

STATE OF NEW MEXICO

NEW MEXICO PUBLIC REGULATION COMMISSION

REQUEST FOR PROPOSALS
FOR
ADMINISTRATOR FOR STATE RURAL UNIVERSAL SERVICE FUND

October 6, 2017

P.E.R.A. Building
1120 Paseo de Peralta/P.O. Box 1269
Santa Fe, NM. 87504-1269

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PART I

A. PURPOSE OF THIS REQUEST FOR PROPOSALS

The State of New Mexico's Public Regulation Commission ("Commission") is requesting proposals from persons qualified to administer the State Rural Universal Service Fund ("Fund") on behalf of and under the supervision and control of the Commission pursuant to the provisions of NMSA 1978, § 63-9H-6 as amended, and Commission Rule 17.11.10 NMAC (the current rule attached as Appendix D to this RFP). In addition, the NMRUSF Administrator will perform the ongoing monthly LITAP administration duties subject to the requirements of the Final Rule in Case No. 05-00313-UT and NMPRC rules found in 17.11.11 NMAC, and rule amendments outlined in Commission orders clarifying 17.11.11 NMAC in Case No. 17-00319-UT, and ongoing payments for Broadband Program administration duties subject to NMAC 17.11.10.31.

The Commission and the Department of Finance and Administration have determined that even though the Universal Service Fund are not considered to be public funds, it is a best practice to follow where practicable the State Procurement Code when considering the award of a professional services contract for fund management and administrative services under for the State Universal Service Fund.

B. INTRODUCTION AND GENERAL INFORMATION

The Commission is a state agency created under Art. XI, § 1 of the New Mexico Constitution and pursuant to the New Mexico Public Regulation Commission Act, NMSA 1978, §§ 8-8-1 through 8-8-21, as amended. The Commission's offices are located in the P.E.R.A. Building, 1120 Paseo de Peralta, Santa Fe, NM 87501.

The Commission is charged with regulating telecommunications carriers and the provision of telecommunications services in the state. The Fund is a multi-million dollar fund created pursuant to the provisions of the Rural Telecommunications Act, NMSA 1978, §§ 63-9H-1, et seq. (2005). Under the Rural Telecommunications Act, the Commission is required to select a neutral third party administrator to administer the Fund. (NMSA 1978, § 63-9H-6.G, as amended.) The administrator is primarily responsible for the collection of contributions to the Fund assessed on telecommunications providers and the disbursement of Fund monetary support to eligible recipients. The administrator shall be reasonably compensated for its services from Fund monies.

The Fund must operate in a manner that is equitable and nondiscriminatory in its collection and distribution of funds, and provide a specific, predictable and sufficient support mechanism that maintains reductions of intrastate switched access charges to interstate switched access charge levels in a revenue-neutral manner and ensures universal service in the State as specified in NMAC 17.11.10 NMAC, and all other purposes that may be determined by the Commission to fall within the purposes of Rural Telecommunications Act, NMSA 1978,

§ 63-9H-1, et seq. Currently a Low Income Telephone Assistance Program(LITAP) and the New Mexico State Universal Service Fund Broadband Program are also funded through the New Mexico Rural Universal Service Fund.

C. SUMMARY OF SCOPE OF WORK

The scope of work shall consist of managing the day to day operations of the Fund, under the Commission's rules and subject to Commission's overall direction and supervision. The Contractor will play a key role in recommending the size of the Fund and the revenue requirements that individual New Mexico eligible telecommunications carriers (state ETC's), as designated by the Commission, will require in monetary support payments from the Fund in order to carry out the purposes of the fund as established by statute and Commission rules. The Contractor will also play a key role in recommending Contribution requirements from telecommunications carriers established as a surcharge on retail intrastate telecommunications revenues or per connection charge to adequately provide for the size of the fund determined to be required. The Contractor will make regular reports to the Commission on Fund activities as established by rule, order, and Commission approved procedures as well as submitting a yearly financial statement to the Commission. Reports will include Fund collections and disbursements, administrative expenditure information and administrative contract cost projections.

The Contractor shall administer the fund using best practices in accordance with sound accounting principles and pursuant to all applicable laws. The Contractor shall exercise due diligence in regard to investing the fund and the preservation of assets. The Contractor shall propose to the Commission an Investment Policy consistent with the NM State Treasurer's Investment Policy and subject to Commission's approval. The administrator will keep the Commission fully advised as to the investments and deposits of the Fund. The Commission shall have the right at any time to direct how and where the amounts in the fund shall be invested or deposited. Unless otherwise directed by the Commission, all amounts in the Fund that are not invested in one or more securities shall be deposited in banks that are headquartered in New Mexico.

The Contractor shall handle the collection and disbursement of Fund monies, develop and maintain the necessary databases and reporting forms to administer the program, collect information from contributing companies and entities eligible to receive support from the Fund, accurately account for monies in the Fund, and perform other activities necessary to administer the Fund as provided by law, rules and regulations, and Commission orders.

The contract shall begin on March 1, 2018 or as soon as practicable thereafter. The Commission may terminate the contract should changes in law or rules repealing the existence of the administrative structure of the Fund occur. Either party may terminate the contract in accordance with the Sample Professional Services Contract attached as Appendix B to this RFP. *The scope of work is set forth in more detail in the proposed form of contract found in Attachment B; Scope Work Attachment 1 (General Administration and Access Reduction Program), Scope of Work Attachment 2 (LITAP Program), and Scope to Work Attachment 3 (Broadband Program) to this RFP.* The Commission may in the future expand the purpose of the Fund, which may increase or reduce the scope of work to be performed by the administrator as permitted by applicable law (recently revised by Senate Bill 308, enacted in the 2017 Regular Session of the New Mexico Legislature). Should that occur, the Commission may

request the Administrator to negotiate mutually agreeable rates, terms and conditions with respect to the changes in the scope or work.

The contract shall be substantially in the form of Appendix B to this RFP, including Scope of Work Attachment 1 (General Administration and Access Reduction Program, Scope of Work Attachment 2 (LITAP Program), and Work Attachment 3 (Broadband Program). In all likelihood, the Scope of Work will change over time and therefore the contract provides a process for renegotiation and early termination.

D. SCOPE OF PROCUREMENT

The scope of procurement includes the establishment of a professional services contract for the administration of the Fund. The duties of the contractor, as administrator of the Fund shall include the day to day management of the operation of the fund under the overall supervision and direction of the Commission, and shall include the following responsibilities:

1. Fairly, consistently, and efficiently administering Fund collections and disbursements in accordance with Commission rules and subject to Commission oversight;
2. Unless the Commission directs where and how the amounts in the Fund shall be deposited and/or invested, establishing an account or accounts in one or more independent financial institutions that are headquartered in New Mexico and ensuring that the monies deposited in the Fund are insured to the practical maximum extent permitted by federal law and that they earn a return commensurate with that of state funds held on deposit in banks or other financial institutions;
3. Ensuring that the Fund complies with all necessary requirements for exemption from federal, state and local taxes;
4. Recommending the establishment of procedures, consistent with the Commission's procedural rules and law, for protecting information submitted confidentially;
5. Reporting to the Commission on Fund activities;
6. Developing an annual proposed budget and submitting an annual financial statement to the Commission;
7. Developing uniform procedures and forms to identify exempt customers, in consultation with contributing companies;
8. Creating and maintaining databases necessary to administer the program and account for the funds;

9. Developing appropriate forms for use in collecting information from contributors and eligible telecommunications carriers;
10. Paying approved administrative expenses out of the Fund in accordance with the budget set by the Commission;
11. Petitioning the Commission to institute an enforcement action when the administrator finds that it is otherwise unable to collect amounts properly due from a contributing company;
12. Conducting such reviews as are necessary to ensure that each contributor is making its required contributions to the Fund and that support from the Fund is used for the purpose of the Fund; and
13. Completing the tasks detailed in the Scope of Work Section containing Attachments 1 (General Administration and Access Reduction), 2 (LITAP Program), and 3 (Broadband Program) to Attachment B.

E. PROCUREMENT MANAGER

1. The PRC has designated a Procurement Manager who is responsible for the conduct of this procurement whose name, address and telephone number is listed below.

Annette Reynolds
Chief Procurement Officer
NM Public Regulation Commission Administrative Services Division
P.O. Box 1269
Santa Fe, New Mexico 87501
(505) 827-4394

All deliveries via express carrier should be addressed as follows:

Annette Reynolds
Chief Procurement Officer
NM Public Regulation Commission
Administrative Services Division
1120 Paseo de Peralta
Santa Fe, New Mexico 87501

Any inquiries regarding this procurement should be submitted to the Procurement Manager in writing. Offerors may contact ONLY the Procurement Manager regarding the procurement. Other state employees do not have the authority to respond on behalf of the Commission.

F. DEFINITIONS

This section contains definitions that are used in this procurement document, including appropriate abbreviations.

"Agency" means the New Mexico Public Regulation Commission.

"Commission" or "PRC" means the New Mexico Public Regulation Commission.

"Contract" means an agreement for the procurement of professional services.

"Contractor" means the Offeror selected by the Commission pursuant to this Request for Proposals with which the Commission enters into a professional services contract.

"Determination" means the written documentation by the Procurement Manager of an Agency decision, including facts supporting the decision. A determination becomes part of the procurement file to which it pertains. This definition does not apply to the use of the term "determination" in the appendices to this RFP.

"Desirable" -The terms "may," "can", "should," "preferably," or "prefers" identify a desirable or discretionary item or factor.

"Evaluation Committee" means a body appointed by the Commission management to perform the evaluation of Offerors proposals.

