

NOTE: The governor signed this measure on 5/10/2014.

An Act

HOUSE BILL 14-1328

BY REPRESENTATIVE(S) Williams and Coram, Becker, Dore, Hamner, McLachlan, Mitsch Bush, Scott, Tyler, Wilson, Young, Exum, Hullinghorst, Labuda, Lee, Melton, Pabon, Rosenthal, Schafer, Singer, Vigil, Ferrandino;
also SENATOR(S) Nicholson and Crowder, Schwartz, Aguilar, Guzman, Heath, Hodge, Kefalas, Kerr, Newell, Tochtrop, Todd, Ulibarri, Zenzinger, Carroll.

CONCERNING THE DEPLOYMENT OF BROADBAND INTO UNSERVED AREAS OF COLORADO THROUGH GRANT-MAKING FROM MONEYS ALLOCATED FROM THE COLORADO HIGH COST SUPPORT MECHANISM, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 40-15-102, **add** (3.3), (3.5), (3.7), (6.7), (9.5), (10.5), (17.5), and (32) as follows:

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

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

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

(3.5) "BROADBAND INTERNET SERVICE" MEANS A RETAIL SERVICE THAT TRANSMITS AND RECEIVES DATA FROM THE CUSTOMER'S PROPERTY OR DETERMINED POINT OF PRESENCE TO SUBSTANTIALLY ALL INTERNET ENDPOINTS. THE TERM INCLUDES ANY CAPABILITIES THAT ARE INCIDENTAL TO AND ENABLE THE OPERATION OF THE BROADBAND SERVICE.

(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 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:

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

(b) EITHER NO USAGE LIMITS OR USAGE LIMITS THAT ARE REASONABLY COMPARABLE TO THOSE FOUND IN URBAN AREAS FOR THE SAME TECHNOLOGY.

(6.7) "ELIGIBLE APPLICANT" MEANS AN APPLICANT SEEKING GRANT FUNDING FOR A PROPOSED BROADBAND PROJECT UNDER SECTION 40-15-509.5 WITH A SUFFICIENT BUSINESS TRACK RECORD TO INDICATE THAT THE APPLICANT'S OPERATIONS WILL BE SUSTAINABLE AFTER RECEIVING INFRASTRUCTURE SUPPORT UNDER SECTION 40-15-509.5. THE TERM IS LIMITED TO FOR-PROFIT ENTITIES; EXCEPT THAT A NONPROFIT TELEPHONE COOPERATIVE, INCLUDING ITS AFFILIATES AND SUBSIDIARIES, OR A NONPROFIT RURAL ELECTRIC ASSOCIATION THAT EXISTED ON THE EFFECTIVE DATE OF THIS SUBSECTION (6.7) QUALIFIES AS AN "ELIGIBLE APPLICANT". THE TERM IS NOT LIMITED TO A CURRENT RECIPIENT OF HIGH COST SUPPORT MECHANISM FUNDS.

(9.5) "INCUMBENT PROVIDER" MEANS A PROVIDER THAT OFFERS BROADBAND INTERNET SERVICE IN AN UNSERVED AREA, BUT THAT IS NOT PROVIDING A BROADBAND NETWORK IN THAT AREA.

(10.5) "INFRASTRUCTURE" MEANS THE FACILITIES OR EQUIPMENT

USED IN THE DEPLOYMENT OF BROADBAND SERVICE.

(17.5) "LOCAL ENTITY" MEANS ELECTED MEMBERS OF A COUNTY GOVERNMENT, MUNICIPAL GOVERNMENT, SCHOOL DISTRICT, OR BOARD OF COOPERATIVE EDUCATIONAL SERVICES IN AN UNSERVED AREA.

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

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

(II) CONSISTS OF ONE OR MORE CONTIGUOUS CENSUS BLOCKS IN WHICH A MAJORITY OF THE HOUSEHOLDS 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.

(b) "UNSERVED AREA" ALSO MEANS ANY PORTION OF A STATE OR INTERSTATE HIGHWAY CORRIDOR THAT LACKS ACCESS TO A PROVIDER OF A BROADBAND NETWORK.

