

This is an Amendment to 17.11.10 NMAC, Sections 19 & 31 effective 7/29/2025.

**17.11.10.19 ANNUAL DETERMINATION OF FUND:**

**A.** The administrator shall determine the amount of the fund for the next calendar year and submit its findings to the commission on or before November 10 of each year to enable commission approval on or before November 20 of each year in order to provide carriers with sufficient time to implement any change in the surcharge rate.

**B.** In the event the commission orders a change in fund support, pursuant to 17.11.10.14 or 17.11.10.25 NMAC of this rule or otherwise, that necessitates a fund amount greater than that which the commission has previously established, the commission may order an adjustment to the amount of the fund, subject to the annual fund cap set forth in Subsection C of 17.11.10.19 NMAC.

**C.** The amount of the fund shall be equal to the sum of each ETC's revenue requirement, calculated pursuant to this section, plus any other fund requirements determined by the commission, including pursuant to 17.11.10.25, 17.11.10.31 or 17.11.11 NMAC, plus projected administrative expenses and a prudent fund balance; provided however, the total amount of the fund shall not exceed a cap of thirty million dollars (\$30,000,000.00) per year.

**D.** Only carriers holding state ETC status as of October 1 shall be included in the calculation of funding requirements for the subsequent calendar year.

**E.** ~~[Except where the commission has established an alternative or additional amount pursuant to 17.11.10.25 or 17.11.10.31 NMAC,]~~ In 2025 and 2026, the annual revenue requirement for support pursuant to Subsection K of Section 63-9H-6 NMSA 1978, ~~[2018 and each year thereafter]~~ for each ETC that was an ETC ~~[eligible]~~ as of July 1, 2005, and is a local exchange carrier, shall be equal to the carrier's revenue requirement for 2023. ~~[2014 SRUSF revenue requirement adjusted by the annual percentage change in the number of access lines served by the carrier as of December 31 of the prior calendar year compared to the number of access lines served by the carrier as of December 31, 2014, and then reduced by the carrier's imputed benchmark revenue. For 2021, the access lines used for the comparison to 2014 shall be as of December 31, 2019, adjusted annually thereafter. The SRUSF revenue requirement formula under this section may be stated arithmetically as follows: revenue requirement minus imputed benchmark revenue.]~~ Support pursuant to Subsection K of Section 63-9H-6 NMSA 1978, for each ETC that was an ETC as of July 1, 2005, and is a local exchange carrier, shall terminate after December 31, 2026.

**F.** The revenue requirement for an ETC that became an ETC after July 1, 2005 or that became an ETC prior to July 1, 2005, but is not a local exchange carrier, shall be determined annually by the administrator in conjunction with the administrator's determination of fund size, and shall be in accordance with the support rate determined by the commission pursuant to 17.11.10.23 NMAC.

**G.** For an ETC that is not eligible for funding pursuant to rate rebalancing per Subsection K of Section 63-9H-6 NMSA 1978 that has been previously authorized for support pursuant to ~~[Subsection M]~~ Subsection N of Section 63-9H-6 NMSA 1978, that ETC may petition for ongoing funding pursuant to ~~[Subsection K]~~ Subsection M of Section 63-9H-6 NMSA 1978, subject to the following:

(1) the commission shall award an applicant ongoing fund support at no less than the average access line amount of funding support for comparable carriers; provided that an eligible telecommunications carrier receiving fund support pursuant to the subsection shall not offer basic local exchange residential and business services at rate levels lower than the rates for such services charged by any of the comparable carriers used for the determination of the level of support;

(2) the commission shall act upon a request for ongoing fund support within one hundred twenty days of the filing of the request.

[17.11.10.19 NMAC - Rp, 17.11.10.19 NMAC, 3/12/2024; A, 7/29/2025]

**17.11.10.31 BROADBAND PROGRAM:**

**A.** It is the goal of the commission that New Mexico consumers have access to high-quality broadband service from both wireline and mobile broadband providers. Pursuant to ~~[Subsection N]~~ Subsection O of Section 63-9H-6, NMSA 1978, ETCs may separately apply to the commission for grants to fund the construction and maintenance of facilities that are capable of providing broadband internet access service to areas unserved or underserved by broadband in the state. Applications must be primarily for coverage of the construction costs of new

facilities, but such applications may include a request for maintenance costs of those facilities as well. Each grant that is awarded will provide up to seventy-five percent of the budgeted project cost, with the ETC applying the remainder from its own funds. Projects receiving any source of third-party funding other than potential loan funds, FCC high-cost fund legacy support or connect America fund support (including mobility fund support) will not be eligible. Each applicant shall provide a detailed description in their application of the origin and type of funding provided for the carrier match, and a certification that those monies are not duplicative of other purposes or projects other than SRUSF broadband program projects. In evaluating applications, the commission shall seek to avoid duplication of service using the same technology. Awards of support under this section shall be consistent with federal universal service support programs and be based on the best use of the fund for rural areas of the state. For purposes of administering the broadband program, the commission may find that a broadband program proposed project area is a rural area, notwithstanding the definition of rural area in Subsection U of 17.11.10.7 NMAC, if it determines that:

- (1) the area otherwise has the characteristics of a rural area;
- (2) the area is unserved or underserved by broadband; and
- (3) the public interest requires that the area be classified as rural.

