

# Minnesota's Broadband Grant Program: *Getting the Rules Right*

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## EXECUTIVE SUMMARY

Since 2014, Minnesota has been promoting the expansion of high-speed Internet access across the state through its Border-to-Border Broadband Development Grant program. The program is intended to help bring high-quality Internet access to unserved and underserved areas in Greater Minnesota; without public support, these communities would continue to be left behind.

In its first two years, the state awarded about \$30 million to 31 Border-to-Border projects. The program has been well administered but should be modified in two significant ways.

- **The grant program needs to be funded properly.** The Governor's Task Force on Broadband estimates Minnesota's unmet broadband need is \$900 million to \$3.2 billion. That level of investment is simply beyond the capacity of existing telecommunications providers to meet

without public investment. There is a dire need to dramatically increase funding for the program.

- Even with adequate funding, **the program's rules and criteria need to be reconsidered to meet its economic development goals.** Under current rules, the Border-to-Border grants could inadvertently harm the very cities that conceived the program.

The Broadband Development Grant program is at a crossroads as the Minnesota Legislature, in the waning days of its 2016 session, considers whether to substantially ramp up funding and possibly revise the funding criteria. The Legislature should set a robust goal, increase funding to the grants program, and ensure some of the funds are used to target economic development in Greater Minnesota population centers.

## Broadband Development Grant Program Basics

It is now widely accepted that the availability of high-speed Internet service is as critical a part of basic infrastructure in the 21<sup>st</sup> century, as were road and electricity networks in the 19<sup>th</sup> and 20<sup>th</sup> centuries. In 2010, Minnesota recognized this by setting ambitious broadband goals: universal high-speed access and to be ranked in the top five U.S. states for high-speed Internet access by 2015.

In 2011, Governor Mark Dayton issued an Executive Order creating the Governor's Broadband Task Force, whose responsibilities include establishing a baseline, monitoring developments and recommending legislative and executive branch actions in an annual report.

In 2013 the legislature established the Office of Broadband Development (OBD), which currently operates under the auspices of the Department of Employment and Economic Development (DEED). The OBD was charged with a long list of responsibilities<sup>1</sup> although the annual budget it was given to carry out these responsibilities was a very modest \$250,000.

In its 2013 report to the Legislature, the Task Force estimated that 25 percent of households in Minnesota lacked access to Internet at the minimum acceptable speeds set by statute in 2010 and the state ranked only 23<sup>rd</sup> in the nation in access to high speed broadband.<sup>2</sup>

In its 2013 and 2014 reports, the Task Force estimated \$900 million to \$3.2 billion in investment would be required to achieve universal access<sup>3</sup> and maintained that public funding would be necessary to "ensure an equitable level of access and affordability across geographic and economic strata."<sup>4</sup> The Task

Force recommended a Legislative appropriation of \$100 million in FY 2015 and \$200 million in FY 2016.<sup>5</sup>

A catalyst and key advocate for public funding was the Greater Minnesota Partnership (GMNP), a non-metro economic development group established in 2013. Its 90 members include economic development authorities, foundations, cities, nonprofits, businesses, and Chambers of Commerce.

"When we formed the organization [the Partnership], we held 10 meetings across the state in order to find out what local people, business leaders, elected officials, and others [wanted and] what the impediments were in their areas," said Partnership Executive Director Dan Dorman. "We followed that up with a survey and the top issue was improved broadband. This was our top priority in 2014 when we helped establish the fund."<sup>6</sup>

In 2014, the Broadband Development Grant program was created with an initial appropriation of \$20 million for the first year, and a smaller amount—\$10 million—for the second year. In its first two years, the Department of Employment and Economic Development (DEED, which houses the Office of Broadband Development) used this money to fund 31 Border-to-Border projects. That, in turn, leveraged an additional \$41.3 million in investments.

Fifteen of the 31 grants went to cooperatives. Of the remainder, three have gone to cable providers, one to a non-profit entity, one to a government entity and 13 to incorporated businesses, partnerships, and limited liability corporations.<sup>7</sup> Broken down differently, four have gone to large established, out-of-state telecom providers such as Mediacom, CenturyLink and Frontier, while other funding has gone to regional

telecom or wireless companies such as Blue Earth Valley Telephone, Hiawatha Broadband Communications, and Otter Tail Telcom.

The smallest grant was \$105,000 to assist Otter Tail Telcom to bring Fiber-to-the-Home (FTTH) to 47 unserved locations in Stuart Lake. The largest was a \$5 million grant to Rock County Broadband Alliance to deploy FTTH to some 1,100 underserved and nearly 300 unserved locations in the county.

