

**TITLE 17 PUBLIC UTILITIES AND UTILITY SERVICES**  
**CHAPTER 11 TELECOMMUNICATIONS**  
**PART 10 STATE RURAL UNIVERSAL SERVICE FUND**

**17.11.10.1 ISSUING AGENCY:** New Mexico Public Regulation Commission.  
[17.11.10.1 NMAC - Rp, 17.11.10.1 NMAC, \_\_/\_\_/2020]

**17.11.10.2 SCOPE:** This rule applies to all entities that provide intrastate retail public telecommunication services and comparable retail alternative services in New Mexico.  
[17.11.10.2 NMAC - Rp, 17.11.10.2 NMAC, \_\_/\_\_/2020]

**17.11.10.3 STATUTORY AUTHORITY:** Sections 8-8-4 and 63-9H-6, NMSA 1978.  
[17.11.10.3 NMAC - Rp, 17.11.10.3 NMAC, \_\_/\_\_/2020]

**17.11.10.4 DURATION:** Permanent.  
[17.11.10.4 NMAC - Rp, 17.11.10.4 NMAC, \_\_/\_\_/2020]

**17.11.10.5 EFFECTIVE DATE:** January 1, 2018, unless a later date is cited at the end of a section.  
[17.11.10.5 NMAC - Rp, 17.11.10.5 NMAC, \_\_/\_\_/2020]

**17.11.10.6 OBJECTIVE:** The purpose of this rule is to provide procedures for administering and implementing the New Mexico state rural universal service fund to maintain and support universal service provided by telecommunications carriers that have been designated as eligible telecommunications carriers.  
[17.11.10.6 NMAC - Rp, 17.11.10.6 NMAC, \_\_/\_\_/2020]

**17.11.10.7 DEFINITIONS:** In addition to the definitions contained in Section 63-9H-3, NMSA 1978, as used in this rule:

**A. "Access line"** means a dial tone line, or its functional equivalent, that provides local exchange service from a carrier's switching equipment to a point of termination at the customer's network interface, and is not limited to wireline or any other technology; for the purposes of this rule, an access line includes a consumer broadband only loop when a regulated traditional voice service is not used, but does not include official lines, unbundled network elements/platforms, retail resale, wholesale resale, special access lines and private lines.

**B. "Administrator"** means the person designated by the commission to administer the fund.

**C. "Area underserved by broadband"** means a broadband program proposed project area where at least 50 percent of households lack access to fixed and mobile facilities-based broadband service at the minimum broadband transmission speeds of 25.0 mbps download/3.0 mbps upload. A household has access to broadband service if the household can subscribe within 10 business days of a request

**D. "Area unserved by broadband"** means a broadband program proposed project area where at least 50 percent of the households lack access to fixed and mobile facilities-based broadband service at the minimum broadband transmission speeds of 10.0 mbps download/1.0 mbps upload. A household has access to broadband service if the household can subscribe to that service within 10 business days of a request.

**E. "Basic local exchange rate"** means an incumbent local exchange carrier's tariffed, monthly, flat single-line rate charged to its retail customers for the provision of local exchange service; for the purposes of this rule, the "residential" and "business" basic local exchange rates shall include any commission-mandated subscriber line charges or extended area service charges. For purposes of this rule, broadband internet access service means a service transmission speed of 25.0 mbps download/3 mbps upload.

**F. "Broadband internet access service"** means a mass-market retail service by wire, wireless or other technology that provides the capability to transmit data to and receive data from all or substantially all Internet endpoints including any capabilities that are incidental to and enable the operation of the communications service, or a functionally equivalent service, but excluding dial-up Internet access service.

**G. "Carrier"** means an entity that provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico.

**H. "Commercial mobile radio service (CMRS)"** means a designation by the federal communications commission for any carrier or licensee whose wireless network is connected to the public switched telephone network or is operated for profit.

- I. “Communication connection”** means a voice-enabled telephone access line, wireless voice connection, unique voice over internet protocol service connection, or other uniquely identifiable functional equivalent as determined by the commission. For purposes of this rule, a communication connection does not include a consumer broadband only loop.
- J. “Commission”** means the New Mexico public regulation commission.
- K. “Consumer broadband only loop”** means a broadband service offered by a local exchange carrier that does not include local exchange service.
- L. “Contributing company”** means any carrier that provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico.
- M. “Eligible telecommunications carrier (ETC)”** means a carrier with New Mexico operations that provides voice over internet protocol (VOIP) as well as broadband services and has been designated as eligible to receive disbursements from the fund or from the federal universal service fund, or both.
- N. “Exempt customer”** means an end-user of telecommunications service that is the state of New Mexico, a county, a municipality or other governmental entity; a public school district; a public institution of higher education; an Indian nation, tribe, or pueblo; a native american customer who resides on tribal or pueblo land; a private telecommunications network; or a person eligible to receive reduced rates under a low-income telephone assistance plan created by the federal government or the state of New Mexico.
- O. “FCC”** means the federal communications commission.
- P. “Fund” or “State Rural Universal Service Fund (SRUSF)”** means the state of New Mexico universal service fund established pursuant to Section 63-9H-6, NMSA 1978 and this rule.
- Q. “Imputed benchmark revenue”** means the difference between the affordability benchmark rates established by the commission pursuant to this rule and the carrier’s basic local exchange residential and business rates as of July 1, 2014, multiplied by the number of basic local exchange residential and business access lines served by the carrier as of December 31 of the year that precedes the year during which the revenue requirement is being determined pursuant to Subparagraph E of 17.11.10.19 NMAC; imputed benchmark revenue shall not be less than zero.
- R. “Interexchange carrier (IXC)”** means an entity that provides intrastate toll services in New Mexico.
- S. “Intrastate retail public telecommunications services revenue”** means the revenue collected from the sale of intrastate telecommunications services to end users; for voice over internet protocol (VOIP) and similar services, the portion of total retail revenues attributable to intrastate retail telecommunications shall be equal to the proportion of calls originating and terminating in New Mexico to all calls originating in New Mexico.
- T. “Intrastate retail public telecommunications services”** means services including, but not limited to, all types of local exchange service; non-basic, vertical or discretionary services, also known as advanced features, or premium services, such as, but not limited to, call waiting, call forwarding, and caller identification (ID); listing services; directory assistance services; cellular telephone and paging services; commercial mobile radio services; personal communications services (PCS); both optional and non-optional operator services; wide area telecommunications services (WATS) and WATS-like services; toll-free services; 900 services and other informational services; message telephone services (MTS) or toll; CENTREX, centron and centron-like services; video conferencing and teleconferencing services; the resale of intrastate retail public telecommunications services; payphone services; services that provide telecommunications through a New Mexico telephone number using voice over internet protocol (VOIP) or comparable technologies; any services regulated by the commission; and such other services as the commission may by order designate from time to time as equivalent or similar to the services listed above, without regard to the technology used to deliver such services.
- U. “Intrastate switched access charge”** means a charge levied by a carrier for the availability and use of its facilities for origination and termination of intrastate interexchange calls as contained in tariffs approved by the commission.
- V. “Local exchange carrier (LEC)”** means an entity certificated to provide local exchange service in New Mexico.
- W. “New Mexico operations”** means intrastate retail public telecommunications services and comparable retail alternative services provided in New Mexico.
- X. “Reasonable rate of return”** means, for purposes of this rule, an intrastate rate of return no greater than the FCC’s prescribed reasonable rate of return for rate of return carriers, as amended from time to time. Initially, the FCC prescribed rate of return shall be assumed to be 9.75%.
- Y. “Rural area”** means (i) any unincorporated area or (ii) any city, town or incorporated area with a population of 20,000 or less as reflected in the most recent decennial United States census together with any applicable Tribal census.
- Z. “Service area”** means a geographic area established by the commission in accordance with Section 214(e)(5) of the federal act (47 U.S.C. Section 214(e)(5)).
- AA. “Universal service”** means basic local exchange service and comparable retail alternative services at affordable rates, service pursuant to a low-income telephone assistance plan, and broadband internet access service to unserved and underserved areas of New Mexico as determined by the commission.