"Evaluation Committee Report" means a report prepared by the Procurement Manager and the Evaluation Committee for submission to the Commission for contract award. It contains all written determinations resulting from the conduct of a procurement requiring the evaluation of competitive sealed proposals.

"Finalist" means an Offeror that meets all the mandatory specifications of the Request for Proposals and whose score on evaluation factors is sufficiently high to qualify that Offeror for further consideration by the Evaluation Committee.

"Mandatory" — The terms "must," "shall," "will," "is required," or "are required" identify a mandatory item or factor. An Offeror's failure to meet a mandatory item or factor will result in the rejection of the Offeror's proposal.

"Offeror" is any person, corporation, or partnership that submits a proposal.

"Request for Proposals" or "RFP" means all documents, including those attached or incorporated by reference, used for soliciting proposals.

"Responsible Offeror" means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that its financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services described in the proposal.

"Responsive Offer" or "Responsive Proposal" means an offer or proposal that conforms in all material respects to the requirements set forth in the request for proposals. Material aspects of responses to the request for proposals include, but are not limited to, price, quality, quantity and delivery requirements.

PART II

CONDITIONS GOVERNING THE PROCUREMENT

This section of the RFP contains the schedule for the procurement, describes the major procurement events and the conditions governing the procurement.

A. SEQUENCE OF EVENTS

The Procurement Manager will make every effort to adhere to the following schedule:

#	Action	Responsibility	(Date Deadline)
1	Issuance of RFP	Agency	10/06/2017
2	Pre-Proposal Conference	Agency	10/16/2017
3	Distribution List Response	Potential Offerors	10/19/2017
4	Deadline to Submit Written Questions	Potential Offerors	10/25/2017
5	Response to Written Questions/RFP Amendments	Agency	11/03/2017
6	Submission of Proposal	Offeror	11/27/2017
7	Proposal Evaluation	Evaluation Committee	11/30/2017 through 12/08/2017
8	Selection of Finalist(s)	Evaluation Committee	12/13/2017
9	Best and Final Offers	Offeror	12/18/2017
10	Oral Presentations (if needed)	Offeror	1/5/2018
11	Finalize Contract	Agency, Offeror	1/12/2018
12	Contract Award	Agency	01/19/2018
13	Protest Deadline	Offeror	02/04/2018
14	Effective date of Contract	N/A	03/01/2018

B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Part II, Paragraph A.

1. Issuance of RFP

The Commission is issuing this RFP for professional services.

2. Pre-Proposal Conference

A pre-proposal conference will be held on Monday, October 16, 2017 1:30 p.m. Mountain Standard Time in Room 553, Legal Division Conference Room, New Mexico Public Regulation Commission, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico 87501. Potential Offerors are encouraged to submit written questions in advance of the conference to the Procurement Manager. Additional questions may be submitted at the conference. All written questions will be addressed either at the conference or in follow-up communications from the Procurement Manager. A public log will be kept of the names of potential Offerors that attend the pre-proposal conference.

Attendance at the pre-proposal conference is not a prerequisite for submission of a proposal.

3. Distribution List Response

Potential Offerors should hand deliver or return by registered or certified mail the "Acknowledgment of Receipt Form" (Appendix A) that accompanies this document to have their organization placed on the procurement distribution list. The form should be signed by an authorized representative of the organization, dated and returned by close of business on October 19, 2017. The procurement distribution list will be used for the distribution of written responses to questions and any RFP amendments.

Failure to return this form shall constitute a presumption of receipt and rejection of the RFP, and the potential Offeror's organization name shall not appear on the distribution list.

4. Deadline to Submit Additional Questions

Potential Offerors may submit written questions about the RFP until close of business on October 25, 2017. All written questions must be addressed to the Procurement Manager.

5. Response to Written Questions/RFP Amendments

Any written responses to written questions and any RFP amendments will be distributed on November 3, 2017 to all potential Offerors whose organization name appears on the procurement distribution list. An Acknowledgment of Receipt Form will accompany the distribution package. The form should be signed by the Offeror's representative, dated, and returned by the date indicated thereon.

6. Submission of Proposal

ALL OFFEROR PROPOSALS MUST BE RECEIVED FOR REVIEW AND EVALUATION BY THE PROCUREMENT MANAGER OR DESIGNEE **NO LATER THAN 5:00 P.M. MOUNTAIN STANDARD TIME ON NOVEMBER 27, 2017.** Proposals received

after this date and time will not be accepted. The date and time received will be recorded on each proposal. Proposals must be addressed and delivered to the Procurement Manager at the address listed in Part I, Paragraph E. Proposals must be labeled on the outside of the package to clearly indicate that they are in RESPONSE TO THE ADMINISTRATOR OF STATE RURAL UNIVERSAL SERVICE FUND

Request for Proposals. Proposals submitted by facsimile will not be accepted. A public log will be kept of the names of all Offeror organizations that submit proposals. Pursuant to NMSA 1978, Section 13-1-116, the contents of any proposal shall not be disclosed to competing Offerors prior to contract award.

7. Proposal Evaluation

An evaluation committee appointed by PRC management will perform the evaluation of proposals. This process will take place between November 30, 2017, and December 8, 2017. Before or during this time, the Procurement Manager may, at his option, initiate discussions with Offerors who submit responsive or potentially responsive proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT BE initiated by the Offerors.

8. Selection of Finalist(s)

The Evaluation Committee will select and the Procurement Manager will notify finalists on December 13, 2017. Only finalist(s) will be invited to participate in the subsequent steps of the procurement. If the Evaluation Committee requests an oral presentation, the schedule for the oral presentation will be determined at that time.

9. Best and Final Offers from Finalists

Finalist Offerors may be asked to enter into negotiations with the Evaluation Committee and/or to submit revisions to their proposals for the purpose of obtaining best and final offers by December 18, 2017. Best and final offers may also be clarified or amended at the finalist Offeror's oral presentation.

10. Oral Presentation by Finalist(s)

Finalist Offerors may be required to present their proposals orally to the Evaluation Committee. The Procurement Manager will schedule the time for Offerors' presentations. Any such presentations will be held at the Public Regulation Commission place of business in the P.E.R.A. Building in Santa Fe, New Mexico. Each presentation will be limited to two (2) hours in duration. Oral presentations, if deemed necessary by the Evaluation Committee, will be scheduled on or about January 5, 2018.

11. Finalize Contract

The contract will be finalized with the most advantageous Offeror on January 12, 2018. In the event that mutually agreeable terms cannot be reached within the time specified, the Agency reserves the right to finalize a contract with another advantageous Offeror without undertaking a new procurement process.

12. Contract Award

Subject to approval by the Commission, the agency will provisionally award the contract on or about January 19, 2018. This date is subject to change at the discretion of the agency management. This agreement shall become effective March 1, 2018.

The contract shall be awarded to the Offeror whose proposal is most advantageous to the Agency, taking into consideration the evaluation factors set forth in the RFP. The most advantageous proposal may or may not have received the most points.

The contract is subject to appropriate State approvals.

13. Protest Deadline

Any protest by an Offeror must be timely and in conformance with NMSA 1978, § 13-1-172, and applicable procurement regulations. The fifteen (15) calendar day protest period shall begin on the day following the contract award and will end as of close of business fifteen calendar days later. A Protest must be written and must include the name and address of the protestor and a reference to this RFP. It must also contain a statement of grounds for protest including appropriate supporting exhibits, and it must

specify the ruling requested. The protest must be delivered to the Procurement Manager at the following address:

Annette Reynolds
Chief Procurement Officer
NM Public Regulation Commission
Administrative Services Division
1120 Paseo de Peralta
P.O. Box 1269
Santa Fe, New Mexico 87501
(505) 827-4394

Protests received after the deadline will not be accepted.

C. GENERAL REQUIREMENTS

The procurement will be conducted in accordance with the State of New Mexico Procurement Code, NMSA 1978 §§ 13-1-21 et seq. and applicable regulations.

1. Acceptance of Conditions Governing the Procurement

Offerors must indicate their acceptance of the Conditions Governing the Procurement (Part II of this RFP) in the letter of transmittal. Submission of a proposal constitutes acceptance of the evaluation factors contained in Part V of this RFP.

2. Incurring Cost

Any cost incurred by the Offeror in preparation, transmittal, or presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Offeror.

3. Prime Contractor Responsibility

Any contract resulting from this RFP shall specify that the prime contractor is solely responsible for fulfillment of the contract with the Commission. The Commission will authorize payments from the Fund for services rendered under the contract only to the prime contractor. Additionally, the Commission will only authorize payments from the Fund for the work performed by employees of the prime contractor that are approved by the Commission. The prime contractor shall receive the prior written approval of the Project Manager to be selected by the Commission before substituting or replacing any approved employee with another employee.

4. Subcontractors

All services performed under a contract entered into pursuant to this procurement must be performed by the contractor unless the Commission approves in writing the subcontracting of any such services.

5. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. An amended proposal must be a complete replacement for a previously submitted proposal and must be clearly identified as such in the transmittal letter. Commission personnel will not merge, collate, or assemble proposal materials.

6. Offeror's Rights to Withdraw Proposal

Offerors will be allowed to withdraw their proposal at any time prior to the deadline for receipt of proposals. The Offeror must submit a written withdrawal request signed by the Offeror's duly authorized representative addressed to the Procurement Manager.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

7. Proposal Offer Firm

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or forty-five (45) days after receipt of a best and final offer if one is submitted.

