

HOUSE BILL No. 2037

By Committee on Energy and Utilities

1-20

9 AN ACT concerning telecommunications; establishing the broadband
10 deployment assistance program; amending K.S.A. 2008 Supp. 66-2010
11 and repealing the existing section.
12

13 *Be it enacted by the Legislature of the State of Kansas:*

14 New Section 1. As used in sections 1 through 5, and amendments
15 thereto:

16 (a) “Broadband” means any synchronous or asynchronous transmis-
17 sion technology capable of speeds of at least 750 kilobits per second in
18 both directions to and from customer and provider.

19 (b) “Grant” means a broadband deployment assistance program
20 grant.

21 (c) All other terms have the meanings provided in K.S.A. 2008 Supp.
22 66-1249, and amendments thereto.

23 New Sec. 2. There is hereby established the broadband deployment
24 assistance program. The commission shall administer the program and
25 shall award grants thereunder. In consultation with the division of infor-
26 mation systems and communications of the department of administration,
27 the commission is hereby authorized to:

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

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

33 (c) prequalify providers who substantially comply with Kansas statu-
34 tory requirements concerning eligibility for a certificate of convenience
35 pursuant to K.S.A. 66-2005, and amendments thereto;

36 (d) adopt rules and regulations necessary to implement and admin-
37 ister the provisions of this act; and

38 (e) ensure that grants are awarded only to provide support for de-
39 ploying broadband in otherwise underserved rural areas.

40 New Sec. 3. (a) In consultation with the division of information sys-
41 tems and communications of the department of administration, the com-
42 mission shall adopt rules and regulations establishing criteria for qualifi-
43 cations to receive grants based on:

- 1 (1) Demonstrated ability of the provider to reliably provide broad-
2 band services and underlying facilities capable of speeds of at least 750
3 kilobits per second, in both directions;
- 4 (2) technological neutrality, including the use of cable-modem, digital
5 subscriber line, fixed-base wireless and other technologies in existence on
6 or before the expiration of this act, and including new technologies that
7 the commission shall determine provide comparable or better service to
8 customers;
- 9 (3) percentage of eligible customers that the provider will be able to
10 reach within one or more census tracts;
- 11 (4) best value to the KUSF, customers and the state's e-government
12 and distance education programs; and
- 13 (5) quality of the provider's marketing plan to inform potential cus-
14 tomers of the availability of broadband services.
- 15 (b) Grants awarded shall be one-time only to assist in the build out
16 of the provider's broadband system and shall not be used to pay, replace
17 or substitute for recurring, operating, maintenance or other expenses of
18 the provider.
- 19 (c) No more than one provider per census tract or other geographic
20 unit shall receive a grant under this program.
- 21 (d) Unless there are extenuating circumstances, as defined by the
22 commission in rules and regulations, if deployment has not begun within
23 12 months of the date the grant is awarded, the grant recipient shall repay
24 the grant advanced with interest as determined by the department of
25 commerce.
- 26 New Sec. 4. On or before the first day of the 2015 regular session of
27 the legislature, the commission shall submit a written report to the house
28 standing committee on energy and utilities and the senate standing com-
29 mittee on utilities concerning the success and outcomes of the broadband
30 deployment assistance program with an emphasis on whether such pro-
31 gram has significantly reduced the number of Kansans without access to
32 broadband services.
- 33 New Sec. 5. Nothing in sections 1 through 4, and amendments
34 thereto, shall be construed as authorizing the state corporation commis-
35 sion, or any other state agency to regulate broadband services which are
36 regulated by the federal communications commission or pursuant to fed-
37 eral law.
- 38 Sec. 6. K.S.A. 2008 Supp. 66-2010 is hereby amended to read as
39 follows: 66-2010. (a) The commission shall utilize a competitive bidding
40 process to select a neutral, competent and bonded third party to admin-
41 ister the KUSF.
- 42 (b) The administrator shall be responsible for: (1) Collecting and au-
43 diting all relevant information from all qualifying telecommunications

1 public utilities, telecommunications carriers or wireless telecommuni-
2 cations service providers receiving funds from or providing funds to the
3 KUSF; (2) verifying, based on the calculations of each qualifying telecom-
4 munications carrier, telecommunications public utility or wireless tele-
5 communications service provider, the obligation of each such qualifying
6 carrier, utility or provider to generate the funds required by the KUSF;
7 (3) collecting all moneys due to the KUSF from all telecommunications
8 public utilities, telecommunications carriers and wireless telecommuni-
9 cations service providers in the state; ~~and~~ (4) distributing amounts on a
10 monthly basis due to qualifying telecommunications public utilities, wire-
11 less telecommunications service providers and telecommunications car-
12 riers receiving KUSF funding; *and (5) distributing amounts on a monthly*
13 *basis to qualifying providers awarded broadband deployment assistance*
14 *program grants pursuant to section 3, and amendments thereto, as di-*
15 *rected by the commission.*

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

20 (d) The administrator shall be authorized to maintain an action to
21 collect any funds owed by any telecommunications carrier, public utility
22 or wireless telecommunications provider in the district court in the county
23 of the registered office of such carrier, utility or provider or, if such car-
24 rier, utility or provider does not have a registered office in the state, such
25 an action may be maintained in the county where such carrier's, utility's
26 or provider's principal office is located. If such carrier, utility or provider
27 has no principal office in the state, such an action may be maintained in
28 the district court of any county in which such carrier, utility or provider
29 provides service.

30 (e) The KUSF administrator shall be responsible to ensure that funds
31 do not fall below the level necessary to pay all amounts collectively owed
32 to all qualifying telecommunications public utilities, wireless telecom-
33 munications service providers ~~and~~, telecommunications carriers *and*
34 *broadband providers*. The administrator shall have the authority to retain
35 and invest in a prudent and reasonable manner any excess funds collected
36 in any period to help ensure that adequate funds are available to cover
37 amounts payable in other periods.

38 (f) (1) Before July 1, of each year, the chief executive officer of the
39 state board of regents shall certify to the administrator of the KUSF the
40 amount provided by appropriation acts to be expended from the KAN-
41 ED fund for the fiscal year commencing the preceding July 1. Upon
42 receipt of the certification of the chief executive officer of the state board
43 of regents, the KUSF administrator shall add the amount certified to the

1 amount annually required to fund the KUSF as determined pursuant to
2 subsection (b).

3 (2) On or before the 10th day of each month, the administrator of
4 the KUSF shall pay from the KUSF to the state treasurer $\frac{1}{12}$ of the
5 amount certified by the chief executive officer of the state board of re-
6 gents pursuant to subsection (a) for the fiscal year preceding the fiscal
7 year in which the payment is made. Upon the receipt of the payment, the
8 state treasurer shall deposit the entire amount in the state treasury and
9 credit it to the KAN-ED fund. Any such payments shall be made after
10 all payments required by K.S.A. 66-2008, and amendments thereto, for
11 the month are made from the KUSF.

12 ~~(3) Not more than the following shall be paid from the KUSF to the~~
13 ~~state treasurer pursuant to this subsection (f): In fiscal year 2006,~~
14 ~~\$10,000,000; in fiscal year 2007, \$8,000,000; in fiscal year 2008,~~
15 ~~\$6,000,000; and in fiscal year 2009, \$5,500,000.~~

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

20 (g) (1) *The KUSF administrator shall add the amount needed to fund*
21 *the broadband deployment assistance program as prescribed by para-*
22 *graph (2) of this subsection (g) to the amount annually required to fund*
23 *the KUSF.*

24 (2) *On or before January 10, 2010, and on or before January 10, 2016,*
25 *the KUSF administrator shall pay from the KUSF to each qualifying pro-*
26 *vider awarded a broadband deployment assistance grant an amount as*
27 *directed by the state corporation commission pursuant to section 3, and*
28 *amendments thereto. The moneys paid from the KUSF pursuant to this*
29 *subsection (g) shall be expended only to fund grants awarded pursuant*
30 *to the broadband deployment assistance program. Any such payments*
31 *shall be made after all payments required by K.S.A. 66-2008, and amend-*
32 *ments thereto, for the month are made from the KUSF.*

33 (3) *Not more than the following shall be paid by the KUSF adminis-*
34 *trator to qualifying providers, in the aggregate, pursuant to this subsec-*
35 *tion (g): In fiscal year 2010, \$500,000; in fiscal year 2011, \$1,000,000; in*
36 *fiscal year 2012, \$1,000,000; in fiscal year 2013, \$1,000,000; in fiscal year*
37 *2014, \$1,000,000; and in fiscal year 2015, \$1,000,000.*

38 (4) *The provisions of this subsection (g) shall expire on December 31,*
39 *2015.*

40 Sec. 7. K.S.A. 2008 Supp. 66-2010 is hereby repealed.

41 Sec. 8. This act shall take effect and be in force from and after its
42 publication in the statute book.