

## NC Counties Broadband Grants/Partnership Options, per SL2021-180

### Option 1. County Only, No State Match (authority under GS153A-459) .....2

**\*\*Key Points\*\***

- Counties entering into partnership with ISPs directly, including direct fund provision from General Fund, or ARPA funds, or a combination thereof:
  - Option 1: If using ARPA/SLFRF funds: ISP will be subrecipient or contractor and subject to Uniform Guidance requirements, along with County.
    - SLFRF Revenue Replacement Option: Must comply with NCGS 143B-1373 definitions/restrictions reference in GS153A-459 (ie minimum speed of 25/3 mbps, terrestrial only, unserved only)
    - SLFRF Broadband Infrastructure Option: Must comply with US Treasury requirements related to Broadband Infrastructure investments (ie 100mbps symmetrical, ISP participation in FCC ACP or similar program, etc) and must comply with NCGS 143B-1373 definitions/restrictions.
  - Option 2: If using general fund only, there is no authority to use property tax dollars (note: intentional move by NCGA)
    - Background: GS 153A-149 was not amended to add these types of broadband grants to the list of authorized functions, therefore a county still may not use property taxes if it goes it alone. The provision in 153A-149(g) just states that the authority to spend property taxes is separate from the authority undertake the activity. A county must have both. In this case, there is authority to award the grants under 153A-459, but not authority to expend property tax proceeds for that purpose.
  - Note: All investments, regardless of funding source must comply with state laws and definitions of unserved and broadband
- Note: GREAT & CAB participation excluded if County expends federal funds (ie ARPA/SLFRF) on broadband outside of state programs on or after May 1, 2021

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**\*\*Key Points\*\***

- County authority to leverage unrestricted general funds or federal ARPA funds established in this provision.
  - "Notwithstanding Article 8 of Chapter 143 of the General Statutes, or any provision of law to the contrary, a county may use unrestricted general funds or federal American Rescue Plan Act (P.L. 117-1) funds allocated to it for the purpose of improving broadband infrastructure for a financial match."
- For the GREAT program, the ISP enters into a partnership/contract directly with the County, including direct receipt of funds, outside of the state.
  - Determination of sub-recipient versus contractor sub-award will be based on individual County assessments and State assessments

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- Details forthcoming from NC BIO

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## **Option 1. County Only, No State Match (authority under GS153A-459)**

### **SECTION 38.10.(a) G.S. 153A-459 reads as rewritten:**

"§ 153A-459. County broadband acceleration.

A county may provide grants to unaffiliated private or nonprofit providers of broadband service, as that term is defined in G.S. 143B-1373(a)(2), for the purpose of expanding broadband service in unserved areas in the county. The grants shall be awarded on a technology neutral basis, shall be open to all private or nonprofit providers of broadband service, and may require matching funds by the private or nonprofit providers. A county shall seek and consider requests for proposal from providers prior to awarding a broadband grant and shall use reasonable means to ensure that potential applicants are made aware of the grant; provided, however, a county is not required to seek and consider requests for proposal when providing financial or other support in connection with an application from a private provider for a broadband service grant under G.S. 143B-1373. The county may use general fund revenue as well as State or federal funds for the grants. For purposes of this section, the term "unserved area" has the same meaning as in G.S. 143B-1373(a)(14). For any grants awarded pursuant to this section after the date this section becomes effective, the term "unserved area" shall not include any location where a private provider has been designated to receive funds through State or federally funded programs designed specifically for broadband service deployment if the recipient of the funding is in good standing with the grantor agency's requirements regarding construction build-out and time lines. Nothing in this section authorizes a county to provide high-speed Internet broadband service."

### **Key Points/Notes for Clarification:**

1. RFP process required if the County is not participating in a state-sponsored program, like GREAT or CAB.
2. General fund revenue does not include property tax dollars (those are not allowed for the purpose of broadband grants, per NCGS 153A-149).
3. Must use definition of broadband found in NC GS143B-1373(a)(2): terrestrial, at least 25/3 mbps.
4. Can only spend funds on "unserved areas" as defined in NCGS143B-1373(a)(14).
  - 4a. Unserved does not include locations where a provider has been designated to receive funding from state or federal programs (including, but not limited to, RDOF, ReConnect, GREAT, CAB, etc).

**Option 2. Federal-funded GREAT Program (GS143B-1373, including amendments from SL2019-230, SL2020-97, & SL2021-108, Section 38.1 and Section 38.4)**

**§ 143B-1373. Growing Rural Economies with Access to Technology (GREAT) program.**

(a) As used in this section, the following definitions apply:

- (1) Agriculture. – Activities defined in G.S. 106-581.1.
- (2) Broadband service. – For the purposes of this section, terrestrially deployed Internet access service with transmission speeds of at least 25 megabits per second (Mbps) download and at least 3 megabits per second upload (25:3).
- (2a) Business. – Any lawful trade, investment, or other purpose or activity, whether or not conducted or undertaken for profit. The term also includes community anchor points, agricultural operations, and agricultural processing facilities.
- (3) Coastal Plain Region. – The portion of the State lying east of the eastern boundaries of Franklin, Lee, Moore, Wake, and Warren Counties.
- (4) Cooperative. – An electric membership corporation, organized pursuant to Article 2 of Chapter 117 of the General Statutes, or a telephone membership corporation, organized pursuant to Article 4 of Chapter 117 of the General Statutes.
- (5) Eligible economically distressed county. – A county designated as a development tier one or tier two area, as defined in G.S. 143B-437.08, or a rural census tract, as defined in G.S. 143B-472.127(a)(2), located in any other county. For the purposes of this section, the tier designation that is in effect as of the beginning of a fiscal year shall be applied for all grants awarded for that fiscal year. With the exception of funds expended under this section or under G.S. 143B-1373.1, as enacted by Section 38.6(a) of this act, a county that has utilized federal funding for broadband infrastructure on or after May 1, 2021, shall be ineligible.
- (6) Eligible project. – An eligible project is a discrete and specific project located in an unserved economically distressed area seeking to provide broadband service to homes, businesses, and community anchor points not currently served. Eligible projects do not include middle mile, backhaul, and other similar projects not directed at broadband service to end users. If a contiguous project area crosses from one eligible county into one or more eligible adjacent counties, for the purposes of this section, the project shall be deemed to be located in the county where the greatest number of unserved households are proposed to be served.
- (7) Eligible recipient. – Eligible grant recipients are private providers of broadband services, including cooperatively organized entities, or any partnerships formed between cooperatively organized entities, private providers, or any combination thereof.
- (8) Household. – A house, apartment, single room, or other group of rooms, if occupied or intended for occupancy as separate living quarters, and where the occupants do not live with any other persons in the structure and there is direct access from the outside or through a common hall.
- (8a) Infrastructure. – Existing facilities, equipment, materials, and structures that an entity has installed either for its core business or public enterprise purposes. Examples include, but are not limited to, copper wire, coaxial cable, optical cable, loose tube cable, communication huts, conduits, vaults, patch panels, mounting hardware, poles, generators, battery and cabinet, network nodes, network routers, network switches, microwave relay, microwave receivers, site routers, outdoor cabinets, towers, easements, rights-of-way, and buildings or structures owned by the entity that are made available for location or collocation purposes.
- (9) Infrastructure costs. – Costs directly related to the construction of broadband infrastructure for the extension of broadband service for an eligible project, including

