SB12-157

Colorado Legislative Council Staff Fiscal Note

STATE and LOCAL FISCAL IMPACT

Drafting Number:	LLS 12-0097	**Date:**	March 19, 2012
Prime Sponsor(s):	Sen. Scheffel; Tochtrop Rep. Williams A.; Murray	**Bill Status:**	Senate Business, Labor & Technology
		Fiscal Analyst:	Alex Schatz (303-866-4375)

TITLE: CONCERNING THE REGULATION OF TELECOMMUNICATIONS SERVICE, AND, IN CONNECTION THEREWITH, ENACTING THE "TELECOMMUNICATIONS MODERNIZATION ACT OF 2012".

Fiscal Impact Summary	FY 2012-2013	FY 2013-2014
State Revenue		
General Fund	$6,332	$384
Cash Funds		
Fixed Utilities Fund	204,736	12,424
State Transfers		
Transfers from the Colorado High Cost Support Mechanism Account to the Broadband Capital Investment Fund	$5,027,005	See State Transfer section.
State Expenditures		
Cash Funds		
Fixed Utilities Fund	$198,028	$11,125
Broadband Capital Investment Fund *	27,005	15,648
FTE Position Change	1.4 FTE	0.4 FTE
Effective Date: Upon signature of the Governor, or upon becoming law without his signature.		
Appropriation Summary for FY 2012-2013: See State Appropriations section.		
Local Government Impact: See Local Government Impact section.		

* *The fiscal note assumes that Office of Information Technology (OIT) costs will be covered by the Broadband Capital Investment Fund (BCIF). Further, it is assumed that the first quarterly distribution to the BCIF, in January 2013, will retroactively cover the costs of rulemaking and other BCIF-related activities in the first two quarters of FY 2012-13, and that OIT has the ability to carry these costs until the January 2013 distribution.*

This fiscal note is preliminary and based on information received by Legislative Council Staff as of March 16, 2012. The fiscal note may be updated if warranted by the receipt of additional information.

Summary of Legislation

This bill modifies the regulation of telecommunications services by the Public Utilities Commission (PUC) under the Department of Regulatory Agencies (DORA).

Among other provisions, the bill phases out price caps on basic local exchange services, with some exceptions. Generally, local exchange carriers must adjust their rate structures to reflect interstate rates filed with the FCC. The PUC is directed to employ price flexibility in its oversight of rural local exchange carriers where there is insufficient competition. Insufficient competition is presumed when there are not at least five telecommunication service providers offering service to at least 90 percent of the market in a local exchange area.

The bill takes initial steps to dismantle the Colorado High Cost Support Mechanism (CHCSM) by January 1, 2025. The bill creates the Broadband Capital Investment Fund (BCIF), which receives funding from the CHCSM to support studies of underserved areas of the state and, beginning in January 2013, to allow the Office of Information Technology (OIT) to make grants for broadband infrastructure and capital construction costs. The BCIF and CHCSM are phased out in 2025.

By July 1, 2012, the bill requires the PUC to initiate new rulemaking:

- to determine geographic areas within the state that have sufficient competition; and
- to eliminate differences between intrastate and interstate access rates by July 1, 2014.

Rulemaking must also be initiated by the OIT by July 1, 2012, to establish rules for the administration and distribution of funds in the BCIF. The OIT is responsible for surveying areas of the state unserved by broadband telecommunications providers and awarding grants to service providers that propose and contractually agree to use grants exclusively for broadband infrastructure and capital construction costs.

Any time after the effective date of the bill, the PUC is required to take action related to changing the status or reviewing the records of local exchange carriers, establishing rate ranges for price flexibility, considering applications for forbearance by regulated telecommunications providers, rescinding designations of providers of last resort, and rulemaking for emerging telecommunications services.

Background

Telecommunications regulation. In 1984, federal litigation resulted in the nationwide divestiture of the American Telephone and Telegraph Company (AT&T). Following this action, fixed assets of the telephone system devolved to local and regional carriers, many of which operated as subsidiaries to AT&T prior to divesture. These local and regional carriers are responsible for the provision and quality of telecommunications access for local customers.