SECTION 2. In Colorado Revised Statutes, 40-15-208, **amend** (2) (a) and (3) (a); and **add** (2) (e) 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 shall 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 to help make basic local exchange service affordable and allow ~~such~~ THE 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 the price charged for ~~such~~ THE service, after taking into account any amounts THAT THE PROVIDERS HAVE received ~~by such providers~~ under price support mechanisms established by the federal

government and by this state; AND

(B) PROVIDE ACCESS TO BROADBAND SERVICE THROUGH BROADBAND NETWORKS IN UNSERVED AREAS PURSUANT TO 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. ~~of such provider~~. 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 ~~service~~ providers in Colorado.

(III) THE COMMISSION, AT ITS REGULARLY SCHEDULED MEETINGS TO ESTABLISH THE HIGH COST SUPPORT MECHANISM SURCHARGE, AND SURCHARGE RATE, SHALL REDUCE THE AMOUNT 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):

(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.

(e) IN ADDITION TO THE ANNUAL REPORT SUBMITTED UNDER PARAGRAPH (b) OF THIS SUBSECTION (2) BY THE COMMISSION, THE DEPARTMENT OF REGULATORY AGENCIES SHALL INCLUDE IN ITS PRESENTATION TO THE APPROPRIATE LEGISLATIVE COMMITTEE UNDER THE REQUIREMENTS OF PART 2 OF ARTICLE 7 OF TITLE 2, C.R.S., AN UPDATE ON THE IMPLEMENTATION AND ADMINISTRATION OF THE HIGH COST SUPPORT MECHANISM.

(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 moneys in the fund that are to be used for the direct and indirect administrative costs incurred by the commission and its contractors. ~~shall be appropriated annually by the general assembly.~~ At the end of any fiscal year, all unexpended and unencumbered moneys in the fund ~~shall~~ remain 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 from ~~such~~ THE assessment 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 IN the fund ~~shall~~ remain in the fund and ~~shall~~ DO not revert to the general fund.

SECTION 3. In Colorado Revised Statutes, 40-15-502, **amend** (5) (a) 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 ~~such~~ THESE services in high-cost areas. THE COMMISSION SHALL FUND these support mechanisms ~~shall be funded~~ 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 ~~be distributed~~ DISTRIBUTE THE FUNDS equitably and on a nondiscriminatory, competitively neutral basis. For purposes of administering ~~such~~ THE support mechanisms, the commission shall divide the state into reasonably compact, competitively neutral geographic support areas. A provider's eligibility to receive support under the support

mechanisms ~~shall be~~ 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 ~~such~~ THE support mechanisms.

SECTION 4. In Colorado Revised Statutes, **add** 40-15-509.5 as follows:

40-15-509.5. Broadband service - report - broadband deployment board - broadband fund - creation - repeal. (1) **Short title.** THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE "CONNECT COLORADO TO ENHANCE ECONOMIC DEVELOPMENT, TELEHEALTH, EDUCATION, AND SAFETY ACT".

(2) THE GENERAL ASSEMBLY HEREBY FINDS, DETERMINES, AND DECLARES THAT, TO PROMOTE THE STATE POLICY OF PROVIDING UNIVERSAL ACCESS TO BROADBAND SERVICE, AS SET FORTH IN SECTION 40-15-502 (4), IT MAY BE NECESSARY TO PROVIDE FINANCIAL ASSISTANCE THROUGH ADDITIONAL SUPPORT MECHANISMS IF COMPETITION FOR LOCAL EXCHANGE SERVICES FAILS TO DELIVER BROADBAND SERVICE THROUGHOUT THE STATE. "ADVANCED SERVICE" INCLUDES "BROADBAND SERVICE" FOR PURPOSES OF THIS SECTION ONLY.

(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 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 THE EFFECTIVE DATE OF THIS SECTION. PURSUANT TO SUBSECTION (4) OF THIS SECTION AND CONSISTENT WITH SECTION 40-15-208 (2) (a) (III), THE COMMISSION MAY TRANSFER TO THE BROADBAND DEPLOYMENT BOARD ONLY THE MONEYS THAT IT DETERMINES ARE NO LONGER REQUIRED BY THE HCSM TO SUPPORT UNIVERSAL BASIC SERVICE THROUGH AN EFFECTIVE COMPETITION DETERMINATION. AFTER EACH TRANSFER TO THE BROADBAND DEPLOYMENT BOARD, THE COMMISSION SHALL USE THE MONEYS REMAINING IN THE HCSM TO SUPPORT BASIC SERVICE. NOTHING IN THIS SECTION INCREASES ANY SURCHARGE RATE CHARGED TO HELP FUND THE HCSM.