- installation, acquiring or updating easements, backhaul infrastructure, and testing costs. The term does not include overhead or administrative costs. The term also includes engineering and any other costs associated with securing a lease to locate or collocate infrastructure on public or private property or structures, but not including the actual monthly lease payment. The term does not include overhead or administrative costs.
- (10) Mountain Region. – The portion of the State lying west of and including Alleghany, Burke, Caldwell, Rutherford, and Wilkes Counties.
  - (11) Office. – The Broadband Infrastructure Office in the Department of Information Technology.
  - (11a) Partnership. – A project for which an Internet service provider affirms that a formalized agreement exists between the provider and one or more unaffiliated partners where the partner is one of the following:
    - a) A separate Internet service provider.
    - b) A nonprofit or not-for-profit, or a for-profit subsidiary of either, and the Internet service provider is being allowed access and use of the partner's infrastructure, on special terms and conditions designed to facilitate the provision of broadband services in unserved areas, or is utilizing a financial contribution provided by one or more partners. A county that is not engaged in providing consumer broadband service may qualify as a nonprofit for the purpose of this section.
  - (12) Piedmont Region. – The portion of the State lying west of and including Franklin, Lee, Moore, Richmond, Wake, and Warren Counties, to the eastern boundaries of Alleghany, Burke, Caldwell, Rutherford, and Wilkes Counties.
  - (12a) Prospective broadband recipient. – A household, home, business, community anchor point, agricultural operation, or agricultural processing facility that is currently unserved and is identified in an application submitted in accordance with this section.
  - (13) Secretary. – The Secretary of the Department of Information Technology.
  - (14) Unserved area. – A designated geographic area that is presently without access to broadband service, as defined in this section, or where internet access service does not meet the definition of broadband service. Areas where a private provider has been designated to receive funds through other State or federally funded programs designed specifically for broadband deployment shall be considered served if such funding is intended to result in construction of broadband in the area within 18 months or for the duration of the federal funding program for that area, or if the funding recipient is otherwise in good standing with the funding agency's regulations governing the funding program.
  - (15) Unserved household or business. – A household or business that does not presently have access to broadband service, as defined in this subsection.
- (b) The Growing Rural Economies with Access to Technology Fund is established as a special revenue fund in the Department of Information Technology. The Secretary may award grants from the Growing Rural Economies with Access to Technology Fund to eligible recipients for eligible projects. The funds shall be used by the recipient to pay for infrastructure costs associated with an eligible project. State funds appropriated to this Fund shall be considered an information technology project within the meaning of G.S.143C-1-2.
  - (c) A private provider receiving State or Federal funds to deploy broadband service in unserved areas may qualify such area for protection by submitting a listing of the census blocks, or portions thereof, comprising the State or federally funded project areas in a manner prescribed by the Office. The Office shall only utilize this data to update maps of census blocks to reflect these census blocks, or portions thereof, as being served. Failure on the part of a provider to submit the listing of census blocks by the cutoff date shall result in those areas being eligible for inclusion under the G.R.E.A.T. grant program

during subsequent program years. The Office shall use the census block data provided only for mapping of unserved areas. A project area shall remain protected for a period of 18 months from the submission of the listing information required under this subsection; provided, however, a private provider that has received protection for a project area shall submit written documentation by April 30 of the year following the program year that broadband deployment has begun or been completed, or is otherwise in good standing, in the census blocks, or portions thereof, that have been deemed ineligible by the Office under this subsection. Upon submission of documentation satisfactory to the Office, a projected project area shall remain protected until project completion. A project area where a private provider has forfeited or otherwise defaulted on an agreement in connection with receipt of funds to deploy broadband service shall be eligible for inclusion in this program in subsequent program years. Information provided to the Office pursuant to this subsection is not a public record, as that term is defined in G.S. 132-1.

(d) Applications for grants will be submitted at times designated by the Secretary and will include, at a minimum, the following information:

- (1) An attestation to the Office that the proposed project area is eligible.
- (2) The identity of the applicant and its qualifications and experience with deployment of broadband.
- (3) The total cost and duration of the project.
- (4) The amount to be funded by the applicant.
- (5) An illustration or description of the area to be served, identifying the number of homes and businesses that will have access to broadband as a result of the project, including any available addresses, or other identifying information satisfactory to the Office, for the foregoing. In the event that the Office is unable to identify the proposed project area with specificity, the Office may require the applicant to submit additional information. If construction of the proposed project would result in the provision of broadband service to areas that are not eligible for funding, those ineligible areas should be identified in the application along with the eligible areas.
- (6) An assessment of the current level of broadband access in the proposed deployment area.
- (7) The proposed construction time line.
- (8) A description of the services to be provided, including the proposed upstream and downstream broadband speeds to be delivered and any applicable data caps, provided that any applicant proposing a data cap below 150 Gigabytes of usage per month shall provide justification to the satisfaction of the Office that the proposed cap is in the public interest and consistent with industry standards.
- (9) Any other information or supplementary documentation requested by the Office.
- (10) A plan to encourage users to connect that incorporates, at a minimum, community education forums, multimedia advertising, and marketing programs.
- (11) For the proposed area to be served, the infrastructure cost per household or business for the project.
- (12) Evidence of support for the project from citizens, local government, businesses, and institutions in the community.
- (13) The proposed advertised speed to be marketed to end users.
- (14) An explanation of the scalability of the broadband infrastructure to be deployed for higher broadband speeds in the future.

(d1) An application submitted pursuant to this section shall include a project area map that provides location-specific data in a format required by the Office. A provider submitting an application pursuant to this section shall bear the burden of proof that the proposed area to be served can, in fact, be served using the proposed technology. The burden of proof may be satisfied by the submission of data, maps, and any other information satisfactory to the Office, demonstrating

that the area and number of prospective broadband recipients proposed to be served can be provided the minimum upload and download speeds indicated in the application.

- (e) Applications shall be made publicly available by posting on the website of the Department of Information Technology for a period of at least 20 days prior to award. During the 20-day period, any interested party may submit comments to the Secretary concerning any pending application. A broadband service provider currently providing broadband service in a project area proposed in an application may submit a protest of any application on the grounds the proposed project covers an area that is a protected area under subsection (c) of this section, or that the proposed project area contains ten percent (10%) or more of total households with access to broadband service as defined in this section. Protests shall be submitted in writing, accompanied by all credible and relevant supporting documentation, including specific addresses and detailed mapping demonstrating that the protesting broadband provider has installed infrastructure sufficient to provide broadband service to the specific addresses provided in the protest, along with an attestation that broadband service is available in the public right-of-way at the specific addresses indicated. The protest shall be considered by the Office in connection with the review of the application. Upon submission of evidence satisfactory to the Office that the proposed project area includes a protected area or prospective broadband recipients that are presently served, as measured using a methodology satisfactory to the Office, the Office may work with an applicant to amend an application to reduce the number of unserved prospective broadband recipients in the project area to reflect an accurate level of current broadband service. The Office may revise application scores in accordance with amended applications; however, the Office may reject any amended application resulting in a lower application score to the extent that the lower score would have impacted the ranking of the application in the initial scoring process. For applications with filed protests, the Secretary shall issue a written decision to the protesting party at least 15 days prior to the approval of that application. Following a protest that is granted for a portion of the application, the Office may release to an applicant the locations or areas declared ineligible. The information released to the applicant is not a public record, as that term is defined under G.S. 132-1, and shall remain confidential. Any provider submitting a protest shall verify that the information in the protest is accurate and that the protest is submitted in good faith. The Office may deny any protest or application that contains inaccurate information.

As a means of resolving a protest, the Office may utilize speed tests to determine if the protested area or individual households or businesses currently have access to broadband service as defined in this section. The Department shall publish the speed test methodology it uses to assess speed levels pursuant to this section. All decisions regarding the speed test to be utilized and the manner by which the speed tests are applied shall be made by the Secretary or the Secretary's designee.

- (f) The Office may consult with the Department of Commerce to determine if a broadband project proposed under this section will benefit a potential economic development project relevant to the proposed area outlined in the broadband project.
- (g) Applications shall be scored based upon a system that awards a single point for criteria considered to be the minimum level for the provision of broadband service with additional points awarded to criteria that exceed minimum levels. The Office shall score project applications in accordance with the following:
- (1) Partnership. – Projects proposing a partnership shall be given points in their application score. A proposed partnership shall (i) be in writing, (ii) provide the specific terms and conditions of the partnership, and (iii) be signed and attested to by the parties. A county or nonprofit may enter into proposed agreements with more than one applicant. For the purposes of scoring under this subdivision, one point shall be given for a proposed partnership that will make available existing infrastructure that has been installed for the partner's enterprise, nonconsumer broadband purposes, or any other property, buildings, or structures owned by the partner, for a proposed project under this section. A county or

nonprofit entity that proposes to provide a financial match shall be given one point. Notwithstanding Article 8 of Chapter 143 of the General Statutes, or any provision of law to the contrary, a county may use unrestricted general funds or federal American Rescue Plan Act (P.L. 117-1) funds allocated to it for the purpose of improving broadband infrastructure for a financial match. An applicant shall receive two additional points for a proposed partnership where the county’s financial match is comprised entirely from federal American Rescue Plan Act (P.L. 117-2) funds intended for broadband infrastructure. Nothing in this subdivision shall be deemed to authorize a county to provide broadband service.