The state and federal government concurrently regulate the telecommunications industry. In-state, or intrastate, services are the primary focus of the Colorado PUC. Under current law, the PUC classifies telecommunications providers according to the type of service and the competitiveness of the market served. Local exchange carriers (LECs) are telecommunication providers with fixed assets serving a specific geographic area. Under currently law, LECs are commonly issued a certificate of public convenience and necessity for a local access and transport area (LATA), and the PUC then establishes with the LEC a set of tariffs and a price list for customer access to the telecommunications system. The PUC applies lesser degrees of regulatory oversight to emerging services and other competitive services.

Many features of Colorado telecommunications law implement, or are governed by, federal law. For example, the federal Telecommunications Act of 1996 contains criteria and provides federal subsidies for certain LECs designated as carriers of last resort (known as providers of last resort under Colorado law). The financial viability of LECs in every geographic area, to ensure universal telecommunications access, is an ongoing concern of both state and federal regulation.

The Colorado High Cost Support Mechanism (CHCSM). The Colorado High Cost Support Mechanism is a surcharge that applies to all providers of intrastate telecommunications services. The PUC determines contributions to the CHCSM based on providers' reported retail revenues, and providers may choose to integrate CHCSM charges into customer access rates or as a separate line item on customer bills. As of 2012, CHCSM collections are limited to $54 million per year by PUC rule.

Funds collected by the CHCSM are distributed to eligible providers in both rural and nonrural areas that are determined to be high cost geographic areas to provide telecommunications service. An eligible provider must provide basic local exchange service. In practice, an eligible provider is typically the owner of local telephone lines. The majority of local telephone lines in high cost geographic areas of Colorado are currently owned by Century Link, as the successor to Qwest, which received over $54 million from the CHCSM in 2011.

The Fixed Utilities Fund (FUF). To fund the PUC and Office of Consumer Counsel (OCC), the Fixed Utilities Fund is established in current law, authorized to receive fees assessed as a percentage of the revenue of all regulated utilities, including energy and telecommunications providers. The FUF is currently collecting fees at a rate approaching the statutory cap of 0.2 percent of gross intrastate utility operating revenue. Under current law, the Department of Revenue (DOR) determines on an annual basis the fees to be paid from gross intrastate utility operating revenue, then collects those fees from utilities in quarterly installments. According to statute, the DOR must contribute 3 percent of fees collected to the General Fund while 97 percent of fees are deposited in the FUF.

In 2010 telecommunications revenue accounted for $1.9 million of the $11.8 million in fees deposited in the FUF from all energy and telecommunications utilities collectively. It is estimated that over $1.1 million of this revenue involves telecommunications services that will be subject to less regulation under this bill.

State Revenue

This bill results in an increase in cash funds revenue to the Fixed Utilities Fund of $204,736 in FY 2012-13, and $12,424 in FY 2013-14, as required to offset increased expenditures (including expenditures not included) by the PUC and OCC. As required by statute, fees paid from gross intrastate utility operating revenue will include these cash funds as well as an additional amount to be paid into the General Fund. An increase in General Fund revenue of $6,332 in FY 2012-13 and $384 in FY 2013-14 is associated with the adjustment in cash funds revenue to the Fixed Utilities Fund.

Fees from gross intrastate utility operating revenue are currently assessed at a rate near the statutory cap. As a result, the Fixed Utilities Fund could run at a deficit and deplete its fund balance. This scenario depends on the interpretation of provisions of the bill concerning the reporting of gross intrastate utility operating revenue, particularly an interpretation that reported revenue must be associated with activities regulated by the PUC. The fiscal note assumes that the PUC and Department of Revenue have authority, whether through interpretation of regulation or adjustment of fees, to maintain base sources of fee revenue to the Fixed Utilities Fund.

