

CHAPTER 89

PUBLIC UTILITIES

SENATE BILL 18-002

BY SENATOR(S) Coram and Sonnenberg, Baumgardner, Cooke, Grantham, Holbert, Aguilar, Court, Crowder, Donovan, Fenberg, Garcia, Gardner, Guzman, Jahn, Kagan, Kefalas, Kerr, Martinez Humenik, Merrifield, Moreno, Priola, Scott, Tate, Todd, Williams A.;

also REPRESENTATIVE(S) Becker K. and Duran, Arndt, Bridges, Buckner, Catlin, Coleman, Danielson, Esgar, Garnett, Ginal, Gray, Hamner, Hansen, Herod, Hooton, Jackson, Kennedy, Kraft-Tharp, Lee, Lontine, McLachlan, Melton, Michaelson Jenet, Pabon, Pettersen, Reyher, Roberts, Rosenthal, Salazar, Singer, Valdez, Weissman, Wilson, Winter, Young.

AN ACT**CONCERNING THE FINANCING OF BROADBAND DEPLOYMENT.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 40-15-102, **amend** the introductory portion, (3.7) introductory portion, and (32)(a); and **repeal** (19.3) as follows:

40-15-102. Definitions. As used in this ~~article~~ ARTICLE 15, unless the context otherwise requires:

(3.7) "Broadband network" means the plant, equipment, components, facilities, hardware, and software used to provide broadband internet service at measurable speeds of at least ~~four~~ TEN megabits per second downstream and one megabit per second upstream or at measurable speeds at least equal to the federal communications commission's definition of high-speed internet access or broadband, whichever is faster, with:

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

(32) (a) "Unserved area" means an area of the state that:

Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(I) Lies outside of municipal boundaries or is a city with a population of fewer than ~~five~~ SEVEN thousand FIVE HUNDRED inhabitants; and

(II) Consists of ~~one or more contiguous census blocks in which a majority of the households~~ THAT lack access to at least one provider of a broadband network that uses satellite technology and at least one provider of a broadband network that uses nonsatellite technology.

SECTION 2. In Colorado Revised Statutes, 40-15-208, **amend** (2)(a) and (3)(a); and **add** (4), (5), and (6) as follows:

40-15-208. High cost support mechanism - Colorado high cost administration fund - creation - purpose - operation - rules - report - repeal.

(2) (a) (I) The commission is hereby authorized to establish a mechanism for the support of universal service, also referred to in this section as the "high cost support mechanism", which must operate in accordance with rules adopted by the commission. The primary purpose of the high cost support mechanism is to provide financial assistance as a support mechanism to:

(A) ~~Local exchange providers in areas without effective competition to~~ Help make basic local exchange service affordable and allow ~~the~~ FOR REIMBURSEMENT TO providers, to be fully reimbursed for the difference between the reasonable costs incurred in making basic service available to their customers within a rural, high cost geographic support area and a reasonable benchmark rate for basic service, as determined by the commission, after taking into account any amounts that the providers have received under price support mechanisms established by the federal government and by this state, regardless of the classification of basic service under ~~part 2, 3, or 4 of this article~~ AS SPECIFIED IN SUBSECTIONS (2)(a)(IV) AND (4) OF THIS SECTION; and

(B) Provide access to broadband service ~~through broadband networks~~ in unserved areas pursuant to THIS SECTION AND section 40-15-509.5 only.

(II) ~~The commission shall ensure that no local exchange provider is receiving funds from this or any other source that, together with local exchange service revenues, exceeds the cost of providing local exchange service to the provider's customers. The high cost support mechanism shall be supported and distributed equitably and on a nondiscriminatory, competitively neutral basis through a neutral assessment on all telecommunications providers in Colorado.~~

(III) ~~The commission at its regularly scheduled meetings to establish the high cost support mechanism surcharge and surcharge rate shall reduce~~ MAINTAIN the amount RATE of the high cost support mechanism surcharge ~~by the following percentages of the new broadband funds allocated in that year pursuant to section 40-15-509.5 (3) from the high cost support mechanism to the broadband fund, created in section 40-15-509.5 (4):~~ AT THE SURCHARGE RATE ESTABLISHED AS OF JANUARY 1, 2018; EXCEPT THAT, ON AND AFTER JULY 1, 2023, THE COMMISSION MAY REDUCE THE SURCHARGE RATE TO ENSURE THAT THE AMOUNT OF MONEY COLLECTED DOES NOT EXCEED TWENTY-FIVE MILLION DOLLARS IN CALENDAR YEAR 2024.

