AN ACT

RELATING TO TELECOMMUNICATIONS; ENACTING THE REGIONAL BROADBAND FRANCHISE ACT; PROVIDING FOR THE ESTABLISHMENT OF REGIONAL BROADBAND FRANCHISES BY PUBLIC AGENCIES THROUGH PARTNERSHIP AGREEMENTS; PROVIDING POWERS; PROVIDING REVENUE BONDS; REQUIRING AUDITS; PROVIDING PENALTIES.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be cited as the "Regional Broadband Franchise Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Regional Broadband Franchise Act:

A. "bonds" means broadband infrastructure revenue bonds;

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

C. "chief broadband officer" means the secretary of information technology or the secretary's designee; provided that when a state agency, department, division or other organizational entity is designated in statute to plan or coordinate broadband development efforts by all state agencies, "chief broadband officer" means the senior executive official for that state agency, department, division or other organizational entity;

D. "franchise" means a regional broadband franchise established by two or more public agencies through a joint powers agreement;

E. "franchise board" means a governing board of a regional broadband franchise;

F. "notice of establishment" means a notice, including a map showing the anticipated service boundaries for a newly established regional broadband franchise, that is sent to the chief broadband officer;

G. "pledgeable revenue" means net income from the lease of trunk lines after accounting for the operation and maintenance expenses of a franchise;

H. "project" means an undertaking by a franchise to finance or plan, acquire, maintain or operate broadband infrastructure;
I. "public agency" means the federal government or a federal department, agency or instrumentality; this state or a state department, agency or instrumentality; an Indian nation, tribe or pueblo located partly or wholly in New Mexico; a subdivision of an Indian nation, tribe or pueblo located partly or wholly in New Mexico that has authority pursuant to the law of that Indian nation, tribe or pueblo to enter into joint powers agreements directly with the state; a county, municipality, public corporation or public district of this state or another state; an educational institution specified in Article 12, Section 11 of the constitution of New Mexico; or a New Mexico school district;

J. "publicly owned" means to be owned by an agency or instrumentality of the state;

K. "regional broadband franchise" means an entity formed by two or more public agencies to provide trunk lines to internet or other electronic data transmission service providers;

L. "state agency" means an agency or instrumentality of the state;

M. "trunk line" means broadband infrastructure leased on a wholesale basis to providers of retail internet or other electronic data transmission services;

N. "underserved" means an area or property that does not receive quality of service access that meets the

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- 3 -
baseline standards established by the federal communications commission; and

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

SECTION 3. [NEW MATERIAL] AGREEMENTS FOR USE OF STATE-OWNED BROADBAND INFRASTRUCTURE--CHIEF BROADBAND OFFICER.--

A. The chief broadband officer may contract with a regional broadband franchise for the use of broadband infrastructure owned by a state agency.

B. A contract for the use of broadband infrastructure shall ensure that the:

(1) purposes for which a state agency owns the broadband infrastructure shall have priority of use for that infrastructure;

(2) use of the infrastructure by a regional broadband franchise shall be in compliance with the provisions of the Regional Broadband Franchise Act; and

(3) state agency that owns the broadband infrastructure shall be compensated for the additional maintenance cost incurred due to a lease of the infrastructure pursuant to Section 6 of the Regional Broadband Franchise Act.

SECTION 4. [NEW MATERIAL] REGIONAL BROADBAND FRANCHISE ESTABLISHMENT--FRANCHISE BOARD MEMBER REQUIREMENTS.--

A. A franchise may be established by a combination
of two or more public agencies for the purpose of sharing their broadband infrastructure and gaining access to state-owned broadband infrastructure and leasing the unused capacity of the combined infrastructure to promote the expansion of internet access; provided that the chief broadband officer determines in writing that there is sufficient evidence that the franchise will be able to establish one or more leases of the broadband infrastructure within six months of the formation of the franchise.

B. A franchise established pursuant to this section shall be formed through a partnership agreement pursuant to the Joint Powers Agreements Act filed with the secretary of state and the chief broadband officer. The agreement shall specify the responsibilities of each member entity and govern the franchise and:

(1) specify that the franchise shall be governed by a franchise board composed of one appointee from each member entity, the secretary of finance and administration or the secretary's designee and the chief broadband officer or the chief's designee;

(2) provide for periodic franchise board meetings with a minimum of four meetings per year;

(3) provide that the franchise board shall invite all internet service providers that are paying a leasing fee to the franchise to participate at a franchise board
meeting at least once per year;

(4) commit each member entity to identify all of the broadband infrastructure that the member entity owns and grant the franchise the ability to extend, lease to third parties, renovate, upgrade or use that broadband infrastructure; and

(5) establish rules for determining ownership of new construction of infrastructure.

C. A franchise established pursuant to this section shall be an instrumentality of the franchise's member entities with the same eligibility as any of its member entities to receive money from a state program that provides financial assistance to public agencies for development of broadband infrastructure. A franchise shall be a public corporate entity created pursuant to state law, but to effectuate the separation of the state and the member entities from the franchise, the use of the terms "public agency" or "instrumentality" in a law that does not provide financial assistance for the development of broadband infrastructure shall not be deemed to refer to a franchise unless "regional broadband franchise" is specifically named.

D. A franchise board member is a public officer subject to the provisions of the Governmental Conduct Act.

E. A franchise board member shall not be employed by a private entity that has benefited from a contractual or
other activity with the franchise within two years prior to when that board member vacated a position on the franchise board. A franchise shall not enter into a new agreement, contract or lease and a franchise contractor, lessee or a partner to an agreement with a franchise shall not offer a new service agreement, contract or lease with a private sector entity that employs a member of the franchise board prior to two years after the board member vacates a position on the board. A person who violates this subsection is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

F. For purposes of this subsection, "member entity" means a public agency that is a member of partnership agreement forming a franchise.

SECTION 5. [NEW MATERIAL] NOTICES OF ESTABLISHMENT--CHIEF BROADBAND OFFICER--BROADBAND INFRASTRUCTURE USE CONTRACTS--REPORTS.--

A. When a franchise is established pursuant to the Regional Broadband Franchise Act, the franchise shall file a notice of establishment with the chief broadband officer. Upon receipt of the notice of establishment, the chief broadband officer shall forward the notice to each state agency. Within sixty days of the filing of the notice of establishment with the chief broadband officer, each state agency shall send to the chief broadband officer:
(1) a list and a map of the broadband infrastructure that is owned by that state agency within the boundaries set out in the notice of establishment; and

(2) describe the purposes for which the broadband infrastructure is owned by the state agency.

B. Within ninety days of receiving the lists and maps of broadband infrastructure owned by state agencies pursuant to Subsection A of this section, the chief broadband officer shall enter into a contract with the franchise that filed the notice of establishment for the use of publicly owned broadband infrastructure within the service boundaries of that franchise.

C. No later than November 30 of each year, the chief broadband officer shall provide a report to the appropriate interim legislative committee regarding the development of franchises, the extent of franchise service areas and other information gathered from the franchise reports submitted pursuant to Section 6 of the Regional Broadband Franchise Act that the chief broadband officer deems relevant to assess the condition and extent of the general broadband system in New Mexico.

SECTION 6. [NEW MATERIAL] FRANCHISE BOARD--DUTIES AND POWERS--REPORTS.--

A. A franchise board may lease broadband infrastructure on a technologically neutral wholesale basis to
third-party internet or other data transmission service
providers for retail service; provided that:

(1) if the leasing entity intends to provide
retail internet service to consumers, the broadband
infrastructure may only be leased to provide retail internet
service in underserved or unserved areas;

(2) the franchise board shall not provide
retail internet or other data transmission services to
consumers;

(3) the service provider maintains
cybersecurity protocols as deemed necessary by the franchise
board; and

(4) the service provider maintains or exceeds
data transmission speeds at the baseline defined by federal
standards promulgated pursuant to federal law.

B. Within one hundred twenty days of its
establishment, a franchise board shall adopt a mission
statement that describes its goals for the provision of trunk
lines within its service area, a broadband infrastructure
improvement and expansion plan designed to meet those goals and
a business plan that delineates the projected costs, required
revenues and any other factors that the franchise board
believes are necessary to achieve its goals by rule.

C. A franchise board shall charge lease fees for
its broadband infrastructure that are in accordance with the
business plan adopted pursuant to Subsection B of this section.

D. A franchise board shall submit a report, including the progress it has made toward implementing its mission statement, its financial obligations and its projected revenues, to the chief broadband officer no later than July 1 of each year.

E. A franchise board shall:

(1) do any and all things necessary or proper to accomplish the purposes of its establishment;

(2) hire employees or other agents as it deems necessary, including an executive director for the performance of its powers and duties, consultants, financial advisors and legal advisors, and prescribe the powers and duties to fix the compensation of employees and agents. An executive director of a franchise shall direct the affairs and business of the franchise, subject to the policies, control and direction of the franchise board; and

(3) maintain such records and accounts of revenues and expenditures as required by the state auditor. The state auditor or the state auditor's designee shall conduct an annual financial and legal compliance audit of the accounts of a franchise and file copies with the governor and the legislature.

F. A franchise may:

(1) make and execute agreements, contracts and...
other instruments necessary or convenient in the exercise of
its powers and functions with any person or governmental
agency;

(2) enter into contractual agreements with
respect to one or more projects upon the terms and conditions
the franchise board considers advisable;

(3) enter into partnerships with public or
private entities;

(4) identify and establish corridors for the
installation of trunk-line broadband infrastructure within the
franchise's service area;

(5) through participation in appropriate
regional forums, coordinate, investigate, plan, prioritize and
negotiate with entities within and outside the state for the
establishment of interstate internet or other electronic data
transmission trunk lines;

(6) finance or plan, acquire, maintain and
operate broadband infrastructure necessary or useful for the
accomplishment of the purposes of its mission statement;

(7) receive by gift, grant, donation or
otherwise, any sum of money, aid or assistance from the United
States, the state of New Mexico, any other state, any political
subdivision or any other public or private entity;

(8) for any project, provide information and
training to employees of the project regarding any unique
hazards that may be posed by the project, as well as training in safe work practices and emergency procedures;

(9) issue bonds as necessary to undertake a project or to carry out the purposes of its mission statement;
(10) enter into contracts for the lease and operation by the franchise of broadband infrastructure;
(11) enter into contracts for leasing broadband infrastructure owned or operated by the franchise;
(12) sue and be sued; and
(13) adopt such reasonable administrative and procedural rules as may be necessary or appropriate to carry out its powers and duties.

SECTION 7. [NEW MATERIAL] BONDS--PLEDGEABLE REVENUE--LIMITATIONS ON OBLIGATIONS.--

A. A franchise may issue bonds, known as "broadband infrastructure revenue bonds", to finance the purchase, construction or renovation of a project and shall irrevocably pledge any or all pledgeable revenue to the payment of those bonds and to a debt service reserve fund if one is established for the bonds.

B. Bonds shall be payable solely from pledgeable revenue and shall not constitute an indebtedness or general obligation of the franchise, the state or the public agencies that formed the franchise.

C. Prior to issuing bonds to finance the purchase,
construction or renovation of broadband infrastructure, a franchise board shall make a determination that the project is necessary and that estimated pledgeable revenue pledged to the bonds is sufficient to repay the bonds.

SECTION 8. [NEW MATERIAL] REPORT--STATE BOARD OF FINANCE APPROVAL.--

A. Prior to issuing bonds to finance a project, a franchise board shall furnish to the state board of finance the following information:

(1) a detailed description of the project;
(2) an explanation of the necessity for the project;
(3) an estimate of the total cost of the project;
(4) an estimate of the net income from the project and other revenues that will be pledged to pay for the project; and
(5) an estimate of the yearly operating cost of the project.

B. A franchise board shall obtain written approval of the state board of finance before it issues bonds to finance a project.

C. Prior to giving written approval to a project, the state board of finance shall determine that the project is necessary and that estimated pledgeable revenue pledged to the
bonds is sufficient to repay the bonds.

SECTION 9. [NEW MATERIAL] RECORDS--RESTRICTION ON USE OF INCOME.--

A. A franchise shall retain complete and accurate records of:

(1) the net income from the project; and
(2) the operating costs of the project.

B. Pledgeable revenue that is pledged to the repayment of bonds shall first be used to pay the principal, interest and service charges on the bonds issued and to fund a debt service reserve fund, if applicable.

SECTION 10. [NEW MATERIAL] BONDS--PLEDGE OF INCOME.--

A. Bonds shall be payable solely from any or all pledgeable revenue, and the franchise board shall irrevocably pledge that revenue to the prompt payment of the principal, interest and service charges on the bonds. The bonds shall be equally and ratably secured, without priority, by this pledge of pledgeable revenue.

B. If the bonds are payable solely from the net income of the project being financed, the franchise board shall operate the project so as to ensure a sufficient income to promptly pay the principal, interest and service charges as they become due on the bonds.

C. The state pledges and agrees with the holders of bonds issued by a franchise and payable from pledgeable revenue
that the state shall not limit or alter the rights of the
franchise board to receive, collect and account for pledgeable
revenue and to fulfill the terms of any agreement made with the
bondholders or in any way impair the rights and remedies of the
bondholders until the bonds, together with the interest on the
bonds, with interest on any unpaid installments of interest and
all costs and expenses in connection with any action or
proceedings by or on behalf of those bondholders, are fully
paid and discharged.

SECTION 11. [NEW MATERIAL] PROCEEDS OF BOND SALES--DEBT
SERVICE FUND--RESERVE FUND.--

A. Proceeds from the sale of bonds shall be
deposited into a separate account to be used solely for the
specific purposes for which the bonds were issued, including a
debt service reserve fund. All costs incident to issuing and
selling the bonds may be paid out of the proceeds of the bonds.

B. The franchise board shall establish a "debt
service fund" to be used solely for the payment of principal,
interest and service charges on the bonds. Sufficient amounts
from the pledgeable revenue shall be deposited in the debt
service fund at least annually so that timely payments of
principal, interest and service charges may be made. All
proceeds remaining after completion of the project shall be
deposited into the debt service fund.

C. The franchise board may establish a "debt
service reserve fund" to be used to pay bond payments in case the pledgeable revenue is insufficient.

SECTION 12. [NEW MATERIAL] BONDS--FORM--REQUIREMENTS.--
All bonds issued pursuant to the Regional Broadband Franchise Act shall:

A. be fully negotiable within the provisions of the Uniform Commercial Code;

B. have a duration of time not to exceed forty years from their date of issuance;

C. have interest, appreciated principal value or any part thereof payable at intervals or at maturity as determined by a franchise board;

D. not be sold with a variable interest rate and shall be sold at a price that does not result in a net effective interest rate in excess of twelve percent per year unless a higher rate of interest is approved by the state board of finance pursuant to the Public Securities Act;

E. have a principal maturity schedule as determined by the franchise board; and

F. be sold at public or private sale at, above or below par.

SECTION 13. [NEW MATERIAL] REFUNDING BONDS.--

A. A franchise board may issue refunding bonds to refund outstanding bonds.

B. Except as otherwise provided in the Regional
Broadband Franchise Act, refunding bonds shall conform to the provisions of that act that provide for the issuance of broadband infrastructure revenue bonds by a franchise board.

C. A refunding bond issued by a franchise board may have the same security or source of payment as was pledged for the payment of the bond being refunded, but no source of payment shall be pledged that is not authorized by the Regional Broadband Franchise Act.

D. A refunding bond may be delivered in exchange for a bond authorized to be refunded, sold at a public or private sale or sold in part and exchanged in part as provided in the Supplemental Public Securities Act. If the refunding bond is sold, the proceeds shall be immediately applied to the retirement of the bond to be refunded or the proceeds shall be placed in trust to be held and applied to payment of the bonds to be refunded.

SECTION 14. [NEW MATERIAL] REFUNDING BONDS--ISSUANCE--SALE--PROCEEDS.--

A. A bond shall not be refunded unless the bond matures or is callable for prior redemption under its terms within fifteen years from the date of issuance of the refunding bond or unless the holder of the bond voluntarily surrenders it for exchange or payment.

B. Outstanding bonds of more than one issue may be refunded by refunding bonds of one or more issues. Bonds and
refunding bonds may be issued separately or in combinations of one or more series.

C. The determination of the franchise board issuing refunding bonds that the issuance has been in compliance with the Regional Broadband Franchise Act is conclusively presumed correct in the absence of fraud or arbitrary and gross abuse of discretion.

SECTION 15. [NEW MATERIAL] TAX EXEMPTION--NO CHARGE AGAINST STATE.--Bonds are exempt from taxation by the state or any of its political subdivisions. No obligation created pursuant to the Regional Broadband Franchise Act shall be a charge against or a debt of the state or any of its political subdivisions.

SECTION 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2021.