[17.11.10.7 NMAC - Rp, 17.11.10.7 NMAC, \_\_/\_\_/2020]

**17.11.10.8 REDUCTION OF INTRASTATE SWITCHED ACCESS CHARGES:** The commission may, upon motion of a carrier or the administrator, or upon the commission's own motion, authorize further intrastate switched access charge reductions for a carrier to correspond to any changes in that carrier's tariffed interstate switched access service charge rates, elements or structure subsequent to January 1, 2006.

[17.11.10.8 NMAC - Rp, 17.11.10.8 NMAC, \_\_/\_\_/2020]

**17.11.10.9 AFFORDABILITY BENCHMARK RATES:**

**A.** Effective January 1, 2020, unless changed by the commission in a proceeding pursuant to subsection B of 17.11.10.09 NMAC, the residential and business affordability benchmark rates to be utilized in determining the level of support available from the fund are as follows:

- (1) the residential benchmark rate for basic local exchange service shall be \$18; the residential benchmark rate shall be determined by the Commission to maintain federal high cost support, as such rate may change from time to time;
- (2) the business benchmark rate for basic local exchange service shall be carrier-specific and shall be equal to the business basic exchange rate of each local exchange carrier as of January 1, 2020;
- (3) each local exchange carrier shall, on or before May 1 of each year, advise the commission and the administrator in writing of its residential and business basic local exchange rates to be in effect on July 1 of that year and how they were determined;
- (4) increases in the residential basic local exchange rates of incumbent rural telecommunications carriers toward the residential benchmark rate established in this section shall be implemented by timely filing of tariff revisions with the commission and shall be effective after 10 days' notice to the carrier's customers and the commission;
- (5) the affordability benchmark rate for residential consumer broadband only loops shall be the residential benchmark rate as provided in this section, and the affordability benchmark rate for business consumer broadband only loops shall be the carrier-specific business benchmark rate as provided in this section;

**B.** The commission may conduct a proceeding to establish new affordability benchmark rates upon its own motion.

[17.11.10.9 NMAC - Rp, 17.11.10.9 NMAC, \_\_/\_\_/2020]

**17.11.10.10 SELECTION OF ADMINISTRATOR:** The commission will designate a third-party administrator who will be subject to the supervision and control of the commission for a four-year term. The administrator shall perform services under the terms of a written contract to be entered into between the commission and the administrator. The commission shall procure the services of a subsequent administrator before the expiration of the term of each such contract, or in the event of early termination of such contract, as soon as practicable before or after the early termination.

**A.** Criteria for selection: the commission will issue a request for proposals to select the administrator; the commission shall consider whether the bidder has demonstrated the competence needed to administer the fund and the rate of compensation proposed; the commission shall also consider at a minimum whether the bidder:

- (1) is able to be neutral and impartial;
- (2) is a member of a trade association that advocates positions before this commission or other state commissions in administrative proceedings related to telecommunications issues;
- (3) is an affiliate of any contributing company;
- (4) has a substantial financial interest in any entity or affiliate that provides telecommunications services or comparable retail alternative services; and
- (5) has a board of directors that includes any member with direct financial interests in entities that contribute to or receive support from the fund in this state or any other state.

**B.** Termination of administrator's contract: the commission may terminate the administrator's contract with the commission before the expiration of the term of the contract upon such notice, and under such conditions, as are set forth in the contract.

[17.11.10.10 NMAC - Rp, 17.11.10.10 NMAC, \_\_/\_\_/2020]

**17.11.10.11 EXPENDITURE AUTHORIZATION:** The commission shall approve an annual budget for administration of the fund. The reasonable expenses incurred in the administration of the fund, in accordance with the terms of the contract between the commission and the administrator, shall be a cost of the fund and shall be recovered from contributions to the fund.

