

DEPARTMENT OF REGULATORY AGENCIES

Executive Director's Office

NOTICE OF PROPOSED PERMANENT RULEMAKING HEARING

October 15, 2020

4 CCR 753-1

[Editor's Notes follow the text of the rules at the end of this CCR Document.]

Pursuant to and in compliance with Title 40, Article 15, and Title 24, Article 4, C.R.S., as amended, notice of proposed rulemaking is hereby given, including notice to the Attorney General of the State of Colorado and to all persons who have requested to be advised of the intention of the Executive Director of the Department of Regulatory Agencies to promulgate rules applicable to local entities that may certify an application area as unserved at the request of an applicant for a grant from the Broadband Deployment Board (Board).

Specific Statutory Authority

The authority for these rules is section 40-15-509.5(8)(a)(III)(B), C.R.S., as amended by HB20-1137 (2020).

Statement of Basis and Purpose

These rules are promulgated to specify the process for the optional certification that is now available to every applicant who applies for funding from the Board for broadband infrastructure projects in unserved areas of Colorado. These rules set forth the process for local entities to collect, review, and analyze quantitative data concerning the existence of broadband service in the application area, so that they may determine whether certification is appropriate. Certification by a local entity that an area is unserved is additional evidence for an applicant to submit to the Board in support of an application for broadband funding.

Summary of Rules

HB20-1137 amended the definitions in section 40-15-102(17.5), C.R.S., as follows:

- a. A local entity is defined as "elected members of a county or municipal government."
- b. A municipal government is "a home rule or statutory city, town, or city and county or a territorial charter city."

1. Process and form to collect, review and analyze quantitative data regarding the availability of broadband service in the proposed area to be served

- A. Each applicant for funding shall submit a completed application according to the requirements of the Board. In addition, an applicant may submit the following new information:
 - i. The written certification of a local entity pursuant to these rules.
- B. The applicant may request from a local entity with jurisdiction over the area proposed to be served a written certification that the area is an unserved area. An unserved area, as defined in section 40.15.102(132), C.R.S, is "an area of the state that: (I) Lies outside of municipal boundaries or is a city with a population of fewer than seven thousand five hundred inhabitants; and (II) Consists of households that lack access to at least one provider of a broadband network that uses satellite technology and at least one provider of a broadband network that uses non-satellite technology." It also means "any portion of a state or interstate highway corridor that lacks access to a provider of a broadband network."
- C. The local entity shall not provide written certification until after the local entity has:
 - i. Provided public notice, including notification to any incumbent provider, if any, and held a hearing on the issue; and
 - ii. Collected, solicited, and reviewed any quantitative data that it deems appropriate regarding the availability of broadband service in the area that the applicant proposes to serve.
- D. A local entity must collect, solicit, and review quantitative data in accordance with rules adopted by the Executive Director of the Department of Regulatory Agencies, in consultation with the Office of Information Technology and the Board, regarding standards concerning quantitative data.
 - i. For the purpose of this rule, "collect, solicit and review" of quantitative data includes the following:
 - Receive form for written certification from applicant at a publicly held board meeting; schedule the certification hearing for members of the public and providers, and ensure any incumbent providers are aware of the request and hearing date; gather necessary documents and resources for certification hearing from both the Colorado Broadband Office (CBO) within the Office of Information Technology and the applicant provider who submitted the certification request; either deny or approve the certification request at the certification hearing, citing the requirements for a written certification to be considered for approval.

- E. Upon receipt of a complete application, the Broadband Fund will post the application on its website, and provide a 60-day comment period, per section 40-15-509.5(8)(a), C.R.S., within which any interested party, including a local entity with jurisdiction over the area to be served, may review and provide comment on the application.

Proposed Rules

The following processes and guidance provides a series of steps that applicants and local entities should follow.

This certification will not be issued to a provider who is not applying for state funding from the Board. The legislation specifically states that applicants for grants from the Board are able to make this request.

Local entities do **NOT** have to approve a written certification requested by a provider applicant.

Under section 40-15-509.5(8)(a)(II)(B), C.R.S., applicants for grants *may* “submit to the Board the written certification of a local entity as described in subsection (8)(a)(III) of this section.”

To consider a written certification request, the local entity must collect, solicit, and review “any quantitative data that it deems appropriate regarding the availability of broadband service in the area that the applicant proposes to serve. A local entity must collect, solicit, and review quantitative data in accordance with rules adopted by the Executive Director of the Department of Regulatory Agencies (DORA), in consultation with the Office of Information Technology (OIT) created in section 24-37.5-103 and the Board, regarding standards concerning quantitative data.” If the local entity certifies that an area is unserved after a hearing, that means that the local entity has reasonable certainty that the application area does not have access to broadband internet service of at least 25/3 Mbps.

Steps for Applicants:

1. Obtain a written certification form from the Broadband Fund’s website (<https://broadbandfund.colorado.gov/>), and notify the Broadband Fund of its intent.
2. Submit the following information to the local entity at the local entity’s regularly scheduled public hearing for the local entity certification hearing date:
 - a. Survey to be utilized to collect data for local entity to review.
 - b. Map of proposed project area using the CBO Broadband Map showing other providers in the area.
 - c. A spreadsheet of household addresses of the project area.
 - d. An analysis of the communities residing in the proposed project area. This analysis should include population information and a justification as to why the applicant is requesting to serve the proposed project area.
 - e. An attachment indicating whether the area is or has been subject to any other upcoming state or national funding or grants in the last 24 months.
3. Distribute the survey to all addresses in the proposed project area on behalf of the local entity.
4. Determine if the local entity has approved a written certification at a public certification hearing. Signatures must be obtained from both the applicant and local entity authority.
5. Provide the signed written certification to the Board by its deadline.

Process for Local Entity:

Step one:

1. Receive written certification form from applicant.
2. Schedule the certification hearing.

3. Announce the date and location of the hearing to members of the public and providers to ensure any incumbent providers are aware of the request and hearing date. At the public hearing, the local entity will review the data and either deny or approve the certification request utilizing the requirements below for a written certification to be considered for approval.

Step two:

1. Gather necessary documents and resources for certification hearing:
 - a. A map of the proposed project area and spreadsheet of household addresses provided by applicant (see spreadsheet sample).
 - b. Designate a date range to collect data from CBO speed tests. The CBO can support local entities analyzing the data by providing unbiased feedback of the results, if requested.
 - c. Surveys distributed by the applicant and submitted to the local entity, at least one (1) week prior to the local entity's public certification hearing.
 - Local entities may choose to request support from the CBO to review internet speed surveys from proposed project area residents in anticipation of the CBO providing speed results.
 - d. An analysis of communities impacted by the proposed project provided to the local entity by the applicant, one (1) week prior to the local entity's public hearing for the certification of the applicant's project. This analysis should include population information and the reason for the proposed project area to be served by the applicant.
 - e. Send a notice to existing internet providers listed on the Broadband Map (https://gis.colorado.gov/broadbandviewer/index.html?Viewer=broadbandmapping.broadbandmapping_hv/) for the application area, asking them to provide evidence that they serve addresses in the area. Where available, provide copies of any advertising (e.g., the existing providers' internet sites, direct mailings) indicating services already available within the proposed project area:
(https://gis.colorado.gov/broadbandviewer/index.html?Viewer=broadbandmapping.broadbandmapping_hv/)
 - f. The CBO may provide additional support as needed to determine no overbuilding will take place.
2. Designate an agenda for the public certification hearing, and include the following information in announcement:
 - a. Date and location of a public hearing for the certification hearing to be held as soon as possible and no later than 60 days after the hearing announcement, or before the publicly scheduled application review by the Board (a Calendar of public meetings by the Board can be found at (<https://broadbandfund.colorado.gov/>)).
3. Topics that need to be covered:
 - a. Introduction of the proposed project area to be considered
 - b. Evidence of providers in area
(https://gis.colorado.gov/broadbandviewer/index.html?Viewer=broadbandmapping.broadbandmapping_hv/).
 - c. Results of the Internet speed survey (<https://gis.colorado.gov/speedtest/>) of the addresses and households in the proposed project area. There needs to be an aggregate response rate of at least 20% of addresses being proposed, covering a full geographic distribution of

the proposed project area to present evidence the area is unserved. Speed test results submitted using the CBO speed test will be provided directly to the local entity by the CBO.

- d. Providers should indicate which addresses in an applicant's proposed address list are serviceable by the provider's network, and provide evidence of services being provided and what is available, including speed and service plan data. If the provider does not service the proposed project area, please indicate to the local entity.
- e. Post link to the applicant's application on the local entity website, link to Broadband Fund website, and have a paper copy available to the public of the applicant's application for review in local entity headquarters. At the public hearing, the local entity must either deny or approve a written certification. Signatures must be provided by both the applicant and local entity authority.

The local entity should approve the request for certification if the local entity determines, after a hearing and considering all the evidence, that the application area does not have access to broadband internet service of at least 25/3 Mbps.