

CHAPTER 411
IOWA BROADBAND DEPLOYMENT PROGRAM

261—411.1(83GA,SF376) Purpose. These rules are intended to implement 2009 Iowa Acts, Senate File 376, section 13(5), relating to public broadband technology grants for the deployment and sustainability of high-speed broadband access. The purpose of the Iowa broadband deployment program is to promote universal access to sustainable high-speed broadband services, at speeds to exceed federal requirements, throughout the state for the benefit of Iowans, by awarding state grant funds to be used as matching funds for the federal funds available for broadband infrastructure projects.

[ARC 8218B, IAB 10/7/09, effective 9/17/09]

261—411.2(83GA,SF376) Definitions. In addition to the definitions in 261—Chapter 410, the following definitions shall apply to the Iowa broadband deployment program:

“Affordable rates” means the current price for high-speed broadband services being charged for similar services in areas with two or more broadband providers, as demonstrated by published or advertised unbundled prices. If there are no existing high-speed broadband services in the proposed funded service area or if there is only one existing provider of high-speed broadband services in the proposed funded service area, projects will be evaluated on the ability of applicants to demonstrate that their proposed pricing is affordable for the service area.

“Areas capable of timely implementation of high-speed broadband access” means those areas in Iowa where broadband infrastructure projects can be deployed or completed consistent with requirements established for federal funding.

“Community anchor institutions” means schools, libraries, medical and healthcare providers, public safety entities, community colleges and other institutions of higher education, and other community support organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by vulnerable populations, including low-income, unemployed, and the aged.

“Critical community facilities” means public facilities that provide community services essential for supporting the safety, health, and well-being of residents, including, but not limited to, emergency response and other public safety activities, hospitals and clinics, libraries and schools.

“Economically sustainable” means that a broadband project funded by the board will require no further government assistance beyond the funding period to remain viable into the future. A broadband project shall not be deemed “economically sustainable” if the broadband project will only continue beyond the funding period with the assistance of additional government grants. Notwithstanding anything to the contrary in this definition, “government assistance” shall not include: (1) fees or other revenues paid from government users in exchange for the ordinary use of broadband services, or (2) ongoing government funding provided by the federal Universal Service Fund. For purposes of this definition, “government” refers to any branch or level of government, including the federal government, any state government, or any political subdivision.

“Federal funds” means funding available for broadband infrastructure initiatives under the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (Feb. 17, 2009) that will be awarded by either the U.S. Department of Agriculture Rural Utilities Service through the Broadband Initiatives Program (BIP) or the U.S. Department of Commerce National Telecommunications and Information Administration through the Broadband Technology Opportunities Program (BTOP).

“Federal requirements” means requirements established for the receipt of federal funds for broadband infrastructure initiatives pursuant to the American Recovery and Reinvestment Act of 2009.

“Grant agreement” means the agreement between the grantee and the ITTC, on behalf of the board for grants awarded under the program, including any amendments thereto.

“Grantee” means the recipient of a grant under the program.

“Grant funds” means state funds provided pursuant to a grant made under the program.

“High-speed broadband service” or *“broadband”* means providing two-way data transmission with advertised speeds that exceed 768 kilobits per second (kbps) downstream and at least 200 kbps

upstream to end users, or providing sufficient capacity in a middle mile project to support the provision of broadband service to end users.

“Last mile project” means any infrastructure project the predominant purpose of which is to provide broadband service to end users or end-user devices (including households, businesses, community anchor institutions, public safety entities, and critical community facilities).

“Middle mile project” means a broadband infrastructure project that does not predominantly provide broadband service to end users or to end-user devices, and may include interoffice transport, backhaul, Internet connectivity, or special access.

“Program” means the Iowa broadband deployment program administered by the governance board to award funds available for broadband deployment pursuant to the competitive grant process established in these rules and to oversee the establishment and implementation of a statewide high-speed broadband deployment plan.

“Qualified private providers” means nongovernmental local exchange carriers, cable television companies, commercial mobile radio service companies, or other entities that offer or are capable of offering broadband services in Iowa and that make minimum broadband capacity available to all business, government, educational, and residential locations within the project area.