[17.11.10.11 NMAC - Rp, 17.11.10.11 NMAC, \_\_/\_\_/2020]

**17.11.10.12 RESPONSIBILITIES OF ADMINISTRATOR:** The administrator shall manage the day-to-day operation of the fund in accordance with this rule, applicable law, and the overall supervision and direction of the commission. The administrator shall:

- A. Fairly, consistently, and efficiently administer fund collections and disbursements in accordance with commission rules and subject to commission oversight.
- B. Establish an account or accounts in one or more independent financial institutions and ensuring that the monies deposited in the fund are insured to the maximum extent permitted by law and that they earn a return commensurate with that of state funds held on deposit in banks or other financial institutions.
- C. Ensure that the fund complies with all necessary requirements for exemption from federal, state and local taxes.
- D. Establish procedures, consistent with the commission's procedural rules and law, and with the commission's approval, for protecting the confidentiality of information submitted pursuant to this rule.
- E. Report to the commission on fund activities at least once each year; the report shall include fund collections and disbursements, administrative expenditure information, budget projections and such other information as the commission may require.
- F. Prepare an annual proposed budget for administration of the fund and submit it to the commission for review, revision, rejection or approval at such time in advance of the need for commission approval as the commission may direct, or absent such direction, at a reasonable time.
- G. Propose to the commission uniform procedures, and develop forms, to identify exempt customers, in consultation with contributing companies.
- H. Create and maintain the databases necessary to administer the program and account for the funds.
- I. Develop appropriate forms for use in collecting information from contributing companies and ETCs.
- J. Pay administrative expenses out of the fund in accordance with the budget approved by the commission.
- K. Petition the commission to institute an enforcement or other action when the administrator finds that it is otherwise unable to collect amounts properly due from a contributing company under these rules, or when it appears to the administrator that any contributing company or ETC carrier is otherwise out of compliance with these rules or applicable law.
- L. Conduct, not less than once every year, such reviews as are necessary to ensure that each contributing company is making its required contributions to the fund and that support from the fund is used for the purpose of the fund.
- M. Advise the commission of any anticipated material changes to, or fluctuations in, the collection of fund revenues in a timely manner and make recommendations to the commission on ways to address or correct such changes or fluctuations.

[17.11.10.12 NMAC - Rp, 17.11.10.12 NMAC, \_\_/\_\_/2020]

**17.11.10.13 DISPUTE RESOLUTION:** The commission may refer any disputed case between the administrator and a contributing company or between contributing companies to alternative dispute resolution if it finds that doing so would encourage the settlement of the dispute.

**A. Mediation:**

- (1) if any of the parties or staff makes a request for mediation, the commission may, in its discretion, designate a mediator consistent with Subsection B of 17.1.2.20 NMAC;
- (2) the mediator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties and staff; if the parties request a mediator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear as their own the costs of obtaining the mediator's services; the mediator shall not be the hearing examiner who is assigned to the case; the mediator shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties and staff at the time the mediator is assigned by the commission and unless all parties agree that the mediator may serve; the mediator shall not subsequent to serving as a mediator participate in the proceeding as a hearing examiner, advisory staff, staff counsel or expert witness, or as an attorney, expert witness, or representative of any party to the proceeding;
- (3) the mediator may be assigned by the commission at the same time as the commission assigns the case to a hearing examiner; the mediator shall not discuss the mediation conference with any commissioner or hearing examiner hearing the case;
- (4) the mediator shall notify the parties and staff by telephone or mail of the time and place of the mediation conference, which will be held at commission offices unless otherwise directed by the mediator; the notice may direct the parties and staff to send the mediator, but not other parties or staff, their settlement positions and other necessary information that could facilitate the mediation conference, including the results of staff's investigation of the complaint;
- (5) if the parties are able to reach a settlement of their dispute, in appropriate cases the mediator shall assist the parties in preparing a written agreement to reflect that resolution; if the parties are unable to reach a complete

settlement of their dispute, the mediator shall advise the parties that they may request arbitration or file a formal complaint with the commission;

(6) nothing shall preclude the commission from using different mediation procedures.

**B. Arbitration:**

(1) a party may request arbitration of any dispute; the party's request shall be in writing to the commission and shall include a concise statement of the grounds for the complaint, the remedy sought, and an acknowledgment that the party has read 17.1.2.22 NMAC and agrees to be bound by its terms;

(2) the commission or its authorized representative shall forward the request for arbitration to the other party together with a copy of Subsection A of 17.1.2.16 NMAC and 1.2.18 NMAC and require that the other party submit a written response within 10 days of the date of the commission's letter forwarding the request;

(3) if the responding party agrees to arbitration of the dispute, he shall include in his response to the complainant's request a concise statement of his position with regard to the merits of the complaint and an acknowledgment that he has read 17.1.2.22 NMAC and agrees to be bound by its terms; if the responding party will not agree to arbitration, he shall so state in the response;

(4) if the responding party either fails to respond to a request for arbitration or does not agree to arbitration, the initiating party retains the right to proceed with a formal complaint;

(5) if both the initiating party and the responding party agree to arbitration, the commission shall designate an arbitrator; the arbitrator may be a permanent or temporary employee of the commission or another state agency or any other individual who is acceptable to the parties to the complaint; the designated arbitrator shall have no official, financial or personal conflict of interest with respect to the issues in controversy, unless such interest is fully disclosed in writing to all parties at the time of the commission's designation and all parties agree that the arbitrator may serve; the parties shall be required to indicate their consent in writing to the designated arbitrator within 10 days of the date of the commission's letter of designation; if the parties request an arbitrator who is not an employee of the commission, the commission shall not approve the request unless the parties agree in writing to bear the costs as their own pursuant to Sections 8-8-4 and 62-13-3 NMSA 1978;

(6) any employee of the commission designated to arbitrate the matter under these provisions shall not participate in a subsequent proceeding on the complaint as a hearing examiner, advisory staff, staff counsel, or expert witness or as an attorney, expert witness, or representative of any party to the proceeding;

(7) the commission may assign docket numbers to arbitration proceedings for purposes of record management but the proceeding remains an informal proceeding;

(8) nothing shall preclude the commission from using different arbitration procedures.

