, site preparation, and site restoration costs.

7.10.2.6. Customer premises equipment: Funding only covers up to the network demarcation point (e.g., NID or ONT).

7.10.2.7. Professional services: Includes engineering and project management costs involved in designing and constructing the proposed project.

7.10.2.8. Testing.

7.10.2.9. Other upfront costs: Includes any other upfront costs not covered in other categories, such as site preparation, permits, required licenses, sales tax applicable to new equipment purchases, shipping and warehousing expenses, and miscellaneous minor material; and

7.10.2.10. Long-term leases, defined as leases for a duration longer than 1 year, of facilities required to provide broadband service on the proposed project.

7.10.3. Internal labor costs incurred as part of eligible project activities are only reimbursable up to the proportion of employees' time spent exclusively on project activities during the period for which reimbursement is sought. When seeking reimbursement, applicants must submit such costs as line-items and provide supporting documentation for the expense. Supporting documentation shall include time spent by each employee on project activities, total time spent by each employee during the period for which reimbursement is sought, and an hourly cost that may include employee salary, itemized payroll taxes and benefits. Indirect costs are not reimbursable.

7.10.4. Costs that appear excessive and/or without justification and costs not considered eligible will not be reimbursed.

7.10.5. Ineligible costs include:

7.10.5.1. Internal administrative activities.

7.10.5.2. Fundraising activities.

7.10.5.3. Computers or office equipment.

7.10.5.4. Vehicles.

7.10.5.5. Equipment owned or leased by the customer, including routers and modems, and any other costs beyond the network interface point.

7.10.5.6. Operating expenses.

7.10.5.7. Expenses incurred prior to the date of the grant award announcement.

7.10.5.8. Acquisition of spectrum licenses.

7.10.5.9. Short-term operating leases.

7.10.5.10. Payment of interest or principal on outstanding debt instruments, or other debt service costs.

7.10.5.11. Fees or issuance costs associated with the issuance of new debt.

7.10.5.12. Satisfaction of any obligation arising under or pursuant to a settlement agreement, judgment, consent decree, or judicially confirmed debt restructuring plan in a judicial, administrative, or regulatory proceeding; or

7.10.5.13. To support or oppose collective bargaining.

7.10.6. Expenditures or ineligible costs cannot be used as match.

7.10.7. Projects must primarily target targeted addresses. Facilities that are needed to deliver last-mile broadband service to targeted addresses and incidentally cover served addresses are reimbursable, but expenditures solely to benefit served addresses are not reimbursable. Customer drops, installations, and equipment at served addresses are not eligible for reimbursement.

### **§145-18-8. Review Guidelines for GigReady Incentive Program Applications.**

8.1. Technical Assistance Applications will be initially reviewed for completeness. Incomplete applications may be returned to applicants for additional information. Responses to requests for additional information will become part of the application.

8.2. The Department will review Technical Assistance Applications and designate applications for either early Implementation Funding eligibility or extensive Technical Assistance development.

#### 8.3. Implementation Funding Project Prioritization:

8.3.1. Awards will be prioritized among proposals and applicants meeting program eligibility requirements (“Eligible Proposals”). Evaluation will score the Eligible Proposal in three areas: Technical, Financial and Broadband Development Impact.

8.3.2. One hundred points may be awarded in the Technical/Operational evaluation based on the following prioritization factors:

8.3.2.1. Project Readiness, the degree to which the proposed project demonstrates that (i) the completion of preliminary engineering, (ii) the attainment of necessary permits, right-of-way access, and easements, and (iii) the completion of necessary pole and conduit licenses.

8.3.2.1.a. Demonstration of full readiness on all factors—up to 30 points.

8.3.2.1.b. Demonstration of substantial readiness on the majority of factors—up to 20 points.

8.3.2.1.c. Demonstration of substantial readiness on some factors—up to 10 points.

8.3.2.2. Operational Readiness, the degree to which the proposed project demonstrates (i) an experienced leadership team and a strong governance model, (ii) the strength of support from key vendors, contractors, and partners, including the degree to which agreements are in place, and (iii) the degree of maturity of operating systems and processes that will support the proposed project—up to 30 points.