8. Disclosure of Proposal Contents

The proposals will be kept confidential until the Commission and the Contractor have entered into a contract. At that time, all proposals and documents pertaining to the proposals will be open to the public, except for proprietary or confidential material that falls within an exception to the general requirement of disclosure set forth in the Inspection of Public Records Act, NMSA 1978, 14-2-1 et seq., including but not limited to data that qualifies as a trade secret under the Uniform Trade Secrets Act, NMSA 1978, Sections 57-3A-1 to 57-3A-7.

When an Offeror believes that material submitted with its proposal is proprietary or confidential and is subject to an exception in the Inspection of Public Records Act, it shall stamp or imprint "proprietary" or confidential on that material and shall arrange that material in its

submission in such a way that it is readily separable from the remainder of the materials submitted with the proposal in order to facilitate eventual public inspection of the non-confidential portion of the proposal. Proprietary or confidential data is normally restricted to confidential financial information concerning the Offeror's organization and the cost of services proposed shall not be designated as proprietary or confidential information.

If the Procurement Manager or the Commission receives a request for disclosure of data for which an Offeror has made a written request for confidentiality, the Procurement Manager shall examine the request and make a written determination that specifies which portions of the proposal should be disclosed. The proposal will be disclosed in conformity with the Procurement Manager's determination unless a court of competent jurisdiction enters an order prohibiting or restricting disclosure. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential data that falls within an exception stated in the Inspection of Public Records Act.

9. No Obligation

This procurement in no manner obligates the State of New Mexico or any of its agencies to the acceptance of or payment, including any payment from the State Universal Service Fund, for services offered until a valid written contract is awarded and approved by the appropriate authorities.

10. Termination

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when the Commission determines such action to be in the best interest of the State of New Mexico.

11. Sufficient Authorization

Any contract awarded as a result of this RFP process may be terminated if sufficient authorization does not exist. Sending written notice to the Contractor will effect such termination. The Commission's decision as to whether sufficient authorization exists will be accepted by the contractor as final.

12. Commitment to be bound by RFP Requirements

By submitting a response to this RFP, each Offeror agrees to be

bound by the General Requirements contained in this RFP.

13. Governing Law

This procurement and any agreement with Offerors that may result shall be governed by the laws of the State of New Mexico.

14. Basis for Proposal

Only information supplied by the Commission in writing through the Procurement Manager or in this RFP should be used as the basis for the preparation of Offeror's proposals.

15. Contract Terms and Conditions

The contract between the Commission and a Contractor will follow the format specified by the Commission and generally contain the terms and conditions set forth in this RFP and Appendix B, "Sample Professional Services Contract." However, the Agency reserves the right to negotiate provisions in addition to those contained in this RFP and Appendix B, or to negotiate modifications of such terms, with the successful Offeror.

If an Offeror objects to any of the Commission's terms and conditions, as contained in this RFP or in Appendix B, that Offeror must propose specific alternative language that is acceptable to the Commission. General references to the Offeror's terms and conditions in a proposed contract, or attempts at wholesale substitutions of other language for language that appears in the form of contract in Appendix B are not acceptable to the Commission and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact of each proposed change, as well as the specific proposed alternate wording.

16. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions that they request to have included in a contract with the Commission.

17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the Agency and the selected Offeror and shall not be deemed an opportunity to amend the Offeror's proposal.

18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the Offeror to adhere to the requirements specified in this RFP. The Evaluation Committee will reject the proposal of any Offeror who is not a responsible Offeror or fails to submit a responsive offer as defined in NMSA 1978, Sections 13-1-83 and 13-1-85.

19. Right to Waive Minor Irregularities

The Evaluation Committee reserves the right to waive minor deviations from the requirements of this RFP and to decide what constitutes such a minor deviation. The Evaluation Committee also reserves the right to waive departures from mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. The exercise of this right is at the sole discretion of the Evaluation Committee and the Commission.

20. Change in Contractor Representatives

The Commission reserves the right to require a change in contractor representatives if the assigned representatives are not, in the opinion of the Commission, meeting its needs adequately.

21. Notice of Penalties

The Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

22. Agency Rights

The Commission reserves the right to accept all or a portion of an Offeror's proposal subject to the Offeror's consent.

23. Right to Publish

Throughout the duration of this procurement process and contract term, potential Offerors, Offerors and Contractors must secure from the Commission written approval prior to release of any information that pertains to the potential work or activities covered by this procurement or the subsequent contract. Failure to adhere to this requirement may result in disqualification of the Offeror's proposal or termination of the contract.

24. Ownership of Proposals

All documents submitted in response to this Request for Proposals shall become the property of the Commission and the State of New Mexico. However, any technical or user documentation submitted with the proposals of non-selected Offerors shall be returned, if such an Offeror so requests, after the expiration of the protest period.

25. Electronic mail address required

Communication regarding this procurement may be conducted by electronic mail. Offeror must have a valid e-mail address to receive this correspondence and must provide it to the Procurement Manager.

26. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. If accepted by such means, the Offeror acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the Agency, the version maintained by the Agency shall govern.

27. Payments to Contractor to be Made From the Fund, Not Public Money

Payments for the Contractor's services are to be made from money in the Fund. The Contractor will have responsibility for collecting money for the Fund from contributing telecommunications carriers. (NMSA 1978, § 63-9H-6 G.) Money deposited in the Fund is not public money. (NMSA 1978, § 63-9H-6 B). Accordingly, no public money will be available to pay the Contractor under a contract to be entered into pursuant to this RFP, and neither the Commission, nor the State, nor any employee nor agent of either the Commission or the State will be responsible for making payments to the Contractor in the event that the Fund balance is insufficient to pay for any of Contractor's services.

28. Obligations From the Fund to ETCs

Obligations to Eligible Telecommunications Carriers funded from the New Mexico Universal Service Fund are not liabilities of the State of New Mexico should there be a shortfall in contributions to the Fund.

29. Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form, Appendix C, as part of their proposal. This requirement applies regardless whether a covered contributions was made or not made for the positions of Governor and Lieutenant Governor or other identified official. Failure to complete and return signed unaltered form will result in disqualification.

PART III

RESPONSE FORMAT AND ORGANIZATION

A. NUMBER OF RESPONSES

Offerors shall submit only one proposal.

B. NUMBER OF COPIES

Each Offerors shall deliver five (5) identical copies of its proposal to the location specified in Part I, Paragraph E on or before the closing date and time for receipt of proposals.

C. PROPOSAL FORMAT

All proposals must be typewritten on standard 8 x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and bound with tabs delineating each section.

1. Proposal Organization

The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated, unless marked optional.

Section 1

Letter of Transmittal
Table of Contents
Proposal Summary (Optional)
Response to Mandatory
Specifications Response to
Desirable Specifications

Section 2

Completed Cost Response Form (Appendix E to this RFP)

Response to Agency Conditions Governing the Procurement (Part II of this RFP)

Response to proposed form of contract (Appendix B to this RFP)

Any Additional Terms and Conditions proposed by Offeror (Optional)

Section 3

Other Supporting Material (Optional)

Within each section of its proposal, the Offeror should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal.

Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.

The proposal summary may be included by an Offeror to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced in other portions of the Offeror's proposal.

Offerors may attach other materials that they feel may improve the quality of their responses. These materials should be included as "Other Supporting Material" in Section 3.

2. Letter of Transmittal

A letter of transmittal must accompany each proposal. The letter of transmittal MUST:

Identify the submitting organization;

Identify the name and title of the person authorized by the organization to contractually obligate the organization;

Identify the name, title and telephone number of the person or persons authorized to negotiate the contract on behalf of the organization;

Identify the names, titles and telephone numbers of persons to be

contacted for clarification;

Explicitly indicate acceptance of the Conditions Governing the Procurement, as required by Part II, Paragraph C.1.;

Be signed by a person authorized to contractually obligate the organization;

Acknowledge receipt of any amendments to this RFP issued prior to the date of submittal of the proposal.

PART IV

SPECIFICATIONS

Offerors should respond in the form of a thorough narrative to each mandatory specification. The narrative(s) along with required supporting materials will be evaluated and awarded points accordingly.

A. Information

1. Agency Resources

No Commission in-house resources are available to contractor personnel for use on this contract.

2. Level of Effort

The contractor will work on an as-needed basis.

3. Time Frame

Services under the contract are scheduled to begin upon award.

B. Mandatory Specifications

1. Corporate Experience

Offeror must submit a statement of relevant corporate experience, including experience of any subcontractors. The documentation must thoroughly describe how the Offeror has supplied expertise for similar contracts and work related to administering state universal service funds or similar programs, and must describe the extent of Offeror's experience and expertise relevant to the duties of the Fund Administrator, including but not limited to managing, collecting, distributing of funds and accounting for funds, expertise in the design, testing, and implementation

of procedures and computer systems related to collection of data and monthly collection/disbursement of funds. The documentation must also describe Offeror's knowledge and expertise in current telecommunications technology, law, and policy.

Private sector companies, individuals or non-profit organizations are required to submit indicators of financial stability along with the proposal. For example, a private company must submit its most recent audited financial statement or a certified public accountant-compiled financial report. Non-profit organizations must submit an audited, a certified public accountant - compiled financial report or similar document. Individuals must submit documents which depict their financial stability, such as an audited proprietorship financial statement, statement from a certified public accountant or banker, or a statement from vendors or suppliers. Similar proof of financial responsibility is also required of any subcontractor that is expected to provide substantial services under the contract.

The proposal must contain evidence of adequate protection against claims of liability against the Fund administrator, including evidence of the contractor's ability to secure a performance bond in a sufficient amount to cover the monies in the Fund.