~~(A) In years 2016 and 2017, five percent;~~

~~(B) In years 2018 and 2019, ten percent;~~

~~(C) In years 2020 and 2021, fifteen percent; and~~

~~(D) In years 2022 and 2023, twenty percent.~~

(IV) THE COMMISSION SHALL ALLOCATE TO THE HIGH COST SUPPORT MECHANISM ACCOUNT DEDICATED TO BROADBAND DEPLOYMENT, ON A QUARTERLY BASIS AND BY THE END OF THE MONTH FOLLOWING THE PREVIOUS QUARTER, THE FOLLOWING PERCENTAGES OF THE TOTAL QUARTERLY AMOUNT OF HIGH COST SUPPORT MECHANISM MONEY COLLECTED, MINUS ADMINISTRATIVE COSTS AND DISTRIBUTIONS REQUIRED UNDER SUBSECTION (4) OF THIS SECTION:

(A) FOR EACH QUARTER IN 2019, SIXTY PERCENT;

(B) FOR EACH QUARTER IN 2020, SEVENTY PERCENT;

(C) FOR EACH QUARTER IN 2021, EIGHTY PERCENT;

(D) FOR EACH QUARTER IN 2022, NINETY PERCENT; AND

(E) FOR EACH QUARTER IN 2023, ONE HUNDRED PERCENT.

(V) THE NONRURAL INCUMBENT LOCAL EXCHANGE CARRIER WILL RECEIVE, ON A QUARTERLY BASIS AND BY THE END OF THE MONTH FOLLOWING THE PREVIOUS QUARTER, THE BALANCE OF THE REMAINING QUARTERLY HIGH COST SUPPORT MECHANISM COLLECTIONS AFTER THE DISTRIBUTIONS REQUIRED BY SUBSECTIONS (2)(a)(IV) AND (4) OF THIS SECTION HAVE BEEN MADE.

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

(A) MAKE EFFECTIVE COMPETITION DETERMINATIONS; NOR

(B) APPLY ANY SECTION OF THIS ARTICLE 15 THAT REQUIRES AN EFFECTIVE COMPETITION DETERMINATION BE MADE OR THAT IN ANY WAY CONFLICTS WITH SUBSECTIONS (2)(a)(IV) AND (4) OF THIS SECTION WITH REGARD TO THE DISTRIBUTIONS.

(3) (a) There is hereby created, in the state treasury, the Colorado high cost administration fund, referred to in this section as the "fund", which shall be used to reimburse the commission and its contractors for reasonable expenses incurred in the administration of the high cost support mechanism, including administrative costs incurred in association with broadband service, as determined by rules of the commission. The general assembly shall appropriate annually the ~~monies~~ MONEY in the fund that ~~are~~ IS to be used for the direct and indirect administrative costs incurred by the commission and its contractors. At the end of any fiscal year, all unexpended and unencumbered ~~monies~~ MONEY in the fund ~~remain~~ REMAINS in the

fund and shall not be credited or transferred to the general fund or any other fund. ~~Based upon the high cost support mechanism, the balance remaining in the fund, and the amount appropriated annually by the general assembly for use by the commission, each year the commission shall determine the nondiscriminatory, competitively neutral assessment on all telecommunications service providers in Colorado that will be necessary to cover the cost of implementing and administering the high cost support mechanism. Only the moneys MONEY from the assessment IN THE HIGH COST SUPPORT MECHANISM THAT IS NECESSARY for administering the high cost support mechanism shall be transmitted to the state treasurer, who shall credit the same to the fund. All interest derived from the deposit and investment of moneys MONEY in the fund remain REMAINS in the fund and do DOES not revert to the general fund.~~