- (2) Unserved households. – The Office shall give additional points to projects based upon the estimated number of unserved households within the eligible economically distressed county, as determined by the most recent data published by the Federal Communications Commission or any other information available to the Office. Points shall be given to projects that will be located in counties with estimated unserved households as follows:

**Unserved Households Points Given**

500 or less	1
501-1400	2
Over 1400	

- (3) Unserved households to be served. – The Office shall give additional points to projects that will provide broadband service based upon the percentage of the total unserved households within the eligible economically distressed county that the project will serve. The number of unserved households shall be determined using the most recent data published by the Federal Communications Commission or any other information available to the Office. Points shall be given to projects that will serve a percentage of unserved households within the project area as follows:

**% Unserved Households To Be Served Points Given**

Under Less than 15%	1
15% to 25%	2
Over 25%	3

- (4) Unserved businesses. – The Office shall give additional points to projects that will provide broadband service to unserved businesses located within the eligible economically distressed county, as determined by the most recent data published by the Federal Communications Commission or any other information available to the Office. Points shall be given to projects that serve unserved businesses within the project area as follows:

- a. Projects proposing to serve between 1 and 4 businesses shall receive 1 point.
- b. Projects proposing to serve between 5 and 10 businesses shall receive 2 points.
- c. Projects proposing to serve either (i) more than 10 businesses or (ii) a business with 31 or more full-time employees shall receive 3 points.

- (5) Cost per household or business. – The Office shall give additional points to projects that minimize the infrastructure cost of the proposed project per household or business, based upon information available to the Office. Points shall be given to projects based upon the estimated cost per household or business as follows:

- a. For projects proposed in the Piedmont or Coastal Plain Regions:

<b><u>Est. Cost per</u></b>	<b><u>Points</u></b>
<b><u>Household/Business</u></b>	

Up to \$3,500	9
\$3,500, up to \$5,000	8
\$5,000, up to \$6,000	7
\$6,000 and over	0

b. For projects located in the Mountain Region:

<u>Est. Cost per Household/Business</u>	<u>Points</u>
Up to \$4,500	9
\$4,500, up to \$6,000	8
\$6,000, up to \$7,000	7
\$7,000 and over	0

Base speed multiplier. – Projects that will provide minimum download and minimum upload speeds shall have the aggregate points given under subdivisions (1) through (5) of this subsection multiplied by a factor at the level indicated in the table below:

<u>Minimum Download: Minimum Upload</u>	<u>Score Multiplier</u>
100:20 Mbps, or greater	1.00
100 Mbps, symmetrical	2.00
Greater than 100:100 Mbps	3.00

An applicant proposing minimum download and minimum upload speeds of less than 100 Mbps., symmetrical, shall provide an attestation to the Office that, upon project completion, the completed infrastructure will be scalable to a minimum of 100 Mbps. download and 100 Mbps. upload on or before December 31, 2026, subject to the return of all federal American Rescue Plan Act (P.L. 117-2) funds received under this section and all of the grant forfeiture provisions in G.S. 143B-1373(l).

Additional points shall be awarded to counties providing a portion of a project's matching funds entirely from federal American Rescue Plan Act (P.L. 117-2) funds the county received directly from the federal government. For counties that received an aggregate of eight million dollars (\$8,000,000) or more directly from the federal government, the following points shall be added to the application score:

<u>County Match</u>	<u>Points</u>
\$1,000,000, up to \$2,000,000	1
\$2,000,000, up to \$4,000,000	2
\$4,000,000, up to \$6,000,000	3
\$6,000,000, up to \$8,000,000	4
\$8,000,000, or greater	5



For counties that (i) received less than an aggregate of eight million dollars (\$8,000,000) directly from the federal government from the American Rescue Plan Act (P.L. 117-2) and (ii) are providing a portion of a project's matching funds using the entirety of the federal funds the county received, together with any other unrestricted general fund monies, if needed, the following points shall be added to the application score:

<u>County Match</u>	<u>Points</u>
\$250,000, up to \$6,000,000	6
\$6,000,000, up to \$8,000,000	7

- (h) The Office shall score applications based upon the metrics provided in subsection (g) of this section. In awarding grants based upon the scoring metrics, the Office shall also award an additional point to projects where a county has a Community Broadband Planning Playbook that meets the guidelines established by the Office.
- (i) (Effective July 1, 2021) Applications receiving the highest score shall receive priority status for the awarding of grants pursuant this section. As a means of breaking a tie for applications receiving the same score, the Office shall give priority to the application proposing to serve the highest number of new households at the lowest cost per household. Applicants awarded grants pursuant to this section shall enter into an agreement with the Office. The agreement shall contain all of the elements outlined in subsection (d) of this section and any other provisions the Office may require. The agreement shall contain a provision governing the time line and minimum requirements and thresholds for disbursement of grant funds measured by the progress of the project. For projects where the application includes a proposed partnership, the agreement shall contain a provision requiring a certification of the existence of the partnership prior to disbursement of grant funds. Grant funds shall be disbursed only upon verification by the Office that the terms of the agreement have been fulfilled according to the progress milestones contained in the agreement. At project completion, the grant recipient shall certify and provide to the Office evidence consistent with Federal Communications Commission attestation that either speeds greater than those identified in the application guidelines or the proposed upstream and downstream broadband speeds identified in the application guidelines, and for which a base speed multiplier was awarded pursuant to subdivision (6) of subsection (g) of this section, are available throughout the project area prior to any end user connections. A single grant award shall not exceed four million dollars (\$4,000,000). No combination of grant awards under this section involving any single county may exceed eight million dollars (\$8,000,000) in a fiscal year. If funds remain available after all top scoring projects have been awarded a grant, then the next highest scoring projects may be awarded a grant even if the project is located in a county where a grant has been awarded in that fiscal year provided the total award associated with that county does not exceed eight million dollars (\$8,000,000) in that fiscal year.

No more than one-half of the funds appropriated to the fund established in subsection (b) of this section shall be disbursed for eligible projects located in a development tier two or tier three county. If the Office has not received enough grant applications for projects located in a development tier one county to disburse one-half of the funds appropriated to the fund established in subsection (b) of this section as of March 1 of each year, then the Office may allocate any unencumbered funds in the fund for eligible projects located in a development tier two or tier three county.

Any project that is applied for and not funded in an award round under this section shall be eligible for funding under the Completing Access to Broadband program, pursuant to G.S. 143B-1373.1.

- (j) Grant recipients are required to provide matching funds based upon the application scoring pursuant to

this section in the following minimum amounts:

<u>Score</u>	<u>Matching Requirement</u>
12.0 points or less	50%
Greater than 12.0 points, but less than 17.5 points	45%
17.5 points, up to 22.0 points	40%
Greater than 22.0 points	30%

Up to fifty percent (50%) of matching funds paid by the grant recipient may be comprised of third-party funding, including funds from other grant programs or federal funds, to the extent applicable rules permit. A grant recipient receiving a portion of matching funds from a county, where the county portion of matching funds is partially comprised of federal American Rescue Plan Act (P.L. 117-2) funding, may have the grant recipient's portion of the matching requirement imposed under this subdivision reduced to a maximum of twenty-five percent (25%). A grant recipient receiving a portion of matching funds from a county, where the county portion of matching funds is entirely comprised of federal American Rescue Plan Act (P.L. 117-2) funding, may have the grant recipient's portion of the matching requirement imposed under this subdivision reduced to a maximum of fifteen percent (15%).

- (k) The Office shall require that grant recipients offer the proposed advertised minimum download and minimum upload speeds identified in the project application for the duration of the five-year service agreement. At least annually, a grant recipient shall provide to the Office evidence consistent with Federal Communications Commission attestation that the grant recipient is making available the proposed advertised speed, or a faster speed, as contained in the grant agreement. For the duration of the agreement, grant recipients shall disclose any changes to data caps for the project area that differ from the data caps listed in the grant application to the Office.
- (l) The Office may cancel an agreement and the grant recipient shall forfeit the amount of the grant received if it fails to perform, in material respect, the obligations established in the agreement. The Office may also cancel an agreement if the grant recipient reduces or proposes to reduce the scope of the project to the extent that the reduction would result in either a lower score and reduced ranking for funding consideration or the amount of State matching funds the project would receive. Grant recipients that fail to provide the minimum advertised connection speed for which a reduction in matching funds was applied shall forfeit that amount. A grant recipient that forfeits amounts disbursed under this section is liable for the amount disbursed plus interest at the rate established under G.S. 105-241.21, computed from the date of the disbursement. The number of subscribers that subscribe to broadband services offered by the provider in the project area shall not be a measure of performance under the agreement for the purposes of this subsection. Within 60 days of the cancellation of the agreement for failure to perform, the Office may conduct a special application period. The Office may select a new grant recipient, in accordance with this section, to complete a project that is substantially similar in location and scope to the project described in the cancelled agreement. The portions of any new project selected that are identical to the project described in the cancelled agreement shall not be subject to the protest period described in subsection (e) of this section.
- (m) The Office of Broadband Infrastructure in the Department of Information Technology (Office) shall be the designated agency for receipt and disbursement of federal grant funds intended for the State for broadband expansion and shall seek available federal grant funds for that purpose. All federal grant funds received for the purpose of broadband expansion shall be disbursed in accordance with this section. The Office shall serve as the designated agency for the receipt of all State, federal, and private grants, gifts, or matching funds for broadband mapping, as provided by G.S. 143B-1370(a)(5)h. Funds

received under this subsection shall remain unexpended until appropriated by an act of the General Assembly.

