

1 AN ACT
2 RELATING TO BROADBAND; ENACTING THE CONNECT NEW MEXICO ACT;
3 CREATING THE CONNECT NEW MEXICO COUNCIL; ESTABLISHING DUTIES;
4 ESTABLISHING THE CONNECT NEW MEXICO COUNCIL AS A CO-
5 COORDINATOR OF STATE BROADBAND PROGRAMS WITH THE DEPARTMENT
6 OF INFORMATION TECHNOLOGY OR A STATE BROADBAND PLANNING
7 ENTITY ESTABLISHED BY OTHER LAW; ESTABLISHING THE CONNECT NEW
8 MEXICO FUND; PROVIDING FOR GRANTS; REQUIRING REPORTS; RAISING
9 THE LEVELS OF DISBURSEMENT FOR BROADBAND FROM THE STATE RURAL
10 UNIVERSAL SERVICE FUND.

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

13 SECTION 1. SHORT TITLE.--Sections 1 through 7 of this
14 act may be cited as the "Connect New Mexico Act".

15 SECTION 2. DEFINITIONS.--As used in the Connect New
16 Mexico Act:

17 A. "2020 broadband plan" means the *State of New*
18 *Mexico Broadband Strategic Plan and Rural Broadband*
19 *Assessment* published by the department of information
20 technology in June 2020;

21 B. "broadband infrastructure" means any cable or
22 device used for high-capacity transmission of a wide range of
23 frequencies enabling a large number of electronic messages to
24 be transmitted or received simultaneously;

25 C. "council" means the connect New Mexico council;

1 D. "department" means the department of
2 information technology; provided that, upon Senate Bill 93 of
3 the first session of the fifty-fifth legislature becoming
4 law, "department" means a state agency, department, division
5 or other organization unit designated in that law to plan or
6 coordinate broadband development efforts by all state
7 agencies;

8 E. "digital equity" means information technology
9 needed for civic and cultural participation, employment,
10 education, business and economic development, lifelong
11 learning and access to essential services generally available
12 to residents regardless of their racial grouping,
13 socioeconomic status or cultural identity;

14 F. "digital inclusion" means access to and the
15 ability to use information technologies;

16 G. "federal assistance funding" means federal
17 grant and loan programs that provide full or matching funding
18 for the development or maintenance of broadband
19 infrastructure, training in the use or administration of
20 internet-based services or the purchase of computers or other
21 devices that access the internet;

22 H. "local government" means the government of a
23 municipality, county or political subdivision of the state or
24 an entity operating pursuant to a joint powers agreement
25 pursuant to the Planning District Act or the Regional

1 Planning Act;

2 I. "public educational institution" means a public
3 school that receives state funding for its operations, a
4 school district, a public post-secondary educational
5 institution or a state agency that provides administrative
6 services, funding or technical support to public schools,
7 school districts and public post-secondary educational
8 institutions;

9 J. "quality of service" means the standards for
10 broadband service established by the department that meet or
11 exceed the baseline standards established by the federal
12 communications commission;

13 K. "statewide broadband plan" means a plan
14 developed by the department that may be an updated revision
15 of the 2020 broadband plan; provided that, upon Senate Bill
16 93 of the first session of the fifty-fifth legislature
17 becoming law, "statewide broadband plan" means the statewide
18 broadband plan developed pursuant to that law;

19 L. "tribal government" means the government of a
20 federally or state-recognized Indian nation, pueblo or tribe;

21 M. "underserved" means an area or property that
22 does not receive internet quality of service access; and

23 N. "unserved" means an area or property that does
24 not have internet access that meets the baseline standards
25 established by the federal communications commission.

