

BEFORE THE MONTANA COMMUNICATIONS COMMISSION

ConnectMT Program

Draft Broadband Application Materials

Comments of the Montana Telecommunications Association

December 2, 2021

The Montana Telecommunications Association (“MTA”)¹ appreciates the opportunity to provide comments on various materials presented to the Communications Commission (“Commission”) regarding the ConnectMT broadband grant process. On November 18, 2021, the Montana Broadband Program presented several materials for Commission consideration, including, *inter alia*:

- Frequently Asked Questions (FAQs);
- Key Metrics;
- Scoring Criteria;
- Draft Application Guidelines; and
- Draft Application

MTA’s comments will discuss certain aspects of each of these materials.

I. Summary of Issues

- Applicability
 - Do rules apply to all ConnectMT funding or only to specifically funded projects (e.g., Sec. 602, Sec 604 Capital Projects, or IJJA)?
 - Rules/guidelines and other criteria apply only to projects funded by ConnectMT
- *Frontier*, unserved and underserved
 - Rules should consistently include “frontier” as well as unserved and underserved
- Speed
 - Primary emphasis needs to focus on fiber, symmetric 100/100 mbps service
 - Draft rules do not include/encourage scalability
- Matching funds
 - Too much emphasis (25 points) on matching
 - Too much spread between low and high scores for less/greater matching
 - Scoring should be more gradual
 - The higher the matching requirement, the lower the participation from smaller providers.
 - 80% match is unrealistic.

¹ MTA represents locally owned, community-based broadband providers serving rural Montana consumers.

- Combination of Funds
 - Draft materials should reflect that SB 297 specifically allows projects to combine funds from state or federal sources unless “government funding supports 100% of the proposed project’s capital costs.
- Timing
 - Preference for shorter time-to-complete favors “off the shelf” (“shovel-ready”) projects. Such projects may be less complex than more comprehensive, holistic projects.
 - Also, some providers/applicants may not have “shovel-ready” projects on the books. These projects necessarily will take longer to design and implement. However, they should not receive lower scores simply because the applicant has no “quick” projects.
 - Supply chain, both labor and material, already make quick-to-complete projects more challenging
- Eligibility
 - Eligible applicants may only be a nongovernmental entity. (SB 297)
- Labor
 - Treasury rules state that “Davis Bacon prevailing wage requirements do not apply...” Nor is there any such requirement in SB 297.
 - Key metric for “new permanent” jobs inconsistent with SB 297” number of Montana jobs the provider proposes to create or maintain relative to the population where service is proposed.”
 - Need to recognize extraordinary labor supply and wage challenges
- Free public access at community center
 - Not in SB 297. Treasury guidelines call for “low-cost option”
 - MTA supports low-cost option, but realizes that the more expensive such options are, the less sustainable a project becomes.
 - Some communities do not have community
- Average Cost per connection
 - Not in law or rule. While “only” a measurement metric for the Program, it implies the a “bang for the buck” strategy which necessarily discriminates against higher cost, lower density projects and fails to recognize the long-term cost, efficiency and performance benefits of fiber infrastructure investment.
- Challenge process
 - SB 297 requires challengers to have timely submitted proposals and submit a new, better proposal than the submitted proposal. Adjacent areas should not be included.
 - Treasury rules allow projects to include served as well as unserved locations
 - Important to avoid challenges by developing accurate map that clearly depicts ineligible (served) areas
- Sustainability
 - Not in law or guidelines
 - Fiber is most sustainable infrastructure

- Demonstrate projects are not feasible without support
 - SB 297 Sec. 7 (5)(j) asks for “the extent to which government funding is necessary to provide broadband service in the proposed project area.”
- Proposed stand-alone pricing for unbundled internet-only service at 25/10. App Guide. 6.12
 - No requirement in SB 297. (IIJA contains language on broadband service labeling. No guidelines/rules promulgated.)
 - MTA members are not planning projects that offer 25/10
- Missing:
 - Prioritization of community-based providers. Experience in delivering reliable broadband

II. Introduction

The materials presented to the Commission provide a basis for implementing a broadband infrastructure grant program authorized by SB 297, the ConnectMT Act, signed by Governor Gianforte on May 11, 2021. The materials draw from a variety of statutory and administrative references, including:

- SB 297, the “ConnectMT Act.” Enacted, May 11, 2021.
- HB 632, Implement[ing] receipt of and appropriate[ing] federal stimulus and COVID recovery funds. Enacted, May 11, 2021.
- U.S. Department of the Treasury. American Rescue Plan Act (“ARPA”) Coronavirus State and Local Fiscal Recovery Funds. [“ARPA Guidelines”] Interim Final Rule. Issued, May 11, 2021; updated, June 17, 2021.
- U.S. Department of the Treasury. Guidance for the Coronavirus Capital Projects Fund. [“Capital Projects Guidance”] Issued, September 21, 2021.
- Infrastructure Investment and Jobs Act (“IIJA”) Enacted, November 15, 2021 as Public Law No. 117-58.

These various statutes and guidelines provide largely complementary, but sometimes contradictory, guidance informing the implementation of the ConnectMT Act. Statute trumps administrative guidelines in cases where there may be room for interpretation. U.S. Treasury guidelines may augment implementation of SB 297 wherever possible; but SB 297 is the guiding statute for implementing the ConnectMT Program.

The ConnectMT Act offers a once-in-a-generation opportunity to change fundamentally Montana’s broadband landscape and avoid incremental change. The Act envisions investment in tomorrow’s broadband infrastructure to close broadband gaps in frontier, unserved and underserved areas. With the combination of ARPA and IIJA (Bipartisan Infrastructure Bill) funds, and Treasury guidance, SB 297 will be the vehicle by which Montana can deliver fiber-based broadband service at symmetric 100 mbps speeds to practically all end users in the state. Settling for anything less not only would be lost opportunity, but would soon recreate a digital divide that SB 297 is designed to eliminate.

MTA believes there are certain aspects of the draft materials presented to the Commission that should be clarified to ensure consistency with the ConnectMT Act. For example, SB 297 and Treasury guidance permit projects to use a combination of funding sources to reach end-users with infrastructure capable of delivering symmetric 100 mbps speeds. In addition, while priority is given to projects that include greater matching funds, MTA cautions that overemphasis on larger matching funds may have unintended consequence of discouraging participation by small community-based providers. Similarly, rules that emphasize cost per connection or number of locations served may discriminate against high-cost projects serving rural or frontier locations. MTA also recognizes the desire to fund projects quickly, given short statutory deadlines. However, care must be taken not to prioritize “shovel-ready” projects at the expense of more comprehensive projects that may not be shovel ready or might necessarily take more time to design and implement—not to mention the unpredictable effects of supply chain challenges. It is important to fund projects in a timely manner; but it is more important to ensure the *best* projects receive priority under the ConnectMT Act.

III. Key Statutory and Administrative Principles:

- To provide “reliable” broadband to frontier, unserved and underserved areas using a “holistic” approach in defining project service areas.²
- To prioritize investment in fiber-optic infrastructure where feasible to deliver service that reliably meets or exceeds symmetrical download and upload speeds of 100 mbps.³
- Where impactable because of geography, topography or excessive cost, to deliver broadband service designed to reliably meet or exceed 100 mbps download and between 20 mbps and 100 mbps upload, *and be scalable to a minimum of symmetric 100 mbps*.⁴
- To award broadband infrastructure grants to eligible nongovernmental entities with demonstrated financial, managerial and operational experience in providing broadband service or other communications services to end-user residential or business customers in the state.⁵
- To prioritize projects that involve broadband networks owned and operated or affiliated with local governments, non-profits, and cooperatives—providers with less pressure to generate profits and *with a commitment to serving entire communities*.⁶

² See SB 297 Sec. 7 (5)(b) regarding service to “frontier” areas. See Capital Projects Guidance, 6.9 regarding “holistic approach” and 6.11 regarding “reliably meet[ing] or exceed[ing] a broadband speed threshold.”

³ Capital Projects Guidance. Sec.1 (C)(a).

⁴ Id.

⁵ SB 297. Sec. 5 (3).

⁶ Op. cit. “To prioritize projects that involve broadband networks owned, operated by or affiliated with local governments, non-profits and cooperatives—providers with less pressure to generate profits and with a commitment to serving entire communities.”

IV. Review of Broadband Program Draft Materials Presented to the Communications Commission

A. Key Performance Metrics

MTA realizes that these metrics represent a sort of “scorecard” to measure the effectiveness of the ConnectMT program. As such, the metrics provide an indication of priorities the State intends to use to guide its review of broadband project success. MTA offers the following observations on certain selected metrics.