“State broadband mapping project” means the statewide broadband data collection, mapping, and planning project conducted by the state’s designated eligible entity in cooperation with the Iowa utilities board under the Broadband Data Improvement Act of 2008 (BDIA), Title I of Public Law 110-385, 122 Stat. 4096 (Oct. 10, 2008) and as funded by the State Broadband Data and Development Grant Program.

“Synchronous data transmission” means broadband transmission services where the upstream and downstream speeds are equal.

“Underserved areas of the state” means, for last mile projects, a proposed funded service area composed of one or more contiguous census blocks where (1) no more than 50 percent of the households have access to facilities-based, terrestrial broadband service at speeds that exceed the minimum broadband transmission speeds set forth in the definition of “broadband” above; (2) no fixed or mobile broadband service provider advertises broadband transmission speeds of at least three megabits per second downstream; or (3) the rate of broadband subscription is 40 percent of households or less. A proposed funded service area may qualify as underserved for middle mile projects if one interconnection point terminates in a proposed funded service area that qualifies as unserved or underserved for last mile projects.

“Unserved areas of the state” means a proposed funded service area composed of one or more contiguous census blocks where at least 90 percent of households in the proposed funded service area lack access to facilities-based, terrestrial broadband service, either fixed or mobile, at speeds that exceed the minimum broadband transmission speeds set forth in the definition of “broadband” above. A household has access to broadband service if the household can readily subscribe to that service upon request.

[ARC 8218B, IAB 10/7/09, effective 9/17/09]

261—411.3(83GA,SF376) Eligible applicants. The following entities are eligible to apply for assistance:

1. State agencies and local governments, including municipal utilities;
2. A nonprofit foundation, a nonprofit corporation, a nonprofit institution, or a nonprofit association, or other nonprofit entities; and
3. Qualified private providers.

[ARC 8218B, IAB 10/7/09, effective 9/17/09]

261—411.4(83GA,SF376) Forms of assistance. Financial assistance for an application approved by the board will be provided in the form of a grant. Grants shall be subject to the provisions of 2009 Iowa Acts, Senate File 376, section 13(5), the administrative rules in 261—Chapters 410 through 412, and the terms and conditions of a grant agreement.

[ARC 8218B, IAB 10/7/09, effective 9/17/09]

261—411.5(83GA,SF376) Threshold application requirements. Applicants must satisfy threshold eligibility requirements to qualify for funding. Applications that fail to meet threshold eligibility requirements will not be considered by the board. An applicant must meet each of the following threshold eligibility factors in order to be considered for a grant award by the board:

411.5(1) *Fully completed application.* Applicants must submit a complete application and provide all supporting documentation required for the application.

411.5(2) *Timely project completion.* A project is eligible only if the application demonstrates that the project can be completed within 24 months of the award date or by December 31, 2012, whichever date is earlier.

411.5(3) *Fully funded project costs.* A project is eligible only if, after approval of the grant and any federal grants and loans, all project costs can be fully funded. To demonstrate this, applicants must include with the application evidence of all funding necessary to support the project.

411.5(4) *Capital projects.* A project is eligible only if the proposed project is for capital expenditures. Program grant funds shall only be used for capital expenditures. The board may require applicants to submit descriptions and itemized lists of capital expenditures for which the applicants intend to use grant money. Additionally, all uses and proposed uses of grant funds shall be subject to review by the board, attorneys for the board or the state of Iowa, and any accountants or auditors retained by the board or the state of Iowa. If a use or proposed use of grant funds is not for capital expenditures, as defined by the board's legal counsel or generally accepted accounting principles, the board may withdraw all or part of a grant award and the board may seek recovery of any grant funds already disbursed to the grantee. Nothing in this subrule shall be construed as limiting the board's authority or any remedies available to the board to ensure that grant awards are spent only on capital expenditures. Furthermore, nothing in this subrule shall be construed as limiting the board's authority to impose additional restrictions on the use of grant funds in award contracts with grantees.