**C. Arbitration Procedures:**

(1) once designated and approved by the parties, the arbitrator shall proceed to render a decision in the arbitration proceeding within 60 days of the date the responding party agreed to arbitration except for good cause; if the arbitrator at any time determines that it is unlikely that the dispute can be resolved without substantially affecting the interests of other ratepayers or the public, he may so inform the parties and staff and terminate the proceeding without prejudice to the initiating party's right to file a formal complaint;

(2) the arbitrator shall fix a time and place for an informal hearing and shall serve notice of the hearing on both parties and on staff at least 10 days in advance of the hearing; he may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence and shall have the power to administer oaths; the parties and staff may offer such evidence and produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute; the arbitrator shall decide the relevancy and materiality of the evidence offered, and conformity to the New Mexico rules of evidence or to rules of evidence contained in the commission's rules, is not necessary; no stenographic or electronic record will be made of the testimony at hearing unless requested by a party, who shall bear the cost of the record, or by staff;

(3) discovery will be permitted but only with leave of the arbitrator who shall not allow discovery which unduly complicates, burdens, or impedes the expeditious and informal nature of the proceeding;

(4) whenever the arbitrator deems it necessary to make an inspection or investigation in connection with the arbitration, he shall so advise the parties and staff, who may be present at the inspection or investigation; in the event that one or both of the parties or the staff are not present, the arbitrator shall make an oral or written report to the parties and staff and afford them an opportunity to comment;

(5) at the close of or soon after the hearing, the arbitrator will issue a brief written decision; findings of fact and conclusions of law are not necessary; the arbitrator's decision will be binding on the parties and can be implemented by the commission to the extent such implementation is necessary; however, the decision will not be a decision of the commission and shall have no precedential effect;

(6) unless agreed to by all the parties and staff, no statements, admissions, or offers of settlement made during the course of arbitration proceedings shall be admissible as evidence in any formal proceeding nor shall the

arbitrator disclose the same voluntarily or through discovery or compulsory process; nothing in this section, however, shall preclude the arbitrator from issuing a brief written decision describing his conclusions and the bases for them;

(7) nothing in this rule shall be construed to mean that the commission has waived its review of any decision or that the commission consents to be bound by arbitration.

[17.11.10.13 NMAC - Rp, 17.11.10.13 NMAC, \_\_/\_\_/2020]

**17.11.10.14 VARIANCES AND WAIVERS:** Any person may petition the commission for variance or waiver of any provision of this rule for good cause shown.

**A. General requirements:**

(1) a contributing company or ETC may petition for an exemption or a variance from any of the requirements of this rule;

(2) such petition may include a motion that the commission stay the affected portion of this rule for the transaction specified in the motion;

(3) petitions for an exemption or a variance and motions for a stay must be supported by an affidavit signed by an officer of the contributing company or ETC or someone with authority to sign for the contributing company or ETC;

(4) the commission may, at its discretion, require an informal conference or formal evidentiary hearing prior to making its determination.

**B. Contents of the petition.** A petition for an exemption or variance shall:

(1) identify the section of this rule for which the exemption or variance is requested;

(2) describe the situation which necessitates the exemption or variance;

(3) describe the effect of complying with this rule on the contributing company or ETC and its customers, or on its competitive affiliates and their customers, if the exemption or variance is not granted;

(4) describe the result the request will have if granted;

(5) state how the exemption or variance will achieve the purposes of this rule and the Rural Telecommunications Act of New Mexico;

(6) state why the proposed alternative is in the public interest and is a better alternative than that provided by this rule;

(7) state why the exemption or variance would have no anticompetitive effect; and

(8) state why the requested exemption or variance would not place an undue burden on the fund.

[17.11.10.14 NMAC - Rp, 17.11.10.14 NMAC, \_\_/\_\_/2020]

**17.11.10.15 GENERAL REPORTING REQUIREMENTS:**

**A. Reports require declaration:** all reports filed with the commission or the administrator must be filed with a declaration from the chief financial officer of the entity or the person who prepared the reports on behalf of the entity that the information is correct and the filing is made subject to the penalty of perjury provided for in Section 30-25-1 NMSA 1978.

**B. Time for reporting:** where no date is specified for a report, or when a request is made by the administrator for information necessary for the administration of the fund, the administrator shall specify when the report must be filed.

**C. Reporting forms:** contributing companies and ETCs shall report information in the manner prescribed by the administrator. The administrator shall not require reporting that will be unduly burdensome.

**D. Electronic filing:** the administrator shall accept electronic reporting when practicable.

**E. Confidentiality:** the commission shall have access to all information reported to the administrator.

Contributing companies may request that company-specific information required by the reporting requirements of this rule be treated as confidential by so indicating at the time the information is submitted. 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 administrator shall keep confidential all company-specific information obtained from contributing companies for which confidential treatment is requested, shall not use such information except for purposes of administering the fund, and shall not disclose such information in company-specific form unless directed to do so by the commission.

**F.** The commission may require the administrator to modify any of its report formats to solicit additional information necessary for the administration of the state universal service program, including possible addition of a revenue report or to delete information that is not necessary.

[17.11.10.15 NMAC - Rp, 17.11.10.15 NMAC, \_\_/\_\_/2020]

**17.11.10.17 REPORTS:** ETCs shall comply with the reporting requirements established by the commission as set forth in 17.11.27 NMAC. In addition, carriers shall report the following information to the administrator in a form prescribed by the administrator, regarding facilities and activities during the preceding calendar year:

**A.** On or before May 1 of each year, contributing companies, including ETCs, shall report the number and type of New Mexico access lines and New Mexico communication connections subscribed to in total and the number of such access lines and communication connections that are exempt from paying the SRUSF surcharge.

**B.** On or before July 1 of each year, ETCs receiving support from the fund (except those receiving only support pursuant to 17.11.11 or 17.11.10.31 NMAC) shall file with the commission a report, in a form approved by the commission, demonstrating that the ETC's payments from the fund were used for the purpose stated in Subsection A of 17.11.10.27 NMAC. If any ETC required to file information with the commission under Subsection B of 17.11.10.17 NMAC fails to comply on or before the applicable reporting deadline, the administrator shall withhold any disbursements otherwise due to the non-compliant ETC until the ETC has complied.

[17.11.10.17 NMAC - Rp, 17.11.10.17 NMAC, \_\_\_/\_\_\_/2020]

**17.11.10.18 CONTACT PERSONS:** All contributing companies and ETCs shall file with the administrator the name, address, phone number and e-mail address of a contact person and shall keep the information current.

[17.11.10.18 NMAC - Rp, 17.11.10.18 NMAC, \_\_\_/\_\_\_/2020]

**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 September 1 of each year to enable commission approval on or before October 1 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) per year.

**D.** Except as provided in 17.11.10.31(A) NMAC, 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, the revenue requirement for 2018 and each year thereafter for each ETC that was eligible as of July 1, 2005 and is a local exchange carrier shall be equal to the carrier's 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. The SRUSF revenue requirement formula under this section may be stated arithmetically as follows: revenue requirement minus imputed benchmark revenue.

**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.

[17.11.10.19 NMAC - Rp, 17.11.10.19 NMAC, \_\_\_/\_\_\_/2020]

**17.11.10.20 DETERMINATION OF SRUSF SURCHARGE RATE AND CONTRIBUTION:**

**A.** The administrator shall recommend the amount of the SRUSF surcharge rate for the next calendar year, on or before September 1 to enable commission approval on or before October 1, based upon monthly and annual reports filed by ETCs and contributing companies, broadband program grants awarded by the commission, and any other pertinent and reliable information available to the administrator or the commission, and applying the annual fund cap set forth in Subsection C of 17.11.10.19 NMAC.

**B.** The commission shall either set a percentage surcharge rate equal to the annual fund requirement determined by the commission divided by the sum of intrastate retail public telecommunications service revenue, or in the alternative, set a fixed charge applicable to each non-exempt communication connection equal to the annual fund requirement

determined by the commission divided by the number of non-exempt communication connections for all contributing carriers in New Mexico. The surcharge rate or fixed charge may be adjusted to account for any material deficit or surplus projected to exist at the start of the fund year, subject to the annual fund cap.

**C.** Each contributing company's monthly contribution shall equal the state rural universal service fund (SRUSF) surcharge rate multiplied by its intrastate retail telecommunications revenues or non-exempt communication connections, as determined by the commission, in New Mexico for the month.

**D.** If, for any month the administrator finds that the fund balance is insufficient to meet the total obligations of the fund, (including support pursuant to 17.11.10.19 NMAC, 17.11.10.25 NMAC, 17.11.10.31 NMAC, and 17.11.11 NMAC) plus administrative expenses and maintenance of a prudent fund balance, the administrator shall prorate all payments to each ETC, with the exception of payments pursuant to 17.11.10.31 NMAC and 17.11.11 NMAC. In the event the administrator determines that such a prorated reduction in payments is reasonably likely to occur, the administrator shall immediately notify the commission and the commission will take prompt action to increase contribution requirements, subject to the annual fund cap set forth in Subsection C of 17.11.10.19 NMAC, or otherwise account for the shortfall and will provide for true-up payments for any underpayments occurring if prorated reduced payments are required before the contribution requirements can be increased. If the fund accumulates a surplus beyond what the administrator and the commission believes is prudent under the circumstances, the administrator may, with the commission's approval, decrease contribution requirements so as to lower the fund balance to an appropriate level.

**E.** Each contributing company shall remit its monthly contribution to the administrator on a schedule to be determined by the administrator.

[17.11.10.20 NMAC - Rp, 17.11.10.20 NMAC, \_\_/\_\_/2020]

#### **17.11.10.21 RECOVERY OF CONTRIBUTIONS:**

**A.** A contributing company shall recover the amount of its contributions to the fund from its end-user customers only in a manner that is not, either by act or omission, deceptive or misleading. Such recovery shall be made in a fair, equitable and nondiscriminatory manner, and no over-recovery of contributions shall be permitted.

**B.** A contributing company required to provide service in accordance with commission approved tariffs shall not recover contributions from its end-user customers except as permitted under commission approved modifications to those tariffs.

**C.** The commission may, after notice and hearing, order modifications to a contributor's method of recovering contributions from its end-user customers.

[17.11.10.21 NMAC - Rp, 17.11.10.21 NMAC, \_\_/\_\_/2020]

#### **17.11.10.22 FUND DISBURSEMENTS:**

**A.** The administrator shall make a monthly disbursement to each ETC eligible to receive such a payment from collected revenues in the fund, on a schedule to be determined by the administrator.

**B.** The amount of each ETC's monthly disbursement shall be one-twelfth of its revenue requirements computed in accordance with 17.11.10.19 NMAC, subject to proration as provided in Subsection E of 17.11.10.20 NMAC.

**C.** 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.

**D.** The administrator shall not pay, and shall hold in escrow, any disbursements otherwise due to an ETC that is also a contributing company, if that company shall not be in compliance with its contribution requirements.

[17.11.10.22 NMAC - Rp, 17.11.10.22 NMAC, \_\_/\_\_/2020]

#### **17.11.10.23 DESIGNATION OF ETCS:**

**A.** Any carrier operating in New Mexico and designated as a state ETC as of July 1, 2005 and which has not lost that designation is automatically designated as an ETC for the purposes of this rule. If at any subsequent time a carrier loses ETC designation status, it shall no longer be eligible to receive support from the fund.

**B.** Other carriers may file a petition for designation as an ETC in accordance with 17.11.10.24 NMAC.

**C.** On its own motion or in response to a petition, the commission may, after notice and hearing and for good cause shown, modify, suspend, or revoke an ETC designation.

**D.** The commission may, upon request, establish the ETC's amount of amount of an ETC's support from the fund, if any in accordance with the requirements of 17.11.10.25 NMAC.

**E.** On its own motion or in response to a petition, the commission may modify an ETC's amount of support to reflect more current information, or other information relevant to the disbursement of support to the ETC under this provision of the rule.

[17.11.10.23 NMAC - Rp, 17.11.10.23 NMAC, \_\_/\_\_/2020]

**17.11.10.24 PETITIONS FOR ETC DESIGNATION AND AMOUNT OF SUPPORT:**

**A.** Any entity seeking designation as a state or federal ETC must file a petition with the commission. In the case of a petition for ETC designation, for state or federal universal service fund the petition shall:

- (1) include a description of the proposed service area for which it seeks designation that is consistent with the federal requirements relating to service areas set forth in 47 CFR 54.207;
- (2) demonstrate that the entity meets the requirements in Section 214(e) of the federal act (47 U.S.C. Section 214(e) to be designated as a federal ETC;
- (3) for federal USF support, how the applicant meets the requirements of 47 C.F.R. 54.101 through 54.203.
- (3) demonstrate that the proposed designation is in the public interest;
- (4) show how the proposed ETC is financially and technically competent to provide the supported services for federal or state support where applicable in this rule;
- (4) demonstrate the petitioner's ability to remain functional in emergency situations;
- (5) demonstrate that the petitioner will satisfy applicable consumer protection and service quality standards;
- (6) demonstrate that granting ETC status to the petitioner in the designated area is likely to result in more customer choice;
- (7) address the impact of designation of the petitioner on the size of the state or federal USF fund;
- (8) address the unique advantages and disadvantages of the petitioner's service offering;
- (9) demonstrate the petitioner's willingness and ability to offer service throughout the designated service area within a reasonable time frame, or time frame required by state or federal law; and
- (10) provide such other information as the commission or the administrator may find appropriate.

**B.** A petition by an ETC and amount of shall demonstrate that granting the proposed support is in the public interest and, where applicable, where required shall include the information required by 17.11.10.25 NMAC.

**C.** Consideration of the public interest will apply in all ETC designation proceedings. The commission is not required to designate additional ETCs in any service area, if not in the public interest.

**D.** The commission shall, after such notice and hearing as the commission shall prescribe, enter its written order approving or denying a company's petition. An order approving a petition for ETC designation shall specify the service area for which designation is made and an order petition for an amount of support shall state the amount and type of approved state or federal fund support.

**E.** The commission may approve a petition for designation as a federal ETC in conjunction with a petition for designation as a state ETC.

**F.** The commission shall require annual verification from each ETC that it continues to meet the requirements herein for designation as an ETC and for provision of support from the state or federal state and federal USF fund.

[17.11.10.24 NMAC - Rp, 17.11.10.24 NMAC, \_\_\_/\_\_\_/2020]

**17.11.10.25 PETITION FOR SUPPORT BASED ON NEED:**

**A.** An ETC serving in a rural area of the state may petition the commission for support from the fund when such payments are needed, on a financial stability basis or on a specific project basis, to ensure the widespread availability and affordability of universal service in the rural area(s) of the state served by the ETC. For an ETC that is an incumbent rural telecommunications carrier, the need for support under this section on a financial stability basis may be shown as follows:

- (1) By showing its earned intrastate rate of return is less than the reasonable rate of return defined in 17.11.10.7 NMAC.
- (2) An ETC seeking support based on need pursuant to subsection A(1) of this section cannot receive need-based support in an amount that is expected to result in an intrastate rate of return greater than the reasonable rate of return.
- (3) If the FCC no longer prescribes a rate of return, commission staff will initiate proceedings as necessary for the commission to determine or modify the rate of return to be used for the purposes of this section.
- (4) An ETC seeking support pursuant to subsection A(1) of this section shall provide financial data in support of its petition in a form [proposed form to be developed], approved by the commission, that contains sufficient information to demonstrate that the ETC's earned intrastate rate of return is less than the reasonable rate of return. The financial data shall include: (a) a summary of the intrastate, regulated revenue and expenses; (b) intrastate invested capital; (c) intrastate Federal income taxes calculated at the applicable tax rate; (d) intrastate network access service revenue; and (e) weighted average cost of capital (for investor-owned utilities). In addition, an ETC shall provide information demonstrating that the amount of need-based support the ETC is seeking would not be expected to result in an intrastate rate of return greater than the reasonable rate of return.

**B.** In determining a just and reasonable amount of support for an ETC seeking support under this subsection, the commission shall:

- (1) consider the cost of efficiently providing services to the proposed service area, using the most cost effective technologies, but also taking into consideration existing infrastructure;
- (2) consider the amount of support available to the ETC through the federal universal service funds;
- (3) ensure that the amount of support for a competitive carrier does not exceed the equivalent support received through these rule by the incumbent carriers serving the proposed service area.

**C.** In addition to establishing need as described in subsections A and B of this section, a petition for support based on need shall identify the geographic area for which support is requested, and shall demonstrate with particularity how the proposed payments from the fund will be used in a manner consistent with the use of fund support requirements set forth in 17.11.10.27 NMAC.

**D.** In support of a petition for support based on need, pursuant to subsections A or B of this section, the ETC must make available to the commission such all information from the ETC that the commission deems necessary, including but not limited to information relating to the ETC's revenues, expenses, and investments, to determine whether support is needed to ensure the widespread availability and affordability of universal service in the area identified in the petition.

**E.** The commission shall resolve each petition for support based on need with or without a hearing no later than six months following the filing date of the petition, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months.

**F.** An ETC receiving support under this section for specific projects shall provide, on a semi-annual basis, the following:

- (1) Specific details of projects for which fund support is used; itemized by the categories of capital expenditures (CapEx) and the related operations expenditures (OpEx).
- (2) Project descriptions will explain the objectives or intended goal of the project. Such as increased capacity or efficiency, redundancy, expansion of network or services.
- (3) Project prioritizations of buildout plans in technical terms that include locations, maps as applicable, milestones and benchmarks to measure performance and assure compliance. The description shall also provide project status, spending plans and metrics.
- (4) Narratives of the projects that explain the current and ongoing status of completion or ready for service dates (RFS), and other pertinent facts (i.e., project delays, permit status, surveys, right of ways issues) for reporting purposes. The term ready for service ("RFS") means a description of projects where construction is complete and the project is operational.
- (5) A demonstration upon completion of the project of the ongoing maintenance cost, if any, for which continuation of need-based support may be justified.

**G.** Only an ETC receiving need-based support under subsection A of this section shall file a financial report annually on July 1 on a form approved by the commission, showing the ETC's earned intrastate rate of return for the previous calendar year.

(1) An ETC reporting an earned intrastate rate of return no greater than the reasonable rate of return will continue to receive the need-based support approved by the commission. An ETC receiving commission approved need-based support that reports an earned intrastate rate of return less than the reasonable rate of return may request that the commission adjusts its commission approved need-based support to an amount that would result in an intrastate rate of return no greater than the reasonable rate of return.

(2) For an ETC reporting an intrastate rate of return greater than the reasonable rate of return, the commission may make an adjustment to the ETC's commission approved need-based support to an amount intended to result in an intrastate rate of return no greater than the reasonable rate of return.