- Connections. The Key Metrics include data for total, unserved and underserved households, businesses and anchor institutions as provided in SB 297.
 - MTA recommendation: “Frontier” connections are a “missing” datapoint that should be included in key metrics.
- Total \$ matching funds. MTA recognizes that matching funds stretch the value of ConnectMT funds and serve to ensure that applicants have sufficient wherewithal to implement projects which they propose. MTA cautions against overemphasis on matching funds which could discourage participation from qualified smaller broadband providers.
 - MTA recommendation. Matching funds should be considered in the context of encouraging participation from a diverse population of providers, including smaller, community-based providers
- # of projects offering 100% 100 mbps symmetrical service. While the *number* of symmetric 100 mbps projects is useful, understanding the *proportion* of frontier, unserved and underserved locations to be served with symmetric 100 mbps broadband service would be valuable in evaluating program success.
 - MTA recommendation: The Program should measure both the number of projects and the number of *locations* to be served by broadband services that meet or exceed symmetric 100 mbps service. Using total number of locations reached would more accurately measure program success.
- # of providers offering low-income fee schedule. Federal guidelines require projects to include “at least one low-cost option.”
- # of projects offering free community access at community centers. MTA is unable to locate any reference in statute or administrative guidance requiring broadband providers to offer free access. MTA notes, too, that many communities have no community centers at which to offer community access.
 - MTA Recommendation: to the extent metrics are used to guide Program analysis, projects should not be judged by standards that are not in law or that are not practically implementable.
- # of projects serving poverty areas. MTA respectfully requests clarification on identifying “poverty” and “poverty area.” This requirement may be contingent on implementation of the IJA, which in part is triggered by development of a national broadband availability map.

- Average cost per connection. MTA understands the Program’s interest in measuring “cost effectiveness” of proposed broadband projects. However, this is a slippery slope if not carefully considered in the broader context of needing to connect Montana’s hardest-to-serve, highest-cost end users. By emphasizing average cost, this metric implies that the Program will be measuring “bang for the buck” cost effectiveness. The best (only?) way to maximize cost effectiveness is to serve more locations at lower cost resulting in a diversion of funds to such lower cost areas. Such a criterion necessarily discriminates against projects that would serve fewer, higher cost locations, even though legislative intent is to serve frontier, unserved and underserved locations—in that order. As far as MTA can determine, there is no statutory or administrative directive to measure average cost per connection for each last mile location.
 - MTA recommendation: MTA urges caution in using this metric, if at all, for anything but an academic exercise. To the extent such a metric could be used in reviewing and weighing broadband proposals, MTA recommends deleting the metric as unnecessary and distracting.
- # of Montana new permanent workers.
 - SB 297 asks for “the number of Montana jobs the provider proposes to create or maintain relative to the population where service is proposed.
- MTA recommends that the key metrics include a measurement of the number of providers “with less pressure to generate profits and with a commitment to serving entire communities.” (Sources: Treasury ARPA guidelines, Capital Projects, BEAD)

B. Scoring Criteria

MTA offers the following comments regarding selected proposed scoring criteria by which the Program will evaluate broadband project applications. Whereas “key metrics” discussed above serve as general program measurements, the scoring criteria directly affect how projects are evaluated and how applicants will develop proposals. Thus, the scoring criteria can “steer” applications and projects.

- Matching Funds (25 points)
As a general observation, MTA notes that the Matching Funds category receives 25% of all available points, whereas the speed category receives relatively less (20%). MTA believes that legislative intent favors deployment of reliable, high-speed broadband infrastructure that meets or exceeds speed thresholds outlined in Treasury guidelines. Matching funds is accorded considerably less priority. While matching funds are important in weeding out less financially sound applications, and for stretching grant dollars, the policy emphasis of SB 297 and supporting federal guidelines prioritizes serving frontier, unserved and underserved Americans with reliable broadband.

in fact, the relative importance of speed over matching funds is clarified even further under IIJA, where the matching requirement is exempted in high-cost areas, and eligible

entities are able to use federal funds to meet their matching requirement. NTIA may reduce or waive matching requirements.⁷

- MTA Recommendation: The Matching Funds category should account for no more than speed thresholds or reaching frontier, unserved and underserved locations to reflect the relative importance of matching as opposed to reaching frontier, unserved and underserved communities and locations with reliable broadband service that meets or exceeds speed thresholds. MTA suggests Matching Funds total of 15 points, with 5 points in each subcategory.

