

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 13-0409.01 Jennifer Berman x3286

SENATE BILL 13-287

SENATE SPONSORSHIP

Nicholson and Brophy, Morse, Aguilar, Giron

HOUSE SPONSORSHIP

McLachlan and Sonnenberg, Coram

Senate Committees
State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 **CONCERNING TELECOMMUNICATIONS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The high cost support mechanism reimburses some of the cost of providing telephone services to rural areas. The bill adds broadband internet service in unserved and underserved areas to the services that are reimbursable.

The bill exempts voice-over-internet-protocol service and internet-protocol-enabled service from regulation by the public utilities commission (PUC) and exempts broadband service from state sales tax.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

It also exempts basic local exchange service from regulation in geographic areas in which the PUC has determined that effective competition exists.

The bill clarifies that this exemption does not affect an entity's rights and obligations under federal law, nor does it affect the PUC's authority with respect to: Wholesale telecommunications rates; services; agreements; providers; tariffs; the resolution of disputes regarding intercarrier compensation; or oversight of the implementation of a next-generation 911 plan with regard to interoperability and performance, operational, and system standards.

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

SECTION 1. In Colorado Revised Statutes, 40-15-102, **add** (2.5), (3.2), (3.3), (3.4), (14.5), (32), (33), and (34) as follows:

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

(2.5) "ADVANCED SERVICE" MEANS HIGH-SPEED, WIRELINE OR WIRELESS BROADBAND CAPABILITY THAT ENABLES USERS TO ORIGINATE AND RECEIVE HIGH-QUALITY VOICE, DATA, GRAPHICS, OR VIDEO TELECOMMUNICATIONS USING ANY TECHNOLOGY.

(3.2) "BROADBAND" OR "BROADBAND SERVICE" MEANS BROADBAND INTERNET SERVICE PROVIDED OVER A BROADBAND NETWORK.

(3.3) "BROADBAND INTERNET SERVICE" MEANS A RETAIL SERVICE THAT TRANSMITS AND RECEIVES DATA FROM THE CUSTOMER'S PROPERTY TO SUBSTANTIALLY ALL INTERNET ENDPOINTS, INCLUDING ANY CAPABILITIES THAT ARE INCIDENTAL TO AND ENABLE THE OPERATION OF THE BROADBAND SERVICE.

(3.4) "BROADBAND NETWORK" MEANS PLANT, EQUIPMENT, COMPONENTS, FACILITIES, HARDWARE, AND SOFTWARE USED TO PROVIDE NONSATELLITE BROADBAND INTERNET SERVICE OF AT LEAST FOUR MEGABITS PER SECOND DOWNSTREAM AND ONE MEGABIT PER SECOND

1 UPSTREAM WITH:

2 (a) SUFFICIENTLY LOW LATENCY TO ENABLE THE USE OF
3 REAL - TIME COMMUNICATIONS , INCLUDING
4 VOICE-OVER-INTERNET-PROTOCOL SERVICE; AND

5 (b) EITHER NO USAGE LIMITS OR USAGE LIMITS THAT ARE
6 REASONABLY COMPARABLE TO THOSE IN URBAN AREAS.

7 (14.5) "INTERNET-PROTOCOL-ENABLED SERVICE" OR "IP-ENABLED
8 SERVICE" MEANS A SERVICE, FUNCTIONALITY, OR APPLICATION, OTHER
9 THAN A VOICE-OVER-INTERNET PROTOCOL, THAT USES INTERNET
10 PROTOCOL OR A SUCCESSOR PROTOCOL AND ENABLES AN END USER TO
11 SEND OR RECEIVE A VOICE, DATA, OR VIDEO COMMUNICATION IN INTERNET
12 PROTOCOL FORMAT OR A SUCCESSOR FORMAT, UTILIZING A BROADBAND
13 CONNECTION AT THE END USER'S LOCATION.

14 (32) "UNDERSERVED AREA" MEANS AN AREA OF THE STATE THAT:

15 (a) LIES OUTSIDE OF MUNICIPAL BOUNDARIES OR IS A CITY WITH A
16 POPULATION OF FEWER THAN FIVE THOUSAND INHABITANTS; AND

17 (b) CONSISTS OF TWO OR MORE CONTIGUOUS CENSUS BLOCKS IN
18 WHICH A SUBSTANTIAL NUMBER, BUT NOT A MAJORITY, OF THE
19 HOUSEHOLDS LACK ACCESS TO A PROVIDER OF A BROADBAND NETWORK
20 AT MEASURABLE SPEEDS OF AT LEAST FOUR MEGABITS PER SECOND
21 DOWNSTREAM AND ONE MEGABIT PER SECOND UPSTREAM.