2. Corporate References

Proposals must include three (3) external client references from clients who received similar services. In addition, three (3) references must be submitted for each proposed subcontractor. The minimum information that must be provided about each reference is:

- a. Name of individual or company services were provided for
- b. Address of individual or company
- c. Name of contact person
- d. Telephone number of contact person
- e. Type of services provided and dates services were provided

3. Offeror Staff Experience

Offerors must submit resumes of all proposed professional, managerial or administrative staff members who will be performing services under the contract. Experience narratives shall be attached that describe the specific relevant experience of the staff members in relation to the role that member will perform for this contract. The narrative(s) must include the name of the individual(s) proposed and should include a thorough description of the education, knowledge, and relevant experience as well as certifications or other professional credentials.

4. Proposed Staff References

One external client reference for each proposed staff member must be provided. The minimum information that must be provided about each reference is:

- a. Name of individual or company services were provided for
- b. Address of individual or company
- c. Name of contact person
- d. Telephone number of contact person
- e. Type of services provided and dates services were provided

5. Project Plan

Offerors must submit a thorough project plan as part of the proposal. At a minimum, the project plan must include the initial financial implementation and conversion, if required from the prior administrator, including a milestone chart showing the conversions and transfer tasks to be performed, the time frame and proposed staff member designated for the completion of each task. Project plans must reasonably specify the activities to be undertaken to carry out the duties of the Fund administrator. Project plan schedules should show beginning and ending dates for each major task, event, activity and milestone as well as the names of persons responsible for each. Offeror should include any other information that is appropriate and that has not been covered elsewhere in this RFP.

6. Cost

Offerors must propose an annual budget for administration of the Fund. Budgeted costs must be justified in terms of activities and must be reasonable and necessary to efficiently administer the Fund. Resources must be adequately and appropriately managed in a cost-effective and prudent business manner. Budgeted labor costs must be broken out by position, labor costs per hour, and the estimated number of hours per activity. Total loaded costs shall be the sum of the hourly rates proposed for each of the employees directly performing services under the contract plus minimal travel and estimated NM gross receipts. No separate amounts for employee benefits, overhead or other similar employee-related costs shall be included in the proposed annual budget. The Offeror should include a proposed payment schedule for reimbursement of any capital costs over the term of the contract. The Offeror should propose an annual budget in total, and also estimate the LITAP and Broadband Program ongoing administration tasks in Scope of Work Attachments 2 and 3 to Appendix B.

7. Surety Bond or Other Form of Financial Guaranty

Offerors must include in their proposal their agreement to provide some

form of financial guarantee covering the monies in the Fund against misappropriation or other dishonest acts of Offeror's employees, theft or mismanagement, including any of the following:

1. A surety bond in a form to be approved by the Commission;
2. An irrevocable letter of credit; or
3. Any other form of financial guarantee approved by the Commission.

8. Oral Presentation and/or Negotiations

If selected as a finalist, the Offeror agrees to provide the Evaluation Committee the opportunity to interview proposed staff members identified by the Evaluation Committee in the finalist notification letter at the oral presentation if an oral presentation is desired by the Agency. In addition, the Offeror agrees that if it is selected as a finalist and, if the Agency chooses to afford the Offeror an opportunity for further negotiations regarding the terms of a contract, as permitted by NMSA 1978, § 13-1-115, the Offeror will engage in such negotiations with the Agency prior to finalization of contract terms.

C. Desirable Specifications

Offeror should also describe clearly and as completely as possible proposed procedures to ensure accuracy of data reported current or proposed accounting procedures used to separately track and account for costs of administering the Fund, potential problems in administration of the Fund, and methods to identify and resolve such problems. The Offeror should also include a description of the Offeror's proposed annual carrier reviews to be conducted on carrier contributions to the fund and uses of support from the fund as required by 17.11.10.12.L NMAC.

Offerors should include in their proposals documentation of the extent of their knowledge regarding accounting programs and databases.

Offerors should provide with their proposals copies of appropriate professional certifications.

Offerors should include in their proposals samples of work performed for previous clients.

Offerors should include in their proposals additional information to assist the Commission in determining whether the Offeror:

- (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.

PART V. EVALUATION

A. Evaluation Point Summary

New Mexico Preference: The Commission has determined that the Procurement Code provisions regarding resident business preference contained in NMSA978, § 13-1-21 Application of preferences (E) (point based system) are applicable to this contract:

§ 13-1-21 Application of preferences (E)

E. When a public body makes a purchase using a formal request for proposals process, and the contract is awarded based on a point-based system, the public body shall award an additional of the equivalent of:

- (1) five percent of the total possible points to a resident business; and
- (2) ten percent of the total possible points to a resident veteran business that has annual revenues of one million dollars (\$1,000,000) or less.

Bidder on the Contract desiring to receive any type of resident preference should formally submit the exact type in compliance with NMSA 1978, § 13-1-22. Resident business, resident veteran business, resident contractor and resident veteran contractor certification;

“a contractor shall submit with its bid or proposal a copy of a valid resident business certificate, valid resident veteran business certificate, valid resident contractor certificate or valid resident veteran contractor certificate issued by the taxation and revenue department.”

The following is a summary of evaluation factors with point value assigned to each. These, along with the general requirements, will be used in the evaluation of Offeror proposals.

<u>FACTOR</u>	<u>POINTS AVAILABLE</u>
1. Corporate Experience	6. Co
2. Corporate References	st
3. Proposed Staff Experience	7. Or
4. Proposed Staff References	al
5. Project Plan	Pre
	TOTAL

100
100
150
100
150
300
100
1,000

B. Evaluation Factors

Points will be awarded on the basis of the following evaluation factors:

1. Corporate Experience (100 points)

The corporate experience of the Offeror including all subcontractors will be evaluated based upon documented experience on similar projects and engagements.

2. Corporate References (100 points)

Points for corporate references will be awarded based upon an evaluation of the Offeror's work for previous clients receiving similar services to those proposed by the Offeror for this contract.

3. Staff Experience (150 points)

Points for staff experience will be awarded based upon an evaluation of each staff member's experience as it relates to their role and the needs of this contract.

4. Individual References (100 points)

Points for individual references will be awarded based upon an evaluation of the individual's work performed for previous clients receiving similar services to those proposed for the staff member for this contract.

5. Project Plan (150 points)

Points will be awarded for this evaluation factor based upon the quality and thoroughness of the project plan.

6. Cost (300 points)

The Offeror with the lowest proposed total cost shall be awarded 300 points. Each of the other bidders shall be awarded points determined in accordance with the following formula: $(\text{lowest proposed total cost}/\text{other bidder's proposed total cost}) \times 300$.

7. Oral Presentation (100 points)

Points for the oral presentation will be awarded based upon an evaluation of the qualifications of proposed staff who participate in an oral presentation to the Agency. Effective communication, technical knowledge, experience with similar contracts and the quality of the responses to questions will be the

principal criteria for the evaluation.

C. Evaluation Process

The evaluation process will follow the steps listed below:

1. All Offeror proposals will be reviewed for compliance with the mandatory requirements stated in the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
2. The Procurement Manager may contact the Offeror for clarification of the response as specified in Part II, Paragraph B(7).
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Part II, Paragraph C(18).
4. Responsive proposals will be evaluated on the factors in Part V that have been assigned a point value, except for the oral presentation factor. The responsible Offerors with the highest scores will be selected as finalist Offerors based upon the proposals submitted. Finalist Offerors who are asked or choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. Points awarded from any oral presentations will be added to the previously assigned points to attain final scores. The responsible Offeror whose proposal is most advantageous to the Agency, taking into consideration the evaluation factors in Part V, will be recommended for contract award as specified in Part II, Paragraph B.12. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

APPENDIX A

Acknowledgement of Receipt Form

REQUESTS FOR PROPOSALS ADMINISTRATOR
STATE RURAL UNIVERSAL SERVICE FUND
ACKNOWLEDGEMENT OF RECEIPT FORM

In acknowledgement of receipt of this Request for Proposal the undersigned agrees that he/she has received a complete copy, beginning with the title page and table of contents, and ending with Appendix H.

The acknowledgement of receipt should be signed and returned to the Procurement Manager no later than close of business on October 19, 2017. Only potential Offerors who elect to return this form completed with the indicated intention of submitting a proposal will receive copies of all Offeror written questions and the Agency's written responses to those questions as well as RFP amendments, if any are issued.

FIRM: _____

REPRESENTED BY: _____

TITLE: _____ PHONE NO.: _____

E-MAIL: _____ FAX NO.: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

SIGNATURE: _____ DATE: _____

This name and address will be used for all correspondence related to the Request for Proposal.
Firm does/does not (**circle one**) intend to respond to this Request for Proposals.

RETURN THIS FORM TO:

Annette Reynolds
Chief Procurement Officer
NM Public Regulation Commission Administrative Services Division
P.O. Box 1269
Santa Fe, New Mexico 87501 Ph: (505) 827-4394
Fax: (505) 476-0474
E-Mail: annette.reynolds@state.nm.us

APPENDIX B

CONTRACT # _____

STATE OF NEW MEXICO
PROFESSIONAL SERVICES CONTRACT
FOR ADMINISTRATOR, STATE RURAL UNIVERSAL SERVICE FUND

THIS AGREEMENT is made and entered into by and between the Public Regulation Commission, State of New Mexico ("Agency" or "Commission"), P.O. Box 1269, Santa Fe, NM 87504, and [insert contractor name] ("Contractor") and [insert address].

IT IS AGREED BETWEEN THE PARTIES:

1. Scope of Work.

A. Definitions.

"Project Manager" means the individual assigned by the Procuring Agency to manage the project and administer this Agreement. For purposes of this project, the Project Manager shall be: _____.