(4) NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY IN SECTIONS 40-15-207 AND 40-15-502 OR THIS SECTION, RURAL TELECOMMUNICATIONS PROVIDERS RECEIVING SUPPORT FROM THE HIGH COST SUPPORT MECHANISM AS OF JANUARY 1, 2017, WILL CONTINUE TO RECEIVE SUPPORT, ON A QUARTERLY BASIS AND BY THE END OF THE MONTH FOLLOWING THE PREVIOUS QUARTER, AT THE SAME LEVEL OF REIMBURSEMENT ESTABLISHED BY AVERAGING THE PAYMENTS RECEIVED FOR CALENDAR YEARS 2015 AND 2016, FOR THE PERIOD OF JANUARY 1, 2019, THROUGH DECEMBER 1, 2023. THE COMMISSION SHALL ADMINISTER THE HIGH COST SUPPORT MECHANISM TO ENSURE COMPLIANCE WITH THIS SECTION.

(5) ON OR BEFORE DECEMBER 31, 2018, THE COMMISSION SHALL ESTABLISH A PLAN TO ELIMINATE, ON AN EXCHANGE-AREA-BY-EXCHANGE-AREA BASIS, OBLIGATIONS IMPOSED PURSUANT TO SECTIONS 40-15-401 (1)(b)(IV) AND 40-15-502 (5)(b) AND (6)(a) CONSISTENT WITH THE REDUCTIONS IN THE HIGH COST SUPPORT MECHANISM DISTRIBUTIONS FOR BASIC SERVICE PURSUANT TO SUBSECTION (2)(a)(IV) OF THIS SECTION.

(6) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2024. BEFORE THE REPEAL, THE DEPARTMENT OF REGULATORY AGENCIES SHALL, IN ACCORDANCE WITH SECTION 24-34-104, REVIEW THE POWERS, DUTIES, AND FUNCTIONS OF THE COMMISSION REGARDING THE ADMINISTRATION OF THE HIGH COST SUPPORT MECHANISM.

SECTION 3. In Colorado Revised Statutes, 40-15-502, **amend** (5)(a) and (5)(b) as follows:

40-15-502. Expressions of state policy. (5) Universal service support mechanisms. (a) In order to accomplish the goals of universal basic service, universal access to advanced service under section 40-15-509.5, and any revision of the definition of basic service under subsection (2) of this section, the commission shall create a system of support mechanisms to assist in the provision of basic service AND ADVANCED SERVICE in high-cost areas. ~~that are without effective competition for basic service, applying the factors stated in section 40-15-207; except that support provided in a particular geographic support area is not affected until the commission makes a finding applying the factors listed in section 40-15-207.~~ The commission shall fund these support mechanisms equitably and on a nondiscriminatory, competitively neutral basis through assessments, which may include a rate element, on all telecommunications ~~service~~ providers in

~~Colorado. and the commission shall distribute the funds equitably and on a nondiscriminatory, competitively neutral basis. For purposes of administering the support mechanisms, the commission shall divide the state into reasonably compact, competitively neutral geographic support areas. A provider's eligibility to receive support FOR BASIC SERVICE under the support mechanisms is conditioned upon the provider's offering basic service throughout an entire support area. The commission shall review the costs of basic service and shall administer the support mechanisms.~~

~~(b) A provider that offers basic local exchange service throughout an entire support area through use of its own facilities or on a resale basis may be qualified as a provider of last resort. or may be eligible to receive universal service support, as determined by the commission. Resale shall be made available on a nondiscriminatory basis, as determined by the commission.~~

SECTION 4. In Colorado Revised Statutes, 40-15-509.5, **amend** (3), (5)(a), (5)(b), (5)(c) introductory portion, (5)(c)(II)(C), (5)(c)(III), (5)(c)(IV), (5)(f), (7), (8) introductory portion, (8)(a), (8)(c), (8)(d)(I), (8)(e), (8)(j), (9)(a) introductory portion, and (11); **repeal** (4)(b) and (6); and **add** (5)(g), (8)(c.5), (8.5), (10.7), and (10.9) as follows:

40-15-509.5. Broadband service - report - broadband deployment board - broadband administrative fund - creation - definitions - repeal. (3) The commission may allocate the Colorado high cost support mechanism, established under section 40-15-208 and referred to in this section as the "HCSM", for the deployment of broadband service in unserved areas of the state pursuant to this section ~~AND SECTION 40-15-208 only.~~ The commission may fund the deployment of broadband service in unserved areas of the state through use of the HCSM surcharge and surcharge rate in effect on ~~May 10, 2014~~ JANUARY 1, 2018. Pursuant to subsection (4) of this section and consistent with sections 40-15-207 and 40-15-208, the commission shall determine funds available for broadband deployment and the administration of the board ~~only~~ AS PRESCRIBED IN SECTION 40-15-208 OR from the HCSM money that it determines is no longer required by the HCSM to support universal basic service through an effective competition determination. The money available for broadband deployment shall be maintained by the HCSM third-party contractor and held in a separate account from money used for basic voice service. Money held for broadband deployment shall not be disbursed for basic voice service, and money held for basic voice service shall not be disbursed for broadband deployment. The commission shall only disburse money for broadband deployment grants from the HCSM as directed by the board. Nothing in this section increases any surcharge rate charged to help fund the HCSM.

~~(4) (b) The broadband deployment board shall dedicate two hundred thousand dollars of the moneys in the fund to cover the direct and indirect costs incurred by the board, its employees, and its contractors in funding the deployment of broadband service in unserved areas of the state.~~

(5) (a) There is hereby created in the department of regulatory agencies the broadband deployment board, referred to in this section as the "board". The board is an independent board created to implement and administer the deployment of broadband service in unserved areas. ~~from the fund.~~ The department of regulatory agencies shall staff the board. The board has the powers and duties specified in this

section.

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

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

(II) Three voting members representing local entities:

(C) One of whom is any other representative of a local entity AND WHO HAS A BACKGROUND IN BROADBAND SERVICE AND EXPERTISE IN RURAL ECONOMIC DEVELOPMENT, EDUCATION, OR TELEMEDICINE, as appointed by the minority leader of the senate;

(III) ~~Six~~ SEVEN voting members representing the broadband industry:

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

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

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

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

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

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

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

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

(A) One of whom resides in an unserved area of the western slope of the state, as appointed by the ~~president of the senate~~ SPEAKER OF THE HOUSE OF REPRESENTATIVES; AND

(B) One of whom resides in an unserved area of the eastern slope of the state, as appointed by the minority leader of the house of representatives. ~~and~~

~~(C) One of whom resides in an unserved urban area of the state, as appointed by the speaker of the house of representatives.~~

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

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

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

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

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

~~(7) For a period of at least six months before accepting applications for proposed projects,~~ The board shall provide notice to and requests for proposals from incumbent providers, INCUMBENT BROADBAND PROVIDERS, and local entities about ~~the broadband fund and its~~ THE BOARD'S purpose to deploy broadband service in unserved areas. The board shall ensure that both the manner and amount of notice provided under this subsection (7) are adequate and equitable for all potentially eligible applicants.

(8) The board shall direct the commission to transfer money, in a manner consistent with this section, from the account for broadband deployment established in the HCSM to approved grant applicants. The board shall develop criteria for awarding money for new projects ~~expanding broadband networks~~ into unserved areas, including:

(a) Developing a project application process that places the burden on an eligible applicant to demonstrate that its proposed project meets the project eligibility criteria established in this subsection (8), including a requirement that the proposal concern a new project, and not a project already in progress, and a requirement to prove that the area to be served by the proposed project is an unserved area. To prove that the area to be served is an unserved area, the applicant must submit a map AND A LIST OF HOUSEHOLD ADDRESSES demonstrating the insufficient availability of broadband service in the area. The applicant must submit the application, ~~and~~ map, AND LIST OF HOUSEHOLD ADDRESSES to the board; the board of county

commissioners, city council, or other local entity with authority over the area to be served; and ~~an~~ ALL incumbent ~~provider~~ PROVIDERS OR INCUMBENT BROADBAND PROVIDERS THAT PROVIDE BROADBAND INTERNET SERVICE OR BROADBAND SERVICE IN THE AREA PROPOSED TO BE SERVED IN THE APPLICATION. The board shall establish a notice and comment period of at least sixty days within which the local entity may review and comment on the application.

(c) ~~Minimizing conflicts with, or duplication of,~~ DENYING FUNDING FOR APPLICATIONS THAT OVERBUILD AREAS RECEIVING federal sources of high cost support or federal broadband grants FOR CONSTRUCTION OF A BROADBAND NETWORK THAT WILL BE COMPLETED WITHIN TWENTY-FOUR MONTHS AFTER THE DATE THAT THE APPLICANT FILED THE APPLICATION so as to maximize the total available state and federal support for rural broadband development. AN INCUMBENT BROADBAND PROVIDER RECEIVING FEDERAL FUNDS MUST SUBMIT TO THE BOARD AN AFFIDAVIT FROM A COMPANY OFFICER THAT THE BUILD-OUT WILL BE COMPLETED WITHIN THE TWENTY-FOUR-MONTH PERIOD. UPON COMPLETION OF THE PROJECT, AN INCUMBENT BROADBAND PROVIDER WILL PROVIDE DOCUMENTATION TO THE BOARD THAT DEMONSTRATES THAT THE UNSERVED ADDRESSES MEET THE MINIMUM DOWNLOAD AND UPLOAD SPEEDS ESTABLISHED IN THE FCC'S DEFINITION OF HIGH-SPEED INTERNET ACCESS OR BROADBAND. IF THE INCUMBENT BROADBAND PROVIDER FAILS TO MEET THE COMMITMENT MADE IN THE AFFIDAVIT FILED, THE BOARD MAY AWARD A GRANT TO ANOTHER PROVIDER TO PROVIDE SERVICE FOR THE ADDRESSES THAT REMAIN UNSERVED.

(c.5) DENYING FUNDING FOR OVERBUILDING OF EXISTING BROADBAND NETWORKS IN ORDER TO MAXIMIZE THE TOTAL AVAILABLE SUPPORT FOR FINANCING RURAL BROADBAND DEVELOPMENT;

(d) Ensuring that a proposed project includes:

(I) Access to ~~a broadband network~~ MEASURABLE SPEEDS OF AT LEAST TEN MEGABITS PER SECOND DOWNSTREAM AND ONE MEGABIT PER SECOND UPSTREAM OR MEASURABLE SPEEDS AT LEAST EQUAL TO THE FCC'S DEFINITION OF HIGH-SPEED INTERNET ACCESS OR BROADBAND, WHICHEVER IS FASTER;

(e) Providing additional consideration for proposed projects that include at least some of the following factors:

(I) PROPOSED PROJECTS THAT PROVIDE SERVICE TO RESIDENTIAL AND BUSINESS ADDRESSES THAT LACK BROADBAND INTERNET SERVICE AT MEASURABLE SPEEDS OF AT LEAST TEN MEGABITS PER SECOND DOWNSTREAM AND ONE MEGABIT PER SECOND UPSTREAM;

(II) Proposed projects that are endorsed by local entities interested in obtaining broadband internet service in unserved areas of the state;

(III) Proposed projects that have ~~downstream and upstream speeds in excess of the minimum required under this section~~ OF AT LEAST TEN MEGABITS PER SECOND DOWNSTREAM AND ONE MEGABIT PER SECOND UPSTREAM OR MEASURABLE SPEEDS AT LEAST EQUAL TO THE FCC'S DEFINITION OF HIGH-SPEED INTERNET ACCESS OR BROADBAND, WHICHEVER IS FASTER;

~~(III)~~ (IV) Proposed projects for which the applicant has an established record of operation in the area of the grant application; and

~~(IV)~~ (V) Proposed projects providing last-mile broadband service, which is defined as the portion of broadband service that delivers an internet connection to an end user that lacks access to broadband service at measurable speeds greater than fifty-six kilobits per second;

(j) Establishing a grant award process that:

(I) Allows ~~for only one grant to be awarded per applicant per year~~ AN APPLICANT TO APPLY FOR GRANTS ON MULTIPLE PROJECTS IN A GIVEN YEAR IF THE APPLICANT MAKES A SEPARATE APPLICATION FOR EACH PROJECT. THE BOARD MAY APPROVE MORE THAN ONE OF THE APPLICANT'S PROJECTS WITHIN A SINGLE YEAR.