(4) (a) THERE IS HEREBY CREATED IN THE STATE TREASURY THE

BROADBAND FUND, REFERRED TO IN THIS SECTION AS THE "FUND". THE FUND CONSISTS OF ALL MONEYS ALLOCATED FROM THE HCSM TO PROVIDE ACCESS TO BROADBAND SERVICES THROUGH BROADBAND NETWORKS IN UNSERVED AREAS PURSUANT TO SECTION 40-15-208 (2) (a) (I) (B), WHICH MONEYS SHALL BE TRANSFERRED TO THE FUND UPON ALLOCATION, AND ALL MONEYS THAT THE GENERAL ASSEMBLY MAY APPROPRIATE TO THE FUND. THE MONEYS IN THE FUND ARE APPROPRIATED TO THE BROADBAND DEPLOYMENT BOARD, CREATED IN SUBSECTION (5) OF THIS SECTION, FOR THE PURPOSES SET FORTH IN THIS SECTION. ALL INTEREST EARNED FROM THE INVESTMENT OF MONEYS IN THE FUND IS CREDITED TO THE FUND. ALL MONEYS NOT EXPENDED AT THE END OF THE FISCAL YEAR REMAIN IN THE FUND AND DO NOT REVERT TO THE GENERAL FUND OR ANY OTHER FUND.

(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. 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 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:

(I) AT LEAST ONE MEMBER FROM THE COMMISSION; ONE MEMBER FROM THE COLORADO OFFICE OF ECONOMIC DEVELOPMENT AND INTERNATIONAL TRADE IN THE OFFICE OF THE GOVERNOR; ONE MEMBER FROM THE DEPARTMENT OF LOCAL AFFAIRS, CREATED IN SECTION 24-1-125, C.R.S.; AND ONE MEMBER FROM THE OFFICE OF INFORMATION TECHNOLOGY, CREATED IN SECTION 24-37.5-103, C.R.S., AS APPOINTED BY THE GOVERNOR. THE GOVERNOR SHALL SELECT THREE OF THESE FOUR APPOINTEES TO SERVE AS VOTING MEMBERS OF THE BOARD.

(II) THREE VOTING MEMBERS REPRESENTING LOCAL ENTITIES:

(A) ONE OF WHOM IS A COUNTY COMMISSIONER, AS APPOINTED BY THE PRESIDENT OF THE SENATE IN CONSULTATION WITH COLORADO COUNTIES, INC.;

(B) ONE OF WHOM IS A MAYOR OR CITY COUNCILPERSON, AS APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES IN CONSULTATION WITH THE COLORADO MUNICIPAL LEAGUE; AND

(C) ONE OF WHOM IS ANY OTHER REPRESENTATIVE OF A LOCAL ENTITY, AS APPOINTED BY THE MINORITY LEADER OF THE SENATE;

(III) SIX 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;

(IV) THREE 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;

(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.

(d) THE BOARD SHALL MEET AS OFTEN AS NECESSARY TO CARRY OUT ITS DUTIES AS DEFINED IN THIS SECTION.

(e) THE TERM OF ANY MEMBER OF THE BOARD WHO MISSES MORE THAN TWO CONSECUTIVE REGULAR BOARD MEETINGS WITHOUT GOOD CAUSE SHALL BE TERMINATED, AND HIS OR HER SUCCESSOR SHALL BE APPOINTED IN THE MANNER PROVIDED FOR APPOINTMENTS UNDER THIS SECTION.

(f) 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.

(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 AND LOCAL ENTITIES ABOUT THE BROADBAND FUND AND ITS 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 AWARD MONEYS FROM THE FUND, AND, IN CONNECTION THEREWITH, SHALL DEVELOP CRITERIA FOR AWARDING MONEYS FROM THE FUND 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 DEMONSTRATING THE INSUFFICIENT AVAILABILITY OF BROADBAND SERVICE IN THE AREA. THE APPLICANT MUST SUBMIT THE APPLICATION AND MAP TO THE BOARD; THE BOARD OF COUNTY COMMISSIONERS, CITY COUNCIL, OR OTHER LOCAL ENTITY WITH AUTHORITY OVER THE AREA TO BE SERVED; AND AN INCUMBENT PROVIDER. 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.