Additionally, the Matching Funds category includes scoring criteria in the following areas:

- % local government contribution
 - Zero points are given to projects that include a match of 0-9%. This score discriminates against partnerships with local government entities with fewer resources but which nonetheless provide matching funds. As drafted, some partnerships with local governments would get zero points.
- % broadband deployment allocation funds requested of total eligible project costs
 - For reasons expressed above, MTA supports matching funds to qualify eligible providers and stretch grant dollars. MTA is concerned that both the range of points (0-10) and the steps between each performance criterion will discourage participation. For example, a project which seeks 51% allocation funds receives only 5 out of 10 points. A 50/50 grant/match project should receive a higher relative score. Many projects become untenable above that threshold. MTA recommends awarding points on a 1-5 range, with 5 points awarded at <50%, 4 at 50%, 3 at 70%, and 1 at 80%.
- % applicant funds used for total eligible project costs
 - For the reasons stated above, the range should be 0 – 5 points, and each step given more gradual progression. MTA recommends eliminating the 80 % match and using >50% instead, with more gradual steps between each score.
- Passing Counts of Locations (20 points)
 - SB 297 prioritizes infrastructure investment in frontier, unserved and underserved locations—with frontier and underserved areas receiving greater weight. The proposed scores may need clarification though. It appears that projects need to include at least 50% coverage of frontier, unserved or underserved locations to qualify for any points. Hypothetically, a project may include 25% of locations passed that qualify as frontier; 45% unserved and 30%

⁷ IJIA. Sec. 60102 (h). Prioritization is directed to a variety of performance criteria.

underserved. Would such a project receive zero points for serving less than 50% of the proposed frontier and unserved locations?

- MTA recommendation. MTA respectfully requests clarification of this scoring criterion to ensure that projects that serve frontier and unserved locations are given proportional priority.
- Speed Thresholds (20 points)
 - MTA seeks clarification of the scores provided. For example, if a project proposes to serve 75% of locations with symmetric 100/100 fiber (15 points) and 25% with 100/20 service (15 points), does the project receive 30 points? MTA also is concerned with the implication that a project where 50% is 100/100 symmetric and 50% is 100/20 (20 points) may satisfy statutory speed expectations. That is, there is no scalability factor in the 100/20 category. Under treasury guidelines, 100/20 is only a temporary solution. Projects that propose 100/20 must demonstrate scalability to meet or exceed symmetric 100/100 service. Further, it appears the fewer locations served with 100/20, the higher the score. Does this mean that, for instance, if a project serves only 25% of locations at 100/20, it is assumed to serve the remaining 75% with symmetric 100 mbps service?
 - MTA recommendation. MTA respectfully requests clarification of this scoring criterion. Additionally, MTA recommends increasing maximum points given for meeting or exceeding speed thresholds, given the primary importance of meeting or exceeding speed thresholds.
- Timeframe to complete project (5 points)
 - Projects that can be completed in less than one year receive 5 points, vs. 3 points for projects that can be completed in less than 2 years. Given the time it normally takes to design a project and order materials and labor, 1 year is aggressive—even without considering that supplies are already quoting delays of a year or more. A 1-year time-to-complete would require the availability of shovel ready projects ready for implementation. This is OK, sometimes. But it can risk scoring higher smaller projects at the expense of more comprehensive projects. Moreover, not all providers have projects ready to go. They may be applying for projects outside of their service areas, where they have no existing facilities. They could not apply for a grant, get awarded, design and implement a project in a one-year time frame.
- Equity and Affordability
 - “Free” public access. There is no statutory or administrative provision regarding free public access offered at a community center. There is reference to “low-cost options” for end users. Nor are there necessarily community centers in every community.
 - Monthly subscriber fees for low-income residents. Treasury guidelines provide for “at least one low-cost option.” This scoring criterion is inconsistent.