- (n) Grant recipients shall submit to the Office an annual report for each funded project for the duration of the agreement. The report shall include a summary of the items contained in the grant agreement and level of attainment for each and shall also include (i) the number of households and businesses that have broadband access as a result of the project; (ii) the percentage of end users in the project area who have access to broadband service and actually subscribe to the broadband service; and (iii) the average monthly subscription cost for broadband service in the project area.
- (o) The Department of Information Technology shall submit an annual report to the Joint Legislative Oversight Committee for Information Technology and the Fiscal Research Division on or before September 1. The report shall contain at least all of the following:
  - (1) The number of grant projects applied for and the number of grant agreements entered into.
  - (2) A time line for each grant agreement and the number of households and businesses expected to benefit from each agreement.
  - (3) The amount of matching funds required for each agreement and the total amount of investment.
  - (4) A summary of areas receiving grants that are now being provided broadband service and the advertised broadband speeds for those areas.
  - (5) Any breaches of agreements, grant fund forfeitures, or subsequent reductions or refunds of matching funds.
  - (6) Any recommendations for the grant program, including better sources and methods for improving outcomes and accountability.
- (p) The Department may use up to one percent (1.0%) of the State funds appropriated each fiscal year to administer the program established under this section. (2018-5, s. 37.1(b); 2018-97, s. 10.1(a), (b); 2019-230, ss. 1-5.)

\*Starting July 1, 2022\*

"§ 143B-1373.1. G.R.E.A.T. program fixed wireless and satellite broadband grants.

- (a) The following definitions apply in this section:
- (1) Broadband service. – Internet access service provided by low-orbit geostationary satellites or fixed wireless networks with (i) a latency of 500 milliseconds or less and (ii) transmission speeds that are equal to or greater than the requirements for the minimum performance tier, as provided by the Federal Communications Commission in Paragraph 39 of the report and order adopted January 30, 2020, and released February 7, 2020.
  - (2) Equipment. – The antenna and any necessary hardware provided by a broadband service provider to a subscriber that enables the subscriber to connect to the broadband service. The term does not include a modem.
  - (3) Fixed wireless provider. – A broadband service provider that provides internet access to a subscriber via fixed antenna that receives a radio link from the provider's network to the subscriber.
  - (4) Grantee. – A broadband provider that has been awarded a grant pursuant to this section.
  - (5) Office. – The Broadband Infrastructure Office in the Department of Information Technology.
  - (6) Satellite broadband provider. – A broadband service provider that provides Internet access directly to consumers via satellite technology.
  - (7) Secretary. – The Secretary of the Department of Information Technology.
  - (8) Unserved household. – A household located in this State that does not have access to broadband service from a wireline or wireless service provider. A household that is included in an area where a grant from the Growing Rural Economies with Access to Technology (GREAT) program pursuant to G.S. 143B-1373 has been awarded is not eligible for a grant under this section.
- (b) Applications for grants will be submitted at times designated by and on forms prescribed by the Secretary. Notwithstanding any other provision of law, if the Secretary deems some of the information in an application to contain proprietary information, the Secretary may provide that such information is not a public record, as that term is defined in G.S. 132-1, subject to public records or other laws requiring the disclosure of such information and have that portion of the application redacted. An application shall include, at a minimum, the following information:
- (1) The identity of the applicant.
  - (2) The specific address of the subscriber.
  - (3) A description of the services provided, including the upstream and downstream broadband speeds delivered, latency metrics, and any applicable data caps. Any applicant proposing a data cap below 150 Gigabytes of usage per month shall also provide justification to the satisfaction of the Office that the proposed cap is in the public interest and consistent with industry standards.
  - (4) The cost to be charged to the unserved household for the equipment needed to connect to the broadband service for the next two years.
  - (5) Evidence of a contract with the subscriber, including the amount charged for the equipment and the installation of the equipment, necessary for providing broadband service to the subscriber.
  - (6) The terms and conditions imposed upon the subscriber, including restrictions on use and possession of equipment used for broadband service connection.
  - (7) Any other information or supplementary documentation requested by the Office.
- (c) The Office shall determine eligibility for a grant pursuant to this section based upon the information provided in the application of a broadband service provider and any other information or supplementary documentation requested by the Office. As a measurement of the provision of broadband equipment to an unserved household, the Office shall award grants to applicants that demonstrate the provision of equipment that has provided broadband service to an unserved household. The Office shall provide grants

to eligible broadband service providers for providing broadband service equipment to unserved households as follows:

- (1) Up to one thousand one hundred dollars (\$1,100) for the provision of satellite broadband equipment to any single unserved household, or up to seven hundred dollars (\$700.00) for the provision of fixed wireless broadband equipment to any single unserved household, providing broadband speeds of 50 megabits per second download and 3 megabits per second upload or greater.
- (2) Up to seven hundred dollars (\$700.00) for the provision of satellite broadband equipment to any single unserved household, or up to five hundred dollars (\$500.00) for the provision of fixed wireless broadband equipment to any single unserved household, providing less than 50 megabits per second download and 3 megabits per second upload.

The grants awarded by the Office shall not exceed the cost of the broadband provider's equipment, including any installation costs, necessary to provide broadband service to the unserved household.

- (d) Eligibility for a grant award is dependent upon the household maintaining broadband service with the grantee for at least 24 consecutive months. No grant shall be awarded for providing broadband service at an address that the Office has previously awarded a grant under this section. A grantee shall submit documentation to the Office annually that will provide information sufficient for the Office to verify eligibility of subscriptions, including that the household was unserved. Payment of grant funds is subject to documentation showing eligibility of subscriptions.
- (e) The Office shall require a grantee to enter into an agreement. The agreement shall contain at least all of the following:
  - (1) An address of the household subscribing for broadband service for which the grant is sought.
  - (2) A provision that requires the grantee to maintain its service for the subscriber for at least 24 consecutive months.
  - (3) A provision establishing the conditions under which the grant agreement may be terminated and under which grant funds may be recaptured by the Office.
  - (4) A provision stating that unless the agreement is terminated pursuant to its terms, the agreement is binding and constitutes a continuing contractual obligation of the State and the grantee.
  - (5) A provision that establishes any allowed variation in the terms of the agreement that will not subject the grantee to grant reduction, amendment, or termination of the agreement.
  - (6) A provision describing the manner in which the amount of the grant will be measured and administered to ensure compliance with the agreement and this section.
  - (7) A provision stating that any recapture of a grant and any reduction in the amount of the grant or the term of the agreement must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.
  - (8) A provision describing the methodology the Office will use to verify subscriptions and the types of information required to be submitted by the grantee.
  - (9) A provision stating that the grantee may not impose data caps upon any eligible subscription, for the term of the agreement.
  - (10) A provision stating that the equipment necessary for a subscriber to receive broadband service from the grantee shall be deemed a fixed asset upon the property of the eligible subscription and shall transfer with the property to any successors.
  - (11) Any other provision the Office deems necessary.
- (f) If the grantee fails to meet or comply with any condition or requirement set forth in an agreement, the Office shall reduce the amount of the grant or the term of the agreement, may terminate the agreement, or both. The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition with respect to which the failure occurred. If the Office finds that the grantee has manipulated or attempted to manipulate data with the purpose of increasing the amount of a

grant, the Office shall immediately terminate the agreement and take action to recapture any grant funds disbursed in any year in which the Office finds the grantee manipulated or attempted to manipulate data with the purpose of increasing the amount of a grant.

- (g) The grantee shall certify and provide to the Office evidence consistent with a Federal Communications Commission attestation that the proposed minimum upstream and minimum downstream broadband speeds and latency metrics identified in the application guidelines are and will be available throughout the project area during the term of the agreement prior to any end user connections. A grantee may receive a disbursement of a grant only after the Office has certified that the grantee has met the terms and conditions of the agreement. A grantee shall submit a certification of compliance with the agreement to the Office. The Office shall require the grantee to provide any necessary evidence of compliance to verify that the terms of the agreement have been met.
- (h) The Office shall require that a grantee offer the proposed advertised minimum download and minimum upload speeds and subscription cost identified in the application for the duration of the 24 consecutive months provided in the agreement. Upon request, a grantee shall provide to the Office evidence consistent with a Federal Communications Commission attestation that the grantee is making available the proposed advertised speed, or a faster speed, as contained in the grant agreement."

