

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 17-1226.01 Jennifer Berman x3286

SENATE BILL 17-306

SENATE SPONSORSHIP

Lambert, Lundberg, Moreno

HOUSE SPONSORSHIP

Hamner, Young, Rankin

Senate Committees
Appropriations

House Committees
Appropriations

A BILL FOR AN ACT

101 **CONCERNING A DIRECT TRANSFER OF MONEY FROM THE HIGH COST**
102 **SUPPORT MECHANISM TO BROADBAND DEPLOYMENT GRANT**
103 **APPLICANTS WITH PROPOSED BROADBAND DEPLOYMENT**
104 **PROJECTS THAT HAVE BEEN APPROVED BY THE BROADBAND**
105 **DEPLOYMENT BOARD FOR A GRANT AWARD, AND, IN**
106 **CONNECTION THEREWITH, REQUIRING SEGREGATION OF FUNDS**
107 **FOR BASIC VOICE SERVICE FROM FUNDS FOR BROADBAND**
108 **DEPLOYMENT.**

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

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.*

HOUSE
Amended 2nd Reading
May 8, 2017

SENATE
3rd Reading Unamended
May 8, 2017

SENATE
2nd Reading Unamended
May 5, 2017

<http://leg.colorado.gov>.)

The bill updates language regarding the use of money from the high cost support mechanism (HCSM) for broadband deployment grant applications approved by the broadband deployment board to have money transferred directly from the HCSM to approved broadband deployment grant applicants. The public utilities commission is directed to determine the amount of HCSM money available for broadband deployment and related administrative costs, and the bill requires that amount to be held in a separate account.

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 and (3.7) introductory portion; and **add** (8.3) 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~~ TWENTY-FIVE megabits per second downstream and ~~one megabit~~ THREE MEGABITS 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:

(8.3)(a) "FACILITIES-BASED PROVIDER" MEANS A PROVIDER THAT PROVIDES TO THE FCC ITS BROADBAND AND VOICE DATA VIA FORM 477 FILINGS, OR ANY SUCCESSOR FCC FORM FILINGS, REGARDLESS OF TECHNOLOGY, AND USES ITS OWN EQUIPMENT OR LEASED EQUIPMENT TO PROVIDE SERVICE TO ITS CUSTOMERS.

(b) "FACILITIES-BASED PROVIDER" DOES NOT INCLUDE SATELLITE OR NOMADIC VOICE-OVER-INTERNET PROTOCOL SERVICE PROVIDERS, BUT

1 DOES INCLUDE CABLE VOICE-OVER-INTERNET PROTOCOL SERVICE
2 PROVIDERS.

3 **SECTION 2.** In Colorado Revised Statutes, 40-15-207, **amend**
4 (1)(b) introductory portion; and **add** (1)(d) as follows:

5 **40-15-207. Reclassification of services and products.**

6 (1) (b) EXCEPT AS PROVIDED IN SUBSECTION (1)(d) OF THIS SECTION, in
7 determining whether effective competition for a specific
8 telecommunications service exists, the commission shall make findings,
9 after notice and opportunity for hearing, and shall issue an order based
10 upon consideration of the following factors:

11 (d) (I) FOR THE PURPOSES OF DETERMINING WHETHER EFFECTIVE
12 COMPETITION EXISTS FOR BASIC SERVICE, THE COMMISSION SHALL USE
13 CENSUS TRACTS AS THE RELEVANT GEOGRAPHIC AREAS IN MAKING
14 EFFECTIVE COMPETITION DETERMINATIONS. THE COMMISSION SHALL
15 DETERMINE WHETHER EFFECTIVE COMPETITION EXISTS IN A SPECIFIC
16 CENSUS TRACT BASED EXCLUSIVELY ON THE MOST RECENT INFORMATION
17 COLLECTED BY OR PROVIDED TO THE COMMISSION BY THE FCC FROM FCC
18 FORM 477 DATA, CENSUS DATA, AND ADDRESS LOCATION INFORMATION
19 AVAILABLE FROM THE OFFICE OF INFORMATION TECHNOLOGY CREATED IN
20 SECTION 24-37.5-103.