"Project Plan" means a document approved by the Project Manager which includes a list of tasks to be performed and the time frame for the completion of each task. (All work under this Agreement shall be performed in accordance with an approved Project Plan as attached in the final contract document.).

"The Fund" means the State Universal Service Fund established pursuant to NMSA 1978, Section 63-9H-6.

B. Scope of Work:

The Contractor shall perform the work outlined in the Scope of work and Appendix B; Attachments 1,2,and 3 in accordance with a Project Plan.

Performance Measures, default by Contractor — Contractor shall substantially perform the tasks set forth in Attachments 1 through 3. In the event the Contractor fails to perform the tasks or obtain the results described in ~~those~~ Attachments, or the timelines or other criteria set forth in the Project Plan, the Commission may provide written notice to the Contractor of the default and specify a reasonable period of time in which the Contractor shall advise the Commission of specific steps that it has taken or will take to achieve these results in the future and the timetable for implementation. Nothing in this subparagraph shall be construed to prevent the Commission from exercising its right of early termination pursuant to Paragraph 4 below.

2. Compensation.

A. The Agency shall authorize payment from the Fund to the Contractor in full payment for services satisfactorily performed pursuant to the Scope of Work (Attachments 1 through 3) rendered at the billed hours for participating employees at the agreed-upon hourly rate for these employees included in the budget. and other non-personnel monthly prices as set forth and attached as “Annual Pricing for Contract Year 1 through 4” and made a part hereof, such compensation not to exceed [AMOUNT TO BE INSERTED], excluding gross receipts tax, in any one-year period commencing on the effective date of this Contract and on each anniversary date thereafter, during the four-year term of this contract. The Agency also shall authorize New Mexico gross receipts tax levied on the amounts payable to the Contractor in connection with services rendered under this Agreement to be paid from the Fund to the Contractor; that the Contractor is legally required to pay in connection with services and receipts rendered under this agreement.

The total amount of the monies payable to the Contractor under this Agreement, including gross receipts tax, shall not exceed [AMOUNT TO BE INSERTED] for the full four year term of the Agreement which amount excludes New Mexico gross receipts tax. The Agency is not responsible to payment of any gross receipts tax obligations of the Contractor under this contract. Payment to the Contractor shall be made only from monies in the Fund and not from state or other public monies. Payment to the Contractor shall be subject to and conditioned upon a sufficient balance in the Fund.

The maximum yearly payments set forth above assume that the Contactor will perform [NUMBER TO BE INSERTED] carrier audits per year, no more than [NUMBER TO BE INSERTED] performed onsite. In the event that the Commission requires a greater number of carrier audits, or on-site audits the parties shall renegotiate the relevant terms of this Agreement, including price, and may mutually enter into an amendment to this agreement.

Travel - For travel expenses incurred by the Contractor in the performance of this Agreement, the Commission shall reimburse the Contractor at the same per diem and mileage rates established for public employees in the rules of the New Mexico Department of Finance and Administration (DFA Rule 95-1) promulgated under the Per Diem and Mileage Act, NMSA 1978, §§10-8-1 through §§10-8-8 (there shall be no additional reimbursement for lodging or meals during travel). Contractor shall be reimbursed at actual cost for commercial airline tickets when required. Such tickets must be purchased at the lowest price available. Notwithstanding any other terms of this Agreement, there shall be no reimbursement for air travel or other travel expenses unless such expenditures are approved in advance by the Project Manager.

B. Payment in FY18, FY19, FY20, and FY21 is subject to availability of funds pursuant to the Appropriations Paragraph set forth below and to any negotiations between the parties from year to year pursuant to Paragraph 1, Scope of Work. All invoices MUST BE received by the Agency no later than fifteen (15) days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date WILL NOT BE PAID.

C. Contractor must submit a detailed statement accounting for all services performed and expenses incurred. If the Agency finds that the services are not acceptable, within thirty days after the date of receipt of written notice from the Contractor that payment is requested, it shall provide the Contractor a letter of exception explaining the defect or objection to the services, and outlining steps the Contractor may take to provide remedial action. Upon certification by the Agency that the services have been received and accepted, payment shall be tendered to the Contractor within thirty days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, the agency shall not incur late charges, interest, or penalties for failure to make payment within the time specified herein.

D. Invoices - Invoices shall be submitted to the Project Manager.

E. The Contractor will provide a mutually agreeable Guaranty of Performance as determined in the final offers and made a part hereof and attached as Attachment (___).

3. Term.

This Agreement shall become effective on **March 1, 2018, provided the contract is signed and agreed to by the agency and contractor.** This agreement shall terminate on February 28, 2022 unless terminated pursuant to paragraph 4 (Termination), or paragraph 5 (Appropriations), infra.

4. Termination.

A. This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least one hundred and twenty (120) calendar days prior to the termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. This Agreement also may be terminated immediately upon written notice to the Contractor, if the Contractor becomes unable to perform the services contracted for, as determined by the Agency or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of monies in the Fund. ***THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.***

In the event the Agency determines, in its sole discretion, that the Scope of Work should be modified due to a change in the applicable statute or rule or for any other reason, the Agency shall propose such changes to the Contractor and the parties shall negotiate modifications to this Agreement. If the parties fail to execute a revised agreement or an amendment to this Agreement within thirty (30) days following such notice, the Agency shall have the right to terminate this Agreement upon at least thirty (30) days notice to Contractor.

B. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice to the Contractor; (i) if the Contractor becomes unable to perform the services contracted for, as determined by the Agency; (ii) if, during the term of this Agreement, the Contractor is suspended or debarred by the State Purchasing Agent; or (iii) the Agreement

is terminated pursuant to Paragraph 5, "Appropriations", of this Agreement.

C. Liability.

Except as otherwise expressly allowed or provided under this Agreement, the Agency's sole liability upon termination shall be to pay for acceptable work performed prior to the Contractor's receipt or issuance of a notice of termination; provided, however, that a notice of termination shall not nullify or otherwise affect either party's liability for pre-termination defaults under or breaches of this Agreement. The Contractor shall submit an invoice for such work within thirty (30) days of receiving or sending the notice of termination. Notwithstanding the foregoing, this Agreement may be terminated immediately upon written notice of the Agency to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Agency or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents if indicted for fraud, embezzlement or other crime due to misuse of NMRUSF funds or due to the Appropriations paragraph herein. ***THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE AGENCY'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.***

D. Termination Management.

Immediately upon receipt by either the Agency or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Agency; 2) comply with all directives issued by the Agency in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Agency shall direct for the protection, preservation, retention or transfer of all property titled to the Agency and records generated under this Agreement. Any non-expendable personal property or equipment provided to or purchased by the Contractor with contract funds shall become property of the Agency upon termination and shall be submitted to the Agency as soon as practicable. Within two days after a notice of termination is received from the Agency, the Contractor shall furnish to the Agency a complete, detailed inventory of non-expendable personal property purchased with funds provided under the existing and previous Agency agreements with the Contractor; the property listed in the inventory report including client records and a final closing of the financial records and books of accounts which were required to be kept by the Contractor under the paragraph of this Agreement regarding financial records.

E. Reduction in Payments, Authorization and Sufficiency of Funds.

If the Agency proposes an amendment to the Agreement to reduce payments to the Contractor, the Contractor shall have the option to terminate the Agreement or agree to the reduced compensation, within sixty (60) days of receipt of the proposed amendment. Payments to the Contractor under this contract are contingent upon the existence of sufficient monies in the Fund, as determined by the Agency. The Agency's determination of the sufficiency or insufficiency of monies in the Fund to pay the Contractor shall be accepted by the Contractor and shall be final.

5. **Sufficiency of Contributions.**

The terms of this Agreement are contingent upon sufficient contributions from contributing telecommunications carriers to the Fund to ensure continuation of the program. If

sufficient contributions are not made to the Fund, the Agency may terminate this Agreement upon written notice from the Agency to the Contractor. The Agency's decision as to whether sufficient contributions are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

6. Status of Contractor.

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

7. Assignment.

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

8. Subcontracting.

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency. No such subcontract shall relieve the primary Contractor from its obligations and liabilities under this Agreement, nor shall any subcontract obligate direct payment from the Procuring Agency. The contractor shall request the Project Managers prior approval when replacing an existing employee with another employee.

9. Release.

Final payment of the amounts due under this Agreement shall operate as a release of the Agency, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

10. Confidentiality.

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency.

11. Product of Service -- Copyright.

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing developed or produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright

or other claim of ownership by or on behalf of the Contractor. Previously existing software developed by the Contractor and used with other customers may be specifically excluded by mutual agreement in the final contract.

12. Conflict of Interest; Governmental Conduct Act.

A. The Contractor represents and warrants that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further represents and warrants that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in anyway limiting the generality of the foregoing, the Contractor specifically represents and warrants that:

1) in accordance with § 10-16-4.3 NMSA 1978, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Agency employee while such employee was or is employed by the Agency and participating directly or indirectly in the Agency's contracting process;

2) this Agreement complies with § 10-16-7(A) NMSA 1978 because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by § 10-16-7(A) NMSA 1978 and this Agreement was awarded pursuant to a competitive process;

3) in accordance with § 10-16-8(A) NMSA 1978; (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Agency's making this Agreement;

4) this Agreement complies with § 10-16-9(A) NMSA 1978 because; (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by § 10-16-9(A) NMSA 1978, this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with § 10-16-13 NMSA 1978, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and

6) in accordance with § 10-16-3 and § 10-16-13.3 NMSA 1978, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Agency.

