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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Sanchez</u>	<b>LAST UPDATED</b> <u>02/14/23</u>
	<b>ORIGINAL DATE</b> <u>02/01/23</u>
<b>SHORT TITLE</b> <u>Rural Telecomm Fund For Broadband</u>	<b>BILL NUMBER</b> <u>House Bill 206/aHRDLC</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.

Duplicates/Relates to SB155  
 Relates to SB41

### Sources of Information

LFC Files

Responses Received From  
 Department of Information Technology  
 Public Regulation Commission

## SUMMARY

### Synopsis of HRDLC Amendment

The House Rural Development, Land Grants and Cultural Affairs Committee amendment to House Bill 206 (HB206) provides that the number of access lines used for the annual calculation of access reduction support payments for any eligible incumbent local exchange carrier shall not exceed the number of access lines existing for that carrier in December 31, 2021.

### Synopsis of House Bill 206

House Bill 206 (HB206) amends the Rural Telecommunications Act (RTA) to include definitions of “access line,” “broadband internet access service,” and “consumer broadband-only loop.” The bill also clarifies references to the state broadband plan, to mean the plan developed pursuant to the Broadband Access and Expansion Act (SB93, 2021). The bill also updates definitions of “access line” in the NMSA 1978 regarding the state rural universal service fund (SRUSF) at the Public Regulation Commission. In sections regarding the fund, the bill clarifies

that the commission shall, rather than “may,” authorize payments from the fund to incumbent rural telecommunications carriers providing comparable retail alternative services in rural areas. The bill further specifies that “A petition for need-based support from the fund...may be filed either on the basis of the petitioner's lack of financial stability or for a proposed specific network development project.” As such, the bill provides for the use of the SRUSF for consumer Broadband-only loops,” meaning a broadband internet access service offered by a local exchange carrier that does not include local exchange service.

The effective date of this bill is July 1, 2023

## **FISCAL IMPLICATIONS**

As amended, the bill does not result in any additional fiscal impacts and does not make an appropriation. However, as noted for the original bill, 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 indicated 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. Because HB206 includes new language allowing a petition be filed for needed support from the fund either on the basis of the petitioner's lack of financial stability or for a proposed specific network development project, there could be an increased demand on the fund. However, it is unclear if the increased demand would result in additional funds being allocated from the SRUSF each year, given the statute only provides for a minimum amount to be allocated each year. However, 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.

PRC notes the bill language has the intent of crediting rural incumbent local exchange carriers (Rural ILECs) for the number of residential broadband-only loops they serve when calculating the access reduction support (ARS) payments they receive on a monthly basis from the SRUSF. According to PRC, “under the current RTA, Rural ILECs receive credit in the calculation only for the wireline voice loops that they serve. The bill would also mandate that the Commission authorize payments to rural ILECs from the SRUSF based upon a showing of need for such support by a Rural ILEC due to the Rural ILEC’s lack of financial stability. Currently, the Commission limits need-based petitions to those requesting funding for specific prospective projects, not for ongoing expenses of a carrier’s operations.” Expanding this language to allow needs-based petitions would also likely expand demand on the fund.

According to PRC, for 2023, the Commission estimates that it will pay \$16.4 million in access reduction support to eligible rural ILECs. The Commission also has a LITAP program that is not mandated except by Commission rule in an amount of approximately \$350 thousand per year.

According to PRC, 14 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). PRC notes it is unknown currently “how many consumer broadband-only loops the current recipients of ARS payments have in addition to Public Switched Telephone Network (PSTN) based voice lines on which they are currently reimbursed.” It is generally known, however, “that incumbent local exchange carriers have been losing voice access lines as their customers are relying solely on wireless voice service and/or switching to broadband-only access lines.” Therefore, the PRC notes it is likely that adding consumer broadband-only access lines as proposed in HB206 for the calculation of access reduction support may substantially increase access reduction support payments beginning in 2023 from the NMRUSF as proposed in this bill. However, the impact is unknown without knowing how many consumer broadband-only lines those 14 local exchange carriers are providing at this time.