8.3.2.3. The ability of the proposed project to serve customers at a gigabit speed (1000/500 Mbps)- up to 40 points.

8.3.3. One hundred points may be awarded in the Financial evaluation based on the on the following prioritization factors:

8.3.3.1. Cost-efficiency relative to the difficulty of the project proposed. Evaluation will include as key metrics the proposed grant amount per unserved premise passed by the project and proposed grant amount per mile of new cable or fiber plant proposed. The Department may also consider factors that may make certain areas more difficult and costly to serve, such low density, extensive make-ready costs or

unavoidable underground construction, to the extent that the applicant is able to provide evidence for such conditions.

8.3.3.1.a. Very high efficiency, meaning a very low grant cost per mile and per unserved premise passed, relative to the difficulty of the proposed project—up to 40 points.

8.3.3.1.b. High efficiency, meaning a low grant cost per mile and per unserved premise, relative to the difficulty of the proposed project—up to 30 points.

8.3.3.1.c. Moderate efficiency, meaning a moderate grant cost per mile and per unserved premise passed, relative to the difficulty of the proposed project—up to 20 points.

8.3.3.1.d. Low efficiency, meaning a high moderate grant cost per mile and per unserved premise passed, relative to the difficulty of the proposed project—up to 10 points.

8.3.3.2. Financial resiliency. The Department will consider the financial sustainability of the project under adverse assumptions such as delays in project completion, lower-than-expected take rate or revenue and higher-than-expected initial capital or ongoing operating costs.

8.3.3.2.a. Very high sustainability, meaning financial resiliency under most plausible adverse scenarios—up to 30 points.

8.3.3.2.b. High sustainability, meaning financial resiliency under many common adverse scenarios—up to 20 points.

8.3.3.2.c. Moderate sustainability, meaning financial sustainability under moderately adverse scenarios—up to 10 points.

8.3.3.2.d. The commitment of proposed match sources—up to 10 points

8.3.3.2.e. The amount of matching funding proposed by the applicant—one point for every \$50 in matching funding provided over \$500 per passed address, up to a maximum of 20 points (which equals \$1500 per passed address).

8.3.4. One hundred points may be awarded in the Broadband Development Impact evaluation based on the on the following prioritization factors:

8.3.4.1. Affordability-

8.3.4.1.a. Price of the lowest generally available non-promotional residential service tier with speeds not less than 25/3 Mbps and no data cap—one point for every \$5 under \$85/month, up to a maximum of 10 points.

8.3.4.1.b. Offering a discounted service tier to low-income customers with speeds not less than 25/3 Mbps and no data cap for a cost that is fully subsidized by the FCC's Emergency Broadband Benefit Program and subsequent affordability programs identified by the U.S. Treasury as a requirement of ARPA Capital Projects Fund funding—10 points.

8.3.4.2. Level of demonstrated community support through formation of a public-private partnership, local government land, facilities, or matching funds provided, local agreements to take service, response to presubscription campaigns—up to 30 points.

8.3.4.3. Community impact factors—up to 50 points based on impact within the community, for reasons such as:

8.3.4.3.a. The project’s location in an area of low or moderate income, high poverty, high unemployment or economic distress;

8.3.4.3.b. The project supports a credible plan to increase broadband adoption and improve digital literacy in the affected communities, especially among populations that have experienced inequities in access to work, education, and health care or health information that resulted from, was made apparent or was exacerbated by the COVID-19 public health emergency;

8.3.4.3.c. The project would provide service that supports a major economic development initiative identified by a regional planning or development council or economic development authority;

8.3.4.3.d. The project supports or implements a recent broadband planning initiative in a county or region;

8.3.4.3.e. The project is coordinated with or builds upon other nearby projects that will provide greater regional benefit;

8.3.4.3.f. The project has strategic partnerships involved in the proposed project, for example, electric utilities, universities, and federal, state, or local agencies;

8.3.4.3.g. The project addresses unserved premises in a region of the state with high need but relatively few funded projects; or

8.3.4.3.h. The project supports adopted state plans or priorities not otherwise addressed by other prioritization factors.

8.3.5. Projects with a high point value in all three areas, Technical/Operational, Financial, and Broadband Development Impact, will be the highest priorities for available funding. The Department may consider other proposed projects to the extent that funds are available.

8.4. The Secretary will issue written decisions on applications to applicants within ten days of the Secretary’s completion of its final review of an application. Grants are awarded on a reimbursement basis.