411.5(5) *Economically sustainable.* Only projects that are economically sustainable are eligible for an award. Applicants must demonstrate through a viable business plan that any project undertaken and funded by the board shall be economically sustainable.

411.5(6) *Minimum broadband capacity.* Only projects that intend to provide "high-speed broadband service," as defined in 261—411.2(83GA,SF376), throughout the project area are eligible for an award.

411.5(7) *Federal funds.* Only projects that will further the purposes of 2009 Iowa Acts, Senate File 376, section 13(5), and that have received a notice of an award of federal funds under either the BIP or BTOP Program are eligible for an award.

411.5(8) *Project meets statutory requirements.* 2009 Iowa Acts, Senate File 376, section 13(5), establishes minimum eligibility requirements for the program. Only projects that meet these statutory requirements for assistance are eligible for an award. To qualify, projects must be designed to accomplish all of the following:

a. Provide minimum broadband capacity throughout the area as determined by the governance board consistent with any applicable state and federal law or guidelines. The governance board shall ensure that the minimum broadband capacity established exceeds any federal requirements established with regard to the availability of federal funds.

b. Make broadband connections available to all business, government, educational, and residential locations within the project area, as appropriate for the type of project.

c. Utilize, where appropriate and feasible, existing privately owned telecommunications fiber infrastructure and wireless facilities to establish universal access to high-speed broadband services, as appropriate and consistent with the priorities established by the governance board for the program.

d. Demonstrate that any project undertaken and funded by the governance board shall be economically sustainable with no further government assistance based upon expected revenue generation.

[ARC 8218B, IAB 10/7/09, effective 9/17/09]

261—411.6(83GA,SF376) Application process.

411.6(1) *Notice of intent to apply for state broadband deployment funds.* Potential applicants are encouraged to submit a Notice of Intent to Apply form to the board prior to submitting an application with the board. A copy of the form is available at www.broadband.iowa.gov. Failure to complete and submit a Notice of Intent to Apply form shall not preclude an entity from applying for or receiving a grant from the board. Furthermore, the board shall not prejudice or take other adverse action against an entity because that entity failed to complete and submit a Notice of Intent to Apply form.

411.6(2) *Application contents.* The board shall develop a standardized application for the program and make the application available at www.broadband.iowa.gov.

411.6(3) *Application time line and submittal.* Applicants for state broadband deployment funds shall submit a completed application within 15 calendar days after being notified that the applicant has been awarded federal funds under either the BIP or BTOP Program. Along with the completed state broadband grant application, all applicants shall submit: (1) a copy of the applicant's federal application and all information required to be submitted with the applicant's federal application, and (2) all records the applicant received from the BIP and BTOP Programs that relate to the applicant's federal award, including but not limited to any award letters. Completed state broadband grant applications and all information required to be submitted with the application shall be submitted to ITTC via the Iowa Grant Notification Storefront and Electronic Grant Management System (www.iowagrants.gov).

411.6(4) *Request for confidential treatment.* Applicants who would like to request that the board treat a record or part of a record as a confidential record must comply with the fair information practices listed at 751—Chapter 2.

[ARC 8218B, IAB 10/7/09, effective 9/17/09]

261—411.7(83GA,SF376) Application review procedures.**411.7(1) *Application review committee and final board action.***

a. Application review committee. Applications meeting the threshold requirements of rule 261—411.5(83GA,SF376) will be reviewed by an application review committee (“the committee”). The committee shall consist of at least two board members and at least five staff members jointly provided by IDED, ITTC, and IUB.

b. Committee review and recommendation to the board. The committee members will score the applications according to the criteria set forth in subrule 411.7(2). A copy of the application scoring sheet that will be used by the committee is available for viewing at www.broadband.iowa.gov. The committee shall use consensus scoring and shall rank order the applications. The committee shall prepare a summary of the applications and the rank order scoring results and shall present to the board the committee's recommendations for approval, denial, or deferral of applications.

c. Board action. All eligible applications and any summaries and recommendations by the application review committee will be reviewed by the board. Summaries, scores, and recommendations by the application review committee shall be wholly advisory and shall be for the board's convenience. The board shall not be bound by any findings or conclusions of the application review committee, and the board shall not be required to give deference to any determination by the application review committee. The board may create summaries, award scores, or make conclusions that depart in whole or in part from those conclusions reached by the application review committee. The board shall make the final decision on all applications.