C. Contractor's representations and warranties in Paragraphs A and B of this Article 12 are material representations of fact upon which the Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's representations and warranties in Paragraphs A and B of this Article 12 were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Agency and notwithstanding anything in the Agreement to the contrary, the Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Article 12(B).

13. Amendment.

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

B. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding due to budget or other considerations, the Contractor shall, within thirty (30) days of receipt of the proposed Amendment, have the option to terminate the Agreement, pursuant to the termination provisions as set forth in Article 4 herein, or to agree to the reduced funding.

14. Merger.

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

15. Penalties for violation of law.

The Procurement Code, §§ 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

16. Equal Opportunity Compliance.

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical

condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law.

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with Section 38-3-1 (G) NMSA 1978. By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Workers Compensation.

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

19. Records and Financial Audit.

The Contractor shall maintain detailed time and expenditure records that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments.

20. Indemnification.

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement. In the event that any action, suit or proceeding related to the services performed by the Contractor or any officer, agent, employee, servant or subcontractor under this Agreement is brought against the Contractor, the Contractor shall, as soon as practicable but no later than two (2) days after it receives notice thereof, notify the legal counsel of the Agency and the Risk Management Division of the New Mexico General Services Department by certified mail.

21. New Mexico Employees Health Coverage.

A. If Contractor has, or grows to, six (6) or more employees who work, or who are expected to work, an average of at least 20 hours per week over a six (6) month period during the term of the contract, Contractor certifies, by signing this agreement, to have in place, and agree to maintain for the term of the contract, health insurance for those employees and offer

that health insurance to those employees if the expected annual value in the aggregate of any and all contracts between Contractor and the State exceed \$250,000 dollars.

B. Contractor agrees to maintain a record of the number of employees who have (a) accepted health insurance; (b) declined health insurance due to other health insurance coverage already in place; or (c) declined health insurance for other reasons. These records are subject to review and audit by a representative of the state.

C. Contractor agrees to advise all employees of the availability of State publicly financed health care coverage programs by providing each employee with, as a minimum, the following web site link to additional information: <http://insurenwemexico.state.nm.us/>.

22. Employee Pay Equity Reporting.

Contractor agrees if it has ten (10) or more New Mexico employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the PE10-249 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. If contractor has (250) or more employees contractor must complete and submit the PE250 form on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration. For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the PE10-249 or PE250 form, whichever is applicable, within thirty (30) days of the annual contract anniversary date of the initial submittal date or, if more than 180 days has elapsed since submittal of the last report, at the completion of the contract, whichever comes first. Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90 days) of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter. Contractor also agrees to levy this requirement on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90 days) of that subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

Notwithstanding the foregoing, if this Contract was procured pursuant to a solicitation, and if Contractor has already submitted the required report accompanying their response to such solicitation, the report does not need to be re-submitted with this Agreement.

23. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the

remainder of this Agreement shall not be affected and shall be valid and enforceable.

24. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

25. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Agency:

[insert name, address and email].

To the Contractor:

[insert name, address and email].

26. Authority.

If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represents and warrants that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor is necessary to enter into a binding contract.

27. Debarment And Suspension And Other Responsibility Matters.

A. Contractor certifies by signing this Agreement, that Contractor and Contractor's principals, if applicable, to the best of Contractor's knowledge and belief: (1) are not debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency; (2) have not, within a three-year period preceding the effective date of this Agreement, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property; (3) have not been indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, state or local) with commission of any of the

offenses enumerated above in this Paragraph; and, (4) have not, within a three-year period preceding the effective date of this Agreement, had one or more public Agreements or transactions (Federal, State or local) terminated for cause or default. If applicable, Contractor certifies that it and its principals have not been excluded from participation from Medicare, Medicaid or other federal health care programs pursuant to Title XI of the Social Security Act, 42 U.S.C. § 1320a.

B. Contractor’s certification in Paragraph A is a material representation of fact upon which the Agency relied when this Agreement was entered into by the parties. Contractor shall provide immediate written notice to the Agency if, at any time during the term of this Agreement, Contractor learns that Contractor’s certification in Paragraph A was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances. If it is later determined that Contractor’s certification in Paragraph A was erroneous on the effective date of this Agreement or has become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Agency, the Agency may terminate the Agreement.

C. Contractor shall require each proposed first-tier sub-Contractor whose subcontract will equal or exceed \$25,000, to disclose to the Agency whether as of the time of award of the subcontract, the sub-Contractor, or its principals, is or is not debarred, suspended, or proposed for debarment by any Federal department or agency. Contractor shall make such disclosures available to the Agency. If the sub-Contractor, or its principals, is debarred, suspended, or proposed for debarment by any Federal department or agency, the Agency may refuse to approve the use of the sub-Contractor.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau below.

By: _____ Date: _____
Agency

By: _____ Date: _____
Agency’s Legal Counsel – Certifying legal sufficiency

By: _____ Date: _____
Agency’s Chief Financial Officer

By: _____
Contractor

Date: _____

The records of the Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department of the State of New Mexico to pay gross receipts and compensating taxes.

ID Number: **00-000000-00-0**

ATTACHMENT 1 (TO APPENDIX B)

SCOPE OF WORK

GENERAL ADMINISTRATION AND ACCESS REDUCTION PROGRAM

The Contractor shall collect, administer and disburse money from the State Rural Universal Service Fund ("the Fund") under the supervision and control of the Commission pursuant to established criteria and rules promulgated by the Commission under NMSA 1978, § 63-9H-6(G).

Goals: Maintain reductions intrastate switched access charges to interstate switched access charge levels in a revenue-neutral manner and ensure universal telecommunications service in the state pursuant to the rules, orders and the policies established by the Commission.

Activities (to be undertaken subject to Commission roles, direction and oversight):

- a. develop and maintain written and electronic forms, procedures and instructions for all carriers to report for the collection of assessments as defined in the rules and refined in Commission orders for intra-state retail telecommunications revenues, or based on the number of communications connections, including NMUSF flow through revenues that are fund assessments that are passed through to ratepayers via an explicit charge or surcharge on monthly bills and collected along with customer payments for other monthly charges.
- b. carry out procedures for the protection of confidential information submitted for Fund purposes;
- c. maintain and update procedures and forms to identify exempt customers;
- d. ensure that all contributing companies and all ETCs promptly and accurately report required information;
- e. create and maintain databases necessary to administer the Fund;
- f. unless otherwise directed by the Commission, establish an account or accounts in one or more independent financial institutions that are headquartered and domiciled in New Mexico, 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. The Contractor shall administer the Fund using best practices in accordance with sound financial and accounting principles and pursuant to all applicable laws.

The Contractor shall exercise due diligence in regard to investing the fund and the preservation of assets. The Contractor shall propose to the Commission an Investment Policy consistent with the NM State Treasurer's Investment Policy and subject to Commission's approval. The administrator will keep the Commission fully advised as to the investments and deposits of the Fund and provide the Commission with full information regarding investment strategy of the Fund and alternatives balancing yield and risk.

- g. determine the amount (i.e., size) of the Fund annually, subject to Commission approval, on or before October 1 of each year.;
- h. determine the surcharge rate or per connection fee, subject to Commission approval, required to support the approved size of the Fund.
- i. monitor support payments to ETCs from the Fund and verifying that the amount of the payments are pursuant to amounts authorized by applicable Commission regulations and orders.
- j. monitor contributions from contributing telecommunications companies to insure they make timely and correct contributions to the Fund.
- k. prepare and submit reports to the Commission showing payments made to ETCs, revenues from assessments, interest and yield on investments, administrative costs, and projected ending fund balance on a frequency to be determined by the Commission, which shall not be less than quarterly.
- l. establish procedures to monitor completed intrastate access charge reductions to interstate levels and rate-balancing of increases in local exchange rates, and have a system in place to accommodate any additional changes that might be adopted by the Commission.
- m. calculate the amount of each contributing company's required contribution to the Fund;

- n. determine a schedule for monthly receipt of contributions to the Fund and monthly disbursements from the Fund;
- o. collect each contributing company's Fund contributions;
- p. make monthly disbursements from the Fund to ETCs;
- q. continuously monitor Fund balance and sufficiency to meet payment requirements; pro-rate payments in the case of an insufficient fund balance; and recommend to the Commission adjustments in contribution requirements as necessary;
- r. conduct, not less than once every year, sufficient carrier reviews to ensure that each contributing company is making its required contributions to the Fund and that support from the Fund is used for purpose of the Fund, and to submit a report to the Commission of the results of such review and recommendations to remedy any problems discovered in the course of the review.
- s. request contributing companies to make up any deficits, and refer unsuccessful attempts to collect contributions to the Commission for further action.
- t. maintain and make needed changes in databases necessary to administer the Fund.
- u. develop and maintain mailing lists and procedure manuals;
- v. provide the Commission with a financial statement of the fund and the administration of the Fund by February 15 of each year unless a waiver is approved.
- w. provide any other information that may be requested by the Commission regarding the Fund.