State Transfers

The bill provides for transfers from the PUC's Colorado High Cost Support Mechanism Account to the Broadband Capital Investment Fund, administered by OIT. In FY 2012-13, this transfer commences in January 2013 with quarterly payments for OIT to administer and distribute the BCIF. The bill also directs that a one-time transfer of $5 million is made on March 31, 2013, to provide seed money to the BCIF.

After March 31, 2013, CHCSM transfers to the BCIF are governed by a statutory formula. On a quarterly basis, the BCIF will receive half the savings to the CHCSM from nonrural LECs that are determined to be ineligible for cost support due to sufficient competition. Because the PUC will not determine areas of the state with sufficient competition until January 1, 2014, it is assumed that no quarterly transfers will occur between March 31, 2013, and the calculation of CHCSM savings in 2014. While criteria for sufficient competition are likely to produce savings to the CHCSM immediately after the first PUC study, it is not possible to quantify the initial savings for this analysis.

State Expenditures

The implementation of new telecommunication regulations under the PUC will involve one-time costs to undertake rulemaking and perform related tasks over the course of multiple years, as well as ongoing costs to administer new regulations. This bill increases expenditures in several state agencies, as follows:

- in the PUC (DORA), $116,245 and 0.6 FTE in FY 2012-13, and $11,125 and 0.1 FTE in FY 2013-14;
- in the OCC (DORA), $81,783 in FY 2012-13;
- in the OIT, $27,005 and 0.3 FTE in FY 2012-13, and $15,648 and 0.3 FTE in FY 2013-14; and
- in the Department of Law, 0.5 FTE in FY 2012-13.

Table 1 summarizes new state expenditures to implement the bill.

Table 1. Expenditures Under SB12-157		
Cost Components	**FY 2012-13**	**FY 2013-14**
DORA - Public Utilities Commission		
Personal Services	$56,070	11,030
FTE	0.6	0.1
Operating Expenses	570	95
Capital Outlay	2,822	0
Legal Services (0.4 FTE to Dept. of Law)	56,783	0
DORA - Office of Consumer Counsel		
Telecommunications Consultant	$25,000	0
Contract Legal Services	56,783	0
Office of Information Technology		
Personal Services	$15,648	15,648
FTE	0.3	0.3
Operating Expenses and Capital Outlay	0	0
Legal Services (0.1 FTE to the Dept. of Law)	11,357	0
TOTAL	**$225,033**	**$26,773**
FTE Total (including Dept. of Law)	**1.4**	**0.4**

Department of Regulatory Agencies - Public Utilities Commission. The workload of the PUC staff will increase to provide technical support and recommendations for rulemaking; to process and analyze petitions and other filings from LECs and other telecommunications providers; and to update forms, regulatory guidance, and other administrative materials to reflect law changes under the bill. One-time workload associated with the bill requires $116,245 and 0.6 FTE in FY 2012-13 and $11,125 and 0.1 FTE in FY 2013-14. The PUC costs include 750 hours of legal representation in FY 2012-13 to accomplish rulemakings commencing on July 1, 2012, at a cost of $56,783. Legal costs will be reappropriated to the Department of Law.

There are currently approximately 6.0 FTE total telecommunications staff within the PUC. Approximately 15 percent of the current telecommunications workload is subject to less regulation under the bill. However, implementation of new regulations requires the PUC telecommunications staff to review its records and its processes to determine what will be maintained and what will be eliminated as the new regulations take effect. In addition, the bill replaces certain existing processes with new ongoing duties for PUC staff, such as analysis of sufficient competition, new CHCSM subsidies, and recommendations to the General Assembly for the phase-out of the CHCSM. Overall, regulation of telecommunications providers under the bill results in full-time work assignments for existing PUC staff through at least FY 2013-14.

Department of Regulatory Agencies - Office of Consumer Counsel (OCC). The implementation of new telecommunications regulations require participation by the OCC. A consultant will provide initial assessment of implementation issues, at a total contract price of $25,000. For the expedited rulemaking, commencing July 1, 2012, the OCC will then retain outside legal counsel to advise and represent the OCC. The Department of Law blended hourly rate of $75.71 is assumed, though the OCC will retain private counsel. For 750 hours of legal services, the OCC will require $56,783.