Further, other bills may be proposed during this legislative session containing proposals 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 additional definitions provided in the bill create a mechanism for larger internet and telecommunications service providers registered with the PRC to be able to apply for broadband only funding. Carriers could only receive ARS payments for those broadband customers that also had phone services. HB206 would allow those carriers to receive ARS payments for broadband-only services without requiring those customers to also have telephone service because it updates the definitions of “access line” to include broadband-only loops. This could result in savings for customers who no longer have to purchase phone services.

As amended, the bill provides that determinations of access reduction support payments shall not consider new access lines created after December 31, 2022. However, it is unclear what number of access lines have been created since that time that would not subsequently be considered in the calculation or the potential costs that would have been incurred or paid if those access lines did count.

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.

HB206 proposes to include broadband-only loops in ARS support calculation, but the Commission notes it considered and rejected similar proposals as contained in this legislation in its Final Order Adopting Rule on November 18, 2020 (Commission Docket No. 19-00286-UT). The language proposed in this bill, then, would amend certain provisions of the RTA that govern the SRUSF so that the Commission would be required to amend the rule to accept the rejected proposals in accordance with the bill.

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 HB10, S93, 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.

Further, the PRC notes an increase in demand upon the SRUSF due to this bill “would substantially diminish the funding available for the Broadband Program within the statutory cap of \$30 million per year.” However, the agency notes it is not known what the additional demand on the SRUSF will be by including broadband-only loops in access reduction support payments as proposed in this bill. PRC notes an example of the bill’s effects could be demonstrated with the passage of SB204 and annual ARS-type annual support payments approved by the Commission in the amount of approximately \$1.2 million per year, which is no longer available for SRUSF Broadband Program support. As amended, however, the bill caps the amount of ARS payments only to those lines existing prior to 2023, which may address concerns regarding expanded payments and expanded demand on the fund into future years.

## **ADMINISTRATIVE IMPLICATIONS**

To administer funds in accordance with HB206, the PRC would need to implement need-based criteria.

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

HB206 as amended relates to Senate Bill 155, while the original bill was a duplication of Senate Bill 155. 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 thousand 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.

## **OTHER SUBSTANTIVE ISSUES**

PRC notes potential conflicts with technological neutrality provisions in the NMSA:

The proposed language in NMSA § 63-9H-6.M limiting needs based support may violate or conflict with the technological neutrality provision of NMSA § 63-9H-6.C. It also is likely to restrict Broadband Program grants. This will depend upon whether the Commission continues to receive a large volume of applications for Broadband Program support, as the Commission did in years 2020 to 2022 (as opposed to 2019, in which the Commission received applications totaling less than the \$5 million statutory minimum in effect at that time).

Further, the PRC notes:

Most of the ILEC ETCs that receive SRUSF access reduction support are classified by the FCC as rural carriers that receive an even greater amount of funding in Federal Universal Service Fund High Cost support to subsidize the buildout and maintenance of broadband networks within their service territory, including broadband loop support.

## **ALTERNATIVES**

The PRC provides the following alternative:

Keeping the permissive language “may” currently in the statute in NMSA § 63-9H-6.M instead of replacing it with the mandatory “shall” would allow the Commission to regulate the amount of support based on need it can fund to help the Commission keep under the statutory cap of \$30 million, or in the alternative choose to fund broadband projects in excess of \$8 million per year. Language restricting support based on need to rural ILECs may also be eliminated to avoid conflict with the technological neutrality provision of the statute NMSA § 63-9H-6.C. If the funding of SRUSF Broadband Program projects is preferable to supporting consumer broadband-only loops and the underlying network of rural ILECs, the concept of adding consumer broadband-only loops to the access reduction support mechanism in the statute can be eliminated from the bill. Or, in the alternative, the current language in the RTA for the SRUSF for access reduction and needs based support could remain unaltered.

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The Commission will continue to administer and govern the SRUSF according to the fund requirements in the current version of the Rural Telecommunications Act.

JH/al/ne/rl