SECTION 38.7.(b) The Department may utilize up to one million dollars (\$1,000,000) in funds appropriated to the Growing Rural Economies with Access to Technology Fund established in G.S. 143B-1373(b) for grants awarded under this section.

SECTION 38.7.(c) This section becomes effective July 1, 2022.

### Option 3. Completing Access to Broadband (CAB) Program (newly established under SL2021-108)

#### "§ 143B-1373.1. Completing Access to Broadband program.

(a) As used in this section, the following definitions apply:

- (1) Broadband service. – Terrestrially deployed internet access service with transmission speeds of at least 25 megabits per second (Mbps) download and at least 3 megabits per second upload (25:3).
  - (2) Department. – The Department of Information Technology.
  - (3) Eligible area. – An area that is unserved or underserved in a county. A county that has utilized federal funding for broadband infrastructure projects on or after May 1, 2021, is not eligible.
  - (4) Office. – The Broadband Infrastructure Office within the Department of Information Technology.
  - (5) Project area. – An eligible area that is jointly determined by a requesting county and the Broadband Infrastructure Office within the Department of Information Technology as requiring project funding under this section to further complete the deployment of broadband service in the county.
  - (6) Unserved or underserved. – A location within a county that has no deployment of broadband service or that has internet access service that does not meet the definition of broadband service. Areas where a private provider has been designated to receive funds through other State- or federally funded programs designed specifically for broadband deployment shall be considered served if such funding is intended to result in construction of broadband in the area within 18 months or for the duration of the federal funding program for that area, or if the funding recipient is otherwise in good standing with the funding agency's regulations governing the funding program.
- (b) The Completing Access to Broadband Fund (CAB Fund) is established as a special revenue fund in the Department of Information Technology. The Secretary may award grants from the CAB Fund projects meeting the criteria established under this section. State funds appropriated to this Fund shall be considered an information technology project within the meaning of G.S. 143C-1-2. The Office shall establish procedures in accordance with this section that allow every county in the State to participate in the Completing Access to Broadband program. Monies awarded from the CAB Fund shall be used for infrastructure and infrastructure costs, as those terms are defined in G.S. 143B-1373(a). The State shall not be obligated for funds committed for project costs from the CAB Fund in excess of those sums appropriated by the General Assembly to the CAB Fund.
- (c) In collaboration with the Broadband Infrastructure Office, a county may request funding under this section for either a defined eligible project area that is mutually identified by the county and the Office or for a project that was not awarded a grant in the most recent round of grant awards under G.S. 143B-1373. All identified projects shall be subject to the bid process requirements in this subsection. In selecting project areas to receive funding, the Office shall give priority to eligible areas that a county has requested funding for based upon utilizing the Office's Community Broadband Planning Playbook and those counties that meet the criteria established in subsection (e) of this section. The Department shall utilize its authority under Part 4 of this Article to develop competitive bid processes for the procurement of the construction, installation, and operation of broadband infrastructure. Notwithstanding Article 8 of Chapter 143 of the General Statutes, or any other provision of law to the contrary, the Department may delegate to a county the authority to select a provider for the project area in accordance with Part 4 of this Article. The Department shall reserve the authority to approve the selection of a county pursuant to this subsection. Unless the county has bid processes acceptable to the Office, the Office shall utilize customizable

forms and procedures developed by the Department for the purposes of this subsection. Selections made pursuant to this subsection are not subject to the Department's administrative review authority under Article 3A of Chapter 150B of the General Statutes or the Department's administrative rules regarding information technology bid protests and contested case procedures. Selection of project areas shall be subject to the protections provided in G.S. 143B-1373(c). In conjunction with the bid process, a proposed project area shall be posted on the Department's website for a period of at least 10 days. Upon submission of credible evidence, a broadband service provider may request a project scope adjustment to the Office in accordance with G.S. 143B-1373(e). Upon a finding that the evidence submitted by the broadband service provider is credible, the Office shall work with the county to amend the scope of the project. The Office shall develop and administer any agreement entered into pursuant to this section. Nothing in this subsection shall be deemed to grant authority for a county to own, operate, or otherwise control broadband infrastructure contracted for under this section.

- (d) A broadband service provider selected for a project under this section may provide up to thirty percent (30%) of the total estimated project cost. The Office may commit up to thirty-five percent (35%) of the total estimated project cost from monies in the CAB Fund. The county requesting the project shall be responsible for at least thirty-five percent (35%) of the total estimated project cost and shall utilize federal American Rescue Plan Act (P.L. 117-2) funds or nonrestricted general funds for that purpose. In the event CAB Fund monies are insufficient to fund a project, a county may increase its share of the total estimated project cost, or the Office may adjust the scope of the project to meet the level of available funding. No county may receive more than four million dollars (\$4,000,000) in aggregate funding from the CAB Fund in any single fiscal year.
- (e) Notwithstanding the project cost responsibility allocations in subsection (d) of this section, for a county receiving from the federal government less than an aggregate of eight million dollars (\$8,000,000) in federal American Rescue Plan Act (P.L. 117-2) funds, a broadband service provider selected for a project shall provide not less than fifteen percent (15%) of the total estimated project cost. If a broadband service provider provides more than fifteen percent (15%) of the total estimated project cost, the State and county cost responsibilities shall be equally apportioned. The following cost responsibility allocations for counties meeting the requirements of this subsection and the State apply:

<u>Direct Federal Funds Received</u>	<u>County Responsibility</u>	<u>State Responsibility</u>
\$250,000, up to \$4,000,000	5%, minimum	Up to 80%
\$4,000,000, up to \$8,000,000	10%, minimum	Up to 75%

- (f) A broadband service provider selected for a project under this section shall enter into an agreement with the Office that shall include the project description, time lines, benchmarks, proposed broadband speeds, and any other information and documentation the Office deems necessary. All proposed broadband speeds must meet or exceed the federal guidelines for use of American Rescue Plan Act (P.L. 117-2) funds. Upon execution of an agreement, the county shall provide its portion of the total estimated project costs to the Office to be combined with CAB Funds awarded for the project and placed in a separate project account. The Office shall provide project oversight, and, upon completion of established benchmarks in the project agreement, the Office shall disburse funds from the project account to the broadband service provider. The forfeiture provisions in G.S. 143B-1373(l) shall apply to agreements entered into under this section."



**Post ARPA Future Years (post-2022). Traditional GREAT Program (codified in GS 143B-1373, as amended by SL2019-230, SL2020-97, & SL2021-108, Section 38.1)**

**§ 143B-1373. Growing Rural Economies with Access to Technology (GREAT) program.**

- (a) As used in this section, the following definitions apply:
- (1) Agriculture. – Activities defined in G.S. 106-581.1.
  - (2) Broadband service. – For the purposes of this section, terrestrially deployed Internet access service with transmission speeds of at least 25 megabits per second (Mbps) download and at least 3 megabits per second upload (25:3).
  - (3) Coastal Plain Region. – The portion of the State lying east of the eastern boundaries of Franklin, Lee, Moore, Wake, and Warren Counties.
  - (4) Cooperative. – An electric membership corporation, organized pursuant to Article 2 of Chapter 117 of the General Statutes, or a telephone membership corporation, organized pursuant to Article 4 of Chapter 117 of the General Statutes.
  - (5) Eligible economically distressed area. – A county designated as a development tier one or tier two area, as defined in G.S. 143B-437.08, or a rural census tract, as defined in G.S. 143B-472.127(a)(2), located in any other county. For the purposes of this section, the tier designation that is in effect as of the beginning of a fiscal year shall be applied for all grants awarded for that fiscal year.
  - (6) Eligible project. – An eligible project is a discrete and specific project located in an unserved economically distressed area seeking to provide broadband service to homes, businesses, and community anchor points not currently served. Eligible projects do not include middle mile, backhaul, and other similar projects not directed at broadband service to end users. If a contiguous project area crosses from one eligible county into one or more eligible adjacent counties, for the purposes of this section, the project shall be deemed to be located in the county where the greatest number of unserved households are proposed to be served.
  - (7) Eligible recipient. – Eligible grant recipients are private providers of broadband services, including cooperatively organized entities, or any partnerships formed between cooperatively organized entities, private providers, or any combination thereof.
  - (8) Household. – A house, apartment, single room, or other group of rooms, if occupied or intended for occupancy as separate living quarters, and where the occupants do not live with any other persons in the structure and there is direct access from the outside or through a common hall.
  - (8a) Infrastructure. – Existing facilities, equipment, materials, and structures that an entity has installed either for its core business or public enterprise purposes. Examples include, but are not limited to, copper wire, coaxial cable, optical cable, loose tube cable, communication huts, conduits, vaults, patch panels, mounting hardware, poles, generators, battery and cabinet, network nodes, network routers, network switches, microwave relay, microwave receivers, site routers, outdoor cabinets, towers, easements, rights-of-way, and buildings or structures owned by the entity that are made available for location or collocation purposes.
  - (9) Infrastructure costs. – Costs directly related to the construction of broadband infrastructure for the extension of broadband service for an eligible project, including installation, acquiring or updating easements, backhaul infrastructure, and testing costs. The term does not include overhead or administrative costs. The term also includes engineering and any other costs associated with securing a lease to locate or collocate infrastructure on public or private property or structures, but not including the actual monthly lease payment. The term does not include overhead or administrative costs.
  - (10) Mountain Region. – The portion of the State lying west of and including Alleghany, Burke, Caldwell, Rutherford, and Wilkes Counties.
  - (11) Office. – The Broadband Infrastructure Office in the Department of Information Technology.