(b) DEVELOPING A METHODOLOGY FOR DETERMINING WHETHER A PROPOSED PROJECT WILL SERVE UNSERVED AREAS;

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

(d) ENSURING THAT A PROPOSED PROJECT INCLUDES:

(I) ACCESS TO A BROADBAND NETWORK;

(II) INDEPENDENT FUNDING SECURED FOR AT LEAST TWENTY-FIVE PERCENT OF THE TOTAL COST OF THE PROPOSED PROJECT; AND

(III) A REQUIREMENT TO UTILIZE ANY AWARD GRANTED FROM THE FUND FOR INFRASTRUCTURE PURPOSES ONLY AND NOT FOR OPERATIONS;

(e) PROVIDING ADDITIONAL CONSIDERATION FOR PROPOSED PROJECTS THAT INCLUDE AT LEAST SOME OF THE FOLLOWING FACTORS:

(I) PROPOSED PROJECTS THAT ARE ENDORSED BY LOCAL ENTITIES INTERESTED IN OBTAINING BROADBAND INTERNET SERVICE IN UNSERVED AREAS OF THE STATE;

(II) PROPOSED PROJECTS THAT HAVE DOWNSTREAM AND UPSTREAM SPEEDS IN EXCESS OF THE MINIMUM REQUIRED UNDER THIS SECTION;

(III) PROPOSED PROJECTS FOR WHICH THE APPLICANT HAS AN ESTABLISHED RECORD OF OPERATION IN THE AREA OF THE GRANT APPLICATION; AND

(IV) 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;

(f) PROVIDING AN ASSESSMENT OF THE FOLLOWING FACTORS:

(I) WHETHER THE PROPOSED PROJECT WILL PROVIDE SERVICES VIA A LICENSED OR UNLICENSED MEANS OF TRANSMISSION;

(II) THE COST-EFFECTIVENESS OF THE PROPOSED PROJECT'S PROPOSED METHOD FOR EXPANDING BROADBAND INTERNET SERVICE INTO UNSERVED AREAS; AND

(III) THE RELIABILITY OF THE NETWORK PROVIDING BROADBAND SERVICES;

(g) WITH REGARD TO AN APPLICANT THAT HAS SUBMITTED A PROPOSED PROJECT TO THE BOARD, AFFORDING EACH INCUMBENT PROVIDER IN THE AREA THAT IS NOT PROVIDING ACCESS TO A BROADBAND NETWORK IN THE UNSERVED AREA A RIGHT OF FIRST REFUSAL REGARDING THE IMPLEMENTATION OF A PROJECT IN THE UNSERVED AREA. IF AN INCUMBENT

PROVIDER PROPOSES A PROJECT FOR THE AREA, THE INCUMBENT PROVIDER COMMITS TO PROVIDING ACCESS TO A BROADBAND NETWORK WITHIN ONE YEAR AFTER THE APPLICANT'S SUBMISSION OF A PROPOSED PROJECT.

(h) ENSURING THAT BROADBAND SERVICE GRANT AWARDS ARE NOT PROVIDED IN AREAS OTHER THAN UNSERVED AREAS;

(i) IN THE CASE OF A FRANCHISE AGREEMENT, ENSURING THAT BROADBAND SERVICE GRANT AWARDS ARE NOT PROVIDED IN AREAS WITH A POPULATION DENSITY LARGE ENOUGH TO REQUIRE SERVICE UNDER AN EXISTING FRANCHISE AGREEMENT;

(j) ESTABLISHING A GRANT AWARD PROCESS THAT:

(I) ALLOWS FOR ONLY ONE GRANT TO BE AWARDED PER APPLICANT PER 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;

(k) ESTABLISHING REPORTING AND ACCOUNTABILITY REQUIREMENTS FOR A PROJECT RECEIVING FINANCIAL SUPPORT FROM THE FUND, INCLUDING CONTRACTUAL REQUIREMENTS THAT:

(I) THE APPLICANT SECURE A PERFORMANCE BOND FOR THE PROJECT, AS APPROPRIATE;