1 SECTION 3. COUNCIL CREATED--POWERS.--

2 A. The "connect New Mexico council" is created and
3 administratively attached to the department.

4 B. The council is composed of the following
5 fifteen members:

6 (1) the secretary of transportation or the
7 secretary's designee;

8 (2) the secretary of economic development or
9 the secretary's designee;

10 (3) the secretary of cultural affairs or the
11 secretary's designee;

12 (4) the secretary of information technology
13 or the secretary's designee;

14 (5) the executive director of the New Mexico
15 mortgage finance authority or the executive director's
16 designee;

17 (6) the secretary of higher education or the
18 secretary's designee;

19 (7) the director of the public school
20 facilities authority or the director's designee;

21 (8) five members of the public who have
22 experience with broadband access and connectivity challenges
23 for either private business or public institutions, appointed
24 as follows:

25 (a) one member appointed by the speaker

1 of the house of representatives;

2 (b) one member appointed by the
3 minority floor leader in the house of representatives;

4 (c) one member appointed by the
5 president pro tempore of the senate;

6 (d) one member appointed by the
7 minority floor leader in the senate; and

8 (e) one member appointed by the
9 governor; and

10 (9) three members appointed by the secretary
11 of Indian affairs: one representative of the Navajo Nation,
12 one representative of Apache tribal governments and one
13 representative of Indian pueblo tribal governments, who are
14 experienced with broadband access and connectivity issues.

15 C. The chair of the council shall be elected by a
16 quorum of the council members. The council shall meet
17 monthly or at the call of the chair. A majority of members
18 constitutes a quorum for the transaction of business. The
19 affirmative vote of at least a majority of a quorum present
20 shall be necessary for an action to be taken by the council.

21 D. Each member of the council appointed pursuant
22 to Paragraph (8) or (9) of Subsection B of this section shall
23 be appointed to a four-year term; provided that to provide
24 for staggered terms:

25 (1) two of the members initially appointed

1 pursuant to Paragraph (8) of Subsection B of this section
2 shall be appointed for a term of two years by lot; and

3 (2) one member initially appointed pursuant
4 to Paragraph (9) of Subsection B of this section shall be
5 initially appointed for a term of two years by lot.

6 E. Public members of the council shall be
7 reimbursed for attending meetings of the council as provided
8 for nonsalaried public officers in the Per Diem and Mileage
9 Act and shall receive no other compensation, perquisite or
10 allowance.

11 F. Public members of the council are appointed
12 public officials of the state while carrying out their duties
13 and activities under the Connect New Mexico Act.

14 G. Council members shall be governed by the
15 Governmental Conduct Act.

16 H. The council shall be staffed by the department.

17 **SECTION 4. COUNCIL--DUTIES.--**The council shall:

18 A. in consultation with the department, coordinate
19 state agency broadband programs and broadband projects in
20 accordance with the statewide broadband plan;

21 B. evaluate and prioritize grant proposals and
22 make grant awards from the connect New Mexico fund; and

23 C. adopt rules establishing a competitive grant
24 program to receive funds from the connect New Mexico fund.

25 The rules shall include the application procedure, the

1 required qualifications for projects and the purposes for
2 which the grants may be used.

3 **SECTION 5. BROADBAND KNOWLEDGE AND DIGITAL EQUITY**
4 ANALYSIS AND PLAN--REPORT--INCLUSION IN STATEWIDE BROADBAND
5 PLAN.--

6 A. The council shall consult local and tribal
7 governments, public educational institutions and state
8 agencies to develop a digital equity analysis and plan to
9 address:

10 (1) the challenges to digital inclusion that
11 are posed by the lack of affordable quality service,
12 broadband-enabled devices or the knowledge of how to use the
13 devices effectively in different age, cultural or geographic
14 populations across the state;

15 (2) the federal and private sector programs
16 that could be applied to by state agencies or local or tribal
17 governments to address the challenges identified in Paragraph
18 (1) of this subsection; and

19 (3) existing state programs or state
20 programs that could be established that address or could
21 leverage federal and private sector programs to address the
22 challenges identified in Paragraph (1) of this subsection.

23 B. On or before August 1, 2023, the council shall
24 report on the digital equity analysis and plan to the
25 department and appropriate interim legislative committees.

1 C. On or before January 1, 2024, the department
2 shall incorporate the digital equity analysis and plan and
3 its recommendations into the statewide broadband plan.

4 D. The department shall cooperate with and provide
5 relevant broadband-related information collected or developed
6 by the department with the council.

7 **SECTION 6. CONNECT NEW MEXICO FUND CREATED.--**

8 A. The "connect New Mexico fund" is created in the
9 state treasury. The fund consists of appropriations, gifts,
10 grants and donations. Money in the fund is subject to
11 appropriation by the legislature to the council for the
12 purpose of administering the broadband grant program.
13 Disbursements from the fund shall be made upon warrants drawn
14 by the secretary of finance and administration pursuant to
15 vouchers signed by the chair of the council. Any unexpended
16 or unencumbered balance in the fund remaining at the end of
17 any fiscal year shall not revert to the general fund.

18 B. The council shall implement the broadband grant
19 program to develop, expand and support digital inclusion;
20 provided that the council shall each year seek to award
21 grants for proposals submitted by the following entities
22 throughout the state:

- 23 (1) local governments;
24 (2) state agencies;
25 (3) public educational institutions;

1 (4) tribal governments; and
2 (5) entities created by a joint powers
3 agreement pursuant to the Joint Powers Agreements Act.

4 C. When approving grants from the connect New
5 Mexico fund, the council shall give consideration to:

6 (1) the extent to which the project connects
7 unserved and underserved populations of New Mexico, with
8 priority given to projects that will connect unserved
9 populations;

10 (2) the extent to which the project meets or
11 exceeds the baseline standards established by the federal
12 communications commission;

13 (3) the extent to which the project
14 leverages existing infrastructure;

15 (4) the extent to which the project
16 complements or coordinates with the statewide broadband plan;

17 (5) the extent to which the project
18 leverages regional collaboration;

19 (6) the degree to which the project fosters
20 digital inclusion;

21 (7) the extent to which the project
22 stimulates in-state economic development, including the
23 creation of jobs and apprenticeships; and

24 (8) the extent to which the project
25 leverages in-kind or financial support from local agencies or

1 entities, federal assistance funding or federal Coronavirus
2 Aid, Relief, and Economic Security Act, federal Consolidated
3 Appropriations Act, 2021 or federal American Rescue Plan Act
4 of 2021 funding.

5 SECTION 7. DATA COLLECTION--ANNUAL REPORT.--

6 A. By October 1 of each year, the department, in
7 coordination with the council, shall provide to the
8 appropriate legislative interim committees a report on the
9 access to and quality of service of broadband across the
10 state. Information shall be provided on a county-by-county
11 basis.

12 B. The report shall contain the following
13 information:

14 (1) progress achieved toward digital equity
15 and digital inclusion as identified in the digital equity
16 analysis and plan;

17 (2) progress achieved on implementation of
18 the statewide broadband plan;

19 (3) identified obstacles to an integrated
20 system of permits, licenses and rules for broadband
21 infrastructure across the state, including an expedited
22 review process for rights of way use applications;

23 (4) recommended statutory, regulatory or
24 policy changes and budget recommendations for the development
25 and expansion of broadband infrastructure and digital equity

1 and digital inclusion; and

2 (5) information on the broadband grant
3 program, including:

4 (a) a list of grant recipients;
5 (b) the amount and date of each grant;
6 (c) a description of each project
7 funded; and

8 (d) a description of how each project
9 contributes to the statewide broadband plan and demonstrates
10 increased access and quality of service for the unserved and
11 underserved populations of New Mexico.

12 SECTION 8. Section 63-9H-3 NMSA 1978 (being Laws 1999,
13 Chapter 295, Section 3, as amended) is amended to read:

14 "63-9H-3. DEFINITIONS.--As used in the Rural
15 Telecommunications Act of New Mexico:

16 A. "affordable rates" means rates for basic
17 service that promote universal service within a local
18 exchange service area, giving consideration to the economic
19 conditions and costs to provide service in the area in which
20 service is provided;

21 B. "basic service" means service that is provided
22 to a rural end-user customer that is consistent with the
23 federal act;

24 C. "broadband infrastructure" means any cable or
25 device used for high-capacity transmission over a wide range

1 of frequencies that enables a large number of electronic
2 messages to be transmitted or received simultaneously;

3 D. "cable service" means the transmission to
4 subscribers of video programming or other programming service
5 and subscriber interaction, if any, that is required for the
6 selection or use of the video programming or other
7 programming service;

8 E. "commission" means the public regulation
9 commission;

10 F. "digital equity" means information technology
11 needed for civic and cultural participation, employment,
12 education, business and economic development, lifelong
13 learning and access to essential services generally available
14 to residents regardless of their racial grouping,
15 socioeconomic status or cultural identity;