**B.** Funding of the broadband program. ~~[At least eight million dollars (\$8,000,000.00) of the fund shall be dedicated annually to the broadband program.] Each year, the commission will dedicate an amount equal to thirty million dollars (\$30,000,000), less the amounts expended pursuant to Subsections K, L, M and N of Section 63-9H-6 NMSA 1978, to the broadband program.~~ The amount of funding allocated to the broadband program shall not be subject to proration under Subsection E of 17.11.10.20 NMAC. ~~[To the extent a year's broadband program funding is not exhausted by grants awarded during that year, the funds will rollover to the following year.]~~

**C.** Applicants for broadband program grants may request that company-specific information contained within an application be treated as confidential. The commission shall make all decisions regarding disclosure of company-specific information and may request further information or justification from the contributing company to ensure uniformity of confidential treatment of all information submitted by contributing companies. Nothing in this rule shall preclude commission issuance of an umbrella protective order identifying what reported data shall be, or shall not be, deemed confidential. The commission staff or a third-party contractor, shall keep confidential all company-specific information obtained from applicants for broadband program grants for which confidential treatment is requested, shall not use such information except for purposes of analyzing the applications, and shall not disclose such information in company-specific form unless directed to do so by the commission.

**D.** Minimum requirements for eligible projects. The commission will consider projects on a technology-neutral basis. Projects that apply technologies including, without limitation, wireline, mobile wireless, and fixed wireless technologies are all eligible for broadband fund grants. A project must meet the following requirements to be eligible for a grant award:

- (1) support broadband internet access service at speeds of at least 25.0 Mbps download/3.0 Mbps upload to all households and businesses in the proposed project area;
- (2) support voice grade telephony service to all households and businesses in the proposed project area. For this purpose, a voice over internet protocol (VOIP) based service is acceptable, as well as traditional voice telephony services and mobile voice services;
- (3) support access to emergency 911 services; and
- (4) offer a latency that is sufficiently low to support real-time, interactive applications.

**E.** Contents of grant applications. An application for support from the broadband program shall include, at a minimum:

- (1) a proposal to build telecommunications network facilities to service an area where the applicant is designated as a state ETC;
- (2) a detailed build plan setting forth a description of the facilities to be deployed, including all costs of constructing facilities; and
- (3) a map showing where service and coverage will be provided. This requirement can be met by providing:
  - (a) for a wireline network, a map showing all homes, businesses, and other end user locations passed; or
  - (b) for a wireless network, a coverage map generated using a radio frequency propagation tool generally used in the wireless industry;
- (4) an estimate of the number of road miles and square miles to be covered and population and population density of the area covered;

(5) the amount of support requested from the broadband program and the amount of the applicant's financial match, and a description of any type, amount, and purpose of subsidy or financial support the applicant is currently receiving or is scheduled to receive in the area designated in the application;

(6) a description of the technology to be deployed, including data throughput speeds and latency characteristics of the service to be delivered to customers;

(7) a demonstration that the area to be served is an area unserved by broadband or an area underserved by broadband as defined in 17.11.10.7 NMAC. If the area to be served contains served, unserved and underserved areas, the application and map shall identify which portions of the area are served, unserved and which are underserved. Each served, unserved, and underserved area shall be clearly identified through color coding on the map submitted with the application. Each served, unserved, and underserved area shall be clearly identified through individual color coding indicators on all city street grid maps submitted with the applications. Satellite views are not acceptable for the application's requirement for mapping;

(8) a demonstration of the estimated customer subscription rates and revenues from the services to be offered as a result of the proposed construction sufficient to justify support from the broadband program;

(9) a commitment to provide a minimum twenty-five percent match of funds;

(10) if the project is a wireless network deployment, a commitment to allow collocation on reasonable terms by other providers of commercial mobile wireless service or any public safety network and to abide by the FCC's collocation requirements for awardees under the federal universal service program;

(11) sample terms and conditions for the service and proposed prices;

(12) explain how the proposed deployment will contribute to the enhancement of digital equity and digital inclusion in the proposed service territory;

(13) explain how the awards of support are consistent with federal universal service support programs;

(14) a certification by an authorized representative affirming that all information set forth in the application is true and correct;

(15) any other requirements to ensure accountability as the commission may develop and approve in a proceeding to determine the form and contents of grant applications; and

(16) applications and mapping information must also be submitted contemporaneously with the New Mexico department of information technology broadband division.