(II) THE APPLICANT DEMONSTRATE AN ABILITY TO PROVIDE BROADBAND SERVICE AT A REASONABLE COST PER HOUSEHOLD IN THE AREA TO BE SERVED BY THE PROPOSED PROJECT;

(III) THE APPLICANT DEMONSTRATE AN ABILITY TO COMPLETE THE PROPOSED PROJECT WITHIN A REASONABLE TIME, NOT TO EXCEED TWO YEARS, UNLESS DELAYED BY A GOVERNMENT ENTITY; AND

(IV) PROHIBIT AN APPLICANT FROM USING GRANT AWARD MONEYS TO OFFER, PROVIDE, OR SELL BROADBAND SERVICES IN AN AREA NOT

MEETING THE DEFINITION OF UNSERVED AREA.

(9) (a) THE BOARD SHALL REPORT ANNUALLY TO THE TRANSPORTATION AND ENERGY COMMITTEE AND BUSINESS, LABOR, AND THE 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 FROM THE FUND IN A GIVEN YEAR, INCLUDING INFORMATION ON:

- (I) THE NUMBER OF PROJECTS;
- (II) THE LOCATION OF EACH PROJECT;
- (III) THE AMOUNT OF FUNDING RECEIVED FOR EACH PROJECT; AND
- (IV) A DESCRIPTION OF EACH PROJECT.

(b) NOTWITHSTANDING SECTION 24-1-136(11), C.R.S., THE REPORT REQUIRED UNDER THIS SUBSECTION (9) CONTINUES INDEFINITELY.

(10) LOCAL ENTITIES ARE ENCOURAGED TO COOPERATE WITH RESPECT TO TIME LINES AND PERMIT FEES CONCERNING PROJECTS IN THEIR GEOGRAPHIC AREA.

(11) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2024. BEFORE THE REPEAL, THE DEPARTMENT OF REGULATORY AGENCIES SHALL REVIEW THE POWERS, DUTIES, AND FUNCTIONS OF THE BOARD REGARDING THE ADMINISTRATION OF THE BROADBAND FUND IN ACCORDANCE WITH SECTION 24-34-104, C.R.S.

SECTION 5. In Colorado Revised Statutes, 24-34-104, **add** (55) (f) as follows:

24-34-104. General assembly review of regulatory agencies and functions for termination, continuation, or reestablishment. (55) The following agencies, functions, or both, terminate on September 1, 2024:

- (f) THE FUNCTIONS OF THE BROADBAND DEPLOYMENT BOARD,

CREATED IN SECTION 40-15-509.5, C.R.S., REGARDING THE ADMINISTRATION OF THE BROADBAND FUND, CREATED IN SECTION 40-15-509.5, C.R.S.

SECTION 6. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the Colorado high cost administration fund created in section 40-15-208 (3) (a), Colorado Revised Statutes, not otherwise appropriated, to the department of regulatory agencies, for the fiscal year beginning July 1, 2014, the sum of \$86,518 and 0.7 FTE, or so much thereof as may be necessary, to be allocated for the implementation of this act as follows:

(a) \$52,733 and 0.7 FTE to the public utilities commission for personal services;

(b) \$5,368 to the public utilities commission for operating expenses and capital outlay; and

(c) \$28,417 to the executive director's office and administrative services for the purchase of legal services.

(2) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2014, the sum of \$28,417 and 0.2 FTE, or so much thereof as may be necessary, for the provision of legal services for the department of regulatory agencies related to the implementation of this act. Said sum is from reappropriated funds received from the department of regulatory agencies out of the appropriation made in paragraph (c) of subsection (1) of this section.

(3) In addition to any other appropriation, there is hereby appropriated to the department of law, for the fiscal year beginning July 1, 2014, the sum of \$27,324 and 0.2 FTE, or so much thereof as may be necessary, for the provision of legal services for the department of regulatory agencies related to the implementation of this act. Said sum is from cash funds received from the department of regulatory agencies from the broadband fund created in section 40-15-509.5 (4) (a), Colorado Revised Statutes. The moneys in the fund are appropriated to the broadband deployment board pursuant to section 40-15-509.5 (4) (a), Colorado Revised Statutes.

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

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Morgan Carroll
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO