

SENATE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

January 31, 2018

Date

Committee on Business, Labor, & Technology.

After consideration on the merits, the Committee recommends the following:

SB18-002 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, page 2, line 3, strike "(32)(a)" and substitute "(32)(a);  
2 and **repeal** (19.3).".

3 Page 3, strike lines 6 through 9 and substitute "second downstream and  
4 one megabit per second upstream ~~or at measurable speeds at least equal~~  
5 ~~to the federal communications commission's definition of high-speed~~  
6 ~~internet access or broadband, whichever is faster, with:".~~

7 Page 3, after line 9 insert:

8 "(19.3) ~~"Nondiscriminatory and competitively neutral basis"~~  
9 ~~means that decisions by the commission concerning the distribution of~~  
10 ~~high cost support mechanism funding to eligible providers shall be made~~  
11 ~~using regulatory principles that are neutral in their effect, that do not~~  
12 ~~favor one class of providers over another, and that do not result in the~~  
13 ~~imposition of regulatory requirements or costs on one class of eligible~~  
14 ~~providers that are not imposed on others:".~~

15 Page 3, strike lines 14 and 15 and substitute:

16 "(II) Consists of ONLY A SINGLE AREA OF one or more contiguous  
17 census blocks in which:".

18 Page 3, strike lines 20 and 21 and substitute:

1           "(B) NO INCUMBENT BROADBAND PROVIDER IS RECEIVING OR HAS  
2 BEEN AWARDED FEDERAL BROADBAND SUPPORT, WITH RESPECT TO A  
3 PROJECT FOR WHICH CONSTRUCTION HAS NOT YET BEEN COMPLETED, FOR  
4 A BROADBAND NETWORK TO SERVE A MAJORITY OF THE HOUSEHOLDS IN  
5 EACH INDIVIDUAL CENSUS BLOCK IN THE SAME AREA."

6 Page 3, strike line 23 and substitute "(2)(a)(II), (2)(a)(III), and (3)(a); and  
7 **add** (2)(a)(IV), (2)(a)(V), (4), (5), and (6) as follows:"

8 Page 3, strike line 26 and substitute "- **repeal.** (2) (a) (II) The  
9 commission shall ensure that no local exchange provider is receiving  
10 funds from this or any other source that, together with local exchange  
11 service revenues, exceeds the cost of providing local exchange service to  
12 the provider's customers. The high cost support mechanism shall be  
13 supported and distributed ~~equitably and on a nondiscriminatory,~~  
14 ~~competitively neutral basis~~ through a neutral assessment on all  
15 telecommunications providers in Colorado.

16           (III) The commission ~~at its regularly scheduled meetings~~".

17 Page 4, line 1, strike "amount" and substitute "~~amount~~ RATE".

18 Page 4, line 5, strike "AMOUNT" and substitute "SURCHARGE RATE".

19 Page 4, line 7, strike "HIGH COST SUPPORT MECHANISM" and substitute  
20 "SURCHARGE".

21 Page 4, line 8, strike "BY THE SURCHARGE".

22 Page 4, after line 23 insert:

23           "(V) IN ACCORDANCE WITH SUBSECTION (2)(a)(IV) OF THIS  
24 SECTION, THE COMMISSION, IN MAKING DISTRIBUTIONS OF HIGH COST  
25 SUPPORT MECHANISM MONEY IN THE YEARS 2019 THROUGH 2023, SHALL  
26 NEITHER:

27           (A) MAKE EFFECTIVE COMPETITION DETERMINATIONS; NOR

28           (B) APPLY ANY SECTION OF THIS ARTICLE 15 THAT REQUIRES AN  
29 EFFECTIVE COMPETITION DETERMINATION BE MADE OR THAT IN ANY WAY  
30 CONFLICTS WITH SUBSECTION (2)(a)(IV) OF THIS SECTION WITH REGARD  
31 TO THE DISTRIBUTIONS.

32           (3) (a) There is hereby created, in the state treasury, the Colorado

1 high cost administration fund, referred to in this section as the "fund",  
2 which shall be used to reimburse the commission and its contractors for  
3 reasonable expenses incurred in the administration of the high cost  
4 support mechanism, including administrative costs incurred in association  
5 with broadband service, as determined by rules of the commission. The  
6 general assembly shall appropriate annually the ~~moneys~~ MONEY in the  
7 fund that ~~are~~ IS to be used for the direct and indirect administrative costs  
8 incurred by the commission and its contractors. At the end of any fiscal  
9 year, all unexpended and unencumbered ~~moneys~~ MONEY in the fund  
10 ~~remain~~ REMAINS in the fund and shall not be credited or transferred to the  
11 general fund or any other fund. ~~Based upon the high cost support~~  
12 ~~mechanism, the balance remaining in the fund, and the amount~~  
13 ~~appropriated annually by the general assembly for use by the commission,~~  
14 ~~each year the commission shall determine the nondiscriminatory,~~  
15 ~~competitively neutral assessment on all telecommunications service~~  
16 ~~providers in Colorado that will be necessary to cover the cost of~~  
17 ~~implementing and administering the high cost support mechanism. Only~~  
18 the ~~moneys~~ MONEY ~~from the assessment~~ IN THE HIGH COST SUPPORT  
19 MECHANISM THAT IS NECESSARY for administering the high cost support  
20 mechanism shall be transmitted to the state treasurer, who shall credit the  
21 same to the fund. All interest derived from the deposit and investment of  
22 ~~moneys~~ MONEY in the fund ~~remain~~ REMAINS in the fund and ~~do~~ DOES not  
23 revert to the general fund."

24 Page 5, line 3, strike "SEPTEMBER" and substitute "DECEMBER".

25 Page 5, after line 4 insert:

26 "(5) ON OR BEFORE DECEMBER 31, 2018, THE COMMISSION SHALL  
27 ESTABLISH A PLAN TO ELIMINATE, ON AN  
28 EXCHANGE-AREA-BY-EXCHANGE-AREA BASIS, OBLIGATIONS IMPOSED  
29 PURSUANT TO SECTIONS 40-15-401 (1)(b)(IV) AND 40-15-502 (5)(b) AND  
30 (6)(a) IN THE SAME PROPORTIONS AND AT THE SAME TIMES THAT HIGH  
31 COST SUPPORT MECHANISM DISTRIBUTIONS FOR BASIC SERVICE ARE  
32 REDUCED PURSUANT TO SUBSECTION (2)(a)(IV) OF THIS SECTION."

33 Renumber succeeding subsection accordingly.

34 Page 5, line 11, strike lines 11 and 12 and substitute "(5)(a), (5)(b), (5)(c)  
35 introductory portion, (5)(c)(III), (5)(c)(IV), (5)(f), (7), (8)(a), (8)(c), (8)(j),  
36 (9)(a) introductory portion, and (11); **repeal** (4)(b) and (6); and **add**

1 (5)(g), (8)(c.5), (8.5), (10.5) and (10.7) as follows:".

2 Page 5, line 14, after "**creation -**" insert "**definitions -**".

3 Page 5, after line 25 insert:

4 "(b) The board consists of ~~sixteen~~ SEVENTEEN MEMBERS, SIXTEEN  
5 OF WHOM ARE VOTING members. The members of the board shall be  
6 selected on the basis of their knowledge of and interest in broadband  
7 service and shall serve for four-year terms. ~~except that, of the members~~  
8 ~~first appointed to the board, eight members shall serve for terms of two~~  
9 ~~years and eight members shall serve for terms of four years.~~ A member  
10 of the board shall not serve more than two consecutive full four-year  
11 terms.

12 (c) No more than eight VOTING members of any one major  
13 political party may serve on the board at the same time. Members of the  
14 board are entitled to seventy-five dollars per diem for attendance at  
15 official meetings plus actual and necessary expenses incurred in the  
16 conduct of official business. Members of the board shall be appointed as  
17 follows:

18 (III) ~~Six~~ EIGHT voting members representing the broadband  
19 industry:

20 (A) One of whom represents a wireless provider, as appointed by  
21 the minority leader of the house of representatives;

22 (B) One of whom represents a wireline provider, as appointed by  
23 the minority leader of the senate;

24 (C) One of whom represents a broadband satellite provider, as  
25 appointed by the governor;

26 (D) One of whom represents a cable provider, as appointed by the  
27 president of the senate;

28 (E) One of whom represents a rural local exchange carrier, as  
29 appointed by the governor; ~~and~~

30 (F) One of whom represents a competitive local exchange carrier,  
31 as appointed by the speaker of the house of representatives;

32 (G) ONE OF WHOM REPRESENTS A CABLE PROVIDER SERVING  
33 RURAL AREAS, AS APPOINTED BY THE PRESIDENT OF THE SENATE; AND

34 (H) ONE OF WHOM REPRESENTS ANY OTHER BROADBAND  
35 PROVIDER, AS APPOINTED BY THE SPEAKER OF THE HOUSE OF  
36 REPRESENTATIVES.

