

CHAPTER 182

GOVERNMENT - STATE

HOUSE BILL 99-1102

BY REPRESENTATIVES Young, Bacon, Dean, George, Hagedorn, Larson, McPherson, Miller, Plant, Smith, Swenson, Taylor, and Webster;
also SENATORS Teck, Chlouber, Reeves, and Wattenberg.

AN ACT

CONCERNING ENCOURAGEMENT OF PRIVATE-SECTOR TELECOMMUNICATIONS INVESTMENT BY PROVIDING INCENTIVES FOR THE PUBLIC SECTOR TO SERVE AS "ANCHOR TENANT", AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. Legislative declaration - encouragement of private-sector investment - public sector as "anchor tenant". (1) The general assembly finds, determines, and declares that advanced communications services provide a means of dispersing population growth and economic opportunity more evenly throughout all geographic regions of the state; however, only by aggregating demand at the state and at the local, community level, through rationally planned and coordinated purchases of telecommunications technology by the state and its political subdivisions, can the state and its political subdivisions take advantage of economies of scale and assume the role of "anchor tenant" in encouraging private-sector investment in the infrastructure adequate to provide state-of-the-art communications service throughout the state and within all communities in the state for both public- and private-sector use.

(2) The general assembly further finds that the department of personnel, acting under executive order, has taken steps necessary to begin acting as an anchor tenant by developing a statewide digital network, called the multi-use network, built on leased private-sector resources. The general assembly further finds that similar action at the local level is needed to enable communities to serve as anchor tenants. Therefore, the general assembly hereby directs the department of local affairs, created in section 24-1-125, Colorado Revised Statutes, to administer a community-based access program of incentive grants available to all communities in the state to aggregate the telecommunications traffic of the public offices within the community.

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

The general assembly also hereby directs the executive director of the department of personnel to interconnect this community-based traffic with networks established by the state, to the extent the available resources permit. Finally, the general assembly hereby finds that an appropriation of four million six hundred seventy-six thousand dollars will be necessary to demonstrate the feasibility of the effort.

SECTION 2. 24-30-903, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

24-30-903. Duties and responsibilities. (7) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF PERSONNEL SHALL CARRY OUT ALL DUTIES AND RESPONSIBILITIES SET FORTH IN THIS SECTION IN A MANNER THAT IS CONSISTENT WITH THE OBJECTIVE OF MAXIMIZING ACCESS TO DIGITAL NETWORKS OF THE STATE BY ALL PUBLIC OFFICES OF ALL LEVELS, BRANCHES, AND POLITICAL SUBDIVISIONS OF THE STATE WITHIN EVERY COMMUNITY OF THE STATE. IN PARTICULAR, WITHIN AVAILABLE RESOURCES AND AS SOON AS IS FEASIBLE, THE EXECUTIVE DIRECTOR SHALL PROVIDE CONNECTIONS PROPOSED AND APPROVED BY THE DEPARTMENT OF LOCAL AFFAIRS, CREATED IN SECTION 24-1-125, C.R.S., THROUGH THE COMMUNITY-BASED ACCESS GRANT PROGRAM ESTABLISHED UNDER SECTION 23-11-104.5, C.R.S., AND MAY ACT AS A NETWORK PROVIDER BETWEEN OR AMONG ALL PUBLIC OFFICES AS DEFINED IN SAID SECTION. TO THE EXTENT POSSIBLE AND IF TECHNICALLY FEASIBLE, THE BIDDING AND THE METHOD OF AWARDED THE CONTRACT FOR TELECOMMUNICATIONS SERVICES UNDER SECTION 23-11-104.5, C.R.S., SHOULD BE STRUCTURED IN A MANNER AS TO ALLOW THE GREATEST NUMBER OF PROVIDERS TO PARTICIPATE IN THE BIDDING AND THE AWARD OF THE CONTRACT.

SECTION 3. Article 11 of title 23, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

23-11-104.5. Community-based access grant program - powers and duties of department of local affairs - definitions - legislative declaration. (1) AS USED IN THIS SECTION:

(a) "AGGREGATE" MEANS TO AGGREGATE OR CONSOLIDATE THE TELECOMMUNICATIONS SERVICE REQUIREMENTS OF ALL OR A SUBSTANTIAL PORTION OF THE PUBLIC OFFICES WITHIN A COMMUNITY INTO A COORDINATED AND RATIONAL NETWORK PLAN FOR THE PROVISION AND PROCUREMENT OF TELECOMMUNICATIONS SERVICES SO AS TO MAXIMIZE ECONOMIES OF SCALE AND COMBINE THE BUYING POWER OF THE ENTITIES OPERATING SUCH OFFICES.

