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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>STBTC</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>03/09/23</u>
<b>SHORT TITLE</b> <u>Use Of Telecomm Fund For Broadband</u>	<b>BILL NUMBER</b> <u>CS/Senate Bill 155/aSIRC/STBTCS</u>
	<b>ANALYST</b> <u>Hitzman</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	Indeterminate but substantial	Indeterminate but substantial			State Rural Universal Service Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

Relates to HB206

Relates to SB41

### Sources of Information

LFC Files

Responses to Substituted Bill Received From  
Public Regulation Commission (PRC)

Responses to Original Bill Received From  
Department of Information Technology (DoIT)  
Public Regulation Commission (PRC)

## SUMMARY

### Synopsis of STBTC Substitute for Senate Bill 155

The Senate Taxation, Business and Transportation Committee substitute for Senate Bill 155 (SB155) amends the Rural Telecommunications Act (RTA) to require the total amount of access reduction payments in 2024, 2025, and 2026 to equal those payments for 2023 and specifies that no access reduction support payments shall be made after December 31, 2026.

Further, the bill increases the minimum amount from the state rural universal service fund for its yearly broadband program from \$8 million to \$30 million less the payments authorized in other sections of the bill. The bill requires a 2025 annual report to include an assessment of the state rural universal service fund that addresses whether to repurpose access reduction support funds for broadband, a methodology for determining broadband support levels for costs, revenues, and

federal support mechanisms, the appropriate size of the fund, criteria for awards, impact of proposed changes on per-connection assessments, and whether all sellers of prepaid telecommunications services should be required to collect assessments at point of sale, similar to 911 emergency surcharges.

The effective date of this bill is July 1, 2023

## **FISCAL IMPLICATIONS**

Depending on the number of applicants and the PRC vetting process, there may be limitations for the use of the SRUSF, so estimated budgetary impacts on that fund are noted as indeterminate but substantial given the increased demand on the fund in recent years. PRC notes in the last five years, broadband projects in the amount of approximately \$5 million were funded in 2018, \$4.6 million in 2019, \$13.9 million in 2020, \$11.5 million in 2021, and \$11.9 million in 2022.

The Broadband Access and Expansion Act of 2021 (SB93) provides each year a minimum of \$8 million of the SRUSF shall be dedicated to the broadband program, and the fund is further limited by the annual statutory maximum of \$30 million for the SRUSF as a whole. The STBTC substitute for SB155 provides that the entirety of the fund, less some particular assessments and payments, shall be used for the broadband program, which will likely increase the number of broadband-related awards made in a given year from this fund.

Further, PRC “has shown that it will finance SRUSF Broadband Program projects in excess of \$8 million per year as allowed under the \$30 million statutory cap when they have the opportunity, as the commission did in years 2020 to 2022,” so increased awards are likely expected.

According to PRC, for 2023, the estimates that it will pay \$16.4 million in access reduction support to eligible rural ILECs. Therefore, this is likely the expected assessments to be paid in 2024, 2025, and 2026 per the provisions of SB155. The commission also has a LITAP program that is not mandated except by commission rule in an amount of approximately \$350,000 per year. According to PRC, fourteen rural incumbent local exchange carriers currently receive ARS payments, not including ARS-type payments received by Sacred Wind as a result of prior amendments to the RTA (SB204).

Further, other bills may be proposed during this legislative session that could further increase demand on the SRUSF. PRC notes that would need to be considered in context with the effects of this bill in order to ensure compliance with the statutory cap of \$30 million.

## **SIGNIFICANT ISSUES**

The bill provides that determinations of access reduction support payments for 2024, 2025, and 2026 shall be made based on 2023 assessments.

PRC notes:

Regarding voice-service lines, for most years since base year 2014, the number of voice-service lines served by the Rural ILECs has decreased as consumers have moved from wireline service to wireless service, resulting in annual decreases in the amount of ARS

support. However, in 2020, there was a net increase in the total number of voice-service lines served by the Rural ILECs, resulting in an increase in ARS support for the year 2022. There is a slight reduction in ARS payments to rural ILECs for 2023 estimated at \$16,397,219.00, which under this substitute bill would be frozen for rural ILECs receiving that support for years 2024, 2025, and 2026.

The substitute bill would provide a predictable level of demand for SRUSF ARS support for Rural ILECs for years 2024 to 2026. Other miscellaneous demands on the fund are small and should remain approximately the same. It is not known if any applications for support based on need pursuant to 63-9H-6-N NMSA 1978 would be received by the commission during this time period, and how much the commission would approve and in what amount. However, given the new language provided NMSA § 63-9H-6-O, SRUSF Broadband Program support during this time would be estimated after obligations for ARS payments, ARS-type payments to Sacred Wind, and any awards for needs based support. If no needs-based support payments are approved by the commission, it is probable that annual SRUSF Broadband Program support awards for years 2024 to 2026 would likely be in the range allocated for the 2023 SRUSF funding year. After 2026, ARS payments will cease, barring any intervening legislative action restoring those payments.

As noted above, PRC estimates this to total around \$16.4 million in 2023. Further, the bill caps the amount of ARS payments only to those lines existing in 2023 and eliminates ARS payments completely after 2026, which addresses concerns regarding expanded payments and expanded demand on the fund into future years.