22 (33) (a) "UNSERVED AREA" MEANS AN AREA OF THE STATE THAT:

23 (I) LIES OUTSIDE OF MUNICIPAL BOUNDARIES OR IS A CITY WITH A
24 POPULATION OF FEWER THAN FIVE THOUSAND INHABITANTS; AND

25 (II) CONSISTS OF THREE OR MORE CONTIGUOUS CENSUS BLOCKS IN
26 WHICH A MAJORITY OF THE HOUSEHOLDS LACK ACCESS TO A PROVIDER OF
27 A BROADBAND NETWORK AT MEASURABLE SPEEDS OF AT LEAST FOUR

1 MEGABITS PER SECOND DOWNSTREAM AND ONE MEGABIT PER SECOND
2 UPSTREAM.

3 (b) "UNSERVED AREA" ALSO MEANS ANY PORTION OF A STATE OR
4 INTERSTATE HIGHWAY CORRIDOR THAT LACKS ACCESS TO A PROVIDER OF
5 A BROADBAND NETWORK AT MEASURABLE SPEEDS OF AT LEAST FOUR
6 MEGABITS PER SECOND DOWNSTREAM AND ONE MEGABIT PER SECOND
7 UPSTREAM.

8 (34) (a) "VOICE-OVER-INTERNET-PROTOCOL SERVICE" OR "VOIP
9 SERVICE" MEANS A SERVICE THAT:

10 (I) ENABLES REAL-TIME, TWO-WAY VOICE COMMUNICATIONS
11 ORIGINATING FROM OR TERMINATING AT A USER'S LOCATION IN INTERNET
12 PROTOCOL OR A SUCCESSOR PROTOCOL;

13 (II) UTILIZES A BROADBAND CONNECTION FROM THE USER'S
14 LOCATION; AND

15 (III) PERMITS A USER TO GENERALLY RECEIVE CALLS THAT
16 ORIGINATE ON THE PUBLIC SWITCHED TELEPHONE NETWORK AND TO
17 TERMINATE CALLS TO THE PUBLIC SWITCHED TELEPHONE NETWORK.

18 (b) A SERVICE IS NOT A VOICE-OVER-INTERNET-PROTOCOL SERVICE
19 IF IT:

20 (I) USES ORDINARY CUSTOMER PREMISES EQUIPMENT WITHOUT
21 ENHANCED FUNCTIONALITY;

22 (II) ORIGINATES AND TERMINATES ON THE PUBLIC SWITCHED
23 TELEPHONE NETWORK;

24 (III) DOES NOT UNDERGO A NET PROTOCOL CONVERSION; AND

25 (IV) DOES NOT PROVIDE END USERS WITH ENHANCED
26 FUNCTIONALITY BASED ON THE PROVIDER'S USE OF INTERNET PROTOCOL
27 TECHNOLOGY.

1 **SECTION 2.** In Colorado Revised Statutes, 40-15-208, **amend**
2 (2) (a) and (3) (a) as follows:

3 **40-15-208. High cost support mechanism - Colorado high cost**
4 **administration fund - creation - purpose - operation - rules - repeal.**

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

11 (A) Local exchange providers to help make basic local exchange
12 service affordable and allow such providers to be fully reimbursed for the
13 difference between the reasonable costs incurred in making basic service
14 available to their customers within a rural, high cost geographic support
15 area and the price charged for such service, after taking into account any
16 amounts received by such providers under price support mechanisms
17 established by the federal government and by this state; AND

18 (B) PROVIDE ACCESS TO ADVANCED SERVICE TO BUILD
19 BROADBAND NETWORKS IN UNSERVED AND UNDERSERVED AREAS.

20 (II) The high cost support mechanism may also be used, to the
21 extent necessary, to supplement any gifts, grants, and donations received
22 pursuant to section 24-37.5-106 (3) (f), C.R.S., in assisting the office of
23 information technology in preparing the statewide inventory of available
24 broadband services as provided in section 24-37.5-106 (3), C.R.S.

25 ~~(H)~~ (III) The commission shall ensure that no local exchange
26 provider is receiving funds from this or any other source that, together
27 with local exchange service revenues, exceeds the cost of providing local

1 exchange service to customers of such provider. The high cost support
2 mechanism shall be supported and distributed equitably and on a
3 nondiscriminatory, competitively neutral basis through a neutral
4 assessment on all telecommunications service providers in Colorado.