C. Draft Challenge Process

- SB 297 provides that a challenger must provide irrefutable information disputing a provider’s claim that an area is unserved or underserved. The language in the draft challenge process requires a demonstration that “more than 10% of serviceable units in the project area have access to speeds above 25/10 or 100/20. MTA believes this is inconsistent with SB 297.
- The draft Challenge Process includes 7 criteria challenges must meet, including “&…documentation detailing commitment to provide service in *or adjacent to* the proposed project area.” (emphasis). SB 297 does not include adjacent areas in the challenge process. There was considerable debate around this specific issue, and the Legislature rejected including adjacent areas in the challenge process.
 - The answer provided in this FAQ is inconsistent with SB 297, ARPA and BEAD.
 - SB 297 specifically allows federal and state funds to be combined to provide service, notwithstanding funding available for deployment
 - The only limit is that projects “may not receive funds under any other federal or state government grant or loan program where government funding supports **100% of the proposed project’s capital costs.**”
 - Thus, for example, a funded project may overbuild or enhance broadband service in an area (e.g., RDOF) if the funds are going to increase service from 100/20, for example, to reliable 100/100 service.
 - [BEAD even states that funding should supplement, not supplant” other funds.]

D. FAQs

- “What service addresses are ineligible?”
 - The answer is incorrect. SB 297 allows the combination of government funds to enhance service in unserved and underserved areas. Underserved areas include areas where service is 100/20. If a provider proposes to use grant funds to upgrade this area with fiber-based 100/100 service, the service address is eligible, contrary to the FAQ.⁸
- See Cap Projects, 6/17, 6.9. holistic approach. unserved and underserved need not be only locations receiving funds.

⁸ See also Treasury guidelines, updated June 17, 2021. 6.9. “It suffices that an objective of the project is to provide service to unserved or underserved households or businesses. Doing so may involve a holistic approach that provides service to a wider area in order, for example, to make the ongoing service of unserved or underserved households or businesses within the service area economical. Unserved or underserved households or businesses need not be the *only* households or businesses in the service area receiving funds.”

E. Application Guide and Instructions

- Eligible Applicants. SB 297 directs that eligible applicant “may only be a nongovernment entity with demonstrated experience in providing broadband service or other communications services to end-user residential or business customers in the state. The Application Guide includes governmental agencies, in contrast to SB 297.
- 1.8. Executive Summary. MTA recommends that the summary include not only organizational support evidence, but evidence of the applicant’s history of providing reliable broadband service to the communities it serves. Financial, technical and operational experience are critical. So too, is a demonstration of how well the provider has demonstrated a commitment to service quality and customer experience.
- 3.9. Applicant Eligibility. See above. SB 297 intentionally limits eligibility to nongovernmental entities.
- 4.4. Unserved and Underserved Documentation Upload. This section should include frontier areas in addition to unserved and underserved. Additionally, as noted above, Treasury guidelines encourage a “holistic” approach to applications, where “[u]nserved or underserved households or businesses need not be the *only* households or businesses in the service area receiving funds.”
- 6.12. Stand-alone pricing for unbundled internet-only service at 25/10, 100/20 and 100/100. SB 297 does not contemplate using ConnectMT funds to deliver 25/3 or 100/20 service.

F. Application Form

Note: the Draft Application Form is not live. Drop down menus are unavailable.

- Minimum required documents.
 - “Documents showing project frontier, unserved or underserved areas.
 - “Demonstration that installed broadband infrastructure meets or exceeds symmetric 100 mbps service, or is scalable to speeds of at least ...”
 - Experience demonstrating experience in delivering reliable broadband service to consumers.
- Organizational Support Evidence
 - Include information demonstrating investment in broadband infrastructure from 2017-2021.
 - Describe broadband technologies delivered
- Part VI
 - Ineligible expenses include.... These ineligible expenses should include those described in Treasury Guidance on the Capital Projects fund. (p. 11)
 - “Demonstrate that the installed broadband infrastructure meets or exceeds symmetrical 100 mbps service, or is scalable to speeds ...”

G. Conclusion

With federal resources from ARPA, Capital Projects and IJJA, the ConnectMT Act offers Montana the opportunity to build fiber optic infrastructure nearly ubiquitously. Implementing rules should ensure that qualified providers deploy to the maximum extent possible broadband service that meets or exceeds symmetrical 100 mbps or is scalable to such speeds within a short time.

Respectfully submitted,

A handwritten signature in blue ink, appearing to be 'G. Feiss', written over a faint horizontal line.

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