(11a) Partnership. – A project for which an Internet service provider affirms that a formalized agreement exists between the provider and one or more unaffiliated partners where the partner is one of the following:

- a. A separate Internet service provider.
  - b. A nonprofit or not-for-profit, or a for-profit subsidiary of either, and the Internet service provider is being allowed access and use of the partner's infrastructure, on special terms and conditions designed to facilitate the provision of broadband services in unserved areas, or is utilizing a financial contribution provided by one or more partners where the total contribution is not less than ten percent (10%), but not more than forty-nine percent (49%), of the match required by this section. A county that is not engaged in providing consumer broadband service may qualify as a nonprofit for the purpose of this section.
- (12) Piedmont Region. – The portion of the State lying west of and including Franklin, Lee, Moore, Richmond, Wake, and Warren Counties, to the eastern boundaries of Alleghany, Burke, Caldwell, Rutherford, and Wilkes Counties.
- (12a) Prospective broadband recipient. – A household, home, business, community anchor point, agricultural operation, or agricultural processing facility that is currently unserved and is identified in an application submitted in accordance with this section.
- (13) Secretary. – The Secretary of the Department of Information Technology.
- (14) Unserved area. – A designated geographic area that is presently without access to broadband service, as defined in this section, offered by a wireline or fixed wireless provider. Areas where a private provider has been designated to receive funds through other State or federally funded programs designed specifically for broadband deployment shall be considered served if such funding is intended to result in construction of broadband in the area within 18 months or for the duration of the federal funding program for that area, or if the funding recipient is otherwise in good standing with the funding agency's regulations governing the funding program.

- (b) The Growing Rural Economies with Access to Technology Fund is established as a special revenue fund in the Department of Information Technology. The Secretary may award grants from the Growing Rural Economies with Access to Technology Fund to eligible recipients for eligible projects. The funds shall be used by the recipient to pay for infrastructure costs associated with an eligible project. State funds appropriated to this Fund shall be considered an information technology project within the meaning of G.S. 143C-1-2.
- (c) A private provider receiving State or Federal funds to deploy broadband service in unserved areas may qualify such area for protection by submitting a listing of the census blocks, or portions thereof, comprising the State or federally funded project areas in a manner prescribed by the Office. The cutoff date for submitting this census block data shall be established by the Office, but shall be not less than 60 days prior to the beginning date of the application period. This will enable the office to update maps and advise applicants as to the unserved areas of the State that are eligible. The Office shall only utilize this data to update maps of census blocks to reflect these census blocks, or portions thereof, as being served. Failure on the part of a provider to submit the listing of census blocks by the cutoff date shall result in those areas being eligible for inclusion under this program during subsequent program years. The Office shall use the census block data provided only for mapping of unserved areas. A project area shall remain protected for a period of 18 months from the submission of the listing information required under this subsection; provided, however, a private provider that has received protection for a project area shall submit written documentation by April 30 of the year following the program year that broadband deployment has begun or been completed, or is otherwise in good standing, in the census blocks, or portions thereof, that have been deemed ineligible by the Office under this subsection. Upon submission of documentation satisfactory to the Office, a projected project area shall remain protected until project

completion. A project area where a private provider has forfeited or otherwise defaulted on an agreement in connection with receipt of funds to deploy broadband service shall be eligible for inclusion in this program in subsequent program years. Information provided to the Office pursuant to this subsection is not a public record, as that term is defined in G.S. 132-1.

(d) Applications for grants will be submitted at times designated by the Secretary and will include, at a minimum, the following information:

- (1) An attestation to the Office that the proposed project area is eligible.
- (2) The identity of the applicant and its qualifications and experience with deployment of broadband.
- (3) The total cost and duration of the project.
- (4) The amount to be funded by the applicant.
- (5) An illustration or description of the area to be served, identifying the number of homes and businesses that will have access to broadband as a result of the project, including any available addresses, or other identifying information satisfactory to the Office, for the foregoing. In the event that the Office is unable to identify the proposed project area with specificity, the Office may require the applicant to submit additional information. If construction of the proposed project would result in the provision of broadband service to areas that are not eligible for funding, those ineligible areas should be identified in the application along with the eligible areas.
- (6) An assessment of the current level of broadband access in the proposed deployment area.
- (7) The proposed construction time line.
- (8) A description of the services to be provided, including the proposed upstream and downstream broadband speeds to be delivered and any applicable data caps, provided that any applicant proposing a data cap below 150 Gigabytes of usage per month shall provide justification to the satisfaction of the Office that the proposed cap is in the public interest and consistent with industry standards.
- (9) Any other information or supplementary documentation requested by the Office.
- (10) A plan to encourage users to connect that incorporates, at a minimum, community education forums, multimedia advertising, and marketing programs.
- (11) For the proposed area to be served, the infrastructure cost per household or business for the project.
- (12) Evidence of support for the project from citizens, local government, businesses, and institutions in the community.
- (13) The proposed advertised speed to be marketed to end users.
- (14) An explanation of the scalability of the broadband infrastructure to be deployed for higher broadband speeds in the future.

(d1) An application submitted pursuant to this section shall include a project area map that provides location-specific data in a format required by the Office. A provider submitting an application pursuant to this section shall bear the burden of proof that the proposed area to be served can, in fact, be served using the proposed technology. The burden of proof may be satisfied by the submission of data, maps, and any other information satisfactory to the Office, demonstrating that the area and number of prospective broadband recipients proposed to be served can be provided the minimum upload and download speeds indicated in the application.

(e) Applications shall be made publicly available by posting on the Web site of the Department of Information Technology for a period of at least 20 days prior to award. During the 20-day period, any interested party may submit comments to the Secretary concerning any pending application. A broadband service provider currently providing broadband service in a project area proposed in an

application may submit a protest of any application on the grounds the proposed project covers an area that is a protected area under subsection (c) of this section, or that the proposed project area contains ten percent (10%) or more of total households with access to broadband service as defined in this section. Protests shall be submitted in writing, accompanied by all credible and relevant supporting documentation, including specific addresses and detailed mapping demonstrating that the protesting broadband provider has installed infrastructure sufficient to provide broadband service to the specific addresses provided in the protest, along with an attestation that broadband service is available in the public right-of-way at the specific addresses indicated. The protest shall be considered by the Office in connection with the review of the application. Upon submission of evidence satisfactory to the Office that the proposed project area includes a protected area or prospective broadband recipients that are presently served, as measured using a methodology satisfactory to the Office, the Office may work with an applicant to amend an application to reduce the number of unserved prospective broadband recipients in the project area to reflect an accurate level of current broadband service. The Office may revise application scores in accordance with amended applications; however, the Office may reject any amended application resulting in a lower application score to the extent that the lower score would have impacted the ranking of the application in the initial scoring process. For applications with filed protests, the Secretary shall issue a written decision to the protesting party at least 15 days prior to the approval of that application. Following a protest that is granted for a portion of the application, the Office may release to an applicant the locations or areas declared ineligible. The information released to the applicant is not a public record, as that term is defined under G.S. 132-1, and shall remain confidential. Any provider submitting a protest shall verify that the information in the protest is accurate and that the protest is submitted in good faith. The Office may deny any protest or application that contains inaccurate information.

As a means of resolving a protest, the Office may utilize speed tests to determine if the protested area or individual households or businesses currently have access to broadband service as defined in this section. The Department shall publish the speed test methodology it uses to assess speed levels pursuant to this section. All decisions regarding the speed test to be utilized and the manner by which the speed tests are applied shall be made by the Secretary or the Secretary's designee.