5 (3) (a) There is hereby created, in the state treasury, the Colorado
6 high cost administration fund, referred to in this section as the "fund",
7 which shall be used to reimburse the commission and its contractors for
8 reasonable expenses incurred in the administration of the high cost
9 support mechanism, INCLUDING ADMINISTRATIVE COSTS INCURRED IN
10 ASSOCIATION WITH ADVANCED SERVICE, as determined by rules of the
11 commission. The moneys in the fund that are to be used for the direct and
12 indirect administrative costs incurred by the commission and its
13 contractors shall be appropriated annually by the general assembly. At the
14 end of any fiscal year, all unexpended and unencumbered moneys in the
15 fund shall remain in the fund and shall not be credited or transferred to
16 the general fund or any other fund. Based upon the high cost support
17 mechanism, the balance remaining in the fund, and the amount
18 appropriated annually by the general assembly for use by the commission,
19 each year the commission shall determine the nondiscriminatory,
20 competitively neutral assessment on all telecommunications service
21 providers in Colorado that will be necessary to cover the cost of
22 implementing and administering the high cost support mechanism. Only
23 the moneys from such assessment for administering the high cost support
24 mechanism shall be transmitted to the state treasurer, who shall credit the
25 same to the fund. All interest derived from the deposit and investment of
26 MONEYS IN the fund shall remain in the fund and shall not revert to the
27 general fund.

1 **SECTION 3.** In Colorado Revised Statutes, 40-15-401, **amend**
2 (1) introductory portion; and **add** (1) (q), (1) (r), (1) (s), and (2) as
3 follows:

4 **40-15-401. Services, products, and providers exempt from**
5 **regulation.** (1) The following products, services, and providers are
6 exempt from regulation under this article or under the "Public Utilities
7 Law" of the state of Colorado, EXCEPT AS SET FORTH IN SUBSECTION (2)
8 OF THIS SECTION:

9 (q) VOICE-OVER-INTERNET-PROTOCOL SERVICE;

10 (r) BASIC LOCAL EXCHANGE SERVICE IN GEOGRAPHIC AREAS IN
11 WHICH THE COMMISSION HAS DETERMINED, PURSUANT TO SECTION
12 40-15-207, THAT EFFECTIVE COMPETITION EXISTS; AND

13 (s) IP-ENABLED SERVICE.

14 (2) THIS SECTION DOES NOT AFFECT, MODIFY, OR EXPAND:

15 (a) THE COMMISSION'S AUTHORITY WITH RESPECT TO, OR AN
16 ENTITY'S RIGHTS OR OBLIGATIONS UNDER, SECTIONS 251 AND 252 OF THE
17 FEDERAL "COMMUNICATIONS ACT OF 1934", AS AMENDED, 47 U.S.C.
18 SECS. 251 AND 252;

19 (b) THE COMMISSION'S AUTHORITY OVER WHOLESALE
20 TELECOMMUNICATIONS RATES, SERVICES, AGREEMENTS, PROVIDERS, OR
21 TARIFFS;

22 (c) THE COMMISSION'S AUTHORITY TO ADDRESS OR RESOLVE
23 DISPUTES REGARDING INTERCARRIER COMPENSATION; OR

24 (d) THE COMMISSION'S AUTHORITY TO OVERSEE THE
25 IMPLEMENTATION OF A NEXT-GENERATION 911 PLAN, COORDINATE
26 SYSTEM ENHANCEMENTS TO MAINTAIN INTEROPERABILITY, AND
27 ESTABLISH AND ENFORCE RULES FOR PERFORMANCE, OPERATIONAL, AND

1 SYSTEM STANDARDS FOR THE OPERATION OF 911 SERVICES.

2 **SECTION 4.** In Colorado Revised Statutes, 40-15-502, **amend**
3 (5) (a) as follows:

4 **40-15-502. Expressions of state policy. (5) Universal service**
5 **support mechanisms.** (a) In order to accomplish the goals of universal
6 basic service, universal access to advanced service, INCLUDING
7 BROADBAND INTERNET SERVICE, and any revision of the definition of
8 basic service under subsection (2) of this section, the commission shall
9 create a system of support mechanisms to assist in the provision of such
10 services in high-cost areas. These support mechanisms shall be funded
11 equitably and on a nondiscriminatory, competitively neutral basis through
12 assessments, which may include a rate element, on all
13 telecommunications service providers in Colorado and shall be distributed
14 equitably and on a nondiscriminatory, competitively neutral basis. For
15 purposes of administering such support mechanisms, the commission
16 shall divide the state into reasonably compact, competitively neutral
17 geographic support areas. A provider's eligibility to receive support under
18 the support mechanisms shall be conditioned upon the provider's offering
19 basic service throughout an entire support area. The commission shall
20 review the costs of basic service and shall administer such support
21 mechanisms.

