



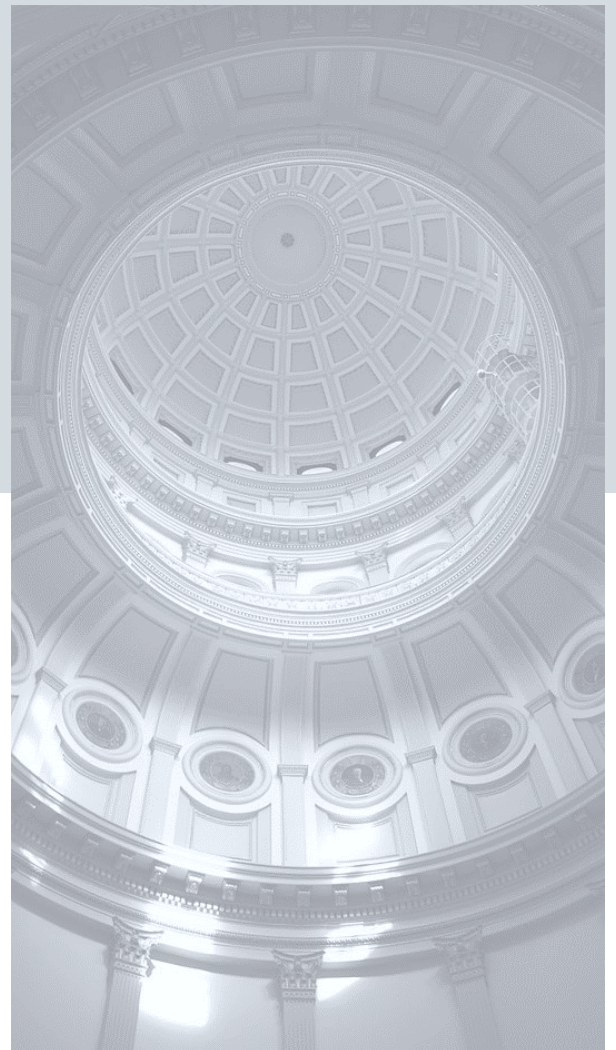
COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2023 Sunset Review

Connect Colorado to Enhance
Economic Development,
Telehealth, Education and Safety
Act



October 13, 2023



COLORADO

Department of
Regulatory Agencies

Executive Director's Office

October 13, 2023

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Pursuant to section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on October 15.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient, and inclusive regulations that reduce barriers to entry into various professions and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed an evaluation of the Connect Colorado to Enhance Economic Development, Telehealth, Education and Safety Act. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2024 legislative committee of reference.

The report discusses the question of whether there is a need for the Broadband Deployment Board provided under Section 119 of Article 37.5 of Title 24, C.R.S. The report also discusses the effectiveness of the Governor's Office of Information Technology in carrying out the intent of the statutes and makes recommendations for statutory changes for the review and discussion of the General Assembly.

To learn more about the sunset review process, among COPRRR's other functions, visit coprrr.colorado.gov.

Sincerely,

Patty Salazar
Executive Director





Sunset Review: Connect Colorado to Enhance Economic Development, Telehealth, Education and Safety Act

Background

What is the purpose of the Broadband Deployment Board?

The Connect Colorado to Enhance Economic Development, Telehealth, Education and Safety Act creates the Broadband Deployment Board (Board) in the Governor's Office of Information Technology. The purpose of the Board is to allocate funds for new capital broadband projects that will provide broadband services in unserved areas within Colorado.

Where do the funds come from?

The funds allocated by the Board are derived from the High Cost Support Mechanism (HCSM), which is administered in the Colorado Public Utilities Commission. The HCSM is a surcharge (universal service charge) of 2.6 percent on wireless and traditional telephone land lines.

Additionally, the Board is responsible for allocating broadband deployment funds that were received from the Federal Coronavirus State Fiscal Recovery Fund, which was created in the American Rescue Plan Act of 2021. Thirty-five million dollars were available for broadband deployment.

How are grants awarded?

To apply for a grant, an applicant must provide several pieces of information, which include but are not limited to the following:

- Ensure that the proposal for broadband deployment is in an unserved area;

- Demonstrate that the proposed project is a new project, and not a project in progress or in an area that is already funded; and
- Ensure grant funds will only be used for infrastructure deployment and not for on-going operating costs.