ATTACHMENT 2 (TO APPENDIX B)

SCOPE OF WORK

STATE LOW INCOME TELEPHONE ASSISTANCE PROGRAM ADMINISTRATION

The Contractor shall collect, administer and disburse money from the State Rural Universal Service Fund ("the Fund") under the supervision and control of the Commission pursuant to established criteria and rules promulgated by the Commission for the State Low Income Telephone Assistance Program;

- a. NMRUSF Administrator will perform the ongoing monthly LITAP administration duties subject to the requirements of the Final Rule in Case No. 05-00313-UT, Commission orders in Case No. 16-00319-UT, and NM PRC rules found in 17.11.11 NMAC.
- b. Eligible Telecommunications Carriers (ETCs) requesting LITAP reimbursements will be required to submit supporting documentation to NMRUSF Administrator on a monthly basis for review.
- c. ETCs will submit to NMRUSF Administrator copies of their FCC Form 497s filed with the Universal Service Administration Company (USAC). NMRUSF Administrator will review ETC LITAP requests for consistency with their FCC Form 497 data.
- d. In accordance with Commission guidelines, NMRUSF Administrator will review for reasonableness the documentation submitted by ETCs to substantiate amounts claimed for Lifeline and LinkUp administrative, advertising, voucher, and other expenses.
- e. NMRUSF Administrator will disburse LITAP support disbursements to ETCs on a monthly basis. ETCs that currently receive NMRUSF Access support and/or LITAP disbursements will receive a combined payment that includes a combination of Access support, LITAP and Broadband Program disbursements, as applicable. For ETCs that do not receive Access or Broadband Program support, NMRUSF Administrator will disburse separate LITAP payments. NMRUSF Administrator will use the current timeline in place for NMRUSF Access support disbursements. ETCs that receive LITAP reimbursement, Access and/or Broadband Program support will have their monthly assessments netted against the sum of ETC support program funding obligations. If an amount is due to the ETC, payment will be issued by the 30th of each month. For those ETCs that do not receive Access or Broadband Program support, their LITAP disbursement will be netted against the monthly assessment, and

if an amount is due to the ETC, payment will be issued by the 30th of each month.

ATTACHMENT 3 (TO APPENDIX B)

SCOPE OF WORK

NEW MEXICO RURAL UNIVERSAL SERVICE FUND BROADBAND PROGRAM ADMINISTRATION

The Contractor shall collect, administer and disburse money from the State Rural Universal Service Fund ("the Fund") under the supervision and control of the Commission pursuant to established criteria and rules promulgated by the Commission for the New Mexico Rural Universal Service Fund Broadband Program;

- a. NMRUSF Administrator will perform the ongoing Broadband Program administration duties subject to the requirements of the Final Rule in Case No. 17-00077-UT, and NMAC 17.11.10.31 NMAC and any other relevant Commission rule or order.
- b. Eligible Telecommunications Carriers (ETCs) qualifying for Broadband Program Funding per NMAC 17.11.10.31.(G)(6) will be required to submit supporting documentation to NMRUSF Administrator in conjunction with Commission Staff and/or consultants in the form and procedure mandated by NMAC 17.11.10.31.(H).
- c. In accordance with Commission guidelines, NMRUSF Administrator will review for reasonableness the documentation submitted by ETCs and confer with Commission Staff and/or consultants to substantiate amounts claimed for Broadband Program disbursements projects approved by the Commission.
- d. NMRUSF Administrator will disburse Broadband Program disbursements to ETCs upon fulfillment of the obligations for Broadband Program support per 17.11.10.31.(H)(2). ETCs that currently receive NMRUSF Access support and/or LITAP disbursements will receive a combined payment that includes a combination of Access support, LITAP and Broadband Program disbursements, as applicable. For ETCs that do not receive Access or LITAP support, NMRUSF Administrator will disburse separate Broadband Program payments. NMRUSF Administrator will use the current timeline in place for NMRUSF Access support disbursements. ETCs that receive LITAP reimbursement, Access and/or Broadband Program support will have their monthly assessments netted against the sum of ETC

support program funding obligations. If an amount is due to the ETC, payment will be issued by the 30th of each month. For those ETCs that do not receive Access or LITAP support, their Broadband Program disbursement will be netted against the monthly assessment, and if an amount is due to the ETC, payment will be issued by the 30th of each month.

APPENDIX C

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to NMSA 1978, § 13-1-191.1 (2006), any person seeking to enter into a contract with any state agency or local public body for professional services, a design and build project delivery system, or the design and installation of measures the primary purpose of which is to conserve natural resources must file this form with that state agency or local public body. This form must be filed even if the contract qualifies as a small purchase or a sole source contract. The prospective contractor must disclose whether they, a family member or a representative of the prospective contractor has made a campaign contribution to an applicable public official of the state or a local public body during the two years prior to the date on which the contractor submits a proposal or, in the case of a sole source or small purchase contract, the two years prior to the date the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor, a family member or a representative of the prospective contractor to the public official exceeds two hundred and fifty dollars (\$250) over the two year period.

Furthermore, the state agency or local public body shall void an executed contract or cancel a solicitation or proposed award for a proposed contract if: 1) a prospective contractor, a family member of the prospective contractor, or a representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or 2) a prospective contractor fails to submit a fully completed disclosure statement pursuant to the law.

THIS FORM MUST BE FILED BY EVERY PROSPECTIVE CONTRACTOR WHETHER OR NOT HE/SHE/IT, HIS/HER/ITS FAMILY MEMBER, OR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

"Applicable public official" means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

"Campaign Contribution" means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to either statewide or local office. "Campaign Contribution" includes the payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation

Title (Position)

---OR---

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)

Appendix D

PROPOSED STATE RURAL UNIVERSAL SERVICE FUND RULE

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, 1/1/2017]

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, 1/1/2017]

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, 1/1/2017]

17.11.10.4 DURATION: Permanent.
[17.11.10.4 NMAC - Rp, 17.11.10.4 NMAC, 1/1/2017]

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, 1/1/2017]

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, including commercial mobile radio services carriers as determined by the commission.
[17.11.10.6 NMAC - Rp, 17.11.10.6 NMAC, 1/1/2017]

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 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 10.0 mbps download/1.0 mbps upload. A household has access to broadband service if the household can readily subscribe to that service upon 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 4.0 mbps download/1.0 mbps upload. A household has access to broadband service if the household can readily subscribe to that service upon 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.

F. "Broadband Internet Access Service" means a mass-market retail service by wire or radio 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.

J. "Commission" means the New Mexico public regulation commission.

K. "Contributing company" means any carrier that provides intrastate retail public telecommunications services or comparable retail alternative services in New Mexico.

L. "Eligible telecommunications carrier (ETC)" means a carrier with New Mexico operations that provides intrastate retail public telecommunications services that has been designated as eligible to receive disbursements from the fund or from the federal universal service fund.

M. "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.

N. "FCC" means the federal communications commission.

O. "Form 477" means the FCC's Form 477, Local Telephone Competition and Broadband Report Form, as amended from time to time, filed with the FCC by carriers as required by 47 C.F.R. § 43.11.

Q. "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.

R. "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.

S. "Interexchange carrier (IXC)" means an entity that provides intrastate toll services in New Mexico.

T. "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.

U. "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.

V. "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.

W. "Local exchange carrier (LEC)" means an entity certificated to provide local exchange service in New Mexico.

X. "New Mexico operations" means intrastate retail public telecommunications services and comparable retail alternative services provided in New Mexico.

Y. "Rural area" means (i) any unincorporated area or (ii) any city, town or incorporated area with a population of 15,000 or less as reflected in the United States census for 2010. 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, 1/1/2017]

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, 1/1/2017]

17.11.10.9 AFFORDABILITY BENCHMARK RATES:

A. Effective July 1, 2015, 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 shall be equal to the rate required by the federal communications commission (FCC) to maintain federal high cost support, as such rate may change from time to time;

(2) the business benchmark rate shall be carrier-specific and shall be equal to the business basic exchange rate of each local exchange carrier on July 1, 2014, plus the amounts required to increase the carrier's residential basic local exchange rate on or after July 1, 2015 to match the new residential benchmark rate set forth above, up to a limit of \$35.96;

(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;

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, 1/1/2017]

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, 1/1/2017]

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, 1/1/2017]

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.

[17.11.10.12 NMAC - Rp, 17.11.10.12 NMAC, 1/1/2017]

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.

17.11.10.13 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, 1/1/2017]

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, 1/1/2017]

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, or to delete information that is not necessary.
- [17.11.10.15 NMAC - Rp, 17.11.10.15 NMAC, 1/1/2017]

17.11.10.16 REVENUE REPORTS: Each ETC and contributing company shall submit on or before May 1 of each year a revenue report on the form prescribed by the administrator detailing its intrastate retail public telecommunications services revenues for the prior calendar year.
[17.11.10.16 NMAC - Rp, 17.11.10.16 NMAC, 1/1/2017]

17.11.10.17 OTHER REPORTS: ETCs shall comply with the reporting requirements established by the commission as set forth in 17.11.27 NMAC. In addition, on or before May 1 of each year, 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. 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 within each New Mexico census tract consistent with the reporting required by FCC Form 477, and the number of such access lines and communication connections that are exempt from paying the SRUSF surcharge.

B.

C. Contributing companies shall report the cost of collecting universal service fund (USF) surcharges, fulfilling reporting requirements, and other administrative costs of complying with this rule.

D. ETCs shall report:

(1) all revenues, compensation, payments, or subsidies received from all sources, including, but not limited to end-user customers, the state, and the federal government;

(2) all dividends or equivalents paid to shareholders, cooperative members, or others holding an ownership interest in the ETC; and

(3) compensation, including value of benefits, paid to the five highest-compensated employees of the carrier.

E. In addition, on or before July 1 of each year, ETCs receiving support from the fund (except those receiving only support pursuant to 17.11.11 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 E 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, 1/1/2017]

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, 1/1/2017]

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. 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 2018, the access lines used for the comparison to 2014 shall be as of December 31, 2016. 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, 1/1/2017]

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.