22 **SECTION 5.** In Colorado Revised Statutes, **add** 40-15-509.5 as
23 follows:

24 **40-15-509.5. Advanced service - report - repeal.** (1) THE
25 GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT,
26 TO PROMOTE THE STATE POLICY OF PROVIDING UNIVERSAL ACCESS TO
27 ADVANCED SERVICE, AS SET FORTH IN SECTION 40-15-502 (4), IT MAY BE

1 NECESSARY TO PROVIDE FINANCIAL ASSISTANCE THROUGH ADDITIONAL
2 SUPPORT MECHANISMS IF COMPETITION FOR LOCAL EXCHANGE SERVICES
3 FAILS TO DELIVER ADVANCED SERVICE IN ALL AREAS OF THE STATE.

4 (2) THE COMMISSION MAY USE THE COLORADO HIGH COST SUPPORT
5 MECHANISM, ESTABLISHED PURSUANT TO SECTION 40-15-208, FOR THE
6 DEPLOYMENT OF ADVANCED AND BROADBAND SERVICE IN UNSERVED AND
7 UNDERSERVED AREAS OF THE STATE. THE COMMISSION MAY FUND THE
8 DEPLOYMENT OF ADVANCED SERVICE IN UNSERVED AND UNDERSERVED
9 AREAS OF THE STATE THROUGH USE OF THE HIGH COST SUPPORT
10 MECHANISM SURCHARGE AND SURCHARGE RATE IN EFFECT ON THE DATE
11 OF ENACTMENT OF THIS SECTION. THE COMMISSION MAY UTILIZE ONLY THE
12 MONEYS THAT IT DETERMINES ARE NO LONGER REQUIRED BY THE HIGH
13 COST SUPPORT MECHANISM TO SUPPORT UNIVERSAL BASIC SERVICE.
14 NOTHING IN THIS SECTION INCREASES ANY SURCHARGE RATE CHARGED TO
15 HELP FUND THE COLORADO HIGH COST SUPPORT MECHANISM.

16 (3) (a) OF THE TOTAL AMOUNT OF FUNDING THAT THE COMMISSION
17 ALLOCATES FOR THE DEPLOYMENT OF ADVANCED AND BROADBAND
18 SERVICE PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE COMMISSION
19 SHALL DEPLOY THE FUNDING IN THE FOLLOWING PERCENTAGES OF THAT
20 TOTAL AMOUNT OVER A PERIOD OF TWELVE YEARS, SO THAT:

21 (I) IN YEARS ONE THROUGH SIX OF THE DEPLOYMENT, THE
22 COMMISSION SHALL MAKE SEVENTY-FIVE PERCENT OF THE TOTAL AMOUNT
23 OF FUNDING DEPLOYED AVAILABLE FOR QUALIFYING ADVANCED SERVICE
24 AND BROADBAND PROJECTS; AND

25 (II) IN YEARS SEVEN THROUGH TWELVE OF THE DEPLOYMENT, THE
26 COMMISSION SHALL MAKE FIFTY PERCENT OF THE TOTAL AMOUNT OF
27 FUNDING DEPLOYED AVAILABLE FOR QUALIFYING ADVANCED SERVICE AND

1 BROADBAND PROJECTS.

2 (b) THE COMMISSION SHALL REDUCE THE CORRESPONDING
3 SURCHARGE THAT IS NOT UTILIZED BY ADVANCED SERVICE AND
4 BROADBAND PROJECTS BY THE APPROPRIATE AMOUNT.

5 (4) THE COMMISSION SHALL DEVELOP CRITERIA FOR AWARDING
6 MONEYS FROM THE FUND FOR PROJECTS EXPANDING BROADBAND
7 INTERNET SERVICE INTO UNSERVED AND UNDERSERVED AREAS,
8 INCLUDING:

9 (a) DEVELOPING A PROJECT APPLICATION PROCESS THAT PLACES
10 THE BURDEN ON THE APPLICANT TO DEMONSTRATE THAT THE APPLICANT'S
11 PROPOSED PROJECT MEETS THE PROJECT ELIGIBILITY CRITERIA
12 ESTABLISHED PURSUANT TO PARAGRAPH (f) OF THIS SUBSECTION (4);

13 (b) DEVELOPING A METHODOLOGY FOR DETERMINING WHETHER
14 PROPOSED PROJECTS WILL SERVE UNSERVED OR UNDERSERVED AREAS;