16 G. "digital inclusion" means access to and the
17 ability to use information technologies;

18 H. "eligible telecommunications carrier" means an
19 eligible telecommunications carrier as defined in the federal
20 act;

21 I. "federal act" means the federal
22 Telecommunications Act of 1996;

23 J. "fund" means the state rural universal service
24 fund;

25 K. "incumbent local exchange carrier" means a

1 person that:

2 (1) was designated as an eligible
3 telecommunications carrier by the state corporation
4 commission in Docket #97-93-TC by order dated October 23,
5 1997, or that provided local exchange service in this state
6 on February 8, 1996; or

7 (2) became a successor or assignee of an
8 incumbent local exchange carrier;

9 L. "incumbent rural telecommunications carrier"
10 means an incumbent local exchange carrier that serves fewer
11 than fifty thousand access lines within the state and has
12 been designated as an eligible telecommunications carrier by
13 the state corporation commission or the public regulation
14 commission;

15 M. "local exchange area" means a geographic area
16 encompassing one or more local communities, as described in
17 maps, tariffs or rate schedules filed with the commission,
18 where local exchange rates apply;

19 N. "local exchange service" means the transmission
20 of two-way interactive switched voice communications
21 furnished by a telecommunications carrier within a local
22 exchange area;

23 O. "long distance service" means
24 telecommunications service between local exchange areas that
25 originate and terminate within the state;

1 P. "private telecommunications service" means a
2 system, including its construction, maintenance or operation
3 for the provision of telecommunications service, or any
4 portion of that service, by a person for the sole and
5 exclusive use of that person and not for resale, directly or
6 indirectly. For purposes of this definition, the person that
7 may use the service includes any affiliates of the person if
8 at least eighty percent of the assets or voting stock of the
9 affiliates is owned by the person. If any other person uses
10 the telecommunications service, whether for hire or not, the
11 private telecommunications service is a public
12 telecommunications service;

13 Q. "public telecommunications service" means the
14 transmission of signs, signals, writings, images, sounds,
15 messages, data or other information of any nature by wire,
16 radio, lightwaves or other electromagnetic means originating
17 and terminating in this state regardless of actual call
18 routing. "Public telecommunications service" does not
19 include the provision of terminal equipment used to originate
20 or terminate the service; private telecommunications service;
21 broadcast transmissions by radio, television and satellite
22 broadcast stations regulated by the federal communications
23 commission; radio common carrier services, including mobile
24 telephone service and radio paging; or cable service;

25 R. "statewide broadband plan" means the *State of*

1 *New Mexico Broadband Strategic Plan and Rural Broadband*
2 *Assessment* published by the department of information
3 technology in June 2020; provided that, upon Senate Bill 93
4 of the first session of the fifty-fifth legislature becoming
5 law, "statewide broadband plan" means the statewide broadband
6 plan developed pursuant to that law; and

7 S. "telecommunications carrier" means a person
8 that provides public telecommunications service."

9 SECTION 9. Section 63-9H-6 NMSA 1978 (being Laws 1999,
10 Chapter 295, Section 6, as amended) is amended to read:

11 "63-9H-6. STATE RURAL UNIVERSAL SERVICE FUND--
12 ESTABLISHMENT.--

13 A. The commission shall implement and maintain a
14 "state rural universal service fund" to maintain and support
15 universal service that is provided by eligible
16 telecommunications carriers, including commercial mobile
17 radio services carriers, as are determined by the commission.
18 As used in this section, "universal service" means basic
19 local exchange service, comparable retail alternative
20 services at affordable rates, service pursuant to a low-
21 income telephone assistance plan and broadband internet
22 access service to unserved and underserved areas as
23 determined by the commission.