**F.** The ETC must make the following commitments and include them in its application:

(1) the broadband service must be offered at reasonably comparable rates for comparable services in urban areas;

(2) the broadband service must be provided for at least seven years following project completion;

(3) the ETC must abide by commission reporting requirements sufficient to monitor the progress of the project deployment and to ensure that all grant funds are being used efficiently and for the purpose intended; and

(4) the ETC must commit to respond to commission inquiries regarding service-related complaints and commit to attempt to resolve service-related complaints in a reasonable manner.

**G.** Procedure for awarding support from the fund:

(1) On or before May 1 of each year, the commission shall open a non-adjudicative, administrative docket and establish a deadline for filing applications for broadband program support for the following calendar year. The telecom bureau, or a third-party contractor, shall review and summarize all timely applications. Only carriers holding ETC status as of October 1 shall be eligible to receive disbursements from the fund during the year that begins the following January 1.

(2) Interested persons may seek intervention in these proceedings, pursuant to 1.2.2.23 NMAC.

(3) On or before September 1, the telecom bureau shall make a presentation to the commission, with analysis of the applications for awards. The telecom bureau, or a third-party contractor, may communicate with applicants to request additional information or clarify information presented in the applications in order to prepare its presentation. Such presentations shall be considered by the commission but shall not bind the commission.

(4) At the September 1 presentation, the telecom bureau shall present a summary of projects. The telecom bureau shall provide the following information for each project on a single spreadsheet.

(a) cost per customer served or passed;

(b) type of technology;  
(c) whether area is unserved or underserved (or, if area includes both, in what proportions);

- (d) download and upload speed of service;  
(e) monthly rates that the grantee intends to charge for the service; and  
(f) telecom bureau comments on the project.

(5) On or before October 15, the commission, in coordination with the broadband office and the council, for prioritization and alignment with the statewide broadband plan, shall issue a decision approving or denying in whole or in part, each application. Among the factors that the commission will consider when selecting proposed projects for funding are the download and upload speeds that a project will provide and whether the project will serve an area unserved by broadband or an area underserved by broadband.

(6) On or before November 1, any interested person may file with the commission a request for reconsideration, in whole or in part, of any award of funds. Requests for reconsideration will not be valid after November 1.

(7) On or before December 1, the commission shall dispose of any motions for reconsideration.

**H.** Conditions for disbursement of awarded funds:

(1) The awardee commits to complete construction of its project within three years from the date of the commission's final order approving an award pursuant to 17.11.10.31 NMAC.

(2) For each awarded project, project reports shall be submitted to staff, consultant(s), and administrator(s) semiannually, during June and December and at the mid-point and completion of the project that provide information regarding the status of the project in a form accepted by staff. Semi-annual reports shall be submitted June 30, and December 31 of the calendar year. The midpoint disbursement report shall describe ETC progress on project milestones at the mid-point of the completion of the project pursuant to Paragraph (1) of Subsection E of 17.11.10.25 NMAC, prior to the release of a mid-point disbursement. The mid-point and final reports may be filed concurrently with the submission of the semi-annual reports, but may not be combined into one report. Within 30 days after project completion, the awardee shall submit a final report in a form accepted by staff demonstrating that the project as completed meets the coverage requirements set forth in the application, including a certification from an officer or director that all program requirements have been met.

(3) Prior to the initial disbursement, the ETC must notify the commission in writing that it is prepared to commence the project with regard to project engineering, ordering or delivery of required equipment, labor requirements, and that all permits have been granted to begin construction. The administrator shall disburse one third of the award promptly following receipt of the ETC's written notice that it is prepared to commence the project, one third at the midpoint of the project, and the remaining third upon project completion. The second and third payments may be requested as a single disbursement upon completion and are contingent upon the submission of acceptable project status reports pursuant to Paragraph (2) of Subsection H of 17.11.10.31 NMAC. The commission may, within 30 days after submission of a report, order additional information to be provided, suspend payment by the administrator, or take other action as necessary after notice and hearing.

(4) Any applicant found to have willfully misrepresented information in an application, is found to have used support unlawfully, or fails to meet the commitments set forth in the application, may be subject to refund of award funds or other actions of the commission.

[17.11.10.31 NMAC - Rp, 17.11.10.31 NMAC, 3/12/2024; A, 7/29/2025]