21 (II) NOTWITHSTANDING SUBSECTION (1)(d)(I) OF THIS SECTION,
22 ANY PROVIDER OR CITIZEN HAS THE RIGHT TO CHALLENGE FCC FORM 477
23 DATA IN A PARTICULAR CENSUS TRACT BY PROVIDING EVIDENCE TO THE
24 COMMISSION THAT ESTABLISHES PRIMA FACIE PROOF THAT A SPECIFIC
25 PROVIDER CLAIMING COVERAGE IN ITS FCC FORM 477 DATA DOES NOT, IN
26 FACT, PROVIDE COVERAGE IN THE CENSUS TRACT. THE CHALLENGED
27 PROVIDER MAY INTERVENE AND PROVIDE EVIDENCE TO REFUTE THE

1 CHALLENGE, AND THE COMMISSION SHALL MAKE A FINAL DETERMINATION
2 BASED ON THE EVIDENCE PROVIDED BY THE CHALLENGER AND THE
3 PROVIDER. IF A CHALLENGED PROVIDER DOES NOT INTERVENE:

4 (A) THE FCC FORM 477 DATA CHALLENGED CARRIES A
5 REBUTTABLE PRESUMPTION OF INVALIDITY FOR PURPOSES OF
6 DETERMINING EFFECTIVE COMPETITION IN THE CHALLENGED CENSUS
7 TRACT; AND

8 (B) THE CHALLENGED PROVIDER IS NOT SUBJECT TO DISCOVERY
9 REQUIREMENTS BY THE COMMISSION OR ANY PARTY.

10 (III) THE COMMISSION SHALL ISSUE A FINAL ORDER DETERMINING
11 EFFECTIVE COMPETITION UNDER THIS SUBSECTION (1)(d) NO LATER THAN
12 SEPTEMBER 1, 2018. THE ORDER SHALL TAKE EFFECT ON JANUARY 1,
13 2019, AND THE COMMISSION MAY UPDATE ITS EFFECTIVE COMPETITION
14 DETERMINATIONS ON A PERIODIC BASIS NO MORE OFTEN THAN ANNUALLY,
15 AS DETERMINED BY THE COMMISSION. ANY EFFECTIVE COMPETITION
16 DETERMINATION THAT THE COMMISSION HAS ALREADY MADE BEFORE THE
17 EFFECTIVE DATE OF THIS SUBSECTION (1)(d)(III) FOR A GEOGRAPHIC AREA
18 REMAINS VALID; EXCEPT THAT, FOR A CENSUS BLOCK PARTIALLY
19 CONTAINED WITHIN A WIRE CENTER SERVING AREA THAT WAS PREVIOUSLY
20 DEEMED EFFECTIVELY COMPETITIVE, THE COMMISSION MAY REEVALUATE
21 THE CENSUS TRACTS CONTAINING THOSE CENSUS BLOCKS PREVIOUSLY
22 EVALUATED.

23 (IV) (A) FOR PURPOSES OF THIS SUBSECTION (1)(d), "EFFECTIVE
24 COMPETITION" MEANS, FOR AN AREA THAT LIES IN WHOLE OR IN PART
25 OUTSIDE A MUNICIPALITY OR TOWN WITH GREATER THAN FIVE THOUSAND
26 INHABITANTS, THAT AT LEAST SEVENTY-FIVE PERCENT OF HOUSEHOLDS OR
27 BUSINESSES IN THE CENSUS TRACT HAVE ACCESS TO AT LEAST TWO

1 ~~FACILITIES-BASED PROVIDERS.~~

2 (B) AN AREA THAT LIES COMPLETELY WITHIN A MUNICIPALITY OR
3 TOWN WITH GREATER THAN FIVE THOUSAND INHABITANTS IS DEEMED
4 EFFECTIVELY COMPETITIVE.