15 (c) GIVING PRIORITY TO PROPOSED PROJECTS THAT WILL SERVE
16 UNSERVED AREAS;

17 (d) MINIMIZING CONFLICTS WITH, OR DUPLICATION OF, FEDERAL
18 SOURCES OF HIGH COST SUPPORT OR FEDERAL BROADBAND GRANTS SO AS
19 TO MAXIMIZE THE TOTAL AVAILABLE STATE AND FEDERAL SUPPORT FOR
20 RURAL BROADBAND DEVELOPMENT;

21 (e) IN UNDERSERVED AREAS, WITH REGARD TO AN EXISTING
22 PROVIDER WHO HAS SUBMITTED A PROPOSED PROJECT TO THE
23 COMMISSION, AFFORDING THE EXISTING PROVIDER AN OPPORTUNITY TO
24 MATCH ANY PROJECT PROPOSED BY ANOTHER PROVIDER FOR THE SAME
25 UNDERSERVED AREA;

26 (f) DETERMINING PROJECT ELIGIBILITY CRITERIA, INCLUDING:

27 (I) ESTABLISHING AS A MINIMUM REQUIREMENT THAT AN ELIGIBLE

1 PROJECT PROVIDE BROADBAND INTERNET SERVICE DELIVERING AT LEAST
2 FOUR MEGABITS PER SECOND DOWNSTREAM AND ONE MEGABIT PER
3 SECOND UPSTREAM;

4 (II) REQUIRING AN ELIGIBLE PROJECT TO DEMONSTRATE THAT IT
5 WILL UTILIZE A COST-EFFECTIVE METHOD FOR EXPANDING BROADBAND
6 INTERNET SERVICE INTO UNSERVED AND UNDERSERVED AREAS; AND

7 (III) REQUIRING AN ELIGIBLE PROJECT TO UTILIZE THE FUNDING
8 FOR CAPITAL DEVELOPMENT PURPOSES ONLY; AND

9 (g) ESTABLISHING REPORTING REQUIREMENTS FOR PROJECTS
10 RECEIVING FINANCIAL SUPPORT FROM THE FUND.

11 (5) THE COMMISSION SHALL REPORT ANNUALLY TO THE
12 TRANSPORTATION AND ENERGY COMMITTEE IN THE HOUSE OF
13 REPRESENTATIVES AND THE AGRICULTURE, NATURAL RESOURCES, AND
14 ENERGY COMMITTEE IN THE SENATE, OR THEIR SUCCESSOR COMMITTEES,
15 ON THE PROJECTS SUPPORTED BY MONEYS FROM THE FUND IN A GIVEN
16 YEAR, INCLUDING INFORMATION ON:

- 17 (a) THE NUMBER OF PROJECTS;
- 18 (b) THE LOCATION OF EACH PROJECT;
- 19 (c) THE AMOUNT OF FUNDING RECEIVED FOR EACH PROJECT; AND
- 20 (d) A DESCRIPTION OF EACH PROJECT.

21 (6) THIS SECTION DOES NOT SUBJECT ANY BROADBAND PROVIDER
22 OR BROADBAND SERVICE TO REGULATION BY THE COMMISSION OTHER
23 THAN FOR THE LIMITED PURPOSES PROVIDED IN THIS SECTION AND ONLY
24 FOR BROADBAND PROVIDERS THAT APPLY FOR OR RECEIVE SUPPORT FROM
25 THE HIGH COST SUPPORT MECHANISM.

26 (7) THIS SECTION IS REPEALED, EFFECTIVE JULY 1 OF THE TWELFTH
27 YEAR FOLLOWING THE YEAR IN WHICH THE DIRECTOR OF THE COMMISSION

1 FILES WRITTEN CERTIFICATION WITH THE REVISOR OF STATUTES THAT THE
2 COMMISSION HAS ALLOCATED MONEY FROM THE COLORADO HIGH COST
3 SUPPORT MECHANISM FOR ADVANCED SERVICE.

4 **SECTION 6.** In Colorado Revised Statutes, **add** 39-26-709.5 as
5 follows:

6 **39-26-709.5. Telecommunications provider.** BEGINNING JULY
7 1, 2015, THE PROVISION OF BROADBAND SERVICE, AS DEFINED IN SECTION
8 40-15-102 (3.2), C.R.S., INTO AN UNSERVED AREA, AS DEFINED IN SECTION
9 40-15-102 (33), C.R.S., IS EXEMPT FROM TAXATION UNDER PART 1 OF THIS
10 ARTICLE.

11 **SECTION 7. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, and safety.