C. 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.

D. 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.

E. 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.

F. 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, 1/1/2017]

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 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, 1/1/2017]

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, 1/1/2017]

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. Upon approval of a carrier for ETC status under these rules, the commission may, if requested, establish the carrier's support rate in accordance with the requirements of 17.11.10.25 NMAC. In determining a just and reasonable support rate for an ETC, the commission shall:

(1) consider the cost of efficiently providing services to the proposed service area, including a rate of return determined by the commission to be reasonable, 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 support rate for a competitive carrier not exceed the equivalent support received through these rules by the incumbent carrier or carriers serving the proposed service area.

E. On its own motion or in response to a petition, the commission may modify an ETC's support rate to reflect more current cost information or changes in service volumes.

[17.11.10.23 NMAC - Rp, 17.11.10.23 NMAC, 1/1/2017]

17.11.10.24 PETITIONS FOR ETC DESIGNATION AND SUPPORT RATES:

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 and support rate, 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) demonstrate that the proposed designation is in the public interest;

(4) include the information required by 17.11.10.25 NMAC;

(5) provide a five-year plan demonstrating how support from the fund will be used to improve the petitioner's coverage, service quality or capacity throughout the service area for which it seeks designation;

(6) demonstrate the petitioner's ability to remain functional in emergency situations;

(7) demonstrate that the petitioner will satisfy consumer protection and service quality standards;

(8) offer local usage plans comparable to those offered by incumbent local exchange carriers in the areas for which the petitioner seeks designation;

(9) acknowledge that the petitioner may be required to provide equal access if all other ETCs in the designated area relinquish their designations;

(10) demonstrate that granting ETC status to the petitioner in the designated area is likely to result in more customer choice;

(11) address the impact of designation of the petitioner on the size of the fund;

(12) address the unique advantages and disadvantages of the petitioner's service offering;

(13) demonstrate the petitioner's willingness and ability to offer service throughout the designated service area within a reasonable time frame; and

(14) provide such other information as the commission or the administrator may find appropriate.

B. A petition by an existing ETC for a support rate shall demonstrate that granting the proposed support rate is in the public interest and shall include the information required by 17.11.10.25 NMAC.

C. Consideration of the public interest will apply in all ETC designation and support rate 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 approving either a petition for ETC designation or a petition for a support rate shall state the approved support rate.

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 fund.

[17.11.10.24 NMAC - Rp, 17.11.10.24 NMAC, 1/1/2017]

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 to ensure the widespread availability and affordability of universal service in the rural area(s) of the state served by the ETC.

B. In addition to establishing need as described in Subsection A 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.

C. In support of the petition, the ETC must make available to the commission all information supplied by Form 481 (or a similar abbreviated form) for the four quarters prior to the petition filing date, plus New Mexico-specific Form 481 information if the form 481 information is consolidated. The commission may also require additional information from the ETC that it deems necessary, including but not limited to information relating to the ETC's regulated 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.

D. 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.

E. Companies reporting the use of funds granted by the commission under this section shall provide:

(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).

(a) Project descriptions will explain the objectives or intended goal of the project. Such as increased capacity or efficiency, redundancy, expansion of network or services.

(b) 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.

(c) Narrative of the projects 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.

(2) The period for the reporting of project details shall be semi-annual, at a minimum, to continue for the period that funds are awarded.

(3) Semi-annual financial reporting on a project specific or company-wide basis, depending if the award is specific to network improvements and projects, or for the financial stability of the ETC receiving the award.

[17.11.10.25 NMAC - Rp, 17.11.10.25 NMAC, 1/1/2017]

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, 1/1/2017]

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. r

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, 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.

[17.11.10.27 NMAC - Rp, 17.11.10.27 NMAC, 1/1/2017]

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, 1/1/2017]

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, 1/1/2017]

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: rural incumbent telecommunications carriers; incumbent local exchange carriers other than incumbent rural telecommunications carriers; interexchange 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 one year, 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, 1/1/2017]

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-3, NMSA 1978, ETCs may separately apply to the commission for grants to fund the construction of facilities that are capable of providing broadband internet access service to areas unserved or underserved by broadband in the state. Each grant that is awarded will provide up to seventy five percent of the budgeted project cost with the ETC applying the remainder from its own funds. Projects receiving any source of third-party funding other than potential loan funds, FCC high-cost fund legacy support or Connect America Fund support (including Mobility Fund support) will not be eligible. 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 4 Mbps download/1 Mbps 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:
 - (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 unserved and underserved areas, the application shall identify which portions of the area are unserved and which are underserved;
- (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 match of funds drawn from the broadband program;
- (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 proposed application:

- (1) the voice and broadband service must be offered at reasonably comparable rates for comparable services in urban areas;
- (2) the voice and broadband service must be provided for at least five 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 broadband 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, or a third-party contractor, shall make a presentation to the commission with analysis of the applications for awards . 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 decision approving or denying, in whole or in part, each application. Selection of projects will prioritize unserved, underserved, and served areas, in that order.

(5) On or before November 1, any interested person may file with the commission a request for reconsideration of the disposition, in whole or in part, of any award of broadband funds.

(6) On or before December 1, the commission shall approve, deny, or modify support awards by a final order.

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 initial disbursement made pursuant to paragraph (3) of Subsection G of 17.11.10.31 NMAC.

(2) For each awarded project, project reports shall be submitted to Staff, consultant(s), and/or administrator(s) semiannually that provide the types of information described in 17.11.10.25(E) NMAC. Within 30 days after project completion, the awardee shall submit a report demonstrating that the project as completed meets the coverage requirements set forth in the application, including a certification from an officer or director that all program requirements have been met.

(3) The administrator shall disburse one third of the award at the beginning of the project as determined by the Commission, one third at the midpoint of the project, and the remaining third upon project completion. The second and third payments are contingent upon the submission of acceptable project status reports pursuant to Paragraph (2) of Subsection G 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.

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.

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APPENDIX F

SUSPENSION AND DEBARMENT CERTIFICATION

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, PROPOSED DEBARMENT, AND OTHER RESPONSIBILITY MATTERS

All Offerors must provide as a part of their proposals a certification to the Commission (NMPRC) in the form provided below. Failure of an Offeror to furnish a certification or provide such additional information as requested by the Procurement Manager for this RFP will render the Offeror non-responsible. Furthermore, the Offeror shall provide immediate written notice to the Procurement Manager for this RFP if, at any time prior to contract award, the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Although the Commission may review the veracity of the certification through the use of the federal Excluded Parties Listing System or by other means, the certification provided by the Offeror in paragraph (a), below, is a material representation of fact upon which Commission (NMPRC) will rely when making a contract award. If it is later determined that the Offeror knowingly rendered an erroneous certification, in addition to other remedies available, the Commission may terminate the contract resulting from this request for proposals for default.

The certification provided by the Offeror in paragraph (a), below, will be considered in connection with a determination of the Offeror's responsibility. A certification that any of the items in paragraph (a), below, exists may result in rejection of the Offeror's proposal for nonresponsibility and the withholding of an award under this RFP. If the Offeror's certification indicates that any of the items in paragraph (a), below, exists, the Offeror shall provide with its proposal a full written explanation of the specific basis for, and circumstances connected to, the item; the Offeror's failure to provide such explanation will result in rejection of the Offeror's proposal.

(1) By signing and submitting a proposal in response to this RFP, the Offeror certifies, to the best of its knowledge and belief, that:

(i) The Offeror and/or any of its Principals-

(A) Are not presently debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any Federal department or agency;

(B) Have not, within a three-year period preceding the date of the Offeror's proposal, been convicted of or had a civil judgment rendered against them for: commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state, or local) contract or subcontract; violation of Federal or state antitrust statutes relating to the submission of offers; or commission of

embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property;

(C) Are D are not D presently indicted for, or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with, commission of any of the offenses enumerated in paragraph (a)(1)(i)(B) of this certification;

(D) (Have),(have not), within a three-year period preceding the date of Offeror's proposal, had one or more public agreements or transactions (Federal, State or local) terminated for cause or default; and

(ii) "Principal," for the purposes of this certification, shall include an officer, director; owner, partner, principal investigator, or other person having management or supervisory responsibilities related to this contract. "Principal" also includes a consultant or other person, whether or not employed by the participant or paid with Federal funds, who: is in a position to handle Federal funds; is in a position to influence or control the use of those funds; or occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the covered transaction.

(iii) For the purposes of this certification, the terms used in the certification, have the meanings set forth in the definitions contained in federal regulation particularly **CFR 47 § 54.8 Prohibition on participation: suspension and debarment:**

(a) Definitions-(1) Activities associated with or related to the schools and libraries support mechanism, the high-cost support mechanism, the rural health care support mechanism, and the low-income support mechanism. Such matters include the receipt of funds or discounted services through one or more of these support mechanisms, or consulting with, assisting, or advising applicants or service providers regarding one or more of these support mechanisms.

(iv) Nothing contained in the foregoing certification shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by paragraph (a) of this provision. The knowledge and information of an Offeror is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

OFFEROR: _____

SIGNED BY: _____

TITLE: _____

DATE: _____

APPENDIX G

NEW MEXICO PUBLIC REGULATION COMMISSION

CONTRACTUAL SERVICE AFFIDAVIT

I, _____, being first duly sworn upon my oath
depose and state the following:

- 1) This Contractor is NOT a current or former state employee or a business in which a current state employee has an interest of greater than 20%; and
- 2) This Contract is NOT an attempt to circumvent the State's hiring freeze.

FURTHER, AFFIANT SAYETH NOT.

Print Name of Contractor or Representative

Signature of Contractor or Representative

(Date)

SUBSCRIBED AND SWORN to before me by _____ [name of
former employee] this _____ day of _____, 2017.

NOTARY PUBLIC

My Commission Expires:
