

HOUSE BILL No. 2050

By Committee on Energy and Utilities

1-20

1 AN ACT concerning telecommunications; establishing the broadband
2 deployment assistance program; amending K.S.A. 2010 Supp. 66-
3 2010 and repealing the existing section.

4
5 *Be it enacted by the Legislature of the State of Kansas:*

6 New Section 1. As used in sections 1 through 8, and amendments
7 thereto:

8 (a) “Broadband” means any synchronous or asynchronous
9 transmission technology capable of speeds of at least one megabit per
10 second in both directions to and from customer and provider.

11 (b) “Census tract” means a tract identified on the most recent
12 official United States decennial census maps.

13 (c) “Commission” means the state corporation commission.

14 (d) “Department” means the department of commerce.

15 (e) “Government” means the state and any department, agency,
16 authority, institution or instrumentality thereof, any county, township,
17 city, school district or other political or taxing subdivision of the state and
18 any other not-for-profit entity primarily funded by appropriations from
19 tax revenues.

20 (f) “Grant” means a broadband deployment assistance program
21 grant.

22 (g) “Potential broadband customer” means any residential,
23 commercial or government customer that could receive broadband service
24 through existing telephone or cable lines or fixed base wireless service
25 and has subscribed to such service, has elected not to subscribe to such
26 service or cannot subscribe to such service because such service is not
27 provided.

28 (h) “Provider” means a provider of wireless, wireline, cable-modem
29 and other non-satellite technological means of providing high speed
30 internet access service to persons who are domiciled in Kansas.

31 (i) “Underserved rural areas” means that no more than 15% of
32 potential broadband customers in a census tract are capable of receiving
33 broadband of at least one megabit per second in both directions in
34 accordance with the provisions of sections 2 through 5, and amendments
35 thereto.

36 New Sec. 2. The department shall verify the accuracy of the

1 broadband maps developed by Connected Nation or other contractor or
2 broadband providers presenting the census tract areas where customers
3 are capable of receiving non-satellite broadband service from at least one
4 provider. For each census tract served by one or more providers, the
5 department shall not require subsequent annual reports from providers
6 who document that at least 98% of potential customers receive broadband
7 service or have elected not to subscribe to such service.

8 New Sec. 3. (a) On or before January 15, 2012, and annually
9 thereafter, subject to the provisions of section 4, and amendments thereto,
10 the department shall report to the legislature on broadband service being
11 provided in the state of Kansas. Such report shall include the following
12 information:

13 (1) A report by census tract indicating whether broadband service is
14 available and the number of providers that offer service to customers in
15 each census tract;

16 (2) beginning with the department's report in 2012, a report by
17 census tract of the change in: (A) The number of broadband providers;
18 (B) the geographic area or census tract where broadband service is
19 available; and (C) the percentage of potential broadband customers
20 receiving service, electing not to receive service, and to whom service is
21 not available.

22 (b) The department shall maintain the information provided by each
23 provider pursuant to section 2, and amendments thereto, as confidential
24 and shall report only the aggregated information by census tract to the
25 legislature.

26 (c) The department may adopt rules and regulations as necessary to
27 establish the form and manner in which the provider information shall be
28 submitted and to fulfill all other requirements of the department under
29 this act.

30 (d) The department shall, in addition to those reports required by
31 subsection (a), on or before January 15, 2012, and annually thereafter,
32 report to the legislature the names of the broadband service providers that
33 fail to comply with the reporting requirements of section 2, and
34 amendments thereto.

35 New Sec. 4. In the event the federal government or any federal
36 agency implements a national program to collect information regarding
37 broadband service deployment on a census tract or smaller unit of land
38 area, the provisions of section 2 and subsection (a) of section 3, and
39 amendments thereto, shall no longer be effective, and the department,
40 with assistance from the commission pursuant to subsection (d) of section
41 3, and amendments thereto, shall collect such broadband service data and
42 report such data to the legislature in a form and manner that is in
43 conformance with such federal program.

1 New Sec. 5. Nothing in sections 1 through 4, and amendments
2 thereto, shall be construed as authorizing the department or the
3 commission to regulate the provision of broadband service in any manner
4 not already otherwise authorized pursuant to federal or state law.

5 New Sec. 6. All certificated telecommunications providers are
6 required to make broadband services available to at least 98% of the
7 residences located within their service territory by January 1, 2014. Such
8 service may be provided by the certificated provider or on a contract basis
9 by another provider. The choice of broadband technology made available
10 shall be determined by the certificated provider or through negotiations
11 with an alternative provider.

12 New Sec. 7. There is hereby established the broadband deployment
13 assistance program. The commission shall administer the program and
14 shall award grants thereunder. In consultation with the division of
15 information systems and communications in the department of
16 administration, the commission is hereby authorized to:

17 (a) Enter into binding commitments for the provision of grants that
18 are awarded by the commission in accordance with the provisions of this
19 act;

20 (b) review applications for grants and select the projects for which
21 grants will be made available;

22 (c) prequalify providers who substantially comply with Kansas
23 statutory requirements concerning eligibility for a certificate of
24 convenience pursuant to K.S.A. 66-2005, and amendments thereto;

25 (d) adopt rules and regulations necessary to implement and
26 administer the provisions of this act; and

27 (e) ensure that grants are awarded only to provide support for
28 deploying broadband in otherwise underserved rural areas.

29 New Sec. 8. (a) In consultation with the division of information
30 systems and communications in the department of administration, the
31 commission shall adopt rules and regulations establishing criteria for
32 qualifications to receive grants based on:

33 (1) Demonstrated ability of the provider to reliably provide
34 broadband services and underlying facilities capable of speeds of at least
35 756 kilobits per second, in both directions;

36 (2) technological neutrality, including the use of wireless, cable-
37 modem, digital subscriber line and other technologies in existence on or
38 before the expiration of this act, and including new technologies that the
39 commission shall determine provide comparable or better service to
40 customers;

41 (3) percentage of eligible customers not already receiving broadband
42 services that the provider will be able to reach within one or more census
43 tracts;

1 (4) best value to the KUSF and customers including the cost that the
2 provider shall agree to charge for residential broadband services for a
3 period of at least three years; and

4 (5) quality of the provider's marketing plan to inform potential
5 customers of the availability of broadband services.

6 (b) Grants awarded shall be one-time only to assist in the build-out
7 of the provider's broadband system and shall not be used to pay, replace
8 or substitute for recurring, operating, maintenance or other expenses of
9 the provider.

10 (c) No more than one provider per census tract or other geographic
11 unit shall receive a grant under this program.

12 (d) Unless there are extenuating circumstances, as defined by the
13 department in rules and regulations, if deployment has not begun within
14 12 months of the date the grant is awarded, the grant recipient shall repay
15 the grant advanced with interest as determined by the department.

16 New Sec. 9. On or before January 15, 2013, the department shall
17 submit a written report to the house standing committee on energy and
18 utilities and the senate standing committee on utilities concerning the
19 success and outcomes of the broadband deployment assistance program
20 with an emphasis on whether such program has significantly reduced the
21 number of Kansans without access to broadband services. The report
22 shall include, but not be limited to, the amount of grants granted to each
23 provider and the number of customers subsequently able to receive
24 broadband service as a result of those grants.

25 New Sec. 10. Nothing in sections 4 through 8, and amendments
26 thereto, shall be construed as authorizing the state corporation
27 commission, or any other state agency to regulate broadband services
28 which are not regulated by the federal communications commission or
29 pursuant to federal law.

30 Sec. 11. K.S.A. 2010 Supp. 66-2010 is hereby amended to read as
31 follows: 66-2010. (a) The commission shall utilize a competitive bidding
32 process to select a neutral, competent and bonded third party to
33 administer the KUSF.

34 (b) The administrator shall be responsible for: (1) Collecting and
35 auditing all relevant information from all qualifying telecommunications
36 public utilities, telecommunications carriers or wireless
37 telecommunications service providers receiving funds from or providing
38 funds to the KUSF; (2) verifying, based on the calculations of each
39 qualifying telecommunications carrier, telecommunications public utility
40 or wireless telecommunications service provider, the obligation of each
41 such qualifying carrier, utility or provider to generate the funds required
42 by the KUSF; (3) collecting all moneys due to the KUSF from all
43 telecommunications public utilities, telecommunications carriers and

1 wireless telecommunications service providers in the state; and (4)
2 distributing amounts on a monthly basis due to qualifying
3 telecommunications public utilities, wireless telecommunications service
4 providers and telecommunications carriers receiving KUSF funding; *and*
5 *(5) distributing amounts on a monthly basis to qualifying providers*
6 *awarded broadband deployment assistance program grants pursuant to*
7 *section 7, and amendments thereto, as directed by the commission.*

8 (c) Any information made available or received by the administrator
9 from carriers, utilities or providers receiving funds from or providing
10 funds to the KUSF shall not be subject to any provisions of the Kansas
11 open records act and shall be considered confidential and proprietary.

12 (d) The administrator shall be authorized to maintain an action to
13 collect any funds owed by any telecommunications carrier, public utility
14 or wireless telecommunications provider in the district court in the county
15 of the registered office of such carrier, utility or provider or, if such
16 carrier, utility or provider does not have a registered office in the state,
17 such an action may be maintained in the county where such carrier's,
18 utility's or provider's principal office is located. If such carrier, utility or
19 provider has no principal office in the state, such an action may be
20 maintained in the district court of any county in which such carrier, utility
21 or provider provides service.

22 (e) The KUSF administrator shall be responsible to ensure that funds
23 do not fall below the level necessary to pay all amounts collectively owed
24 to all qualifying telecommunications public utilities, wireless
25 telecommunications service providers, ~~and~~ telecommunications carriers
26 *and broadband providers*. The administrator shall have the authority to
27 retain and invest in a prudent and reasonable manner any excess funds
28 collected in any period to help ensure that adequate funds are available to
29 cover amounts payable in other periods.

30 (f) (1) Before July 1, of each year, the chief executive officer of the
31 state board of regents shall certify to the administrator of the KUSF the
32 amount provided by appropriation acts to be expended from the KAN-ED
33 fund for the fiscal year commencing the preceding July 1. Upon receipt of
34 the certification of the chief executive officer of the state board of
35 regents, the KUSF administrator shall add the amount certified to the
36 amount annually required to fund the KUSF as determined pursuant to
37 subsection (b).

38 (2) On or before the 10th day of each month, the administrator of the
39 KUSF shall pay from the KUSF to the state treasurer 1/12 of the amount
40 certified by the chief executive officer of the state board of regents
41 pursuant to subsection (a) for the fiscal year preceding the fiscal year in
42 which the payment is made. Upon the receipt of the payment, the state
43 treasurer shall deposit the entire amount in the state treasury and credit it

1 to the KAN-ED fund. Any such payments shall be made after all
2 payments required by K.S.A. 66-2008, and amendments thereto, for the
3 month are made from the KUSF.

4 ~~(3) Not more than the following shall be paid from the KUSF to the~~
5 ~~state treasurer pursuant to this subsection (f): In fiscal year 2006,~~
6 ~~\$10,000,000; in fiscal year 2007, \$8,000,000; in fiscal year 2008,~~
7 ~~\$6,000,000; and in fiscal year 2009, \$5,500,000.~~

8 ~~(4) The provisions of this subsection (f) shall expire on June 30,~~
9 ~~2009. Thereafter, state general fund moneys shall be used to fund the~~
10 ~~KAN-ED network and such funding shall be of the highest priority along~~
11 ~~with education funding.~~

12 *(g) (1) The KUSF administrator shall add the amount needed to*
13 *fund the broadband deployment assistance program as prescribed by*
14 *paragraph (2) of this subsection (g) to the amount annually required to*
15 *fund the KUSF.*

16 *(2) On or before the 10th day of January, 2012, and on or before*
17 *January, 2014, the KUSF administrator shall pay from the KUSF to each*
18 *qualifying provider awarded a broadband deployment assistance grant*
19 *an amount as directed by the state corporation commission pursuant to*
20 *section 8, and amendments thereto. The moneys paid from the KUSF*
21 *pursuant to this subsection (g) shall be expended only to fund grants*
22 *awarded pursuant to the broadband deployment assistance program. Any*
23 *such payments shall be made after all payments required by K.S.A. 66-*
24 *2008, and amendments thereto, for the month are made from the KUSF.*

25 *(3) Not more than the following shall be paid by the KUSF*
26 *administrator to qualifying providers, in the aggregate, pursuant to this*
27 *subsection (f): In fiscal year 2011, \$1,000,000; in fiscal year 2012,*
28 *\$1,000,000; in fiscal year 2013, \$1,000,000; and in fiscal year 2014,*
29 *\$1,000,000.*

30 *(4) The provisions of this subsection (g) shall expire on December 31,*
31 *2013.*

32 Sec. 12. K.S.A. 2010 Supp. 66-2010 is hereby repealed.

33 Sec. 13. This act shall take effect and be in force from and after its
34 publication in the statute book.