(II) Ensures the geographically equitable distribution of grant awards; ~~and~~

(III) Provides for an appeals process for any party aggrieved by an award or denial of grant ~~moneys~~ MONEY, WHETHER EXERCISING A RIGHT OF FIRST REFUSAL, HAVING FILED ANY COMMENTS REGARDING THE INITIAL GRANT APPLICATION, OR BOTH. IF A PROVIDER OF BROADBAND SERVICE OR A BROADBAND NETWORK THAT ALLEGES FUNDING PROVIDED PURSUANT TO THIS SECTION WILL OVERBUILD THE PROVIDER'S BROADBAND NETWORK, THE PROVIDER IS AN AGGRIEVED PARTY WITH STANDING TO APPEAL UNDER THIS SUBSECTION (8)(j)(III).

(IV) REQUIRES THE BOARD TO CONSIDER APPEALS ALLEGING THAT THE APPLICATION AREA IS NO LONGER UNSERVED BECAUSE FEDERAL SUPPORT IMPROVES A BROADBAND NETWORK FOR SERVICE LOCATIONS THAT ARE ADJACENT TO THE AREA RECEIVING THE FEDERAL AWARD AND ARE WITHIN THE APPLICATION AREA.

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

(b) IF ALL OTHER APPLICATION REQUIREMENTS REMAIN MET, AN APPLICATION MAY BE AMENDED AT ANY TIME TO REMOVE FROM THE APPLICATION COVERAGE OF AN AREA THAT DOES NOT MEET THE CRITERIA ESTABLISHED PURSUANT TO THIS SECTION. ALTERNATIVELY, THE BOARD MAY AWARD A PARTIAL GRANT FOR AN AREA THAT DOES MEET THE CRITERIA.

(9) (a) The board shall report annually to the transportation and energy committee and ~~the business affairs and labor and economic and workforce development committee in the house of representatives and to the agriculture, natural resources, and energy committee and business, labor, and technology committee in the senate,~~ or their successor committees, on the projects supported by ~~moneys~~ MONEY from the ~~fund~~ HCSM ACCOUNT DEDICATED TO BROADBAND DEPLOYMENT in a given year, including information on:

(10.7) THE BOARD SHALL MAKE EVERY EFFORT TO ENSURE THAT A PROJECT

FUNDED PURSUANT TO THIS SECTION DOES NOT OVERBUILD ANY PROJECT SUPPORTED OR APPROVED BY THE DEPARTMENT OF LOCAL AFFAIRS.

(10.9) AS USED IN THIS SECTION:

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

(b) "OVERBUILD" OR "OVERBUILDING" MEANS PROVIDING A BROADBAND NETWORK TO A HOUSEHOLD OR HOUSEHOLDS THAT:

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

(II) ACCOUNT FOR TWENTY PERCENT OR MORE OF THE TOTAL HOUSEHOLD OR HOUSEHOLDS TO BE SERVED BY A PROPOSED WIRELESS PROJECT.

(11) This section is repealed, effective September 1, 2024. Before the its repeal, the department of regulatory agencies shall review the powers, duties, and functions of the board regarding the administration DEPLOYMENT of the broadband fund SERVICES INTO UNSERVED AREAS ARE SCHEDULED FOR REVIEW in accordance with section 24-34-104. ~~C.R.S.~~

SECTION 5. In Colorado Revised Statutes, 24-34-104, **amend** (25)(a)(VI); and **add** (25)(a)(XVII) as follows:

24-34-104. General assembly review of regulatory agencies and functions for repeal, continuation, or reestablishment - legislative declaration - repeal. (25) (a) The following agencies, functions, or both, are scheduled for repeal on September 1, 2024:

(VI) The functions of the broadband deployment board created in section 40-15-509.5; ~~regarding the administration of the broadband fund created in section 40-15-509.5;~~

(XVII) THE FUNCTIONS OF THE PUBLIC UTILITIES COMMISSION WITH REGARD TO THE ADMINISTRATION OF THE HIGH COST SUPPORT MECHANISM CREATED IN SECTION 40-15-208.

SECTION 6. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018

and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 2, 2018