In 2015, the Task Force reported about 11 percent of all Minnesota households and 25 percent of rural households lacked access to a fixed connection of at least 10 megabits per second (Mbps) downstream and 5 Mbps upstream and the state ranked 21st in the nation in average connection speed.<sup>8</sup> Internet access availability was based on data collected by Connected Nation, which has long been accused of overstating coverage.<sup>9</sup> Minnesota's access may be worse than those statistics imply.

In 2016 the debate about the Minnesota broadband initiative continues with two important questions on the Legislative table. First, legislators and the Governor disagree about the appropriate level of funding. The second is the program rules regarding where to target grants.

### **Funding Level**

After largely ignoring his task force funding recommendations in previous years, Governor Dayton budgeted \$100 million for next year. As of this writing, the two Legislative chambers are far apart. The Senate has proposed \$85 million while the House has proposed \$15 million.

Both Republicans and Democrats have routinely issued talking points that discuss the critical importance of Internet access – for economic development, educational benefits, health care advances, and more. But no party or branch of

government has committed to seriously funding any program to put Minnesota communities on a path to ensure universal access to the essential utility of the 21st century.

The discussion about the funding level is not complete without noting that the cable and telephone companies have a very strong lobbying contingent in Saint Paul (and every other capital). They work diligently and successfully to shape public policy to channel subsidies to incumbent providers, ensuring that no government program would subsidize competition. They argue that subsidized competition would be unfair to existing providers even though most of them have received significant government subsidies in some form.<sup>10</sup> There is no opposing force anywhere close to their scale and influence working to educate legislators.

### **Program Purpose**

The second question regards how these funds will be spent. The Broadband Development Grant program was designed to improve “broadband service in unserved or underserved areas of the state” and help provide opportunities to help existing businesses and attract new ones.<sup>11</sup>

Unserved areas were defined as those lacking Internet access at the minimum threshold for broadband set by the Federal Communications Commission (FCC), which was then 4 Mbps download and 1 Mbps upload (4/1).<sup>12</sup> Most population centers in Greater Minnesota tend to be “underserved.” They have some minimum level of broadband Internet access, but the access is insufficient to retain and attract jobs.

Minnesota has a unique and long-standing history with cooperatives, which have been crucial for providing essential infrastructure to rural regions. Many of the telephone cooperatives have been upgrading their subscribers from last-century's copper telephone lines to modern fiber

optic networks. Now, these co-ops are poised to make further expansions in Greater Minnesota cities and townships.

Meanwhile, the largest telephone companies like CenturyLink, Frontier, and Windstream have failed to invest in modern networks. As ILSR noted in its case study of the new RS Fiber Cooperative centered in Sibley County, the big telephone companies have steadfastly refused to serve significant territories with any form of broadband and ignored opportunities to partner.<sup>13</sup> Though these firms may deliver some form of basic broadband to cities in greater Minnesota – like Willmar, Austin, and Albert Lea, the connections are insufficiently reliable, affordable, or high capacity to attract and retain businesses in the digital economy. Now the big telephone companies are aggressively advocating to prevent those cities from receiving any funds to build the networks they need.

The GMNP insists the original legislation was aimed to assist a large portion of rural Minnesota, particularly regional population centers desiring economic development. It points to a provision of the statute creating the OBD which directs it to “improve accessibility for underserved communities and populations.”<sup>14</sup> But under pressure from incumbent telecoms, the focus has become so much narrower that most Minnesota cities are not eligible for the funds.

Chris Henjum, GMNP attorney maintains, “The Office of Broadband Development was created with a mission to serve ‘underserved areas’ but the program has evolved into giving a strong preference to mainly remote or sparsely-populated areas... That preference was something that the [telecommunications] industry has pushed

hard for: Once there was [grant] money that ‘threatened’ competition, they brought out the big guns against “underserved.”<sup>15</sup>

By excluding most cities from possibly receiving grants, a “donut hole effect” is created, where a city has much poorer service than its surrounding rural areas, says Dorman, of the GMNP.<sup>16</sup> He noted, for example, that the entire county outside the city of Madison in Lac qui Parle have gained access to world-class broadband due to federal funding for which the city itself did not qualify because it had basic service. (ILSR also made note of this situation in our 2014 “All Hands on Deck” report.”<sup>17</sup>)

One of the goals of the broadband development program was to spur economic development and business retention. However, the majority of grants have targeted areas with very limited economic development potential – often remote residential areas. Though some of these grants have resulted in economic development, often by allowing people to work remotely from home or operate a home-based business, many community leaders hoped for a more significant impact when they led the effort to establish the program.

The Star Tribune is one of the newspapers that has urged the Minnesota Legislature to adopt a “blended approach” that would “allow investment in both unserved areas and areas where some networks already exist so centers of economic activity can still compete with their neighbors.”<sup>18</sup>

Currently the GMNP supports the Governor’s \$100 million funding request contingent on its statutory language being changed to “allow more access to the cities of the funds,” said Dorman, of the GMNP.

### Moving the Goalposts

Eligibility for broadband grants depend on how “broadband” is defined – and this definition has evolved with technology. The FCC had defined broadband at 4/1 Mbps upload, until January 2015 when it re-defined it as 25/3.<sup>19</sup> The FCC recognized that the rapid evolution of common applications required faster connections for basic use, in part because modern households and businesses typically have many devices sharing a single connection.

The telephone and cable companies have long fought to keep the standard lower, especially for upload speeds because neither cable nor DSL are capable of the high upload speeds common both on fiber and high quality wireless systems. But upload streams are especially important for businesses and increasingly households that need to send their data out to the world.

As of this writing, the DFL-led Senate uses the new FCC minimum broadband definition of 25/3 Mbps to define what areas do not have “broadband” (“unserved”) whereas the Republican-led House uses a much lower threshold of 10/3 Mbps.

Industry lobbyists have been pushing for the lower threshold because it would significantly limit the number of areas eligible to receive funds. Greater Minnesota stakeholders believe that this popular program ought to have its eligibility expanded, whereas industry asserts – in effect – it should be reduced.

Under the House definition, areas with basic DSL connections that advertised 10 Mbps down and 3 Mbps would not have “broadband” by any modern definition but would be considered “underserved” rather than “unserved.” This is

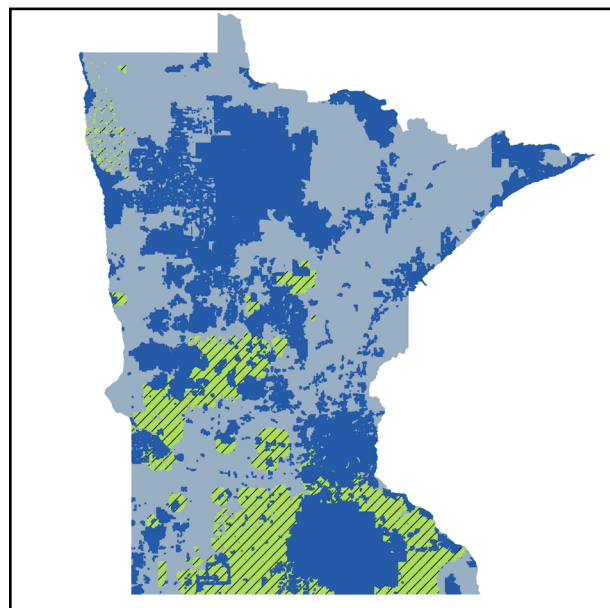
a crucial distinction because the grant program focuses on unserved populations with its extremely limited funds.

**Figure 1** examines the difference between setting the unserved definition at 10/3 Mbps or 25/3 Mbps. The areas in green with cross hatch would be eligible for grants with a 25/3 Mbps definition but not if it were set lower at 10/3 Mbps.<sup>20</sup>

**Figures 2 and 3** show where the grant program has funded improved Internet service in 2014 and 2015.

Though the House and the Senate agree on establishing a new goal for Minnesota, it is unimpressive. When Minnesota set its original goal, it aimed to be at the top of U.S. states. The

**Figure 1: Defining Unserved Households**



**LEGEND:**

- Access to 25 Mbps/3Mbps
- Access to 10 Mbps/3Mbps
- Without Access to even 10 Mbps/3Mbps





language, an incumbent could nullify a grant by providing its “intention and commitment” to “begin construction” within 1 year and complete construction 2 years after that date to provide services meeting the state’s speed goal.<sup>21</sup> It is unclear whether there would be a penalty for providers that provided their intention to construct but failed to do so, delaying competition.

A right of first refusal would have several impacts, all of them bad for investment in Greater Minnesota. The first is that fewer entities would seek awards for underserved areas because the awards could be nullified by an existing provider that sought to preserve its monopoly.

A troubling indirect impact is that existing providers would have an incentive to hold back investment in underserved areas until a grant was awarded. They could then focus their investment solely in areas that were on the verge of receiving a grant to encourage investment.

The right of first refusal is anti-competition policy despite public policy in the United States being oriented to competition. The telephone and cable companies will argue that the government should not subsidize competition, but as noted above, it has already substantially subsidized existing providers. Given the heavily monopolistic nature of telecommunications in much of Minnesota, a subsidy for competition may be exactly what is needed in the right circumstances.