(b) "COMMUNITY" MEANS A GEOGRAPHICALLY CONTIGUOUS AND DISTINCT POPULATION, SELF-DEFINED FOR THE PURPOSES OF APPLYING FOR THE GRANT RESOURCES DESCRIBED IN THIS SECTION, AND HAVING A SPONSORING FISCAL AGENT THAT IS A POLITICAL SUBDIVISION OF THE STATE.

(c) "CONNECT" AND "CONNECTION" REFER TO THE ESTABLISHMENT OF A FULL-TIME, DEDICATED, DIGITAL NETWORK CONNECTION BETWEEN A PUBLIC OFFICE AND THE STATE NETWORK.

(d) "DEPARTMENT" MEANS THE DEPARTMENT OF LOCAL AFFAIRS, CREATED IN SECTION 24-1-125, C.R.S.

(e) "DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT.

(f) "END-USER EQUIPMENT" MEANS HARDWARE AND SOFTWARE THAT ARE IDENTIFIED WITH A SPECIFIC PUBLIC OFFICE OR OTHER PHYSICAL LOCATION AND THAT CAN OPERATE INDEPENDENTLY OF THE STATE NETWORK. THE TERM INCLUDES, WITHOUT LIMITATION, PERSONAL COMPUTERS, NETWORK SERVERS, LOCAL AREA NETWORKS, AND VIDEO CONFERENCING EQUIPMENT.

(g) "PRIVATE-SECTOR TELECOMMUNICATIONS PROVIDER" MEANS A PRIVATE CORPORATION, WHETHER OR NOT OPERATED FOR PROFIT, THAT OFFERS TELEPHONE, CABLE, WIRELESS, OR OTHER TELECOMMUNICATIONS SERVICES TO THE PUBLIC.

(h) "PUBLIC OFFICE" MEANS ANY BUILDING, OFFICE, OR FACILITY THAT IS PHYSICALLY LOCATED WITHIN THE GEOGRAPHIC BOUNDARIES OF A COMMUNITY AND IS OWNED OR OPERATED BY:

(I) AN AGENCY OR POLITICAL SUBDIVISION OF THE STATE OR OF ANY LOCAL GOVERNMENT, INCLUDING, BUT NOT LIMITED TO, A STATE ADMINISTRATIVE AGENCY, A PUBLIC SCHOOL OR COLLEGE, A LIBRARY, A COUNTY OR MUNICIPAL GOVERNMENT, AND A PUBLIC HOSPITAL OR HEALTH CARE FACILITY; OR

(II) A NONPROFIT HOSPITAL.

(2) THE DEPARTMENT SHALL ESTABLISH A COMMUNITY-BASED ACCESS GRANT PROGRAM UNDER WHICH THE DEPARTMENT SHALL ALLOCATE CAPITAL CONSTRUCTION FUNDS APPROPRIATED TO THE DEPARTMENT FOR THIS PURPOSE TO COMMUNITIES SEEKING TO AGGREGATE THE TELECOMMUNICATIONS SERVICES REQUIRED BY THE PUBLIC OFFICES WITHIN THE COMMUNITY TO CONNECT TO THE DIGITAL NETWORK OPERATED BY THE DEPARTMENT OF PERSONNEL PURSUANT TO ARTICLE 30 OF TITLE 24, C.R.S. SAID TELECOMMUNICATIONS SERVICES SHALL BE PROCURED BY THE COMMUNITIES FROM PRIVATE-SECTOR TELECOMMUNICATIONS PROVIDERS.

(3) THE USE OF MONEYS ALLOCATED UNDER THIS SECTION SHALL BE LIMITED AS FOLLOWS:

(a) EXPENDITURES SHALL BE MADE ONLY IN ACCORDANCE WITH PROPOSALS THAT RESULT IN MATERIAL IMPROVEMENTS IN THE AVAILABILITY AND COMPETITIVE COST OF ADVANCED, DIGITAL TELECOMMUNICATIONS SERVICES TO THE COMMUNITY AS COMPARED TO OTHER COMMUNITIES OF COMPARABLE SIZE AND CHARACTERISTICS.

(b) EXPENDITURES SHALL BE MADE ONLY FOR SERVICES PROCURED BY THE COMMUNITY FROM PRIVATE-SECTOR TELECOMMUNICATIONS SERVICE PROVIDERS.

(c) EXPENDITURES SHALL BE MADE ONLY FOR COSTS ASSOCIATED WITH:

(I) TERMINATING COMMUNICATIONS EQUIPMENT AT A PUBLIC OFFICE;

(II) LEASED DIGITAL TELECOMMUNICATIONS SERVICES ASSOCIATED WITH CONNECTING A PUBLIC OFFICE TO THE STATE'S DIGITAL NETWORK; AND

(III) APPROPRIATE COST-RECOVERY CHARGES FOR THE USE OF THE STATE'S

DIGITAL NETWORK.