8.4.1. Construction Timeline. Construction must be able to be completed and ready to serve customers within 24 months from award; this may be extended up to an additional 6 months for delays not caused by the applicant. Customer drops at targeted addresses requesting new service are eligible for reimbursement within 24 months of award.

Cost Reasonableness. Proposed costs must be reasonable and proportional to the density and difficulty of the proposed project.

8.4.2. Projects selected for award will receive a Preliminary Approval Announcement, which will be published on <http://broadband.wv.gov>. Internet Service Providers other than the applicant will receive an opportunity to submit data demonstrating that the ISP currently offers broadband service at 25/3 Mbps or greater to addresses within the Proposed Project Funded Service Area. Data submitted must meet all the requirements described in the Process for Soliciting Information Regarding Unserved Areas, which the Department published on July 12, 2021. Notwithstanding the response deadline stated in the Process for Soliciting Information Regarding Unserved Areas, ISPs providing data must submit to the Department data related to projects receiving Preliminary Approval Announcement not later than 14 days after the publication of the Announcement. Based on submitted data, the Department may request that a preliminary

awardee submit a revised project removing parts that solely benefit some or all addresses identified as served, the Department may withdraw the preliminary approval, or the Department may allow the preliminary award to proceed without changes. ISP-submitted data alone will not be dispositive. In making its determination, the Department will also consider:

8.4.2.1. Previous opportunities that the ISP submitting information has had to provide data to the Department;

8.4.2.2. Any data provided by the preliminary awardee about availability of services in the proposed service area;

8.4.2.3. The extent of overlap between the proposed project and existing services, and the impact that modification of the proposed project would have on the ability of the proposed project to serve targeted addresses;

8.4.2.4. Whether the proposed project will offer services superior to the existing available services, and especially if existing services offer speeds less than 100/20 Mbps;

8.4.2.5. Information about user experiences on the current network, to the extent available, such as whether users actually receive internet service at or above speed thresholds at all hours of the day, or whether factors other than speed such as latency or jitter, or deterioration of the existing connections make their user experience unreliable;

8.4.2.6. Whether the existing service is being delivered by legacy technologies, such as copper telephone lines (typically using Digital Subscriber Line technology) or early versions of cable system technology (DOCSIS 2.0 or earlier); and

8.4.2.7. Other available data including but not limited to documentation of existing broadband internet service performance, federal and/or state collected broadband data, user speed test results, and interviews with community members and business owners, and reports from community organizations.

#### **§145-18-9. Fund Administration.**

9.1. The Secretary will administer amounts in the Broadband Fund.

9.2. Successful Applicants will be required to enter into a Grant Distribution Agreement with the Secretary. The Grant Distribution Agreement will include, but is not limited to, the following obligations:

9.2.1. Presentation of final engineering design documents prepared under the supervision of a licensed professional engineer or by a degreed engineer with substantial experience designing cable or fiber broadband networks. This requirement may be waived by the Secretary for projects awarded less than \$1,000,000 in grant funding to facilitate projects with a rapid project construction schedule.

9.2.2. Quarterly progress reports addressing progress in achieving milestones according to the project schedule, project expenditures, number of fiber miles deployed or equipped towers installed, number of formerly unserved residential and non-residential addresses which now have broadband service offered, number of subscribers to constructed facilities, and number of jobs created.

9.2.3. Cooperation with field audits to verify completeness and quality of constructed facilities

9.2.4. Submission of as-built network documentation.

9.3. Grant Recipient Obligations and Post Award Monitoring. Awardees of grant funds must comply with post-award monitoring and reporting requirements to maintain continued eligibility for disbursement of grant funds. Awardees are responsible for active technical, financial, and project management of awarded projects through their own staff and/or by hiring and managing well-qualified contractors. Awardees should also expect to cooperate with technical and financial monitoring and review provided by Department contractors and staff.

9.3.1. Awardees must submit engineered designs prior to reimbursement. Designs must be prepared under the review of a P.E. or an engineer with substantial demonstrated experience designing cable or fiber networks whose credentials are submitted along with the design. This requirement may be waived by the Secretary for projects awarded less than \$1,000,000 in grant funding to facilitate projects with a rapid project construction schedule.