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

7 **40-15-208. High cost support mechanism - Colorado high cost**
8 **administration fund - creation - purpose - operation - rules - report**
9 **- repeal.** ~~(2) (a) (III) The commission, at its regularly scheduled meetings~~
10 ~~to establish the high cost support mechanism surcharge and surcharge rate~~
11 ~~shall reduce the amount of the high cost support mechanism surcharge by~~
12 ~~the following percentages of the new broadband funds allocated in that~~
13 ~~year pursuant to section 40-15-509.5 (3) from the high cost support~~
14 ~~mechanism to the broadband fund, created in section 40-15-509.5 (4):~~

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

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

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

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

19 (3) (a) (I) There is hereby created, in the state treasury, the
20 Colorado high cost administration fund, referred to in this section as the
21 "fund", which shall be used to reimburse the commission and its
22 contractors for reasonable expenses incurred in the administration of the
23 high cost support mechanism, including administrative costs incurred in
24 association with:

25 (A) Broadband service, as determined by rules of the commission;

26 AND

27 (B) EFFECTIVE COMPETITION DETERMINATIONS MADE PURSUANT

1 TO SECTION 40-15-207 AND ANY RULEMAKING REQUIRED TO EFFECTUATE
2 SUCH DETERMINATIONS.

3 (II) The general assembly shall appropriate annually the moneys
4 MONEY in the fund that ~~are~~ IS to be used for the direct and indirect
5 administrative costs incurred by the commission and its contractors. At
6 the end of any fiscal year, all unexpended and unencumbered moneys
7 MONEY in the fund ~~remain~~ REMAINS in the fund and shall not be credited
8 or transferred to the general fund or any other fund.

9 (III) Based upon the high cost support mechanism, the balance
10 remaining in the fund, and the amount appropriated annually by the
11 general assembly for use by the commission, each year the commission
12 shall determine the nondiscriminatory, competitively neutral assessment
13 on all telecommunications service providers in Colorado that will be
14 necessary to cover the cost of implementing and administering the high
15 cost support mechanism. Only the moneys MONEY from the assessment
16 for administering the high cost support mechanism shall be transmitted
17 to the state treasurer, who shall credit the same to the fund. All interest
18 derived from the deposit and investment of moneys MONEY in the fund
19 ~~remain~~ REMAINS in the fund and ~~do~~ DOES not revert to the general fund.

20 (4) (a) NOTWITHSTANDING ANY OTHER PROVISION TO THE
21 CONTRARY IN SECTIONS 40-15-207, 40-15-502, OR THIS SECTION, RURAL
22 TELECOMMUNICATIONS PROVIDERS RECEIVING SUPPORT FROM THE HIGH
23 COST SUPPORT MECHANISM AS OF JANUARY 1, 2017, WILL CONTINUE TO
24 RECEIVE SUPPORT AT THE SAME LEVEL OF REIMBURSEMENT ESTABLISHED
25 AS OF JANUARY 1, 2017, FOR THE PERIOD OF JANUARY 1, 2017, THROUGH
26 SEPTEMBER 1, 2024. THE COMMISSION SHALL ADMINISTER THE HIGH COST
27 SUPPORT MECHANISM TO ENSURE COMPLIANCE WITH THIS SECTION.

1 (b) NOTWITHSTANDING ANY OTHER PROVISION TO THE CONTRARY
2 IN SECTIONS 40-15-207 AND 40-15-502 OR THIS SECTION, NONRURAL
3 INCUMBENT LOCAL EXCHANGE CARRIERS RECEIVING SUPPORT FROM A
4 SUPPORT MECHANISM AS OF JANUARY 1, 2017, WILL CONTINUE TO RECEIVE
5 SUPPORT AT THE SAME LEVEL OF REIMBURSEMENT ESTABLISHED AS OF
6 JANUARY 1, 2017, FOR THE PERIOD OF JANUARY 1, 2017, THROUGH
7 DECEMBER 31, 2018.