(d) NO EXPENDITURES SHALL BE MADE FOR COSTS ASSOCIATED WITH CONNECTING PUBLIC OFFICES THAT ALREADY HAVE CONNECTIONS; EXCEPT THAT SUCH PUBLIC OFFICES MAY BE REIMBURSED FOR THEIR NET, NEW INCREMENTAL COSTS INCURRED AS A RESULT OF THEIR INCLUSION IN THE COMMUNITY'S PLAN FOR THE AGGREGATION OF TELECOMMUNICATIONS SERVICES.

(e) NO EXPENDITURES SHALL BE MADE FOR END-USER EQUIPMENT, APPLICATIONS DEVELOPMENT, MAINTENANCE, TRAINING, OR OTHER SIMILAR COSTS INCURRED BY A PUBLIC OFFICE OR ORGANIZATION.

(f) MONEYS SHALL BE DISBURSED ONLY TO THE FISCAL AGENT ACTING ON BEHALF OF A COMMUNITY.

(4) THE DEPARTMENT SHALL RECEIVE AND EVALUATE PROPOSALS FOR FUNDING UNDER THIS SECTION, SUBJECT TO THE FOLLOWING POLICY DIRECTIVES:

(a) THE PROPOSAL PROCESS SHALL BE CONDUCTED WITH THE OVERALL GOAL OF PROVIDING FUNDING TO EVERY COMMUNITY WHOSE PROPOSAL IS OF HIGH QUALITY AND COMPETITIVE WITH THOSE OF COMMUNITIES OF COMPARABLE SIZE AND CHARACTERISTICS.

(b) PRIORITY SHALL BE GIVEN TO THOSE COMMUNITIES PROPOSING TO AGGREGATE THE TRAFFIC OF, AND OBTAIN PARTICIPATION FROM, THE GREATEST PROPORTION OF THE PUBLIC OFFICES WITHIN THE COMMUNITY. TO QUALIFY FOR CONSIDERATION, PROPOSALS SHALL LIST ALL PUBLIC OFFICES IN THE COMMUNITY AND, AS TO EACH SUCH PUBLIC OFFICE, SHALL SPECIFY WHETHER OR NOT THE PUBLIC OFFICE IS TO BE CONNECTED UNDER THE PROPOSAL. IN ADDITION, INCREASED PRIORITY SHALL BE GIVEN TO THOSE COMMUNITIES THAT SHOW PARTICIPATION OF PRIVATE- AND NONPROFIT-SECTOR TELECOMMUNICATIONS CONSUMERS IN THE TOTAL AGGREGATED DEMAND.

(c) IN ACCORDANCE WITH MEASURABLE CRITERIA ESTABLISHED IN ADVANCE BY THE DEPARTMENT, THE DEPARTMENT SHALL CONSIDER THE DEGREE OF CASH AND IN-KIND MATCHING FUNDS TO BE PROVIDED BY THE COMMUNITY, CONSISTENT WITH THE COMMUNITY'S RESOURCES.

(5) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3) OF THIS SECTION, THE DEPARTMENT MAY ALLOCATE UP TO TEN PERCENT OF THE CAPITAL CONSTRUCTION APPROPRIATION FOR TECHNICAL ASSISTANCE, TRAINING, ENGINEERING, AND CONSULTING TO PREPARE PLANS, PROGRAM DOCUMENTS, LIFE-CYCLE COST STUDIES, REQUESTS FOR PROPOSALS AND OTHER STUDIES, AND DOCUMENTS ASSOCIATED WITH AND NECESSARY FOR THE DEVELOPMENT OF PROPOSALS UNDER THIS SECTION.

(6) THE DEPARTMENT SHALL COORDINATE THE ALLOCATION OF THE CAPITAL CONSTRUCTION FUNDS APPROPRIATED TO IT FOR THE PURPOSES OF THIS SECTION WITH THE SCHEDULE OF DEPLOYMENT FOR THE STATE'S DIGITAL NETWORKS.

(7) IN THE FUNDING OF AGGREGATED ACCESS FOR COMMUNITIES, THE DEPARTMENT SHALL REQUIRE THAT PUBLIC ENTITIES PARTICIPATING IN THE AGGREGATION OF

TRAFFIC LOCALLY DEMONSTRATE THE ABILITY TO DIVERT OR SEPARATE LOCAL TRAFFIC, INCLUDING BUT NOT LIMITED TO INTERNET AND VOICE TRAFFIC, FROM THE POINT OF AGGREGATION TO A LOCAL DESTINATION.

(8) THE DEPARTMENT SHALL ALLOCATE THE CAPITAL CONSTRUCTION FUNDS APPROPRIATED TO IT FOR THE PURPOSES OF THIS SECTION IN SUCH A MANNER AS TO REDUCE GEOGRAPHIC DISPARITY THROUGHOUT THE STATE IN THE AVAILABILITY AND COST OF ADVANCED COMMUNICATIONS SERVICES.