24 B. The fund shall be financed by a surcharge on
25 intrastate retail public telecommunications services to be

1 determined by the commission, excluding services provided
2 pursuant to a low-income telephone assistance plan billed to
3 end-user customers by a telecommunications carrier, and
4 excluding all amounts from surcharges, gross receipts taxes,
5 excise taxes, franchise fees and similar charges. For the
6 purpose of funding the fund, the commission has the authority
7 to apply the surcharge on intrastate retail public
8 telecommunications services provided by telecommunications
9 carriers, including commercial mobile radio services and
10 voice over internet protocol services, at a competitively and
11 technologically neutral rate or rates to be determined by the
12 commission. The commission may establish the surcharge as a
13 percentage of intrastate retail public telecommunications
14 services revenue or as a fixed amount applicable to each
15 communication connection. For purposes of this section, a
16 "communication connection" means a voice-enabled telephone
17 access line, wireless voice connection, unique voice over
18 internet protocol service connection or other uniquely
19 identifiable functional equivalent as determined by the
20 commission. Such surcharges shall be competitively and
21 technologically neutral. Money deposited in the fund is not
22 public money, and the administration of the fund is not
23 subject to the provisions of law regulating public funds.
24 The commission shall not apply this surcharge to a private
25 telecommunications network; to the state, a county, a

1 municipality or other governmental entity; to a public school
2 district; to a public institution of higher education; to an
3 Indian nation, tribe or pueblo; or to Native American
4 customers who reside on tribal or pueblo land.

5 C. The fund shall be competitively and
6 technologically neutral, equitable and nondiscriminatory in
7 its collection and distribution of funds, portable between
8 eligible telecommunications carriers and additionally shall
9 provide a specific, predictable and sufficient support
10 mechanism as determined by the commission that ensures
11 universal service in the state.

12 D. The commission shall:

13 (1) establish eligibility criteria for
14 participation in the fund consistent with federal law that
15 ensure the availability of universal service at affordable
16 rates. The eligibility criteria shall not restrict or limit
17 an eligible telecommunications carrier from receiving federal
18 universal service support;

19 (2) provide for the collection of the
20 surcharge on a competitively neutral basis and for the
21 administration and disbursement of money from the fund;

22 (3) determine those services and areas
23 requiring support from the fund;

24 (4) provide for the separate administration
25 and disbursement of federal universal service funds

1 consistent with federal law; and

2 (5) establish affordability benchmark rates
3 for local residential and business services that shall be
4 utilized in determining the level of support from the fund.
5 The process for determining subsequent adjustments to the
6 benchmark shall be established through a rulemaking.

7 E. All incumbent telecommunications carriers and
8 competitive carriers already designated as eligible
9 telecommunications carriers for the fund shall be eligible
10 for participation in the fund. All other carriers that
11 choose to become eligible to receive support from the fund
12 may petition the commission to be designated as an eligible
13 telecommunications carrier for the fund. The commission may
14 grant eligible carrier status to a competitive carrier in a
15 rural area upon a finding that granting the application is in
16 the public interest. In making a public interest finding,
17 the commission may consider at least the following items:

18 (1) the impact of designation of an
19 additional eligible carrier on the size of the fund;

20 (2) the unique advantages and disadvantages
21 of the competitor's service offering; and

22 (3) any commitments made regarding the
23 quality of telephone service.

24 F. The commission shall adopt rules, including a
25 provision for variances, for the implementation and

1 administration of the fund in accordance with the provisions
2 of this section. The rules shall enumerate the appropriate
3 uses of fund support and any restrictions on the use of fund
4 support by eligible telecommunications carriers. The rules
5 shall require that an eligible telecommunications carrier
6 receiving support from the fund pursuant to Subsection K, L
7 or M of this section must expend no less than sixty percent
8 of the support it receives to deploy and maintain broadband
9 internet access services in rural areas of the state. The
10 rules also shall provide for annual reporting by eligible
11 telecommunications carriers verifying that the reporting
12 carrier continues to meet the requirements for designation as
13 an eligible telecommunications carrier for purposes of the
14 fund and is in compliance with the commission's rules,
15 including the provisions regarding use of support from the
16 fund.

17 G. The commission shall, upon implementation of
18 the fund, select a neutral third-party administrator to
19 collect, administer and disburse money from the fund under
20 the supervision and control of the commission pursuant to
21 established criteria and rules promulgated by the commission.
22 The administrator may be reasonably compensated for the
23 specified services from the surcharge proceeds to be received
24 by the fund pursuant to Subsection B of this section. For
25 purposes of this subsection, the commission shall not be a

1 neutral third-party administrator.

2 H. The fund established by the commission shall
3 ensure the availability of universal service as determined by
4 the commission at affordable rates in rural areas of the
5 state; provided, however, that nothing in this section shall
6 be construed as granting any authority to the commission to
7 impose the surcharge on or otherwise regulate broadband
8 internet access services.