As noted by PRC:

The Rural Telecommunications Act of New Mexico (RTA) was initially enacted in 1999 and amended in 2005, 2013, 2017 and 2021 to clarify the use of the SRUSF, to adjust the funding formula for access reduction support (ARS) payments, allowing the commission to impose a cap on the surcharge that funds the SRUSF, then removing the surcharge cap and instead imposing a statutory \$30 million cap on the fund and establishing a broadband fund that would be funded out of the SRUSF. The 2021 amendments integrated SRUSF Broadband Program support with the connect New Mexico council and statewide broadband plan and allowed for access reduction support-type payments to Sacred Wind Communications in the amount of approximately \$1.2 million annually. PRC notes the original demand obligation of the fund was a little more than \$24 million per year based on access reduction support to qualifying eligible telecommunications carriers (ETCs), mostly rural incumbent local exchange carriers (ILECs).

...under the 2017 amendments to the act, the ARS payments are calculated based upon the pre-2017 calculation of revenue lost due to the access charge reductions required by the RTA, with adjustments to this amount based upon the annual percentage change in the number of access lines served by the recipient since 2017. In general, the payments made to ETCs that receive SRUSF ARS support are calculated with annual adjustments for each ETC based upon the ETC'S percentage of wireline voice access line customers lost in the most recent year. Though it is possible that an ARS recipient might experience an increase in the size of its payments if the number of voice access line customers served by the carrier increased in the most recent year, the general trend for the rural ILECs is to lose voice access line customers to the wireless carriers. Thus, it was anticipated at the

time of the 2017 amendments that the ARS payments would decrease going forward, which would allow for increased SRUSF Broadband Program funding within the \$30 million statutory cap. The ARS payments are the largest portion of the SRUSF. The chart below shows the trend of access reduction payments and associated number of access lines from 2018 to 2022, not including 2022 ARS-type payment for Sacred Wind Communications. Access reduction payments are calculated based on a per-line support amount specific to each ETC multiplied by end-of-year access line counts two years prior (NMSA 63-9H-6(K)).

	<b>Access Reduction Disbursements</b>	<b>Total # of Access Lines Associated with Access Reduction Disbursements</b>
<b>2018</b>	19,774,405.05	81,431 (2016)
<b>2019</b>	18,843,564.35	76,388 (2017)
<b>2020</b>	17,234,912.14	70,310 (2018)
<b>2021</b>	16,415,744.77	67,803 (2019)
<b>2022</b>	16,572,618.08	69,963 (2020)

The SRUSF funds the commission’s Low Income Telephone Assistance Program (LITAP) payments (a \$3.50 matching amount for those ratepayers already receiving federal Lifeline benefits), as well as the annual Broadband Program (at an annual statutory minimum of \$8 million for the program and limited by the annual statutory maximum of \$30 million for the SRUSF as a whole). In addition, carriers may apply for need-based funding from the SRUSF in an amount that is specific to the particular carrier’s application. The only carrier ever to have been awarded such support is Sacred Wind Communications, Inc. The five-year term of that support (at \$1.4 million annually) recently expired in December of 2020 and has been replaced by the access reduction-type support awarded by the commission as a result of the passage of SB 204 in 2021.

The PRC notes the SRUSF is funded from a flat surcharge levied on all “customer connections” in the state, as defined by the RTA, currently totaling \$.97 per connection, which includes wireline, wireless, and VoIP voice lines. The surcharge is projected to cover the fund near the full annual statutory cap of \$30 million. As noted above, in the last five years, broadband projects in the amount of approximately \$5 million were funded in 2018, \$4.6 million in 2019, \$13.9 million in 2020, \$11.5 million in 2021, and \$11.9 million in 2022. Applicants who receive approval for projects are paid in three installments until the projects are completed within a three-year time span.

Regarding reporting, PRC provides the following:

A major part of this substitute bill is the recommendations and information to be provided by the commission as a result of the expanded reporting requirements for the October 2025 SRUSF report to the Legislature as detailed in proposed Subsection NMSA § 63-9H-6(S). Given the scope of the investigation and reporting requirements, it is likely the commission will commence a proceeding well in advance of the due date for the report to seek comment and gather information. Once this report is submitted by the commission to the Legislature, the Legislature will then have to opportunity to act on the

commission’s findings and recommendations on items 1 through 6 of NMSA § 63-9H-6(S) in the 2026 legislative session. If a bill enacting legislative changes to Section NMSA § 63-9H-6 are not enacted during that legislative session, they would then need to wait for adoption during 2027 legislative session. The commission would then need to commence a rulemaking proceeding to modify the current SRUSF rule NMAC 1978 17.11.10 to comply with any new statutory criteria.

PRC notes the commission has another SRUSF rulemaking in progress in Case No. 21-00285-UT addressing changes to the SRUSF as a result of the passage of HB 10, SB 93, and SB 204. While the comment cycle in the rulemaking is complete, the commission has yet to issue an order integrating any changes to the SRUSF rule.

## **ADMINISTRATIVE IMPLICATIONS**

To administer funds in accordance with SB155, the PRC would need to implement need-based criteria. The bill requires the agency to report on its criteria for determining awards and to report on whether the funding capacity is adequate, among other determinations, which will likely require additional administrative capacity at the agency to implement.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

SB155 relates to House Bill 206. The bill also relates to Senate Bill 41, which amends the New Mexico Telecommunications Act regarding provisions applicable to incumbent local exchange carriers serving more than 50,000 access lines in the state, a category that the PRC has designated as “large incumbent local exchange carrier,” or LILEC., essentially regulating these ILECS in the same way as provided for in the Rural Telecommunications Act.

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