Office of Information Technology (OIT). The OIT's workload will increase to promulgate rules for, and to thereafter administer, the BCIF. In FY 2012-13, the OIT requires 150 hours of legal representation to accomplish rulemaking, at a cost of $11,357. Legal costs will be reappropriated to the Department of Law.

Following the establishment of BCIF rules, the OIT is required to study areas of the state unserved by broadband telecommunications and to issue requests for proposal (RFPs) for BCIF grants in unserved areas. The BCIF program will require 0.3 FTE, as of July 1, 2012, to manage BCIF accounting, issue and review RFPs, negotiate terms for grants, audit recipients, and periodically reissue RFPs. This workload increase is assumed to incur costs of $15,648 and 0.3 FTE in FY 2012-13 and $15,648 and 0.3 FTE in FY 2013-14 and future fiscal years (until 2025).

The OIT will also expend moneys from the BCIF for grant awards, but it is not possible to quantify these grants for this analysis, as they will depend on both the content of proposals and the availability of BCIF funding. At least $5 million is assumed to be available for grants as of March 31, 2013.

Legislative Council Staff did not receive a formal response from the Office of Information Technology (OIT) prior to this analysis. The fiscal note will be revised if warranted by the receipt of new information.

Department of Law. The costs of legal counsel for state agencies represented by the Department of Law are accounted for in the analysis of each client agency. Based on client agency workload increases, in FY 2012-13 the bill requires an increase of 0.4 FTE to represent the PUC and 0.1 FTE to represent the OIT.

This fiscal note does not account for potential costs due to litigation. Department of Law client agencies will seek additional funds through the annual budget process as needed to respond to legal issues outside of the anticipated rulemaking and regulatory process.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are summarized in Table 2.

Table 2. Expenditures Not Included Under SB12-157*		
Cost Components	**FY 2012-13**	**FY 2013-14**
Employee Insurance (Health, Life, Dental, and Short-term Disability)	$5,559	$2,462
Supplemental Employee Retirement Payments	3,823	1,638
TOTAL	**$9,382**	**$4,100**

**More information is available at: http://colorado.gov/fiscalnotes*

Local Government Impact

This bill has no direct effect on local government revenue or expenditures. Deregulation may lower operating costs for local governments in competitive telecommunications markets. Local governments in noncompetitive markets may experience adverse effects on telecommunications rates or service.

Legislative Council Staff did not receive a formal response from local government representatives prior to this analysis. The fiscal note will be revised if warranted by the receipt of new information.

State Appropriations

For FY 2012-13, the bill requires a cash funds appropriation of $198,028 and 0.6 FTE from the Fixed Utilities Fund to the Department of Regulatory Agencies. Of this amount, $56,783 is reappropriated to the Department of Law for legal services.

For FY 2012-13, the bill also requires a cash funds appropriation of $27,005 and 0.3 FTE from the Broadband Capital Investment Fund to the Office of Information Technology. Of this amount, $11,357 is reappropriated to the Department of Law for legal services.

Based on reappropriated amounts for legal services, the Department of Law requires an appropriation of 0.5 FTE for FY 2012-13.

Technical Note

Quarterly transfers to the Broadband Capital Investment Fund are assumed by this fiscal note to commence in January 2013 based on the language of proposed Subsection 24-37.5-805 (1), C.R.S. (at page 65 of the introduced bill). However, language concerning transfers from the Colorado High Cost Support Mechanism in proposed revised Subparagraph 40-15-208 (2)(a)(IX), C.R.S. (at pages 31-32 of the introduced bill) indicates that quarterly transfers are to commence once the PUC has determined areas of the state with sufficient competition, on January 1, 2014. It is unclear whether these provisions conflict or if quarterly transfers in 2013 (not including the one-time $5 million seed money transfer) are limited to administrative costs in OIT.

Departments Contacted

Regulatory Agencies	Revenue	Law
Office of Information Technology	Public Safety	Local Affairs
Office of Economic Development	Governor's Office	Transportation
Personnel and Administration		