How many grants have been awarded?

The Board awarded a total 93 of HSCM and American Rescue Plan Act grants from calendar year 2016 through 2023.

How much HCSM and American Rescue Plan Act Funds were awarded by the Board for broadband deployment?

In fiscal year 21-22, the Board allocated \$3,636,071 HCSM and \$18,733,521 American Rescue Plan Act funds.

Key Recommendations

- **Continue the Connect Colorado to Enhance Economic Development, Telehealth, Education and Safety Act for five years, until 2029.**

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Background

Sunset Criteria

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are guided by statutory criteria and sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether the program under review is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To address the second sunset criterion--whether conditions that led to the initial creation of the program have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the fifth sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency or the agency's board performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the fourteenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

¹ Criteria may be found at § 24-34-104, C.R.S.

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review. While not necessarily exhaustive, the table below indicates where these criteria are applied in this sunset report.

**Table 1
Application of Sunset Criteria**

Sunset Criteria	Where Applied
(I) Whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare.	<ul style="list-style-type: none"> • Profile of the Program
(II) Whether the conditions that led to the initial creation of the program have changed and whether other conditions have arisen that would warrant more, less, or the same degree of governmental oversight.	<ul style="list-style-type: none"> • History of Regulation
(III) If the program is necessary, whether the existing statutes and regulations establish the least restrictive form of governmental oversight consistent with the public interest, considering other available regulatory mechanisms.	<ul style="list-style-type: none"> • Legal Framework
(IV) If the program is necessary, whether agency rules enhance the public interest and are within the scope of legislative intent.	<ul style="list-style-type: none"> • Legal Framework •
(V) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters.	<ul style="list-style-type: none"> • Legal Framework • Program Description and Administration • Recommendation 1
(VI) Whether an analysis of agency operations indicates that the agency or the agency's board or commission performs its statutory duties efficiently and effectively.	<ul style="list-style-type: none"> • Program Description and Administration
(VII) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.	<ul style="list-style-type: none"> • Legal Framework • Program Description and Administration
(VIII) Whether regulatory oversight can be achieved through a director model.	<ul style="list-style-type: none"> • Recommendation 1
(IX) The economic impact of the program and, if national economic information is not available, whether the agency stimulates or restricts competition.	<ul style="list-style-type: none"> • Profile of the Program
(X) If reviewing a regulatory program, whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession or regulated entity.	<ul style="list-style-type: none"> • Not Applicable

Sunset Criteria	Where Applied
(XI) If reviewing a regulatory program, whether the scope of practice of the regulated occupation contributes to the optimum use of personnel.	<ul style="list-style-type: none"> Program Description and Administration
(XII) Whether entry requirements encourage equity, diversity, and inclusivity.	<ul style="list-style-type: none"> Not Applicable
(XIII) If reviewing a regulatory program, whether the agency, through its licensing, certification, or registration process, imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses, certifications, or registrations that the agency denied based on the applicant's criminal history, the number of conditional licenses, certifications, or registrations issued based upon the applicant's criminal history, and the number of licenses, certifications, or registrations revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification.	<ul style="list-style-type: none"> Not Applicable
(XIV) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.	<ul style="list-style-type: none"> Not Applicable

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR's website at coprrr.colorado.gov.

The functions of the Connect Colorado to Enhance Economic Development, Telehealth, Education and Safety Act, which created the Broadband Deployment Board (Board) and the related functions of the Governor's Office of Information and Technology (Office of Information Technology), as enumerated in Section 119 of Article 37.5 of Title 24, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2024, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed purpose of the Board should be continued and to evaluate the performance of the Office of Information and Technology. During this review, the Board must demonstrate that it serves the public interest. COPRRR's findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff interviewed Office on Information and Technology staff, members of the Board, industry members, and officials with state and national professional associations; and reviewed grant applications, Colorado statutes and rules.

The major contacts made during this review include, but are not limited to:

- American Association of Retired Persons (AARP)
- Broadband Deployment Board Members
- Colorado Telecommunications Association
- Governor's Office of Information and Technology
- Lumen
- Public Utilities Commission staff

Profile of the Program

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first criterion asks whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare.

