



Testimony submitted to the Senate Finance Committee
Wednesday, June 7, 2023
Amended Substitute House Bill 33
By Frank Darr, Counsel, The Ohio Telecom Association

Chairman Dolan, Ranking Member Sykes and members of the Senate Finance Committee:

My name is Frank Darr, and I am Counsel representing the Ohio Telecom Association and its member companies here to speak as an interested party on two areas in Amended Substitute House Bill 33. Amended Substitute House Bill 33 would make several changes to amend the Ohio Residential Broadband Grant Program and contains funding and statutory provisions for a new pole replacement fund.

Broadband Amendments

The Ohio Telecom Association is generally supportive of the changes proposed for the Ohio Residential Broadband Grant Program that clarify and reduce the regulatory burdens of the application process. The organization also understands the need for changes in scoring criteria to conform with federal requirements if the two conflict.

Other provisions raise concerns or suggest opportunities.

New language in the substitute bill would remove current law that protects a challenger's right to have some information redacted from a challenge if the challenger believes that information, such as planned construction, is proprietary business information (8170-8172). The current protection should not be omitted for several reasons. First, as a matter of law, R.C. 149.43 requires state agencies to treat information as nonpublic records if those records are protected by state or federal law. In this instance, confidential business records receive state law protection as trade secrets under R.C. 1333.61(D). The proposed change would be contrary to the protection afforded by state law. Second, the removal of the protection would create an informational asymmetry: The applicant could withhold business plans, while the incumbent could not. Third, the information would be available to the agency, and the applicant and challenger could enter

into protective agreements if sharing for some reason became necessary (although it is hard to imagine what would drive that need). Accordingly, the OTA encourages this Committee to reverse the change in the substitute bill that would remove the protection for a challenger's proprietary information.

Experience during the first round of grants recommends an additional change of the broadband program requiring use of FCC mapping of served and unserved areas. The use of the FCC mapping, which has already undergone substantial vetting and which will be updated twice a year as more addresses are served, will provide a "common language" upon which both applicants and challengers can rely. (Notably, the FCC map is used as a basis for determining unserved locations for pole replacement funding. See lines 20229-20232. Thus, the budget is already making a financial commitment of \$50 million based on the use of these maps.)

The most significant proposed changes to Ohio's broadband grant program are in lines 8280-8469 of the substitute bill and affect the scoring criteria. OTA agrees that the current scoring criteria need updating. On the positive side, the factors and rubric contained in the amendment place an emphasis on projects to extend broadband to unserved areas. They also encourage applicants to work with local governments and organizations, an outcome that is consistent with long commitments of OTA members to their communities. However, the amendment provides a limited response to what OTA has considered a deficiency in current law, insufficient credit for demonstrated experience and ability to complete complex projects. Collectively these factors would account for no more than 10% of the final application score. Additionally, new division (F) needs clarification. The factor's description leaves undefined the area that would benefit from the project or projects that would serve it. Without a clear definition of the area to be served, it would not be possible to estimate the project or projects' score or scores. The new division also might encourage coordination among competitors to maximize an application's score. Coordination of applications raises new potential legal issues that should be and can be avoided by either modifying or removing this factor from the scoring system.

Pole Replacement Fund

The bill also contains the House version of the pole replacement fund proposal. One concern with that proposal is that it would provide additional support to broadband grantees that received awards prior to the creation of the fund. See lines 20221-20232 and 20401-20410. Those grantees would be receiving additional support for projects that they may have represented could be completed with the original award and should be responsible for that commitment.

Again, thank you for the opportunity to address the Committee, and OTA looks forward to working through issues raised by the bill.