

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF A COMMISSION)
INVESTIGATION INTO EXPANDING THE)
DEPLOYMENT OF BROADBAND IN NEW)
MEXICO)
_____)

Case No. 15-00048-UT

Report and Action Plan

Prepared By
The New Mexico Broadband Task Force
Steering Committee

June 10, 2015

Executive Summary

The need for more broadband in rural areas of New Mexico at higher speeds and at comparable prices to urban areas has received a lot of attention in the media. For example, the following are just a few of the recent articles about the need for broadband in rural New Mexico: “High speed internet gaps leave rural New Mexicans lacking a ‘basic right.’” *Santa Fe, New Mexican*, May 30, 2015; “Information superhighway bypasses rural New Mexico.” *Durango Herald*, May 31, 2015; and “State eyes broadband access in rural schools.” *Santa Fe New Mexican*, June 4, 2015.

The New Mexico Public Regulation Commission (Commission or PRC), in recognition of the fact that many areas of New Mexico are either unserved or underserved in regard to broadband services, established a Task Force to investigate ways to address this lack of adequate broadband services in the state. This report, prepared by the Task Force Steering Committee as established by the Commission, contains a discussion of an Action Plan for addressing the very real issues facing New Mexico as it tries to bring broadband services to all of its citizens.

This Report represents the first phase of a two-phase process designed to address the issues raised in the Commission’s Order opening this investigation. The report establishes a solid foundation for addressing New Mexico’s broadband service needs by providing recommendations on policy, funding, and mapping issues. While more work is necessary, the Task Force believes this Report can and should be used by the Commission and all industry stakeholders as a solid starting point for moving forward and addressing more difficult and technical issues.

The majority of the Task Force members believe that the Commission has the authority to support broadband in high-cost rural areas using New Mexico State Rural Universal Service Fund (NMUSF) and, therefore, has the authority to adopt the broadband infrastructure program proposed herein. This Report provides a recommendation of how such a program could be structured – an infrastructure grant program in the annual amount of \$5 million designed to jump-start investment in the networks necessary to expand broadband service availability in rural areas of New Mexico. The Report also provides the Commission with a discussion and recommendation of a funding mechanism that includes a new surcharge to fund the state broadband support mechanism, and recommends use of either the current State Broadband Initiative (SBI) map, now administered by the Federal Communications Commission, or the maps developed by the New Mexico Department of Information Technology (DoIT) for determining where unserved and underserved areas of New Mexico exist.

The Task Force commends the Commission for taking this vital step by recognizing the need to address inadequate broadband service in many areas of New Mexico, and looks forward to working further with the Commission as this process continues.

I. Background

On March 18, 2015, the New Mexico Public Regulation Commission (“Commission”) adopted a Non-Adjudicatory Notice of Inquiry (NOI)¹ that found that with the increasing importance of broadband in people’s lives today, too many areas of New Mexico are underserved or unserved by broadband carriers.² Therefore, the Commission took a step toward remedying the lack of adequate broadband service in New Mexico by determining it should form a task force that will be responsible for developing a recommended action plan that will include the following:

- A. The minimum upload and download broadband speeds that should be made available either across the State or, if deemed appropriate by the Task Force, in each area of the State;
- B. A map showing: (i) the areas of the State that currently have available broadband service with at least the minimum upload and download speeds determined by the Task Force, and the type of technology used to provide such Internet service, such as DSL, cable or fixed wireless; and (ii) the areas of the State that currently do not have broadband service with at least the minimum upload and download speeds determined by the Task Force; and (iii) the areas of the State that do not have any broadband services at all;
- C. A description of any barriers under existing law that prevent or impede the deployment of broadband service in the State;
- D. The identification of possible funding sources that can be used to increase the deployment of broadband services in the State. If the Task Force proposes using the State Rural Universal Service Fund (“USF”) as one of the funding sources, the proposal shall not include changing the existing cap on the USF surcharge;
- E. The specific Commission actions and possible legislation that should be taken or enacted to ensure the rapid deployment across the State of broadband services that meets the minimum speeds recommended by the Task Force.

