

Initiative: Community Broadband as a Service (BaaS) Grants

Authority: It is the purpose of the Appalachian Regional Commission (ARC) to support broadband access in the Appalachian region. 40 USC 14303(a)(11). It is also ARC's mission to encourage private investment in industrial, commercial, and recreational projects. 40 USC 14303(a)(6). The Infrastructure Investment and Jobs Act (IIJA) appropriated significant funds for the deployment of broadband capabilities in the Appalachian region (the Region).

Challenge: ARC has been actively pursuing the deployment of broadband projects in the Region. In the process, ARC has identified the following recurrent challenges in making broadband accessible to the communities in the Region:

1. Communities' failure to attract private Internet Service Providers¹ (ISP) on the basis of split ownership of the assets acquired with Federal financial assistance.
2. Local governments lack technical expertise or desire to operate broadband assets and networks.
3. Broadband networks typically require interoperability and integration with adjacent privately-owned networks. Network integration of unaffiliated broadband networks is likely to raise challenges in deploying broadband in remote areas.
4. Expanding an existing broadband network is often more cost-efficient than deploying a standalone broadband network.

Need: The communities in the Region continue to express the urgent need to get access to affordable and reliable broadband services to improve their quality of life and foster economic development. Although there's a need for the service, ISPs are unwilling to provide the broadband service in areas that lack a positive return on investment, due among other things, low-density population and lower median household incomes. Experience to date has shown that, even when ARC funds are made available for broadband infrastructure, there's little appetite in the ISP community to deploy broadband infrastructure that is subject to property encumbrances.

Proposed Solution: ARC to make available to eligible communities grants to procure broadband as a service (BaaS) for the benefit of their communities. With this mechanism, eligible communities will enter into long-term contracts with Internet Service Providers (ISPs) to make broadband or highspeed internet as a solution available to homes and businesses in their communities. Rather than the grantees soliciting the deployment of broadband infrastructure, grantees will be procuring broadband as a solution by subsidizing the availability of the service to the businesses and residences in the grant-approved geographical footprint. Grantees will not own broadband infrastructure or any of the assets in the network but must ensure that the competitively selected ISP offers reasonably

¹ For purposes of this document, an internet service provider (ISP) means any entity that provides internet services.

affordable and non-discriminatory broadband services to eligible residences and businesses. The ISP will be selected in a procurement process that meets the Uniform Guidance requirements. The grantee will enter into a long-term contract with an entity that can meet the requirements and technical specifications described below. In the interest of clarity, the ARC grantee will not be an aggregator of subscribers. It will be the ISP's responsibility to engage in marketing efforts to acquire new subscribers.

Grantee requirements:

1. Procurement of BaaS shall comply with the procurement standards set forth in the Uniform Guidance, 2 CFR 200.317-327.
2. Grantee shall not build, acquire, improve or modify any real property and/or capital asset, nor acquire any equipment with the financial assistance from ARC.
3. Period of Performance for the grant will be 7 years unless a shorter period of performance is approved by ARC in writing. It is expected that grantees will enter into BaaS agreements with ISPs in excess of the grant period of performance.
4. Service requirements:
 - a. Speed: Must provide Qualifying Broadband service, defined as no less than 100 Megabits per second (Mbps) download and no less than 20 Mbps upload. Delivered service should generally exceed 80% of the advertised download and upload speeds.
 - b. Availability: Service outages must not exceed 48 hours in a given 365-day period (excluding force majeure occurrences).
 - c. Latency: Service latency must not exceed 100 milliseconds (ms) round-trip time.
 - d. Equal access: Service must not be subject to data caps, surcharges, or usage-based throttling, and must adhere to the same acceptable use policies that apply to all other broadband internet access service plans offered by the ISP to their subscribers.
 - e. Affordability: The service provider should participate in the Affordable Connectivity Program or any successor program or any other program that would promote service affordability to the subscribers in the BaaS service area. Broadband service prices should be reasonably affordable for the subscribers within the BaaS service area.
 - f. Eligibility: BaaS is only available in areas designated Unserved or Underserved by the applicable state broadband office or state broadband authority. Specifically, the BaaS area must be Unserved (<25/3) or Underserved (<100/20) and cannot have an existing federal, state, or local enforceable commitment for Qualifying Broadband service ($\geq 100/20$).
 - g. Geographic footprint: Grantee must define the geographic footprint for which the BaaS will be made available for subscribers to participate and define availability timelines for the entire geographic footprint or for each sub-geography, as applicable.
 - h. Reporting: The ARC grantee must require the BaaS service provided to provide a list of BaaS-served addresses or Location Identifications (Broadband Deployment Location Map to designate the homes and businesses associated

with the BaaS subsidy as part of an enforceable commitment to provide services that meet or exceed these technical requirements.

- i. ISP must comply with all applicable federal, state, local laws in delivering the services to the grantee and the subscribers within the BaaS area.
5. Risk Analysis- The grantee must perform a risk analysis of the ISP to assess likelihood to succeed in providing reasonably affordable and reliable broadband service based on such factors as proximity of the BaaS footprint to current operations and experience operating at the scale sought by the grantee. The risk analysis should also include an assessment of the financial position of the ISP and its past performance at similar projects for the elements described in the previous paragraph.
6. Set up legally sufficient mechanisms to monitor ISP's performance and adequately protect the grantee's interest for lack of ISP's satisfactory performance. E.g. 1-Engage third party consultants to validate service availability, network speeds and other material elements of the broadband service contracted. 2- Contractual covenants/liens.
7. Grantee should structure the payments for the BaaS is such a way that will mitigate risk but is reasonably sufficient to encourage ISP to make broadband services as solution available to the businesses and houses in their communities. E.g. Frontloading the payment structure with adequate recourse mechanisms.
8. Grantee must follow the cost principles set forth in the Uniform Guidance (2 CFR Part 200) in the implementation of a BaaS.
9. ARC's financial assistance shall not be used to procure services, nor enter into a contract with a party, that uses covered telecommunications technology banned by Section 889 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. Law 115-232.
10. Grantee must validate the BaaS model to make broadband available in their jurisdiction is a viable vehicle under state law.
11. Grantee's service contract with a qualified ISP must be for the primary purpose of making available broadband services in a defined area eligible to receive ARC financial assistance. In the interest of clarity, the ISP must perform clearly defined tasks agreed upon with the grantee, but it shall not furnish an end item of supply to the grantee.