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

10 40-15-502. Expressions of state policy. (5) Universal service
11 support mechanisms. (a) (I) In order to accomplish the goals of
12 universal basic service, universal access to advanced service under
13 section 40-15-509.5, and any revision of the definition of basic service
14 under subsection (2) of this section, the commission shall create a system
15 of support mechanisms to assist in the provision of basic service in
16 high-cost areas that are without effective competition for basic service,
17 applying the factors stated in section 40-15-207; except that support
18 provided in a particular geographic support area is not affected until the
19 commission makes a finding applying the factors listed in section
20 40-15-207. The commission shall fund these support mechanisms
21 equitably and on a nondiscriminatory, competitively neutral basis through
22 assessments, which may include a rate element, on all
23 telecommunications service providers in Colorado, and the commission
24 shall distribute the funds equitably and on a nondiscriminatory,
25 competitively neutral basis.

26 (II) For purposes of ~~administering the~~ PROVIDING HIGH COST
27 SUPPORT MECHANISM ~~support mechanisms~~ FOR BASIC VOICE SERVICE, the

1 commission shall divide the state into reasonably compact, competitively
2 neutral geographic support areas USE THE CENSUS TRACTS THAT HAVE NOT
3 BEEN DEEMED EFFECTIVELY COMPETITIVE BY THE COMMISSION OR
4 INDIVIDUAL BLOCKS IN A CENSUS TRACT WHERE A PROVIDER, UPON
5 APPLICATION, DEMONSTRATES THAT EFFECTIVE COMPETITION DOES NOT
6 EXIST FOR THE CENSUS BLOCK. A provider's eligibility to receive support
7 under the support mechanisms is conditioned upon the provider's offering
8 OF basic service throughout an entire support area. The commission shall
9 review the costs of basic service and shall administer the support
10 mechanisms.

11 (III) THE COMMISSION SHALL AWARD A PROVIDER
12 REIMBURSEMENT FROM THE HIGH COST SUPPORT MECHANISM FOR A
13 GEOGRAPHIC AREA ONLY IF THE PROVIDER HAS DEMONSTRATED THAT THE
14 COST OF PROVIDING LOCAL EXCHANGE SERVICE TO ITS CUSTOMERS
15 EXCEEDS ITS LOCAL EXCHANGE SERVICE REVENUES AND ANY OTHER
16 SOURCE OF REVENUES FOR THE GEOGRAPHIC AREA. AN APPLICANT FOR
17 MONEY FROM THE HIGH COST SUPPORT MECHANISM SHALL PROVIDE TO THE
18 COMMISSION, AT THE TIME OF APPLICATION AND ON AN ANNUAL BASIS
19 THEREAFTER IF THE COMMISSION APPROVES THE APPLICANT'S
20 APPLICATION, ACTUAL COST INFORMATION TO JUSTIFY THE APPLICANT'S OR
21 RECIPIENT'S ELIGIBILITY AND THE AMOUNT OF SUPPORT REQUESTED OR
22 BEING RECEIVED. THE COMMISSION MAY CONSIDER ANNUAL COSTS
23 AVERAGED OVER A PERIOD UP TO THREE YEARS TO DETERMINE ACTUAL
24 COST IN PROVIDING SERVICE. IN PROVIDING THE ACTUAL COST
25 INFORMATION REQUIRED UNDER THIS SUBSECTION (5)(a)(III), THE
26 APPLICANT OR RECIPIENT SHALL NOT RELY ON ANY PROXY METHOD OR ON
27 A METHOD BASED ON IDENTICAL SUPPORT RECEIVED BY OTHER PROVIDERS

1 FOR ITS JUSTIFICATION.

2 (IV) A RECIPIENT OF MONEY FROM THE HIGH COST SUPPORT
3 MECHANISM SHALL, ON AN ANNUAL BASIS, VERIFY TO THE COMMISSION
4 THAT THE MONEY RECEIVED WAS USED TO SUPPORT THE HIGH-COST AREAS
5 FOR WHICH THE MONEY WAS ALLOCATED.