- (f) The Office may consult with the Department of Commerce to determine if a broadband project proposed under this section will benefit a potential economic development project relevant to the proposed area outlined in the broadband project.
- (g) Applications shall be scored based upon a system that awards a single point for criteria considered to be the minimum level for the provision of broadband service with additional points awarded to criteria that exceed minimum levels. The Office shall score project applications in accordance with the following:
  - (1) Partnership. – Projects proposing a partnership shall be given points in their application score. A proposed partnership shall (i) be in writing, (ii) provide the specific terms and conditions of the partnership, and (iii) be signed and attested to by the parties. A county or nonprofit may enter into proposed agreements with more than one applicant. For the purposes of scoring under this subdivision, one point shall be given for a proposed partnership that will make available existing infrastructure that has been installed for the partner's enterprise, nonconsumer broadband purposes, or any other property, buildings, or structures owned by the partner, for a proposed project under this section. A county or nonprofit entity that proposes to provide a financial match shall be given one point. Notwithstanding Article 8 of Chapter 143 of the General Statutes, or any provision of law to the contrary, a county may use unrestricted general funds or federal funding allocated to it for the purpose of improving broadband infrastructure for a financial match. Funds received from the federal American Rescue Plan Act (P.L. 117-2) may not be used for the purposes of this subdivision. Nothing in this subdivision shall be deemed to authorize a county to provide broadband service.
  - (2) Unserved households. – The Office shall give additional points to projects based upon the

estimated number of unserved households within the eligible economically distressed county, as determined by the most recent data published by the Federal Communications Commission or any other information available to the Office. Points shall be given to projects that will be located in counties with estimated unserved households as follows:

<u>Unserved Households</u>	<u>Points Given</u>
500 or less	1
501-1400	2
Over 1400	

- (3) Unserved households to be served. – The Office shall give additional points to projects that will provide broadband service based upon the percentage of the total unserved households within the eligible economically distressed county that the project will serve. The number of unserved households shall be determined using the most recent data published by the Federal Communications Commission or any other information available to the Office. Points shall be given to projects that will serve a percentage of unserved households within the project area as follows:

<u>% Unserved Households To Be Served</u>	<u>Points Given</u>
Under Less than 15%	1
15% to 25%	2
Over 25%	3

- (4) Unserved businesses. – The Office shall give additional points to projects that will provide broadband service to unserved businesses located within the eligible economically distressed county, as determined by the most recent data published by the Federal Communications Commission or any other information available to the Office. Points shall be given to projects that serve unserved businesses within the project area as follows:

- a. Projects proposing to serve between 1 and 4 businesses shall receive 1 point.
- b. Projects proposing to serve between 5 and 10 businesses shall receive 2 points.
- c. Projects proposing to serve either (i) more than 10 businesses or (ii) a business with 31 or more full-time employees shall receive 3 points.

- (5) Cost per household or business. – The Office shall give additional points to projects that minimize the infrastructure cost of the proposed project per household or business, based upon information available to the Office. Points shall be given to projects based upon the estimated cost per household or business as follows:

- a. For projects proposed in the Piedmont or Coastal Plain Regions:

<u>Est. Cost per Household/Business</u>	<u>Points</u>
Up to \$3,500	9
\$3,500, up to \$5,000	8
\$5,000, up to \$6,000	7
\$6,000 and over	0

- b. For projects located in the Mountain Region:

<u>Est. Cost per Household/Business</u>	<u>Points</u>
Up to \$4,500	9
\$4,500, up to \$6,000	8
\$6,000, up to \$7,000	7
\$7,000 and over	0

- (6) Base speed multiplier. – Projects that will provide minimum download and minimum upload speeds shall have the aggregate points given under subdivisions (1) through (5) of this subsection multiplied by a factor at the level indicated in the table below:

<u>Minimum Download: Minimum Upload</u>	<u>Score Multiplier</u>
Up to 100:10 Mbps.	1.35
100:10 Mbps. up to 200:20 Mbps.	1.75
200:20 Mbps or greater	2.00
100 Mbps, symmetrical	3.00
Greater than 100:100 Mbps	4.00

- (h) The Office shall score applications based upon the metrics provided in subsection (g) of this section. In awarding grants based upon the scoring metrics, the Office shall also award an additional point to projects where a county has a Community Broadband Planning Playbook that meets the guidelines established by the Office.
- (i) (Effective July 1, 2021) Applications receiving the highest score shall receive priority status for the awarding of grants pursuant this section. As a means of breaking a tie for applications receiving the same score, the Office shall give priority to the application proposing to serve the highest number of new households at the lowest cost per household. Applicants awarded grants pursuant to this section shall enter into an agreement with the Office. The agreement shall contain all of the elements outlined in subsection (d) of this section and any other provisions the Office may require. The agreement shall contain a provision governing the time line and minimum requirements and thresholds for disbursement of grant funds measured by the progress of the project. For projects where the application includes a proposed partnership, the agreement shall contain a provision requiring a certification of the existence of the partnership prior to disbursement of grant funds. Grant funds shall be disbursed only upon verification by the Office that the terms of the agreement have been fulfilled according to the progress milestones contained in the agreement. At project completion, the grant recipient shall certify and provide to the Office evidence consistent with Federal Communications Commission attestation that either speeds greater than those identified in the application guidelines or the proposed upstream and downstream broadband speeds identified in the application guidelines, and for which a base speed multiplier was awarded pursuant to subdivision (6) of subsection (g) of this section, are available throughout the project area prior to any end user connections. A single grant award shall not exceed four million dollars (\$4,000,000). No combination of grant awards under this section involving any single county may exceed eight million dollars (\$8,000,000) in a fiscal year. If funds remain available after all top scoring projects have been awarded a grant, then the next highest scoring projects may be awarded a grant even if the project is located in a county where a grant has been awarded in that fiscal year provided the total award associated with that county does not exceed eight million dollars (\$8,000,000) in that fiscal year.

No more than one-half of the funds appropriated to the fund established in subsection (b) of this section shall be disbursed for eligible projects located in a development tier two or tier three county. If the Office has not received enough grant applications for projects located in a development tier one county to disburse one-half of the funds appropriated to the fund established in subsection (b) of this section as of March 1 of each year, then the Office may allocate any unencumbered funds in the fund for eligible projects located in a development tier two or tier three county.

Any project that is applied for and not funded in an award round under this section shall be eligible for funding under the Completing Access to Broadband program, pursuant to G.S. 143B-1373.1.

- (j) Grant recipients are required to provide matching funds based upon the application scoring pursuant to this section in the following minimum amounts:

<u>Score</u>	<u>Matching Requirement</u>
12.0 points or less	50%
Greater than 12.0 points, but less than 17.5 points	45%
17.5 points, up to 22.0 points	40%
Greater than 22.0 points	30%

Up to fifty percent (50%) of matching funds paid by the grant recipient may be comprised of third-party funding including funds from other grant programs. Funds from the Universal Service Fund shall not be used for any portion of the required matching funds. Any other current or future federal funds may be used, including any future phase of the Connect America Fund, for the required matching funds within the parameters of this program.

- (k) The Office shall require that grant recipients offer the proposed advertised minimum download and minimum upload speeds identified in the project application for the duration of the five-year service agreement. At least annually, a grant recipient shall provide to the Office evidence consistent with Federal Communications Commission attestation that the grant recipient is making available the proposed advertised speed, or a faster speed, as contained in the grant agreement. For the duration of the agreement, grant recipients shall disclose any changes to data caps for the project area that differ from the data caps listed in the grant application to the Office.
- (l) The Office may cancel an agreement and the grant recipient shall forfeit the amount of the grant received if it fails to perform, in material respect, the obligations established in the agreement. The Office may also cancel an agreement if the grant recipient reduces or proposes to reduce the scope of the project to the extent that the reduction would result in either a lower score and reduced ranking for funding consideration or the amount of State matching funds the project would receive. Grant recipients that fail to provide the minimum advertised connection speed for which a reduction in matching funds was applied shall forfeit that amount. A grant recipient that forfeits amounts disbursed under this section is liable for the amount disbursed plus interest at the rate established under G.S. 105-241.21, computed from the date of the disbursement. The number of subscribers that subscribe to broadband services offered by the provider in the project area shall not be a measure of performance under the agreement for the purposes of this subsection. Within 60 days of the cancellation of the agreement for failure to perform, the Office may conduct a special application period. The Office may select a new grant recipient, in accordance with this section, to complete a project that is substantially similar in location and scope to the project described in the cancelled agreement. The portions of any new project selected that are identical to the project described in the cancelled agreement shall not be subject to the protest period described in subsection (e) of this section.
- (m) The Office of Broadband Infrastructure in the Department of Information Technology shall be the designated agency for receipt and disbursement of federal grant funds intended for the State for broadband expansion and shall seek available federal grant funds for that purpose. All federal grant funds received for the purpose of broadband expansion shall be disbursed in accordance with this section.
- (n) Grant recipients shall submit to the Office an annual report for each funded project for the duration of the agreement. The report shall include a summary of the items contained in the grant agreement and level of attainment for each and shall also include (i) the number of households and businesses that have broadband access as a result of the project; (ii) the percentage of end users in the project area who have access to broadband service and actually subscribe to the broadband service; and (iii) the average monthly subscription cost for broadband service in the project area.