¹ *In the Matter of a Commission Investigation Into Expanding the Deployment of Broadband in New Mexico*, Case No. 15-00048-UT, Non-Adjudicatory Notice of Inquiry, issued March 18, 2015 (*Opening Order*)

² *Id.*, at p.2

In a companion Order, the Commission appointed the Task Force Steering Committee members, which include a member each from (1) a telecommunications service provider that has at any time served more than 375,000 access lines in the State, (2) a mid-size carrier, (3) an incumbent rural telecommunications carrier, (4) a Native American-owned telecommunications carrier, (5) a wireless carrier, (6) an ETC wireless company, and (7) a commercial developer.³ The complete Task Force was comprised of over 30 individual volunteers with diverse backgrounds – the telecommunications industry, cable, local businesses, rural and county economic development entities, community associations, electric cooperatives, and others. A complete list of the members was filed in this docket on April 9, 2015. (See attached list).

New Mexico has substantial work to do in order to ensure as many New Mexicans as possible have access to adequate broadband service. According to the most recent National Broadband Map data, approximately 250,000 New Mexicans lack access to wireline broadband download speeds of at least 3 Mbps.⁴ The table below summarizes some of the data from the National Broadband Map for New Mexico.

Wireline Speed	Without Access	
	Down	Up
< 3 mbps	11.80%	23.50%
- Population	254,907	507,653
< 6 mbps	14.70%	30.30%
- Population	317,553	654,549
< 10 mbps	16.50%	30.30%
- Population	356,437	654,549

The Task Force Steering Committee determined that establishing separate work groups within the Task Force would be the most efficient means for addressing the five items required by the Commission to be included in its recommended Action Plan. These work groups are (1)

³ Order Appointing Steering Committee, Case No. 15-00048-UT, issued March 18, 2015

⁴ See National Broadband Map at <http://www.broadbandmap.gov/summarize/state/new-mexico>. Data as of June 30, 2014.

Policy, (2) Funding, and (3) Mapping. Each Work Group prepared a report and presented it to the Task Force Steering Committee from which the recommendations in this Action Plan are drawn.

II. Authority and Definitions

A. Legal Authority For The Commission To Adopt A Broadband Program

As a preliminary matter, the first issue that must be addressed is whether the Commission has the legal authority to adopt a state broadband support program for high cost rural areas with funding support from the NMUSF. The majority of the Task Force members believe the Commission does indeed have such authority under the New Mexico Telecommunications Act, Sec. 63-9H-6 NMSA 1978.

B. Definitions

The Task Force adopted a few definitions of key terms vital to the process of recommending the adoption of a New Mexico broadband support plan. These definitions are as follows:

Broadband: For purposes of the infrastructure grant program, broadband is service that provides consumers with a minimum actual download speed of 4 Mbps and upload speed of 1 Mbps.

Unserved: Any area where no facilities-based provider offers access at speeds greater than 56K.

Underserved: Any area where a facilities-based provider offers access at speeds greater than 56K down but less than broadband.

Comparable Access: Universal broadband service access to one fixed and one mobile broadband provider.

The above definitions are subject to change, depending on the state of the broadband marketplace, regulatory requirements, and other relevant factors.

III. New Mexico Broadband Support Program

The Task Force examined the many issues involved in developing a possible New Mexico Broadband Plan and analyzed similar plans across the United States, including plans from California, Nebraska, and Minnesota. While there are only a few broadband-specific state universal service funds, those in effect at this time are largely of the infrastructure grant variety. Thus, the Task Force determined that an infrastructure grant-type mechanism is a reasonable first step in addressing the unserved and underserved areas of New Mexico.