6 SECTION 5. In Colorado Revised Statutes, 40-15-509.5, amend
7 (3), (4)(a), (8) introductory portion, and (8)(j)(I) as follows:

8 40-15-509.5. Broadband service - report - broadband
9 deployment board - broadband administrative fund - creation -
10 repeal. (3) The commission may allocate the Colorado high cost support
11 mechanism, established under section 40-15-208 and referred to in this
12 section as the "HCSM", for the deployment of broadband service in
13 unserved areas of the state pursuant to this section only. The commission
14 may fund the deployment of broadband service in unserved areas of the
15 state through use of the HCSM surcharge and surcharge rate in effect on
16 May 10, 2014. Pursuant to subsection (4) of this section and consistent
17 with ~~section 40-15-208 (2)(a)(III)~~ SECTIONS 40-15-207 AND 40-15-208,
18 the commission ~~may transfer to the~~ SHALL DETERMINE FUNDS AVAILABLE
19 FOR broadband deployment board AND THE ADMINISTRATION OF THE
20 BOARD only the moneys FROM THE HCSM MONEY that it determines ~~are~~
21 IS no longer required by the HCSM to support universal basic service
22 through an effective competition determination. ~~After each transfer to the~~
23 ~~broadband deployment board, the commission shall use the moneys~~
24 ~~remaining in the HCSM to support basic service~~ THE MONEY AVAILABLE
25 FOR BROADBAND DEPLOYMENT SHALL BE MAINTAINED BY THE HCSM
26 THIRD-PARTY CONTRACTOR AND HELD IN A SEPARATE ACCOUNT FROM
27 MONEY USED FOR BASIC VOICE SERVICE. MONEY HELD FOR BROADBAND

1 DEPLOYMENT SHALL NOT BE DISBURSED FOR BASIC VOICE SERVICE, AND
2 MONEY HELD FOR BASIC VOICE SERVICE SHALL NOT BE DISBURSED FOR
3 BROADBAND DEPLOYMENT. THE COMMISSION SHALL ONLY DISBURSE
4 MONEY FOR BROADBAND DEPLOYMENT GRANTS FROM THE HCSM AS
5 DIRECTED BY THE BOARD. Nothing in this section increases any surcharge
6 rate charged to help fund the HCSM.

7 (4) (a) There is hereby created in the state treasury the broadband
8 ADMINISTRATIVE fund, referred to in this section as the "fund". The fund
9 consists of all money allocated from the HCSM ~~to provide access to~~
10 ~~broadband services through broadband networks in unserved areas~~
11 ~~pursuant to section 40-15-208 (2)(a)(I)(B), which money shall be~~
12 ~~transferred to the fund between July 1 and August 31 of each year, FOR~~
13 THE ADMINISTRATION OF THE BOARD and all money that the general
14 assembly may appropriate to the fund. ~~The money in the fund allocated~~
15 ~~from the HCSM is continuously appropriated to the broadband~~
16 ~~deployment board, created in subsection (5) of this section, for the~~
17 ~~purposes set forth in this section. Any other~~ THE money in the fund is
18 subject to annual appropriation by the general assembly for the purposes
19 set forth in this section. All interest earned from the investment of money
20 in the fund is credited to the fund. All money not expended at the end of
21 the fiscal year remains in the fund and does not revert to the general fund
22 or any other fund.

23 (8) The board shall ~~award moneys from the fund, and, in~~
24 ~~connection therewith~~ DIRECT THE COMMISSION TO TRANSFER MONEY, IN
25 A MANNER CONSISTENT WITH THIS SECTION, FROM THE ACCOUNT FOR
26 BROADBAND DEPLOYMENT ESTABLISHED IN THE HCSM TO APPROVED
27 GRANT APPLICANTS. THE BOARD shall develop criteria for awarding

1 ~~moneys from the fund~~ MONEY for new projects expanding broadband
2 networks into unserved areas, including:

- 3 (j) Establishing a grant award process that:
 - 4 (I) ~~Allows for only one grant to be awarded per applicant per year;~~
5 AN APPLICANT TO APPLY FOR GRANTS ON MULTIPLE PROJECTS IF THE
6 APPLICANT MAKES A SEPARATE APPLICATION FOR EACH PROJECT. IN A
7 GIVEN YEAR, THE BOARD MAY APPROVE ONE OR MORE APPLICATIONS FOR
8 AN APPLICANT.

9 **SECTION 6. Safety clause.** The general assembly hereby finds,
10 determines, and declares that this act is necessary for the immediate
11 preservation of the public peace, health, and safety.