To understand the need for the program, it is first necessary to recognize what it does and who it serves.

Generally, broadband refers to high-capacity transmission technologies that transmit data, voice and video at high speeds. The Federal Communications Commission ruled that in order to be considered broadband internet, the service is required to offer download speeds of at least 25 megabits per second and upload speeds of at least 3 megabits per second.²

There are several different types of broadband, including:³

- Digital subscriber line (DSL),
- Cable modem,
- Fiber,
- Wireless,
- Satellite, and
- Broadband over powerlines.

Digital subscriber lines (DSL) transmit data through copper wires that already exist from telephone lines in businesses and residential homes.⁴

Cable modems enable transmission of data by the coaxial cables used by cable companies.⁵

Generally, fiber broadband utilizes fiber optic technology and converts electrical signals to light. The electrical signals carry data to consumers. Once converted to light, the light is sent through transparent glass fibers.⁶

² Investopedia. *What is Broadband High-Speed Internet and How Does it Work?* Retrieved June 21, 2023, from <https://www.investopedia.com/terms/b/broadband.asp>

³ Investopedia. *What is Broadband High-Speed Internet and How Does it Work?* Retrieved June 21, 2023, from <https://www.investopedia.com/terms/b/broadband.asp>

⁴ Investopedia. *What is Broadband High-Speed Internet and How Does it Work?* Retrieved June 21, 2023, from <https://www.investopedia.com/terms/b/broadband.asp>

⁵ Investopedia. *What is Broadband High-Speed Internet and How Does it Work?* Retrieved June 21, 2023, from <https://www.investopedia.com/terms/b/broadband.asp>

⁶ Investopedia. *What is Broadband High-Speed Internet and How Does it Work?* Retrieved June 21, 2023, from <https://www.investopedia.com/terms/b/broadband.asp>

Wireless broadband transmits data via radio signals to consumers.⁷

Satellite broadband transmits data from satellites in the earth's orbit.⁸

Broadband over powerlines transmits data over existing powerlines.⁹

The Broadband Deployment Board (Board) was established by the General Assembly to allocate funds for new capital projects related to providing broadband services in unserved areas within Colorado. The funds allocated by the Board are derived from the High Cost Support Mechanism (HCSM), which is administered in the Colorado Public Utilities Commission. The HCSM is a surcharge (universal service charge) of 2.6 percent on wireless and traditional telephone land lines.

Importantly, although not subject to this sunset review, in 2021, Congress passed the Infrastructure Investment and Jobs Act (Act), which among other things, provides funds for broadband infrastructure. At the time of this writing, the exact amount of funds the state of Colorado will receive is not available; however, it is estimated that Colorado will receive more than \$800 million for broadband deployment.

For profit entities, nonprofit telephone cooperatives or nonprofit rural electric associations are eligible to apply for HCSM funds through the Board.

Additionally, the Board is responsible for allocating broadband deployment funds that were received from the Federal Coronavirus State Fiscal Recovery Fund, which was created in the American Rescue Plan Act of 2021. Thirty-five million dollars were available for broadband deployment.¹⁰

The ninth sunset criterion questions the economic impact of the program and, if national economic information is not available, whether the agency stimulates or restricts competition.

Broadband delivers positive economic outcomes to individuals and businesses. In fact, researchers have concluded that higher levels of broadband in communities lead to economic growth, higher incomes and lower unemployment.¹¹

⁷ Investopedia. *What is Broadband High-Speed Internet and How Does it Work?* Retrieved June 21, 2023, from <https://www.investopedia.com/terms/b/broadband.asp>

⁸ Investopedia. *What is Broadband High-Speed Internet and How Does it Work?* Retrieved June 21, 2023, from <https://www.investopedia.com/terms/b/broadband.asp>

⁹ Investopedia. *What is Broadband High-Speed Internet and How Does it Work?* Retrieved June 21, 2023, from <https://www.investopedia.com/terms/b/broadband.asp>

¹⁰ § 24-37.5-119(4)(b)(I), C.R.S.

¹¹ Brookings. *Digital Prosperity: How Broadband Can Deliver Health and Equity to All Communities*. Retrieved August 16, 2023, from www.brookings.edu/articles/digital-prosperity-how-broadband-can-deliver-health-and-equity-to-all-communities/

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset and second sunset criteria question:

Whether regulation or program administration by the agency is necessary to protect the public health, safety, and welfare; and

Whether the conditions that led to the initial creation of the program have changed and whether other conditions have arisen that would warrant more, less or the same degree of governmental oversight.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

House Bill 14-1328 enacted the Connect Colorado to Enhance Economic Development, Telehealth, Education and Safety Act, which created the Broadband Deployment Board (Board). Originally, the Board was comprised of 16 members and was housed in the Executive Director's Office of the Department of Regulatory Agencies (DORA). The Board was created to implement and administer the deployment of broadband service in unserved areas.

House Bill 21-1289 (HB 1289), among other things, provided \$35 million for the Board to grant applicants. These funds were derived from the federal American Rescue Plan Act of 2021 and provided funds to state governments for broadband deployment. House Bill 1289 also relocated the Board from DORA to the Governor's Office of Information Technology (Office of Information Technology).

This is the Board's initial sunset review.

Legal Summary

The third, fourth, fifth and seventh sunset criteria question:

Whether the existing statutes and regulations establish the least restrictive form of governmental oversight consistent with the public interest, considering other available regulatory mechanisms;

Whether agency rules enhance the public interest and are within the scope of legislative intent;

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters; and

Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.

A summary of the current statutes and rules is necessary to understand whether the law is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

Section 24-37.5.119, C.R.S., creates the Board, the primary purpose of which is to allocate High Cost Support Mechanism (HCSM) funds for the deployment of broadband services in unserved areas in Colorado. Applicants for funds provide information that the area to be served is an unserved area by including the following:¹²

- Submitting a map and a list of household addresses demonstrating the insufficient availability of broadband service in the area;
- The board of county commissioners, city council, or other local entity with authority over the area to be served; and
- All incumbent providers or incumbent broadband providers that provide broadband internet service or broadband service in the area.

The funds are maintained in the Broadband Administrative Fund, which is located in the Colorado State Department of the Treasury.¹³

Additionally, the Board is responsible for allocating funds for broadband deployment of money that was received from the Federal Coronavirus State Fiscal Recovery Fund,

¹² § 24-37.5-119(9)(a)(II)(A), C.R.S.

¹³ § 24-37.5-119(4)(a), C.R.S.

which was created in the American Rescue Plan Act of 2021. Thirty-five million dollars were available for broadband deployment.¹⁴

Currently, the Board consists of 11 voting members, which are as follows:¹⁵

- One voting member from the Office of Information Technology, appointed by the Governor,
- Three voting members representing local entities,
 - One of whom is a county commissioner from the Eastern Plains and is appointed by the President of the Senate,
 - One of whom is a county commissioner from the Western Slope and is appointed by the Speaker of the House of Representatives, and
 - One of whom represents a rural city or town as a mayor, or city councilperson and is appointed by the Governor;
- Five voting members representing the broadband industry,
 - One of whom represents a wireless provider and is appointed by the President of the Senate,
 - One of whom represents a wireline provider and is appointed by the Speaker of the House of Representatives,
 - One of whom represents a broadband satellite provider and is appointed by the Minority Leader of the House of Representatives,
 - One of whom represents a cable provider and is appointed by the Minority Leader of the Senate, and
 - One of whom represents a rural wireline provider and is appointed by the Minority Leader of the Senate; and
- Two public members,
 - One of whom resides in an unserved area of the Western Slope and is appointed by the Governor, and
 - One of whom resides in an unserved area of the Eastern Plains and is appointed by the Minority Leader of the House of Representatives.

The Board is required to establish a request for proposal process for up to 60 percent of the HCSM funds to award grants that will serve unserved areas in Colorado, including Indian reservations.¹⁶ HCSM funds are generated from a 2.6 percent surcharge on voice over internet protocol, wireless phones and traditional land line telephones.

The Board is also required to establish a grant award process that does the following:¹⁷

- Allows an applicant to apply for grants on multiple projects in a given year, and the Board may approve more than one project in a given year;
- Ensures the geographically equitable distribution of grant awards;

¹⁴ § 24-37.5-119(4)(b)(I), C.R.S.

¹⁵ § 24-37.5-119(7)(d), C.R.S.

¹⁶ § 24-37.5-119(9)(a)(V)(A), C.R.S.

¹⁷ §§ 24-37.5-119(9)(k) and (9)(l), C.R.S.

-
- Requires the Board to consider appeals alleging that the application area is no longer unserved due to federal support that improves a broadband network for service locations that are adjacent to the area receiving a federal award and are within the application area;
 - Establishing reporting and accountability requirements for a project receiving support from HCSM funds;¹⁸ and
 - Provides for an appeals process for any party aggrieved by an award or denial of grant funds:
 - Applicants filing an appeal submit a speed test performed on an incumbent's network, the speed test is required to be performed in accordance with industry-standard speed-test protocols identified by the Federal Communications Commission.¹⁹

The Office of Information Technology is required to submit maps to the Board identifying critically unserved areas, and the Board utilizes these maps when reviewing applications for appeals.²⁰

¹⁸ § 24-37.5-119(9)(I), C.R.S.

¹⁹ § 24-37.5-119(9)(a)(VII), C.R.S.

²⁰ § 24-37.5-119(9)(a)(VI)(A), C.R.S.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The fifth, sixth and seventh sunset criteria question:

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;

Whether an analysis of agency operations indicates that the agency or the agency's board or commission performs its statutory duties efficiently and effectively; and

Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

Section 24-37.5.119, C.R.S., creates the Broadband Deployment Board (Board), the primary purpose of which is to allocate High Cost Support Mechanism (HCSM) funds for the deployment of broadband services in unserved areas in Colorado. The Board is housed in the Governor's Office of Information Technology (Office of Information Technology).

Additionally, the Board is responsible for allocating funds for broadband deployment of money that was received from the Federal Coronavirus State Fiscal Recovery Fund, which was created in the American Rescue Plan Act of 2021 (ARPA). Thirty-five million dollars were available for broadband deployment.²¹

Currently, the Board consists of 11 voting members, which are as follows:²²

- One voting member from the Office of Information Technology appointed by the Governor,
- Three voting members representing local entities,
 - One of whom is a county commissioner from the Eastern Plains and is appointed by the President of the Senate,
 - One of whom is a county commissioner from the Western Slope and is appointed by the Speaker of the House of Representatives, and

²¹ § 24-37.5-119(4)(b)(I), C.R.S.

²² § 24-37.5-119(7)(d), C.R.S.

- One of whom represents a rural city or town as a mayor, or city councilperson and is appointed by the Governor;
- Five voting members representing the broadband industry,
 - One of whom represents a wireless provider and is appointed by the President of the Senate,
 - One of whom represents a wireline provider and is appointed by the Speaker of the House of Representatives,
 - One of whom represents a broadband satellite provider and is appointed by the Minority Leader of the House of Representatives,
 - One of whom represents a cable provider and is appointed by the Minority Leader of the Senate,
 - One of whom represents a rural wireline provider and is appointed by the Minority Leader of the Senate; and
- Two public members,
 - One of whom resides in an unserved area of the Western Slope and is appointed by the Governor, and
 - One of whom resides in an unserved area of the Eastern Plains and is appointed by the Minority Leader of the House of Representatives.

The Broadband Office (Office), which is located in the Office of Information Technology, is responsible for the administrative functions related to the Board. Specifically, Office staff is responsible for a variety of oversight duties, including but not limited to preparing update-to-date maps for the Board highlighting current unserved broadband areas in Colorado, preparing meeting agendas, taking meeting minutes, and advising Board members on funding issues.

Table 2 details the total number full-time equivalent (FTE) employees associated with the Board.

**Table 2
FTE Employees Associated with the Board**

Fiscal Year	FTE
17-18	1.0
18-19	1.5
19-20	1.5
20-21	1.0
21-22	2.0

In fiscal year 21-22, there were 2.0 FTE associated with the Board. The Director (1.0 FTE) of the Office, is responsible for, among other things, providing up-to-date maps detailing unserved areas in Colorado that do not have broadband, as well as ensuring that administrative functions related to the Board are met.

The Office also employs a Broadband Specialist (1.0 FTE) who is responsible for, among things, reviewing grant applications, managing grant portfolios to ensure that payments are prompt and accurate and establishing Board meet agendas.

Also, in fiscal year 21-22, the Office's expenditures were \$202,504.

Broadband Board Grant Awards

The eleventh sunset criteria question whether the scope of practice of the regulated occupation contributes to the optimum use of personnel.

In part, COPRRR utilizes this section of the report to evaluate the program according to these criteria.

The Board is primarily a grant-awarding body. The grants are funded through two primary streams: the HCSM and ARPA.

The HCSM, which is administered by the Colorado Public Utilities Commission, represents a surcharge (universal service charge) of 2.6 percent on wireless and traditional telephone land lines.

The federal Coronavirus State Fiscal Recovery Fund, which was created in ARPA, is also intended for broadband deployment. Thirty-five million dollars were made available for broadband deployment.²³

To apply for a grant, an applicant must provide several pieces of information, which include but are not limited to the following:

- Ensure that the proposal for broadband deployment is in an unserved area, which includes the proposed project area either:
 - Outside of municipal boundaries or is within a city with a population of fewer than 7,500 inhabitants; and consists of households that lack access to at least one provider of a broadband network that uses satellite technology and at least one provider of a broadband network that uses non-satellite technology; or
- Demonstrate that the proposed project is a new project, and not a project in progress or in an area that is already funded;
- Ensure grant funds will only be used for infrastructure deployment and not for on-going operating costs. Funds will be used to provide last mile service, which is defined as the portion of broadband service that delivers an internet connection to an end user. Proposed projects may include middle mile or other infrastructure necessary to provide last mile connections to a broadband network.

²³ § 24-37.5-119(4)(b)(I), C.R.S.

For profit entities, nonprofit telephone cooperatives or nonprofit rural electric associations are eligible to apply for HCSM and ARPA funds through the Board.

Table 3 illustrates, for the fiscal years indicated, the dollar value of the HCSM grants awarded by the Board.

Table 3
HCSM Grant Funds Awarded

Fiscal Year	HCSM Grants Awarded
17-18	\$13,603,378
18-19	\$11,161,656
19-20	\$14,100,692
20-21	\$11,689,825
21-22	\$3,636,071

As Table 3 indicates, the amount of grants awarded in fiscal year 21-22 increased substantially from the previous fiscal year. Office staff stated that the increase in grants awarded was attributable to the General Assembly’s allocation of APRA monies for one funding cycle only in fiscal year 20-21. In fiscal year 21-22, there were two funding cycles.

Additionally, Table 4 highlights the total number of grant funds issued in the five fiscal years indicated related to funding from ARPA; the General Assembly allocated \$35 million for broadband deployment.

Table 4
American Rescue Plan Act Broadband Grant Funds

Fiscal Year	Grants Awarded
17-18	\$0
18-19	\$0
19-20	\$0
20-21	\$12,535,855
21-22	\$18,733,521

As Table 4 illustrates, the Board distributed over \$31 million of the available \$35 million in fiscal years 20-21 and 21-22.

Table 5 below illustrates, for the calendar years indicated, the number of grant applications received, and the number of grants awarded by the Board. Further, beginning in 2019, the Board implemented two funding cycles (winter and summer -

represented by “W” for winter and “S” for summer in the table below). The winter deadline for applications is January 15, and the deadline for summer grant applications is July 15. In calendar years 2016 through the 2023 winter cycle, the Board allocated approximately \$85 million for broadband deployment.

**Table 5
Total Awards Granted in Calendar Years 2016 through 2023**

	All applications	HCSM awardees	American Rescue Plan Act awardees
2016	15	8	Not Applicable
2017	14	7	Not Applicable
2018	16	7	Not Applicable
W 2019	15	5	Not Applicable
S 2019	20	12	Not Applicable
W 2020	20	5	Not Applicable
S 2020	15	8	Not Applicable
W 2021	34	8	Not Applicable
S 2021	38	13	5
W 2022	21	4	10
W 2023	18	8	2
Total	226	76	17

As Table 5 indicates, the Board, in calendar years 2016 through winter deadline 2023, awarded 76 grants from HCSM funds and 17 grants from ARPA funds for broadband deployment in unserved areas throughout the state. In fact, there were a number of counties where broadband deployment was installed, including, but not limited to:

- Lincoln,
- Logan,
- Sedgwick,
- Weld,
- Teller,
- El Paso,
- Mesa, and
- Douglas.

Once the Board approves a grant application, the grants are funded on a reimbursement basis. In other words, businesses submit documentation that certain work has been completed related to broadband deployment, then they submit documentation for reimbursement. For HCSM funds, the Office of Information Technology staff submits

the appropriate paperwork for reimbursement to the PUC staff. PUC staff utilizes a third-party administrator to ultimately disburse the funds to the appropriate business.

ARPA grants are also available to businesses on a reimbursement basis. These funds are reimbursed through the Office of Information Technology, not the PUC.

Additionally, Table 4 shows that some grant applications were not approved for funding by the Board for HCSM or American Rescue Plan Act. Although the reasons the Board denies funding for HCSM grants varies, most commonly, the Board does not approve HCSM funds due to an applicant failing to meet the following requirements:²⁴

- Providing broadband in an unserved area. The applicant must provide information that demonstrates that the proposed project area is either:
 - Outside of municipal boundaries or is within a city with a population of fewer than 7,500 inhabitants and consists of households that lack access to at least one provider of a broadband network that uses satellite technology and at least one provider of a broadband network that uses non-satellite technology; or
- Demonstrating that the project is new. The proposed project must be a new project and not an existing project or one that has already been funded. The Board may consider phased projects if the phase for which funding is being requested would not otherwise be completed without funding from the Broadband Fund.
- Funding Usage. Grant funds may only be used for infrastructure deployment and not for on-going operating costs. Funds must be used to provide last mile service, which is defined as the portion of broadband service that delivers an internet connection to an end user. Proposed projects may include middle mile or other infrastructure necessary to provide last mile connections to a broadband network.

The Board also denied grant applications related to ARPA funds. The Board did not approve applications based on one or all the following criteria not being met:²⁵

- Identify need for broadband. The project must provide broadband service to households with an identified need for such infrastructure.
- Internet speed - Adequacy of Design. Upon completion, the project must:
 - Reliably meet or exceed symmetrical 100 megabits per second (Mbps) download and upload speeds; or
 - In cases where it is not practicable, because of the excessive cost of the project or geography or topography of the area to be served by the project, to provide service reliably meeting or exceeding symmetrical 100 Mbps download speed and upload speeds:

²⁴ Colorado Broadband Office. *Broadband Deployment Board Grant Award Policy*. Retrieved July 7, from <https://drive.google.com/file/d/1XtYj-3WRfGazmYD1JqvFzMLuxOQ9l7bg/view>

²⁵ Colorado Broadband Office. *Broadband Deployment Board Grant Award Policy*. Retrieved July 7, from <https://drive.google.com/file/d/1XtYj-3WRfGazmYD1JqvFzMLuxOQ9l7bg/view>

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- Reliably meet or exceed 100 Mbps download speed and between at least 20 Mbps and 100 Mbps upload speed; and
 - Be scalable to a minimum of 100 Mbps download speed and 100 Mbps upload speed;
 - Low-Income Households. The Applicant must agree to:
 - Participate in the Federal Communications Commission’s Affordable Connectivity Program (ACP); or
 - Otherwise provide access to a broad-based affordability program to low-income consumers in the project area of the broadband infrastructure that provides benefits to households commensurate with those provided under the ACP.
 - Complete Application. The Applicant must:
 - Apply using the most recent application form,
 - Answer all questions, and
 - Provide all attachments.

The Board has an appeal process in place for anyone, including the applicant or other parties, such as an incumbent provider. Appeals are required to be submitted to the Board within seven days of the initial decision of the Board.²⁶

Any non-appealing party, which includes anyone who may have any comment on the Board’s decision, may submit a one-page reply to the Board within seven days from the appeal deadline.²⁷

Upon receiving all the information related to an appeal, the Board evaluates the information and renders a final decision concerning the appeal.

In 2016 to summer 2023, there were 59 appeals to grants and 27 were of those appeals the Board overturned its decision and awarded the money granted and 32 were denied related to HCSM funds. Also, from winter 2021 through summer 2023, there eight appeals with three granted and five denied related to ARPA funds.

²⁶ Colorado Broadband Office. *Broadband Deployment Board Grant Award Policy*. Retrieved July 7, from <https://drive.google.com/file/d/1XtYj-3WRfGazmYD1JqvFzMLuxOQ9l7bg/view>

²⁷ Colorado Broadband Office. *Broadband Deployment Board Grant Award Policy*. Retrieved July 7, from <https://drive.google.com/file/d/1XtYj-3WRfGazmYD1JqvFzMLuxOQ9l7bg/view>

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

Recommendation 1 – Continue the Connect Colorado to Enhance Economic Development, Telehealth, Education and Safety Act for five years, until 2029.

The Connect Colorado to enhance Economic Development, Telehealth, Education and Safety Act (Act) creates the Broadband Deployment Board (Board), the primary purpose of which is to allocate High Cost Support Mechanism (HCSM) funds for the deployment of broadband services in unserved areas in Colorado.

Additionally, the Board is responsible for allocating funds for broadband deployment that was received from the Federal Coronavirus State Fiscal Recovery Fund, which was created in the American Rescue Plan Act of 2021 (ARPA). Thirty-five million dollars were available for broadband deployment.²⁸

Currently, the Board consists of 11 voting members, which are as follows:²⁹

- One voting member from the Office of Information Technology, appointed by the Governor,
- Three voting members representing local entities,
 - One of whom is a county commissioner from the Eastern Plains and is appointed by the President of the Senate,
 - One of whom is a county commissioner from the Western Slope and is appointed by the Speaker of the House of Representatives, and
 - One of whom represents a rural city or town as a mayor, or city councilperson and is appointed by the Governor;
- Five voting members representing the broadband industry,
 - One of whom represents a wireless provider and is appointed by the President of the Senate,
 - One of whom represents a wireline provider and is appointed by the Speaker of the House of Representatives,
 - One of whom represents a broadband satellite provider and is appointed by the Minority Leader of the House of Representatives,
 - One of whom represents a cable provider and is appointed by the Minority Leader of the Senate,
 - One of whom represents a rural wireline provider and is appointed by the Minority Leader of the Senate; and
- Two public members,

²⁸ § 24-37.5-119(4)(b)(I), C.R.S.

²⁹ § 24-37.5-119(7)(d), C.R.S.

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- One of whom resides in an unserved area of the Western Slope and is appointed by the Governor, and
 - One of whom resides in an unserved area of the Eastern Plains and is appointed by the Minority Leader of the House of Representatives.

The Broadband Office (Office), which is located in the Governor's Office of Information Technology is responsible for the administrative functions related to the Board. Specifically, Office staff is responsible for a variety of oversight duties, including, but not limited to preparing up-to-date maps for the Board highlighting current unserved broadband areas in Colorado, preparing meeting agendas, taking meeting minutes, and advising Board members on funding issues.

As the data in Tables 3 and 4 of this sunset report indicate, the Board has allocated approximately \$85 million in HCSM and ARPA funds for broadband deployment.

The disbursement of available of funds related to broadband deployment is important because it provides consumers internet access in unserved areas in Colorado. Modern society depends on broadband connections for everything from on-line education to everyday business transactions. Thus, broadband access is necessary to protect the public.

Today, consumers depend on broadband making access necessary to protect the public.

The fifth sunset criterion asks whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively. As mentioned earlier, the Board has allocated approximately \$85 million for broadband deployment in unserved areas in the past five fiscal years, thereby demonstrating its effectiveness. Also, from calendar year 2018 through the winter grant cycle, more than 25,000 households will have broadband access through the grants allocated by the Board.

Additionally, the eighth sunset criterion asks whether regulatory oversight can be achieved through a director model. As previously highlighted, the Board has allocated approximately \$85 million for broadband deployment, which has demonstrated its effectiveness, as well as highlighting the transparent and public process of allocating funds.

However, although not subject to this sunset review, in 2021, Congress passed the Infrastructure Investment and Jobs Act (Act), which among other things, provides funds for broadband infrastructure. The State of Colorado will receive more than \$800 million for broadband deployment. It is unclear if the allotment from the Act will achieve the Governor's goal to connect 99 percent of households to high-speed internet by 2027. If the allotment is sufficient to achieve this goal, then perhaps the Board will be no longer necessary, but to date, it is unclear whether the means will achieve the intended goal.

Therefore, the General Assembly should continue the Act for five years, until 2029. Doing so will allow additional time to determine whether the funds allocated within the Act concerning broadband deployment will be sufficient to achieve the Governor's broadband deployment goal.