

CHAPTER 93

PUBLIC UTILITIES

SENATE BILL 18-104

BY SENATOR(S) Donovan, Court, Fenberg, Jones, Kagan, Kerr, Merrifield, Todd, Zenzinger, Aguilar, Coram, Crowder, Fields, Guzman, Kefalas, Martinez Humenik, Moreno, Priola, Tate, Williams A.;

also REPRESENTATIVE(S) Willett and McLachlan, Becker J., Roberts, Arndt, Becker K., Bridges, Buckner, Catlin, Coleman, Covarrubias, Danielson, Esgar, Exum, Foote, Garnett, Ginal, Gray, Hamner, Hansen, Herod, Hooton, Kennedy, Kraft-Tharp, Lee, Lewis, Lontine, Melton, Pettersen, Rosenthal, Salazar, Singer, Thurlow, Valdez, Weissman, Wilson, Winter, Young, Duran.

AN ACT

CONCERNING A REQUIREMENT THAT THE BROADBAND DEPLOYMENT BOARD FILE A PETITION WITH THE FEDERAL COMMUNICATIONS COMMISSION TO SEEK A WAIVER FROM THE COMMISSION'S RULES PROHIBITING A STATE ENTITY FROM APPLYING FOR CERTAIN FEDERAL MONEY EARMARKED FOR FINANCING BROADBAND DEPLOYMENT IN REMOTE AREAS OF THE NATION.

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and determines that:

(a) In 2011, the FCC created the connect America fund to help fund broadband deployment in high-cost census blocks throughout the nation;

(b) As part of the connect America fund, the FCC developed a connect America fund phase II auction in which the FCC, beginning in 2018 and through a competitive bidding process, will award up to one hundred ninety-eight million dollars annually for ten years to telecommunications service providers that provide both voice and broadband service in high-cost areas of the nation;

(c) In May 2016, the FCC adopted a framework for the auction that allows only telecommunications service providers to apply for financial support through the auction;

(d) In October 2016, the state of New York filed a petition for expedited waiver from the FCC's auction rules to allow the state's statewide broadband program to allocate auction money through the competitive bidding process that the state

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.

developed for the broadband program;

(e) In January 2017, the FCC granted the state of New York's petition, finding that:

(I) The statewide broadband program's project award criteria were already sufficiently aligned with the auction's minimum speed requirement of at least ten megabits per second downstream and one megabit per second upstream and latency requirement of one hundred milliseconds or faster;

(II) The expedited timeline of deployment under New York's statewide broadband program warranted early release of auction money to the state of New York for allocation by the state to eligible providers; and

(III) New York could leverage significant state funds to further support broadband deployment because it had already budgeted five hundred million dollars for its broadband program;

(f) Colorado has not applied for a waiver from the FCC's auction rules and, given the projection that the FCC will start accepting auction bids in early 2018, there is unlikely to be sufficient time for Colorado to apply for and receive a waiver from the auction rules. Furthermore, Colorado does not have similar circumstances to the unique timeline, funding, and project eligibility requirements of New York's broadband program, which circumstances the FCC relied upon in granting New York's petition.

(g) However, after the FCC completes the process of awarding bids through the auction, it will provide further financial support from the connect America fund by providing at least one hundred million dollars annually from a remote areas fund created as part of the connect America fund to eligible telecommunications service providers that will commit to providing both voice and broadband service in extremely high-cost areas of the nation;

(h) The FCC has not yet finalized a framework for providing financial support through its remote areas fund, but the FCC has proposed that only telecommunications service providers may apply for the money; and

(i) Colorado's model of providing broadband deployment to unserved areas of the state through the broadband deployment board's competitive bidding process appears to be aligned with the financial support envisioned for allocating federal money from the remote areas fund.

(2) Therefore, the general assembly hereby declares that, if Colorado petitioned for a waiver from the FCC's rules concerning the remote areas fund and the FCC granted the petition, Colorado could leverage its state funding and the broadband deployment board's existing process and expertise to allocate the federal financial support to broadband deployment projects throughout the state.

SECTION 2. In Colorado Revised Statutes, 40-15-509.5, **add** (10.6) as follows:

40-15-509.5. Broadband service - report - broadband deployment board -

broadband administrative fund - creation - definitions - repeal.

(10.6) (a) (I) FOLLOWING THE MODEL OF NEW YORK'S PETITION FOR EXPEDITED WAIVER, THE BOARD, ON OR BEFORE JANUARY 1, 2019, SHALL PETITION THE FCC FOR A WAIVER FROM THE FCC'S RULES CONCERNING THE REMOTE AREAS FUND TO SEEK FCC AUTHORIZATION FOR THE BOARD TO ITSELF ALLOCATE REMOTE AREAS FUND MONEY FOR BROADBAND DEPLOYMENT PROJECTS IN COLORADO.