## Recommendations

What direction the development grant program takes will depend on the definitions set in the 2016 session. Will Minnesota continue to set forward-looking goals to encourage high capacity networks, or will it merely settle for the minimum speeds necessary for yesterday’s applications?

When it comes to its goal, Minnesota should recall the danger of aiming low: you might hit the target. Minnesota should establish a stronger

goal and then actually fund the program to achieve it. 100 Mbps symmetrical by 2022 would be both ambitious and worthwhile.

The definition for “unserved” should continue to be pegged to the FCC definition, currently at 25/3 Mbps. The definition for “underserved” should include those with the minimum 25/3 Mbps connections but below the threshold of Minnesota’s goal for access.

The Border-to-Border fund should set some portion – less than half – of its funds aside for applications that would target the underserved population centers and blend them in with nearby unserved areas. Those business and industry centers are the economic heart of many regions and they need modern connectivity for Minnesota to thrive.

The cable and telephone lobbyists will vigorously protest but their companies will also begin investing more earnestly in the networks communities need – providing a still larger return on the state’s investment. Only when they are threatened with potential competition will they invest. There is no need for them to have any additional “right of first refusal” beyond that of any market: failing to meet local needs such that other competitors can take their subscribers.

It is darkly ironic that a program created to aid Greater Minnesota cities may end up gutting them, inadvertently encouraging businesses to locate further from population centers to obtain modern connectivity. Such a result would be bad for nearly everyone, harming the economic viability of entire regions while reinforcing the telecommunications monopolies that largely created the problem.

## FOOTNOTES

1. Minnesota Statutes 2015, section 116J.39, subdivision 4; <https://www.revisor.mn.gov/statutes?id=116J.39&year=2015>
2. <http://mn.gov/deed/images/2013-bb-annual-report.pdf>
3. <http://mn.gov/deed/images/2015-broadband-report.pdf>
4. <http://mn.gov/deed/images/broadband-dev-report.pdf>
5. Governor's Task Force on Broadband Annual report for 2013, p. 48 <http://mn.gov/deed/images/2013-bb-annual-report.pdf> and 2014 Task Force annual report, p.7 <http://mn.gov/deed/images/2014-taskforce-report.pdf>
6. ILSR email with Dorman, April 28, 2016
7. Powerpoint slide shared by OBD entitled MN Border to Border Grant – By the Numbers. The numbers do not add up to 31, we believe because some grants went to multiple entities working together.
8. <http://mn.gov/deed/images/2015-broadband-report.pdf>
9. <https://www.publicknowledge.org/pdf/connected-nation-report-20090323.pdf>
10. The telephone companies have broadly received major subsidies both in direct federal outlays and decades of monopoly protection from competition. Most cable companies also benefited from monopoly protection. Even though monopolies are no longer official policy, the incumbents benefit from effectively having a 50 meter head start in a 100 meter race.
11. Minnesota Statutes 2015, section 116J.395; <https://www.revisor.leg.state.mn.us/statutes/?id=116J.395>
12. Minnesota Statutes 2015, section 116J; <https://www.revisor.mn.gov/statutes/?id=116J&view=chapter>
13. Minnesota Statutes 2015, section 116J.39; <https://www.revisor.mn.gov/statutes/?id=116J.39>
14. <https://www.revisor.mn.gov/statutes/?id=116J.39>
15. Email correspondence with ILSR, April 21, 2016
16. ILSR in interview; April 8, 2016
17. ILSR "All Hands on Deck" report, see especially p. 52-58. [http://ilsr.org/wp-content/uploads/downloads/2014/09/all\\_hands\\_on\\_deck\\_mn.pdf](http://ilsr.org/wp-content/uploads/downloads/2014/09/all_hands_on_deck_mn.pdf).
18. <http://www.startribune.com/broadband-grants-deserve-priority-in-minnesota/374335571/>
19. [http://bits.blogs.nytimes.com/2015/01/29/f-c-c-sharply-increases-definition-of-broadband/?\\_r=0](http://bits.blogs.nytimes.com/2015/01/29/f-c-c-sharply-increases-definition-of-broadband/?_r=0)
20. Based on FCC Form 477 Data from June 2015 and December 2014. The December 2014 data is only used for Paul BUnyan Cooperative and Arrowhead Electric. Mercator Projection. Built in QGIS.
21. [https://www.revisor.mn.gov/bills/text.php?number=HF3931&version=3&session=Is89&session\\_year=2016&session\\_number=0](https://www.revisor.mn.gov/bills/text.php?number=HF3931&version=3&session=Is89&session_year=2016&session_number=0)

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