- (o) The Department of Information Technology shall submit an annual report to the Joint Legislative Oversight Committee for Information Technology and the Fiscal Research Division on or before September 1. The report shall contain at least all of the following:
- (1) The number of grant projects applied for and the number of grant agreements entered into.
  - (2) A time line for each grant agreement and the number of households and businesses expected to benefit from each agreement.
  - (3) The amount of matching funds required for each agreement and the total amount of investment.
  - (4) A summary of areas receiving grants that are now being provided broadband service and the advertised broadband speeds for those areas.
  - (5) Any breaches of agreements, grant fund forfeitures, or subsequent reductions or refunds of matching funds.
  - (6) Any recommendations for the grant program, including better sources and methods for improving outcomes and accountability.
- (p) The Department may use up to one percent (1.0%) of the State funds appropriated each fiscal year to administer the program established under this section. (2018-5, s. 37.1(b); 2018-97, s. 10.1(a), (b); 2019-230, ss. 1-5.)



**§ 143B-1373.1. G.R.E.A.T. program fixed wireless and satellite broadband grants.**

- (a) The following definitions apply in this section:
- (1) Broadband service. – Internet access service provided by low-orbit geostationary satellites or fixed wireless networks with (i) a latency of 500 milliseconds or less and (ii) transmission speeds that are equal to or greater than the requirements for the minimum performance tier, as provided by the Federal Communications Commission in Paragraph 39 of the report and order adopted January 30, 2020, and released February 7, 2020.
  - (2) Equipment. – The antenna and any necessary hardware provided by a broadband service provider to a subscriber that enables the subscriber to connect to the broadband service. The term does not include a modem.
  - (3) Fixed wireless provider. – A broadband service provider that provides internet access to a subscriber via fixed antenna that receives a radio link from the provider's network to the subscriber.
  - (4) Grantee. – A broadband provider that has been awarded a grant pursuant to this section.
  - (5) Office. – The Broadband Infrastructure Office in the Department of Information Technology.
  - (6) Satellite broadband provider. – A broadband service provider that provides Internet access directly to consumers via satellite technology.
  - (7) Secretary. – The Secretary of the Department of Information Technology.
  - (8) Unserved household. – A household located in this State that does not have access to broadband service from a wireline or wireless service provider. A household that is included in an area where a grant from the Growing Rural Economies with Access to Technology (GREAT) program pursuant to G.S. 143B-1373 has been awarded is not eligible for a grant under this section.
- (b) Applications for grants will be submitted at times designated by and on forms prescribed by the Secretary. Notwithstanding any other provision of law, if the Secretary deems some of the information in an application to contain proprietary information, the Secretary may provide that such information is not a public record, as that term is defined in G.S. 132-1, subject to public records or other laws requiring the disclosure of such information and have that portion of the application redacted. An application shall include, at a minimum, the following information:
- (1) The identity of the applicant.
  - (2) The specific address of the subscriber.
  - (3) A description of the services provided, including the upstream and downstream broadband speeds delivered, latency metrics, and any applicable data caps. Any applicant proposing a data cap below 150 Gigabytes of usage per month shall also provide justification to the satisfaction of the Office that the proposed cap is in the public interest and consistent with industry standards.
  - (4) The cost to be charged to the unserved household for the equipment needed to connect to the broadband service for the next two years.
  - (5) Evidence of a contract with the subscriber, including the amount charged for the equipment and the installation of the equipment, necessary for providing broadband service to the subscriber.
  - (6) The terms and conditions imposed upon the subscriber, including restrictions on use and possession of equipment used for broadband service connection.
  - (7) Any other information or supplementary documentation requested by the Office.
- (c) The Office shall determine eligibility for a grant pursuant to this section based upon the information provided in the application of a broadband service provider and any other information or supplementary documentation requested by the Office. As a measurement of the provision of broadband equipment to an unserved household, the Office shall award grants to applicants that demonstrate the provision of equipment that has provided broadband service to an unserved household. The Office shall provide grants to eligible broadband service providers for providing broadband service equipment to unserved households as follows:

- (1) Up to one thousand one hundred dollars (\$1,100) for the provision of satellite broadband equipment to any single unserved household, or up to seven hundred dollars (\$700.00) for the provision of fixed wireless broadband equipment to any single unserved household, providing broadband speeds of 50 megabits per second download and 3 megabits per second upload or greater.
- (2) Up to seven hundred dollars (\$700.00) for the provision of satellite broadband equipment to any single unserved household, or up to five hundred dollars (\$500.00) for the provision of fixed wireless broadband equipment to any single unserved household, providing less than 50 megabits per second download and 3 megabits per second upload.

The grants awarded by the Office shall not exceed the cost of the broadband provider's equipment, including any installation costs, necessary to provide broadband service to the unserved household.

- (d) Eligibility for a grant award is dependent upon the household maintaining broadband service with the grantee for at least 24 consecutive months. No grant shall be awarded for providing broadband service at an address that the Office has previously awarded a grant under this section. A grantee shall submit documentation to the Office annually that will provide information sufficient for the Office to verify eligibility of subscriptions, including that the household was unserved. Payment of grant funds is subject to documentation showing eligibility of subscriptions.
- (e) The Office shall require a grantee to enter into an agreement. The agreement shall contain at least all of the following:
  - (1) An address of the household subscribing for broadband service for which the grant is sought.
  - (2) A provision that requires the grantee to maintain its service for the subscriber for at least 24 consecutive months.
  - (3) A provision establishing the conditions under which the grant agreement may be terminated and under which grant funds may be recaptured by the Office.
  - (4) A provision stating that unless the agreement is terminated pursuant to its terms, the agreement is binding and constitutes a continuing contractual obligation of the State and the grantee.
  - (5) A provision that establishes any allowed variation in the terms of the agreement that will not subject the grantee to grant reduction, amendment, or termination of the agreement.
  - (6) A provision describing the manner in which the amount of the grant will be measured and administered to ensure compliance with the agreement and this section.
  - (7) A provision stating that any recapture of a grant and any reduction in the amount of the grant or the term of the agreement must, at a minimum, be proportional to the failure to comply measured relative to the condition or criterion with respect to which the failure occurred.
  - (8) A provision describing the methodology the Office will use to verify subscriptions and the types of information required to be submitted by the grantee.
  - (9) A provision stating that the grantee may not impose data caps upon any eligible subscription, for the term of the agreement.
  - (10) A provision stating that the equipment necessary for a subscriber to receive broadband service from the grantee shall be deemed a fixed asset upon the property of the eligible subscription and shall transfer with the property to any successors.
  - (11) Any other provision the Office deems necessary.
- (f) If the grantee fails to meet or comply with any condition or requirement set forth in an agreement, the Office shall reduce the amount of the grant or the term of the agreement, may terminate the agreement, or both. The reduction in the amount or the term must, at a minimum, be proportional to the failure to comply measured relative to the condition with respect to which the failure occurred. If the Office finds that the grantee has manipulated or attempted to manipulate data with the purpose of increasing the amount of a grant, the Office shall immediately terminate the agreement and take action to recapture any grant funds disbursed in any year in which the Office finds the grantee manipulated or attempted to manipulate data

with the purpose of increasing the amount of a grant.

- (g) The grantee shall certify and provide to the Office evidence consistent with a Federal Communications Commission attestation that the proposed minimum upstream and minimum downstream broadband speeds and latency metrics identified in the application guidelines are and will be available throughout the project area during the term of the agreement prior to any end user connections. A grantee may receive a disbursement of a grant only after the Office has certified that the grantee has met the terms and conditions of the agreement. A grantee shall submit a certification of compliance with the agreement to the Office. The Office shall require the grantee to provide any necessary evidence of compliance to verify that the terms of the agreement have been met.
- (h) The Office shall require that a grantee offer the proposed advertised minimum download and minimum upload speeds and subscription cost identified in the application for the duration of the 24 consecutive months provided in the agreement. Upon request, a grantee shall provide to the Office evidence consistent with a Federal Communications Commission attestation that the grantee is making available the proposed advertised speed, or a faster speed, as contained in the grant agreement."

SECTION 38.7.(b) The Department may utilize up to one million dollars (\$1,000,000) in funds appropriated to the Growing Rural Economies with Access to Technology Fund established in G.S. 143B-1373(b) for grants awarded under this section.

SECTION 38.7.(c) This section becomes effective July 1, 2022.