37 (IV) ~~Three~~ TWO voting members of the public:

38 (A) One of whom resides in an unserved area of the western slope

1 of the state, as appointed by the president of the senate; AND  
2 (B) One of whom resides in an unserved area of the eastern slope  
3 of the state, as appointed by the minority leader of the house of  
4 representatives. and  
5 (C) ~~One of whom resides in an unserved urban area of the state,~~  
6 ~~as appointed by the speaker of the house of representatives."~~.

7 Page 5, strike lines 26 and 27 and substitute:

8 "(f) (I) If a board member has a conflict of interest with respect to  
9 any matter addressed by the board, including a financial interest in the  
10 matter, the member shall recuse himself or herself from any discussion or  
11 decisions on the matter.

12 (II) (A) A BOARD MEMBER APPOINTED PURSUANT TO SUBSECTION  
13 (5)(c)(I), (5)(c)(II), OR (5)(c)(IV) OF THIS SECTION IS NOT DEEMED TO  
14 HAVE A CONFLICT OF INTEREST MERELY BY VIRTUE OF RESIDING IN OR  
15 REPRESENTING AN UNSERVED AREA OR AN AREA THAT IS THE SUBJECT OF  
16 AN APPLICATION BEFORE THE BOARD.

17 (B) A BOARD MEMBER APPOINTED PURSUANT TO SUBSECTION  
18 (5)(c)(III) OF THIS SECTION IS DEEMED TO HAVE A CONFLICT OF INTEREST  
19 WITH RESPECT TO AN APPLICATION FILED BY AN ENTITY THAT THE BOARD  
20 MEMBER REPRESENTS; HOWEVER, IF SUCH APPLICATION IS FILED, THE  
21 BOARD MEMBER MAY STILL PARTICIPATE IN DISCUSSIONS ABOUT OTHER  
22 APPLICATIONS BEFORE THE BOARD, BUT SHALL NOT VOTE ON THOSE OTHER  
23 APPLICATIONS.

24 (g) IN THE EVENT OF A TIE VOTE OF THE BOARD, THE APPLICATION,  
25 APPEAL, PROPOSITION, OR OTHER MATTER BEING VOTED UPON FAILS.

26 (6) ~~The board's powers and duties commence three months after~~  
27 ~~moneys are first allocated from the HCSM to the fund.~~

28 (7) ~~For a period of at least six months before accepting~~  
29 ~~applications for proposed projects, The board shall provide notice to and"~~.

30 Page 6, strike lines 1 through 4.

31 Page 6, line 5, strike "providers" and substitute "providers, INCUMBENT  
32 BROADBAND PROVIDERS,".

33 Page 6, after line 14 insert:

34 "(a) Developing a project application process that places the  
35 burden on an eligible applicant to demonstrate that its proposed project

1 meets the project eligibility criteria established in this subsection (8),  
2 including a requirement that the proposal concern a new project, and not  
3 a project already in progress, and a requirement to prove that the area to  
4 be served by the proposed project is an unserved area. To prove that the  
5 area to be served is an unserved area, the applicant must submit a map  
6 demonstrating the insufficient availability of broadband service in the  
7 area. The applicant must submit the application and map to the board; the  
8 board of county commissioners, city council, or other local entity with  
9 authority over the area to be served; and ~~an~~ ALL incumbent ~~provider~~  
10 PROVIDERS OR INCUMBENT BROADBAND PROVIDERS THAT PROVIDE  
11 BROADBAND INTERNET SERVICE OR BROADBAND SERVICE IN THE AREA  
12 PROPOSED TO BE SERVED IN THE APPLICATION. The board shall establish  
13 a notice and comment period of at least sixty days within which the local  
14 entity may review and comment on the application.