411.7(2) *Evaluation criteria.* The application review committee shall evaluate and score applications based on the following criteria:

a. Project purpose. (0-25 points) An application will be reviewed to evaluate the purpose of the project and its consistency with statutory intent for this program. Rating factors for this criterion include, but are not necessarily limited to, the following:

(1) Promote universal access. The degree to which a project will provide service to unserved areas or improve service to underserved areas of Iowa as identified by current broadband availability data or as ultimately determined by the state broadband mapping project.

1. If a project proposes to serve an unserved area, the percentage of households in the proposed service area (as defined by census block) that will be served by the project.

2. If a project proposes to improve service to an underserved area, the percentage of households in the proposed service area (as defined by census block) that will have improved service.

Points will be awarded on a sliding scale. The higher the percentage of households served or improved service, the more points awarded.

- (2) Private enterprise. Whether the applicant is a qualified private provider. Additional consideration will be given to applications from qualified private providers of broadband service.

- (3) Public-private partnership. Whether public and private collaboration is required for the project, as appropriate.

- (4) Public entities. Whether participation by the public entity will promote access in an area that remains unserved or underserved due to lack of private sector investment.

- b. Project benefits.* (0-25 points) Applications will be reviewed to evaluate the degree to which the proposed project will offer service at an advertised speed which exceeds the federal requirements. Rating factors for this criterion include, but are not necessarily limited to, the following:

- (1) Advertised speeds above federal minimums. For wireline last mile projects and wireless last mile projects, the advertised downstream and upstream speeds. More points will be awarded for higher speeds.

- (2) Middle mile projects. For middle mile projects, the degree to which the proposed project is sustainable and supports the goal of universal access to high-speed broadband service for the benefit of Iowans. Consideration will be given to the project's impact on the area, including proposed connections to last mile networks and benefit to community anchor institutions or public safety entities; the level of need for the project in the area, including whether projected end users are located in unserved or underserved areas; and network capacity, i.e., whether the network will provide sufficient capacity to serve last mile networks, community anchor institutions and public safety entities.

- (3) Synchronous data transmission. Whether the proposal contemplates synchronous data transmission capabilities and at what speed.

- (4) Affordability of services offered. Proposed pricing will be evaluated based on comparison to published unbundled prices and speeds for existing broadband services in the proposed funded service area. If there are no existing broadband services present, an applicant must demonstrate that proposed pricing is appropriate for the proposed service area.

- (5) Community impact. How the project impacts job creation and economic development and provides other benefits to the targeted community.

- (6) Speed of completion. How quickly the project will be completed.

- c. Project viability.* (0-25 points) Applications will be reviewed to evaluate the viability of the proposed project. Rating factors for this criterion include, but are not necessarily limited to, the following:

- (1) Economic sustainability. The extent to which the proposed project will not require any additional funding from the state in the course of normal operations.

- (2) Applicant's track record. Whether the applicant possesses a record of accomplishment for historically similar projects.

- (3) Financial metrics. How the project compares to similar projects, including but not limited to return on investment, internal rate of return, net present value, payback, break-even analysis, capital cost per household, and debt metrics.

- d. Project budget and sustainability.* (0-25 points) Applications will be reviewed to evaluate the reasonableness of the budget and sustainability of the proposed project. Rating factors for this criterion include, but are not necessarily limited to, the following:

- (1) Reasonableness of the budget. Points will be awarded based on adequacy and completeness of the proposed budget.

- (2) Ratio of state funding request to number of households passed (cost of funding request per household). Points will be awarded on a sliding scale. More points will be awarded for lower cost per household.

(3) Funding leverage (outside funding/government funding). The degree to which the proposed project leverages outside funding sources. The higher the ratio, the more points awarded.
[ARC 8218B, IAB 10/7/09, effective 9/17/09]

261—411.8(83GA,SF376) Administration of awards.