**H.** An ETC receiving support on a financial stability basis under subsections A or B of this section shall comply with the reporting requirements of 17.11.10.17.B NMAC demonstrating with particularity how the payments from the fund were used in a manner consistent with the use of fund support requirements set forth in 17.11.10.27(A) NMAC.

**I.** Any report or information that the commission requires a carrier to provide under this section shall be treated by the commission as confidential under the requirements of 17.11.10.15(E) NMAC.

[17.11.10.25 NMAC – Rp, 17.11.10.25 NMAC, \_\_/\_\_/2020]

#### **17.11.10.26 COMPLIANCE WITH CONTRIBUTION REQUIREMENTS:**

**A.** If the administrator finds that a contributing company has not contributed the amount required by this rule, the administrator shall notify the contributing company in writing. The administrator shall request the company to pay the deficiency in its contribution.

**B.** The contributing company shall pay the requested amount within 21 days of the date of the notice or seek dispute resolution as provided in this rule.

**C.** If attempts by the administrator to collect the total requested amount from a contributing company or to resolve a dispute are unsuccessful, the administrator shall notify the commission in writing.

**D.** Upon request by the administrator, a complaint filed by an interested party, or on its own motion, the commission, after providing notice and an opportunity for a hearing in accordance with 17.1.2 NMAC, may issue an order requiring a contributing company to pay any arrearage in contributions that the commission finds to exist and may also impose interest, a fine or other appropriate administrative penalties or requirements or bonding to assure future compliance with contribution requirements. In the event that a contributing company fails or refuses to comply with a commission order issued pursuant to this provision, the commission may petition the appropriate district court for appropriate injunctive relief and for enforcement of the commission's order.

**E.** The commission may take the same types of action set forth in Subsection D of 17.11.10.26 NMAC in the event that it finds, after a proceeding of the type specified in Subsection D of 17.11.10.26 NMAC, that a contributing company or an ETC has, in any other way, violated any provision of this rule or of the rural telecommunications act of New Mexico, Sections 63-9H-1, et seq. NMSA 1978.

[17.11.10.26 NMAC - Rp, 17.11.10.26 NMAC, \_\_/\_\_/2020]

**17.11.10.27 USE OF FUND SUPPORT:**

**A.** An ETC shall use fund support in a manner consistent with the rural telecommunications act, Sections 63-9H-1 et seq., NMSA 1978, Section 254 of the federal telecommunications act (47 U.S.C. 254), and commission rules and orders. Fund support must be used to maintain and support universal service; provided, however, that each ETC receiving support pursuant to 17.11.10.19 or 17.11.10.25 NMAC must expend no less than sixty percent (60%) of the support it receives to deploy and maintain broadband internet access services in rural areas of the state, Section 63-9H-6(F) NMSA 1978.

**B.** If the commission finds, in a proceeding on its own motion or on the motion of the administrator or an interested party, that an ETC has used fund support for purposes other than to preserve and advance universal service or that the ETC has failed to satisfy the sixty percent minimum expenditure requirement referenced in 17.11.10.27(A) NMAC, the commission may impose an appropriate administrative remedy, which may include, but need not be limited to, ordering the ETC to refund amounts paid to it from the fund and withholding future payments.

[17.11.10.27 NMAC - Rp, 17.11.10.27 NMAC, \_\_/\_\_/2020]

**17.11.10.28 ACCESS TO BOOKS, RECORDS AND PROPERTY:**

**A.** The administrator or the commission shall have access to the books of account, records and property of all contributing companies and ETCs to the extent necessary to verify information reported or required to be reported pursuant to this rule. The administrator or commission may direct a contributing company or ETC to send copies of records to the administrator or commission or may inspect records at the offices of the contributing company or ETC, at the administrator's or commission's discretion.

**B.** In the normal course of business, the administrator will give at least three days' notice of its plans to inspect records in the offices of a contributing company or ETC. The administrator may apply to the commission to procure a subpoena in order to inspect records without notice.

[17.11.10.28 NMAC - Rp, 17.11.10.28 NMAC, \_\_/\_\_/2020]

**17.11.10.29 REVIEW AND AUDIT OF ADMINISTRATOR AND FUND:** The administrator shall provide the commission with a financial statement of the fund and the administration of the fund on an annual basis by May 1. The commission shall engage a qualified independent auditor to audit each such financial statement and to submit a written opinion to the commission.

[17.11.10.29 NMAC - Rp, 17.11.10.29 NMAC, \_\_/\_\_/2020]

**17.11.10.30 ADVISORY BOARD:**

**A.** The commission shall establish and appoint an advisory board composed of representatives from participating contributing companies and ETCs, the attorney general, the commission staff, and any representative(s) of one or more consumer groups or organizations that the commission may choose to appoint. The members shall include no more than one representative from each of the following types of telecommunications carriers and entities providing comparable intrastate retail services: incumbent rural telecommunications carriers; incumbent local exchange carriers other than incumbent rural telecommunications carriers; competitive local exchange carriers not ETC-designated; ETC-designated competitive local exchange carriers; commercial mobile radio service providers not-ETC-designated; and ETC-designated commercial mobile radio service providers. Any other type of telecommunications carriers or providers of comparable intrastate retail service may petition the commission for representation by no more than one member of that type of carrier or service provider on the advisory board, which the commission may grant by order. The commission shall resolve any dispute

among the carriers or service providers of each type as to who shall be the member of the advisory board. The members representing participating contributors shall each be appointed for a term of three years. Members of the board may be reappointed to subsequent terms with the approval of the commission. Expenses incurred by a member in connection with participation on the advisory board shall not be reimbursed from the fund.

**B.** The advisory board shall meet periodically with the administrator and shall provide advice and consultation to the administrator as provided under this rule. Where deemed necessary by the advisory board, it shall make recommendations to the commission or the administrator, or both, relating to potential matters related to administration of the fund. Should the members of the advisory board not agree on a recommendation to the commission or administrator on any particular matter, the advisory board may provide a majority recommendation as well as a minority recommendation as to the resolution of any such identified issue. In addition, any member of the advisory board may, with advance written notice to the other members of the advisory board, provide individual recommendations or other information to the commission and the administrator that it deems appropriate. The advisory board is intended to be a forum within which to build consensus on matters relating to the administration of the fund, while not deterring any interested party from communicating its concerns relating to the administration of the fund to the advisory board, or, subject to advance written notice to the other members of the advisory board, directly to the commission.