(9) ON OR BEFORE APRIL 1, 2000, THE DEPARTMENT SHALL REPORT TO AND MAKE AN APPEARANCE BEFORE THE BUSINESS AFFAIRS AND LABOR AND CAPITAL DEVELOPMENT COMMITTEES OF THE HOUSE AND SENATE. THEREAFTER, THE DEPARTMENT SHALL REPORT TO AND MAKE AN APPEARANCE BEFORE THE CAPITAL DEVELOPMENT COMMITTEE AT THE CONCLUSION OF EACH FISCAL YEAR OF OPERATION OF THIS PROGRAM.

(10) THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE AGGREGATION OF LOCAL PUBLIC TELECOMMUNICATIONS SERVICES IS A NEW STATE PROGRAM AND THAT ADMINISTRATION OF THE PROGRAM REQUIRES SERVICES OF A SPECIALIZED, TECHNICAL NATURE THAT ARE NOT AVAILABLE WITHIN THE STATE PERSONNEL SYSTEM. THE DIRECTOR IS THEREFORE AUTHORIZED TO CONTRACT WITH A PRIVATE PERSON, CORPORATION, OR ENTITY FOR THE ADMINISTRATION OF THE COMMUNITY-BASED ACCESS GRANT PROGRAM DESCRIBED IN SUBSECTION (2) OF THIS SECTION IF THE CONTRACT OTHERWISE COMPLIES WITH PART 5 OF ARTICLE 50 OF TITLE 24, C.R.S., CONCERNING CONTRACTS FOR PERSONAL SERVICES.

(11) DURING THE INITIAL YEAR OF FUNDING, THE DEPARTMENT OF LOCAL AFFAIRS SHALL ALLOCATE THE MONEYS MADE AVAILABLE FOR THE PURPOSES OF THIS SECTION IN A MANNER THAT:

(a) PROVIDES TECHNICAL ASSISTANCE FOR STRATEGIC TELECOMMUNICATIONS PLANNING TO COMMUNITIES THAT REQUIRE HELP IN PREPARING COMPETITIVE PROPOSALS FOR FUTURE FUNDING;

(b) EVALUATES THE RELATIONSHIP BETWEEN THE SIZE OF A COMMUNITY AND THE ABILITY TO SUCCESSFULLY ATTRACT INVESTMENT THROUGH AGGREGATION; AND

(c) GIVES PRIORITY TO PROPOSALS THAT DEMONSTRATE A HIGH PROBABILITY OF SUCCESS THROUGH SUFFICIENT PRIOR STRATEGIC TELECOMMUNICATIONS PLANNING, LOCAL MANAGERIAL EXPERTISE, AND TECHNICAL FEASIBILITY OF THE CHOSEN BID FROM THE PRIVATE VENDOR.

SECTION 4. Appropriation - adjustment in 1999 long bill. (1) (a) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the capital construction fund created in section 24-75-302, Colorado Revised Statutes, not otherwise appropriated, to the department of local affairs, for the fiscal year beginning July 1, 1999, the sum of three million one hundred seventy-six thousand dollars (\$3,176,000), or so much thereof as may be necessary, for the community-based access grant program established by this act. Of this amount, the sum of two million eight hundred thousand dollars (\$2,800,000) represents the amount of money to be deposited into the capital construction fund from the Colorado

advanced technology institute share of the proceeds of supernet, and the sum of three hundred seventy-six thousand dollars (\$376,000) represents funds transferred to the capital construction fund outlined in section 3 (1) (f) of the general appropriation act for the fiscal year beginning July 1, 1999.

(b) From the local government severance tax fund created pursuant to section 39-29-110, Colorado Revised Statutes, the sum of one million five hundred thousand dollars (\$1,500,000) cash funds exempt, or so much thereof as may be necessary, shall be made available to local governments for the community-based access grant program established by this act.

(c) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the general fund not otherwise appropriated, to the department of local affairs, for the fiscal year beginning July 1, 1999, the sum of one hundred twenty-four thousand dollars (\$124,000), or so much thereof as may be necessary, for the implementation of this act.

(2) For the implementation of this act, appropriations made in the annual general appropriations act for the fiscal year beginning July 1, 1999, shall be adjusted as follows:

(a) The general fund appropriation to the capital construction fund outlined in section 3 (1) (f) is reduced by one hundred twenty-four thousand dollars (\$124,000).

(b) The capital construction fund exempt appropriation to the department of transportation, construction projects, is reduced by five hundred thousand dollars (\$500,000).

SECTION 5. 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.

Approved: May 17, 1999

Editor's note: Section 23-11-104.5, contained in section 3 of this act, will be renumbered on revision as 24-32-3001 and relocated as a new part 30 of article 32 of title 24.