9.3.2. Disbursement of grant funds will require submission of proof of expenditures on eligible costs for review prior to reimbursement. Awardees must cooperate with field audits performed by Department contractors to verify constructed plan completeness and quality and must submit as-built network documentation prior to final close-out of the grant.

#### 9.4. Reporting

9.4.1. Awardees will be required to complete quarterly progress reports through project completion. Progress reports will require information on:

- 9.4.1.1. Project expenditures.
- 9.4.1.2. Number of communities served.
- 9.4.1.3. Number of jobs created.

9.5. Awardees will be required to cooperate with the Department's federal reporting obligations for ARPA funding, including as a subrecipient of federal funds. Awardees should expect to provide information such as:

- 9.5.1. Projected construction start date (month/year).
- 9.5.2. Projected initiation of operations date (month/year).
- 9.5.3. Actual construction start date (month/year).
- 9.5.4. Actual initiation of operations date (month/year).
- 9.5.5. Project location (for broadband geospatial location data).
- 9.5.6. Information provided in Applicant proposals such as, speeds/pricing tiers to be offered, technology to be deployed, miles of fiber, cost per mile, and cost per passing
- 9.5.7. Information regarding:
  - 9.5.7.1. Number of households projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload.

9.5.7.2. Number of households with access to minimum speed standard of reliable 100 Mbps symmetrical upload and download.

9.5.7.3. Number of households with access to minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

9.5.7.4. Number of institutions and businesses projected to have increased access to broadband meeting the minimum speed standards in areas that previously lacked access to service of at least 25 Mbps download and 3 Mbps upload, in each of the following categories: business, small business, elementary school, secondary school, higher education institution, library, healthcare facility, and public safety organization.

9.5.7.5. The number of each type of institution with access to the minimum speed standard of reliable 100 Mbps symmetrical upload and download.

9.5.7.6. The number of each type of institution with access to the minimum speed standard of reliable 100 Mbps download and 20 Mbps upload.

9.5.7.7. Additional terms and conditions contained in the GDA.

9.6. For projects awarded to local governments or affiliated organizations, the Department may request that awardees enter into cooperative agreements with the Department or Regional Planning and Development Council for consolidated administration of reporting requirements.

9.7. Labor Standards. Awardees must comply with all applicable federal labor laws and regulations, and with all requirements for state, and local laws and ordinances to the extent that such requirements do not conflict with federal laws. U.S. Treasury encourages recipients of Capital Projects Funds funding to incorporate strong labor standards, including project labor agreements and community benefits agreements that offer wages at or above the prevailing rate. Potential applicants should become familiar with federal requirements and guidance specific to the Capital Projects Fund.

9.8. Compliance with Federal Funds Obligations. The U.S. Treasury has released Guidance for the Coronavirus Capital Projects Fund and it is expected to issue federal regulations for that Fund. Awardees must comply with APRA funding recipient obligations for the Capital Projects Fund, including obligations of a subrecipient of federal funds, in addition to reporting obligations. Awardees should expect to comply with requirements of other applicable federal statutes, regulations, and executive orders applicable to recipients of federal funds used by the Department for awards made under the program. Applicants should consider how and whether certain aspects of these requirements may apply.

9.8.1. Awardees will be subject to audit or review by the U.S. Treasury Inspector General and Government Accountability Office.

9.8.2. Awardee obligations are more fully described in the Department's Guide to Reporting and Compliance Obligations for West Virginia ARPA Broadband Investment Plan Recipients. Applicants should review this Guide and the applicable guidance provided and requirements identified by U.S. Treasury.

9.9. Successful applicants must present requests for reimbursement using the Secretary's spreadsheet form and provide supporting documentation. Matching funds must be spent by the awardee prior to reimbursement. Match must be spent on allowed expenditures.

9.10. The Secretary will act upon requests for reimbursement within 30 days of submittal. The Secretary will disburse funds for approved reimbursements within ten days of approval.

9.11. The Secretary will retain 10% of any grant award until project completion, including approval of all close out documents and reporting requirements.

9.12. Successful applicants are required to provide information about broadband availability and speeds in response to data collection requests from the Office of Broadband on an annual basis. Information must be reported statewide at the address level for all broadband networks operated by the awardee. Address-level reporting will be required immediately for grant-funded projects but may be deferred by the Secretary for non-grant funded networks to allow coordination with new Federal Communications Commission address-level data collection.