15 (c) ~~Minimizing~~ DENYING FUNDING FOR conflicts with, or  
16 duplication IN WHOLE OR IN PART of, federal sources of high cost support  
17 or federal broadband grants FOR CONSTRUCTION OF A BROADBAND  
18 NETWORK so as to maximize the total available state and federal support  
19 for rural broadband development;

20 (c.5) DENYING FUNDING FOR OVERBUILDING, IN WHOLE OR IN  
21 PART, OF EXISTING BROADBAND NETWORKS IN AREAS THAT DO NOT MEET  
22 THE DEFINITION OF UNSERVED AREA IN ORDER TO MAXIMIZE THE TOTAL  
23 AVAILABLE SUPPORT FOR FINANCING RURAL BROADBAND DEVELOPMENT;".

24 Page 6, strike lines 19 through 23 and substitute "PROJECT. THE BOARD  
25 MAY APPROVE MORE THAN ONE OF THE APPLICANT'S PROJECTS WITHIN A  
26 SINGLE YEAR."

27 Page 7, strike line 2 and substitute "GRANT APPLICATION, OR BOTH. IF A  
28 PROVIDER OF BROADBAND SERVICE OR A BROADBAND NETWORK THAT  
29 ALLEGES FUNDING PROVIDED PURSUANT TO THIS SECTION WILL OVERBUILD  
30 OR DUPLICATE, IN WHOLE OR IN PART, THE PROVIDER'S BROADBAND  
31 NETWORK, THE PROVIDER IS AN AGGRIEVED PARTY WITH STANDING TO  
32 APPEAL UNDER THIS SUBSECTION (8)(j)(III)."

33 Page 7, after line 7 insert:

34 "(8.5) (a) THE BOARD SHALL DENY AN APPLICATION THAT  
35 CONTAINS AN AREA THAT DOES NOT MEET THE DEFINITION OF UNSERVED  
36 AREA AND SHALL GRANT AN APPEAL TO AN INCUMBENT BROADBAND  
37 PROVIDER THAT DEMONSTRATES, BY A PREPONDERANCE OF THE EVIDENCE,

1 THAT AN AREA COVERED BY AN APPLICATION DOES NOT MEET THE  
2 DEFINITION OF UNSERVED AREA.

3 (b) IF ALL OTHER APPLICATION REQUIREMENTS, INCLUDING  
4 CONTIGUITY, REMAIN MET, AN APPLICATION MAY BE AMENDED AT ANY  
5 TIME TO REMOVE FROM THE APPLICATION COVERAGE OF AN AREA THAT  
6 DOES NOT MEET THE CRITERIA ESTABLISHED PURSUANT TO THIS SECTION."

7 Page 7, strike lines 16 through 27 and substitute:

8 "(10.5) THE BOARD SHALL MAKE EVERY EFFORT TO ENSURE THAT  
9 A PROJECT FUNDED PURSUANT TO THIS SECTION DOES NOT DUPLICATE  
10 ANOTHER BROADBAND PROJECT OR BROADBAND NETWORK, INCLUDING  
11 ANY PROJECT SUPPORTED OR APPROVED BY THE DEPARTMENT OF LOCAL  
12 AFFAIRS."

13 Page 8, strike lines 1 through 13 and substitute:

14 "(10.7) AS USED IN THIS SECTION:

15 (a) "INCUMBENT BROADBAND PROVIDER" MEANS A PROVIDER THAT  
16 OFFERS BROADBAND INTERNET SERVICE OVER A BROADBAND NETWORK IN  
17 AN AREA COVERED BY AN APPLICATION FILED PURSUANT TO THIS SECTION.

18 (b) "OVERBUILD" OR "OVERBUILDING" MEANS PROVIDING A  
19 BROADBAND NETWORK TO RESIDENTIAL OR BUSINESS ADDRESSES THAT:

20 (I) AT THE TIME OF APPLICATION, EITHER HAVE ACCESS TO A  
21 BROADBAND NETWORK OR HAVE RECEIVED FEDERAL SOURCES OF HIGH  
22 COST SUPPORT OR FEDERAL BROADBAND GRANTS TO PROVIDE ACCESS TO  
23 A BROADBAND NETWORK; AND

24 (II) ACCOUNT FOR TEN PERCENT OR MORE OF THE TOTAL  
25 RESIDENTIAL AND BUSINESS ADDRESSES TO BE SERVED BY A PROPOSED  
26 PROJECT."

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