(II) AFTER SUBMITTING THE PETITION TO THE FCC, THE BOARD MAY:

(A) FILE ANY ADDITIONAL DOCUMENTATION THAT THE FCC REQUIRES OF THE BOARD IN CONSIDERING THE BOARD'S PETITION; AND

(B) COORDINATE WITH THE FCC TO DEVELOP ANY CONDITIONS THAT THE FCC MIGHT REQUIRE TO GRANT THE PETITION.

(b) IF THE FCC DENIES THE BOARD'S PETITION, THE BOARD SHALL NOT FILE A NEW PETITION OR OTHERWISE SUBSEQUENTLY APPLY FOR MONEY FROM THE REMOTE AREAS FUND.

(c) IF THE FCC GRANTS THE BOARD'S PETITION:

(I) THE HCSM THIRD-PARTY CONTRACTOR SHALL MAINTAIN ANY FEDERAL MONEY AWARDED THROUGH THE REMOTE AREAS FUND IN A SEPARATE ACCOUNT OF THE HCSM THAT IS DEDICATED TO ALLOCATING THE FEDERAL MONEY IN COMPLIANCE WITH ANY CONDITIONS ESTABLISHED BY THE FCC IN GRANTING THE PETITION;

(II) THE COMMISSION IS AUTHORIZED TO DISBURSE THE FEDERAL MONEY IN THAT ACCOUNT FOR BROADBAND DEPLOYMENT GRANTS AS AUTHORIZED BY THE BOARD AND IN COMPLIANCE WITH ANY CONDITIONS ESTABLISHED BY THE FCC IN GRANTING THE PETITION; AND

(III) THE BOARD IS AUTHORIZED TO COORDINATE WITH THE FCC TO COMPLY WITH ANY CONDITIONS ESTABLISHED BY THE FCC IN GRANTING THE PETITION. IF ANY SUCH FCC CONDITIONS IMPOSE PROJECT ELIGIBILITY, APPLICATION PROCESS, AWARD CRITERIA, OR OTHER REQUIREMENTS THAT ARE DISTINCT FROM THE REQUIREMENTS SET FORTH IN THIS SECTION OR ESTABLISHED BY THE BOARD PURSUANT TO THIS SECTION, THE COMMISSION MAY, BY RULE AND IN CONSULTATION WITH THE BOARD, ESTABLISH REQUIREMENTS THAT COMPLY WITH THE FCC'S CONDITIONS; EXCEPT THAT ANY REQUIREMENTS ESTABLISHED BY THE COMMISSION BY RULE PURSUANT TO THIS SUBSECTION (10.6) MUST APPLY ONLY TO BROADBAND DEPLOYMENT PROJECTS THAT ARE ELIGIBLE TO RECEIVE THE FEDERAL REMOTE AREAS FUND MONEY.

(d) AS USED IN THIS SUBSECTION (10.6):

(I) "AUCTION RULES" REFERS TO THE FCC'S RULES IN 47 CFR 54.309 TO 54.316, WHICH RULES CONCERN THE IMPLEMENTATION OF THE CONNECT AMERICA FUND PHASE II AUCTION.

(II) "CONNECT AMERICA FUND" REFERS TO THE FEDERAL UNIVERSAL SERVICE

HIGH-COST PROGRAM THAT ALLOWS ELIGIBLE TELECOMMUNICATIONS PROVIDERS TO RECOVER SOME OF THEIR COSTS FROM THE FEDERAL GOVERNMENT FOR PROVIDING VOICE AND BROADBAND SERVICE IN HIGH-COST AREAS.

(III) "CONNECT AMERICA PHASE II AUCTION" REFERS TO A TEN-YEAR AUCTION OF FEDERAL MONEY THROUGH WHICH THE FCC WILL ALLOCATE MONEY THROUGH A COMPETITIVE BIDDING PROCESS TO TELECOMMUNICATIONS PROVIDERS WHO COMMIT TO PROVIDING VOICE AND BROADBAND SERVICE IN HIGH-COST AREAS OF THE NATION IN ACCORDANCE WITH THE FCC'S AUCTION RULES.

(IV) "NEW YORK'S PETITION FOR EXPEDITED WAIVER" REFERS TO A PETITION THAT THE STATE OF NEW YORK FILED WITH THE FCC SEEKING A WAIVER FROM THE FCC'S AUCTION RULES, WHICH WAIVER THE FCC GRANTED ON JANUARY 26, 2017.

(V) "REMOTE AREAS FUND" REFERS TO A FUND CREATED BY THE FCC AS PART OF ITS CONNECT AMERICA FUND TO FACILITATE BROADBAND DEPLOYMENT IN EXTREMELY HIGH-COST AREAS OF THE NATION.

SECTION 3. 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