The Task Force recommends that the Commission adopt an infrastructure grant program similar to the one currently in use in Nebraska⁵ in the annual amount of \$5 Million using a separate NMUSF surcharge and scoring criteria to be determined by the Commission. The main features of this program are:

- Applications for broadband infrastructure projects may be filed by Eligible Telecommunications Carriers (ETCs). Municipalities, ISPs, and non-ETCs could not file applications. Entities that want to obtain ETC status would need to do so before filing an application.⁶
- Proposed areas to be served are to be defined by the applicant.
- Applications would be analyzed using a scoring criteria focused on unserved, underserved, and comparable access.
- The level of investment proposed by the applicant would be considered during the scoring process; the higher the proposed investment, the higher the applicant's score.

⁵ See e.g., Nebraska Public Service Commission, *In the Matter of the Petition of the Nebraska Telecommunications Association for Investigation and Review of Processes and Procedures Regarding the NUSF*, Application No. NUSF-77, Progression Order No. 4 (September 27, 2011) and Progression Order No. 5 (November 21, 2011).

⁶ In order to be an ETC, an entity must be a common carrier. To the extent the Commission may want to make funds from the NMUSF available to non ETCs for broadband purposes, legislative action would be needed.

- Unserved areas, underserved areas, and comparable access would be identified using the current SBI (State Broadband Initiative) map or the National Broadband Map as determined by the Commission.
- An applicant's claim that an area is unserved, underserved, or lacks comparable access will be subject to a challenge process where third parties could rebut the applicant's claim. Conversely, an applicant can rebut the presumption that an area is already served.

Similar to the Nebraska plan, the Task Force believes a scoring system should, to the greatest extent possible, be competitively and technologically neutral. It should also prioritize unserved, and then underserved areas. The exact nature of the scoring criteria to be used will need to be determined.

IV. Action Plan Discussion

A. Minimum Speed

The Task Force recognizes the need for increased broadband speeds throughout New Mexico and agrees that a minimum broadband speed of 25 Mbps downstream and 3 Mbps upstream or greater would be ideal, but the Task Force recommends that the initial minimum speed for a New Mexico broadband plan should be 4 Mbps downstream and 1 Mbps upstream. This will initially enable those unserved and underserved areas to be targeted to at least receive 4 Mbps downstream and 1 Mbps upstream. The Task Force also recognizes that after the initial phase the broadband speed may need to be increased at some point when the Commission considers the next steps under phase II.

B. Mapping

The Task Force examined two options for meeting the Commission's mapping requirement. First, the State Broadband Initiative ("SBI") maps currently available can be utilized to identify areas of the state that have access to broadband services with speeds of at least 4 Mbps down and 1 Mbps up, the type of technology used to provide such Internet service,

such as DSL, cable or fixed wireless; the areas of the State that currently do not have broadband service with at least the minimum upload and download speeds determine by the Task Force; and the areas of the State that do not have any broadband services at all. The SBI map contains the data required to be included in the Task Force's Action Plan, is publicly and easily available, and is updated on a semi-annual basis.⁷

A second option for meeting the Commission's broadband mapping requirement is to engage the State of New Mexico's Department of Information Technology (DoIT) to generate maps in conjunction with the geospatial and broadband program. In order to engage DoIT for this purpose some type of funding would be required through the legislature.

C. Barriers Under Existing Law

As previously noted, the Task Force does believe that the Commission has the authority under the New Mexico Rural Telecommunications Act to implement a rural broadband plan utilizing support from the NMUSF. However, there are several barriers that exist under the laws of New Mexico or the United States that may prevent or impede the deployment of broadband services in the State. Some of these barriers include the following:

- Funding
- State and Federal Right of Way
- Eligibility To Receive Funds From The NMUSF

From a funding perspective, other than using a separate surcharge under the NMUSF, any funding from the state will likely require legislative action. Moreover, any fee that might be

⁷ The FCC assumed responsibility for collection of broadband deployment data in 2013 (see Report and Order, WC Docket No. 11-10, rel. June 27, 2013). The broadband deployment data is now provided via FCC Form 477, with the first such collection taking place in October 2014 covering deployment data as of June 30, 2014. Form 477 filings are due on March 1 and September 1 each year.

considered a tax on the Internet would need to be approved by the legislature and reviewed to ensure that it does not conflict with federal law.