**C.** The advisory board members shall elect a chair, vice-chair, and secretary to serve on the board for two years, subject to additional terms as elected from within the board. For the purpose of conducting business, a majority of the board members present at any meeting shall constitute a quorum.

[17.11.10.30 NMAC - Rp, 17.11.10.30 NMAC, \_\_/\_\_/2020]

#### **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 of Section 63-9H-6, NMSA 1978, ETCs may separately apply to the commission for grants to fund the acquisition, construction or maintenance of facilities that are capable of providing broadband internet access service to areas unserved or underserved by broadband in the state. A carrier seeking ETC designation pursuant to 17.11.10.24 NMAC for the limited purpose of becoming eligible to apply for broadband program grants under this section may submit an application for grants on a provisional basis subject to obtaining ETC designation for such limited purpose. Such an application will be considered by the commission on an expedited streamlined basis. If ETC designation on a limited basis is not provisionally approved for the proposed project will be deemed ineligible and the application will be rejected. Except in circumstances when the commission determines that a grant should provide up to one hundred percent of the budgeted project costs, each grant that is awarded will provide up to seventy five percent or greater, not to exceed one hundred percent of the budgeted project cost, at the discretion of the Commission, with the ETC applying the remainder from its own funds. Projects for which full third-party funding has been obtained by a prospective applicant will not be eligible for an award of support under this section. Such third-party funding shall not include loan funds, federal high cost fund legacy support, Connect America fund support or other sources that are not directly tied to the proposed project. 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 Section 17.11.10.7(U) NMAC, if it determines that (a) the area otherwise has the characteristics of a rural area, (b) the area is unserved or underserved by broadband, and (c) the public interest requires that the area be classified as rural.

**B.** Funding of the broadband program. Beginning in 2018, and each year thereafter, at least five million dollars (\$5,000,000) of the fund shall be dedicated annually 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 2510 Mbps download/31Mbps 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; and

- (3) Support access to emergency 911 services.

**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;
- (3) a map showing where service and coverage will be provided; this requirement can be met by providing; Applications and mapping information must also be submitted contemporaneously with the New Department of Information Technology Broadband Division.
  - (a) for a wireline network, a map showing all homes, businesses, and other end user locations passed;
  - (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 both 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 or less match of funds drawn from fund or a demonstration that the circumstances justify an award requiring a lower or no match of funds as determined by the commission;
- (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) a certification by an authorized representative affirming that all information set forth in the application is true and correct; and
- (13) 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.

**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.
- (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 proceeding and establish a 30 day window for filing applications for broadband program support for the following calendar year. The commission staff, or a third party contractor, shall review all timely applications.

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

(3) On or before September 1, the commission's staff, shall make a presentation to the commission with analysis of the applications for awards. Staff may seek the assistance of a third-party contractor to assist in its review. The commission's staff, 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) On or before October 1, the commission shall issue a preliminary decision approving, denying, or modifying, in whole or in part, each application. In its election of projects the commission will consider unserved, underserved, and served areas, in that order. The Commission will also prioritize submitted projects that include a higher proposed percent carrier match.

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

(6) On or before December 1, the commission shall approve, deny, or modify support awards by a final order. The commission may also defer a final decision on an application for good cause shown

**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 NMAC 17.11.10.31. (G)(6)(G)(4)

(2) For each awarded project, project reports shall be submitted to Staff, consultant(s), and/or 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 final set forth in the application, including a certification from an officer or director that all program requirements have been met.

(3) For each awarded project, the awardee shall notify staff and the administrator of the commencement of a project within 30 days following completion of pre-construction engineering, final receipt of all required rights of way and permits, and ordering of equipment for the project. The administrator shall disburse one third of the award promptly following receipt of notice of commencement submitted consistent with this subsection, one third at the midpoint of the project, and the remaining third upon project completion. Within thirty days of the commencement of the project, the carrier must notify the commission in the relevant docket that project build-out has begun. Within thirty days of the filing of the carrier's notice of the commencement of the project, the administrator shall disburse one third of the award to the carrier. 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 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.

**I.** Applications for grant for reimbursement of costs:

(1) ETCS may separately apply to the commission under this section for grants from the fund for reimbursement of costs incurred on broadband deployment projects. Such applications for reimbursement may be awarded if the commission determines that:

(a) the project was started after the most recent broadband grant application window closed on June 1 and was completed prior to the next broadband application window opening the follow May1;

(b) the project otherwise would have been eligible under the broadband grant program; and

(c) the applicant for reimbursement demonstrates that the project as completed meets the coverage requirements set forth in this 17.10.11.31 including a certification from an officer or director to that effect

(2) Any reimbursement granted by the commission for a broadband project shall be for the costs of the completed project minus a matching fee amount up to 25 percent of the cost, as determined by the commission. [17.11.10.31 NMAC - Rp, 17.11.10.31 NMAC, \_\_/\_\_/2020]

**HISTORY OF 17.11.10 NMAC:**

**Pre-NMAC History:** None.

**History of Repealed Material:**

17 NMAC 13.10, State Rural Universal Service Fund (filed 11/15/2005) repealed effective 01/01/2015.

17 NMAC 11.10, State Rural Universal Service Fund (filed 01/01/2015) repealed effective 01/29/2016.

17 NMAC 11.10, State Rural Universal Service Fund (filed 01/01/2015) repealed effective 01/01/2017.

**Other History:**

17 NMAC 13.10, State Rural Universal Service Fund (filed 12/15/1999) was replaced by 17.11.10 NMAC, State Rural Universal Service Fund, effective 01/01/2015.

17.13.10 NMAC, State Rural Universal Service Fund (filed 1/1/2015) was replaced by 17.11.10 NMAC State Rural Universal Service Fund, effective 1/29/2016.

17.13.10 NMAC State Rural Universal Service Fund (filed 1/19/2016) was replaced by 17.11.10 NMAC State Rural Universal Service Fund, effective 1/1/2017.