411.8(1) Notice of award and conditions. Applicants will be notified in writing of the board's decision, including any conditions and terms of approval. Award conditions may include but are not limited to the following:

a. Awards conditioned on completion of external requirements. Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

b. Awards conditioned on other financial sources. Awards may be conditioned upon commitment of other sources of funds necessary to complete the activity, including the receipt of federal grants or loans.

c. Awards conditioned on implementation plan. Awards may be conditioned upon ITTC's receipt and approval on behalf of the board of an implementation plan for the funded activity.

411.8(2) Contract required.

a. Contract contents. A contract shall be executed between the recipient and ITTC on behalf of the board. The rules in 261—Chapters 410 to 412 and applicable state laws and regulations shall be part of the contract. The agreement will include, but is not limited to:

(1) A description of the project to be completed by the recipient.

(2) Length of the project period.

(3) Conditions to disbursement as approved by the board.

(4) Reporting requirements, to be made to the board consistent with federal requirements, on the use and effectiveness of the grant funding.

(5) The reimbursement requirements of the recipient or other penalties imposed on the recipient in the event the recipient does not meet the commitments set forth in the contract, in the documentation provided to establish eligibility, or in other provisions negotiated on a project-by-project basis.

b. Contract amendments. Any substantive change to a funded project will require a contract amendment approved by the board. Substantive changes include, but are not limited to, contract time extension, budget revisions, and significant alterations of existing activities or beneficiaries.

411.8(3) Deadline for contract execution. A recipient must execute and return the contract to ITTC within 60 days after the contract is sent to the recipient. Failure to do so may be cause for the board to terminate the award.

411.8(4) Accounting. On behalf of the board, the telecommunications and technology commission shall establish separate accounts for the bond proceeds and non-bond proceeds received to fund Iowa broadband deployment program grants.

411.8(5) Grant information posted on Web site. All disbursements and related, nonconfidential information for each grant will be posted on www.broadband.iowa.gov and will be accessible by the public within 30 days after distribution of funds.

411.8(6) Project status reports.

a. Quarterly status reports and contents. Each grantee shall submit a quarterly state status report to the board on or before each of the following dates: March 31, June 30, September 30, and December 31. Each quarterly status report shall, at a minimum, include the following information:

(1) The total amount of the grant from the board;

(2) The total amount of grant funds that the grantee has expended or obligated; and

(3) A detailed list of all projects or activities for which Iowa grants were expended or obligated, including:

1. The name of the project or activity,

2. A description of the project or activity,

3. An evaluation of the completion status of the project or activity, and

4. An estimate of the number of jobs created and the number of jobs retained by the project or activity.

b. Copies of federal status reports. At the time the grantee submits a state quarterly status report, the grantee shall also submit copies of the grantee's most recent federal status reports.

c. Final project completion report. Within 30 days of completing a project funded by grant funds, a grantee shall submit to the board a final report that summarizes the grantee's quarterly filings, describes the nature of the completed project, and states whether the project's goals have been satisfied.

411.8(7) Report to legislature. The board shall provide a report to the general assembly, the legislative services agency, and the department of management on the status of all projects completed or in progress. The board shall submit the report each year, on or before January 15.

a. The report shall include the following information about each project funded by grants awarded by the board:

- (1) A description of the project,
- (2) The work completed on the project,
- (3) The total estimated costs of the project,
- (4) A list of all revenue sources being used to fund the project,
- (5) The amount of funds expended on the project,
- (6) The amount of funds obligated to the project, and
- (7) The date the project was completed or an estimated completion date of the project.

b. The report may include any other information related to the board and the board's activities, including but not limited to descriptions of significant board actions and requests for additional legislation that would further the purposes of the board.

[ARC 8218B, IAB 10/7/09, effective 9/17/09]

These rules are intended to implement 2009 Iowa Acts, Senate File 376, section 13(5).

[Filed Emergency ARC 8218B, IAB 10/7/09, effective 9/17/09]