From a right of way perspective, there was some discussion within the Task Force that the right of way laws of the State currently prevent or impede the construction of fiber networks due to the regulations and time it takes to get approval to use them. However, any change to the current right of way laws to reduce regulation would need legislative action.

From eligibility to receive funds from the NMUSF perspective, only ETCs can currently receive funds from the NMUSF. There was discussion among some Task Force members that broadband funds should be available for use by non ETCs or even for the generation and maintenance of broadband mapping, for example from DoIT, but legislative action would be necessary for this type of funding.

D. Funding

The Task Force and Task Force Steering Committee are well aware of the state universal service program funding issues in New Mexico. The Commission's decision to cap the overall NMUSF at 3% of assessable revenues⁸ places some constraints on how the Task Force and Task Force Steering Committee approached the funding issues related to the New Mexico Broadband Support Program. As a result, the Task Force considered four options for funding the New Mexico Broadband Support program:

1. Create an additional surcharge under the NMUSF for a broadband fund. The surcharge would be assessed in the same manner that the current state USF surcharge is assessed. Also, if there are excess funds in the NMUSF that are not needed for the rural carriers' access recovery, excess funds may be used for the broadband plan.
2. Use funds currently collected through PRC Utility and Carrier Inspection Fee (from State General Funds), to a specific broadband fund administered by

⁸ *In the Matter of Possible Changes to State Rural Universal Service Fund Rules at 17.11.10*, Case No. 12-00380-UT, Order Adopting Final Rule

PRC. This fee generally collects between \$14 to 15 million in inspections fees, of which roughly \$5 million is derived from telecommunications.

3. Charge a permanent flat fee on all telecommunications subscribers for a Broadband Fund.
4. Obtain a legislative appropriation for a Broadband Fund.

Of the four Options presented above for funding, the Task Force recommends that the Commission adopt Option Number 1. Not only does it appear to the Committee that the Commission has the authority to implement Option One, this option would allow the Commission to generate \$5 million to implement an annual broadband fund quickly and deliver broadband to unserved and underserved areas in New Mexico. Moreover, the Task Force believes that the Commission Staff has experience in collecting and administering such a surcharge. Although Option Nos. 2, 3, and 4 are potentially viable options for funding a state broadband plan, as previously stated, the Task Force generally believes that legislative action would be necessary to implement each of these options for funding purposes.

E. Actions The Commission Should Take For Rapid Deployment Of Broadband

The Task Force believes that the Commission should use the infrastructure grant-based mechanism discussed in Section III to implement a NMUSF supported broadband plan and surcharge that can be used for the rapid deployment of broadband in New Mexico. Additional funding sources for the broadband plan could then be sought through the legislature. The initial phase would be used to deploy broadband at speeds of 4 Mbps downstream and 1 Mbps upstream to unserved and underserved rural areas so that broadband at comparable prices to urban areas would be available in rural areas. At some point the Commission could then determine higher speeds are warranted when it implements a phase II of the broadband plan.

Conclusion and Recommendation

The New Mexico Broadband Task Force agrees with the Commission's statement that there are far too many areas of New Mexico that are unserved or underserved with broadband services. The Report being provided today represents a reasonable first step in addressing the lack of broadband service in many areas of New Mexico, but more work is necessary. Most importantly, the Commission must first decide to adopt a broadband support mechanism, and then must decide how to fund this mechanism. The Task Force recommends the Commission move forward with creating a broadband support program, and fund the plan by creating a new surcharge similar to the method used to fund the current New Mexico USF. Finally, the Task Force recommends the Commission either utilize the current State Broadband Initiative map or the maps being generated via the New Mexico Geospatial and Broadband Program to determine which areas of the state are unserved or underserved.