9 I. The commission shall ensure that intrastate
10 switched access charges are equal to interstate switched
11 access charges established by the federal communications
12 commission as of January 1, 2006. Nothing in this section
13 shall preclude the commission from considering further
14 adjustments to intrastate switched access charges based on
15 changes to interstate switched access charges.

16 J. To ensure that providers of intrastate retail
17 communications service contribute to the fund and to further
18 ensure that the surcharge determined pursuant to Subsection B
19 of this section to be paid by the end-user customer will be
20 held to a minimum, the commission shall adopt rules, or take
21 other appropriate action, to require all such providers to
22 participate in a plan to ensure accurate reporting.

23 K. The commission shall authorize payments from
24 the fund to incumbent local exchange carriers, in combination
25 with revenue-neutral rate rebalancing up to the affordability

1 benchmark rates. Beginning in 2018, the commission shall
2 make access reduction support payments in the amount made
3 from the fund in base year 2014, adjusted each year
4 thereafter by:

5 (1) the annual percentage change in the
6 number of access lines served by the incumbent local exchange
7 carriers receiving such support for the prior calendar year,
8 as compared to base year 2014; and

9 (2) changes in the affordability benchmark
10 rates that have occurred since 2014.

11 L. The commission shall determine the methodology
12 to be used to authorize payments to all other carriers that
13 apply for and receive eligible carrier status; provided,
14 however, that nothing in this section shall limit the
15 commission's authority to adopt rules pursuant to Subsection
16 F of this section regarding appropriate uses of fund support
17 and any restrictions on the use of the fund support by
18 eligible telecommunications carriers.

19 M. The commission may also authorize payments from
20 the fund to incumbent rural telecommunications carriers or to
21 telecommunications carriers providing comparable retail
22 alternative services that have been designated as eligible
23 telecommunications carriers serving in rural areas of the
24 state upon a finding, based on factors that may include a
25 carrier's regulated revenues, expenses or investment, by the

1 commission that such payments are needed to ensure the
2 widespread availability and affordability of universal
3 service. The commission shall decide cases filed pursuant to
4 this subsection with reasonable promptness, with or without a
5 hearing, but no later than six months following the filing of
6 an application seeking payments from the fund, unless the
7 commission finds that a longer time will be required, in
8 which case the commission may extend the period for an
9 additional three months.

10 N. The commission shall adopt rules that establish
11 and implement a broadband program to provide funding to
12 eligible telecommunications carriers for the construction and
13 maintenance of broadband infrastructure. Each year, a
14 minimum of eight million dollars (\$8,000,000) of the fund
15 shall be dedicated to the broadband program.

16 O. Rules adopted pursuant to Subsection N of this
17 section shall require that the commission:

18 (1) consider applications for funding on a
19 technology-neutral basis;

20 (2) submit applications for funding to the
21 connect New Mexico council for prioritization and alignment
22 with the statewide broadband plan to ensure digital equity
23 and digital inclusion; and

24 (3) require that the awards of support be
25 consistent with federal universal service support programs.

1 P. The total obligations of the fund determined by
2 the commission pursuant to this section, plus administrative
3 expenses and a prudent fund balance, shall not exceed a cap
4 of thirty million dollars (\$30,000,000) per year. The
5 commission shall evaluate the amount of the cap in an
6 appropriate proceeding to be completed by June 30, 2019 and
7 consider whether, based on the then-current status of the
8 fund, the cap should be modified, maintained or eliminated.

9 Q. By October 1 of each year, the commission shall
10 make a report to the legislature regarding the status of the
11 fund, including:

12 (1) relevant data relating to implementation
13 of the broadband program and the progress toward digital
14 equity and digital inclusion in rural areas of the state;

15 (2) recommendations for changes to the
16 structure, size and purposes of the fund and whether the cap
17 on the fund provided for in Subsection P of this section
18 should be modified, maintained or eliminated; and

19 (3) the service areas that received funding
20 awards from the broadband program and the amounts of those
21 awards."

22 SECTION 10. EFFECTIVE DATE.--The effective date of the
23 provisions of this act is July 1, 2021. _____