

**Connect New Mexico Council SPECIAL Meeting**  
**Virtual**  
**Monday, March 25, 2024, 3:00 PM**

**1. WELCOME AND CALL TO ORDER – Erica Valdez**

This Special Meeting of the Connect New Mexico Council was called to order by Erica Valdez, at 3:04 pm, on Monday, March 25, 2024. Ms. Valdez introduced herself and reviewed general rules and procedures regarding the meeting.

**MEMBERS PRESENT-**

Kimball Sekaquaptewa, Chair	Ovidiu Viorica
Peter Mantos	Katherine Crociata
Eli Guinnee	Jim Ruybal
Joseph Navarette	Godfrey Enjady

**MEMBERS ABSENT-**

Luis Reyes	Launa Waller
Alex Greenberg	Steve Grey
Leonard Manzanares	Tico Charlee
Bogi Malecki	

**OTHERS PRESENT**

Erica Valdez, OBAE paralegal  
Vanessa Willock, OBAE General Counsel  
Sandeep Taxali (OBAE), Bo Ford (NM State Library), Misti Willock, Jen Sommers, Manh Pham, Kitty Clemens, Tomas \_\_\_\_\_

**2. Chair Updates/Comments – Kimball Sekaquaptewa**

Mr. Mantos sent the draft of the letter of Amnesty to Ms. Valdez so she could screen share in Zoom. He then gave background for this with the deadline for comments on this issue occurring tomorrow, 03/26/2024. This special meeting was scheduled to review this letter. He reviewed the issues regarding his position within the Governor's Office, however, this letter can certainly be sent from the Connect New Mexico Council, if that is the pleasure of the Council today.

Chair Sekaquaptewa asked if all Council members received a copy of the letter. Mr. Mantos replied that he did not send this out to every member specifically, however, it is only two pages. Chair Sekaquaptewa asked if Ms. Valdez could send the letter out at this time. Ms. Valdez replied that she would do so.

Mr. Viorica asked if anyone in the meeting could give background information while Ms. Valdez is sending the letter out. He asked specifically about what information is available and what the Council is trying to accomplish with this letter.

Mr. Mantos asked if Chair Sekaquaptewa would like him to address this. Chair Sekaquaptewa asked him to do so.

Mr. Mantos stated that in the work of the Mapping Working Group issues had come up with respect to the designations of unserved, underserved and served locations, where some locations are designated as being "served" because they are within an area covered by previous awards such as RDOF and the Connect America Fund Option. However, the time horizon on these awards goes out several years and progress may or may not be proceeding on any or all of the DSLs included in these awards. He gave details regarding the many circumstances affecting this and that the FCC has recognized the issue, sending out a letter inviting comment with respect to some type of amnesty for these awardees, so that other entities would be eligible to service these areas. Mr. Mantos commented that the letter being shown and discussed today is basically a response to the FCC letter from the Connect New Mexico Council supporting this amnesty concept. He also reviewed the concerns regarding amnesty with no consequences or penalties, and what types or levels of consequences or penalties should be considered. The letter being considered today does not specify any type of penalty. This letter suggests to the FCC the possibility of requiring these awardees to give periodic reports on either their progress, their plans, or both, as evidence of them acting in good faith.

Chair Sekaquaptewa referenced a letter she received from Councilman Enjady after the last Council meeting, covering his position, which is stronger and states that he does believe there should be penalties. She reviewed

several points raised in Mr. Enjady's letter; that "forgiveness" has been a longstanding pattern in FCC programs, amnesty with no penalty which might not be acceptable and another issue regarding tribal consent, which was not required for these previous programs and is problematic with regard to how things are done in New Mexico, with examples of these given in that letter. She again noted that the deadline for issuing the letter before this Council is tomorrow.

Mr. Mantos posed the question of how many of these awardees would step aside and how many broadband locations does this affect. He stated that some analysis has been done regarding this and there could possibly be +/- 20,000, and questioned how much this would impact the state, which is unclear at this time.

Ms. Crociata asked if there was any way to track those awardees which would not be completing their build-out.

Chair Sekaquaptewa asked Mr. Viorica if he could share the chart he had sent out previously, which only applied to RDOF and not to CAF.

Mr. Viorica noted that he has access to some numbers, which are public information and posted on the FCC website. He reviewed some of this information which included \$165 million which was supposed to cover approximately 60,000 locations, which after the required curing process ended up being +/- \$130 million covering approximately 41,000 locations, but he does not know where these numbers stand today and it would be very important to determine this. He pointed out, in contrast, that the current map for BEAD eligible locations sits close to 40,000 locations, which is expected to vary to some degree. He noted that the New Mexico Best map, which reflects the active challenges put forward, shows approximately 60,000 locations. He stated that this issue could truly "throw a wrench" into an already complicated plan associated with broadband expansion in New Mexico. The status of these awards and projects is truly unknown, but by accessing the RDOF information related to the process he believes that 40% of these proposed connections should be available within three years, at the end of this year, 2024, as he believes the timeline would be 60% deployment of the end of year four, all the way to deployment of 100% of the locations covered by RDOF in year six. He stated that it would be very important and interesting to know if these projects are on track, and by the end of this year there could be about 40% of these 41,000 locations materialize. If these are on track probably nothing needs to be done, but if they are not on track that is concerning, especially considering the fact that the State is under an order to connect at risk students, which according to the latest PED report is 34,400 students who still lack access to broadband. He stated that these are numbers associated with 25/3 threshold associated with broadband and in light of the recent order by the FCC this changed to 100/20, which is only going to increase the number of locations which do not have broadband accessible to them. He noted again that these are large numbers and a lot of uncertainty that could affect this entire process.

Mr. Mantos commented that he has similar numbers from their database which concern RDOF only.

Chair Sekaquaptewa reiterated Ms. Crociata's question of how to determine what is really being done by these awardees.

Mr. Mantos stated this is exactly the question. There is no way to determine this.

Chair Sekaquaptewa, referring to Mr. Viorica's comment about throwing in wrenches into the process, noted that there are so many wrenches in this process already what difference does one more make. She also commented on the length of time involved with CAF-2, and how could there not be reports on what the progress is with those awardees.

Ms. Crociata agreed with Chair Sekaquaptewa's comment on CAF-2. She asked if they are required to report their build-out to the FCC and whether this information could be accessed this way.

Chair Sekaquaptewa stated they do have to provide annual reports but is unsure who has access to those.

Mr. Viorica pointed out that already 30% of the participants in the RDOF program have defaulted, and most likely some of these paid penalties, which would be challenging to an amnesty period given this precedent. He emphasized that more clarity about the fate of these projects is essential to the State being able to adjust and make the best use of the resources and processes available. He also reviewed the predicament that would occur if these locations were changed from "served" to "unserved", increasing the number of "unserved" locations substantially, which would have to be addressed under the BEAD mandate, with the same amount of funding, essentially an unfunded mandate as there is no additional funding coming in. He commented that it would be important to make sure that if these projects go into default or are determined to not be moving forward, the funding associated with these projects would go to the State to help with the actual deployment that needs to

occur. Mr. Viorica then called attention to a comment in the chat.

Chair Sekaquaptewa stated she was glad there were industry representatives participating.

Ms. Misti Willock, with Resound Networks, thanked Chair Sekaquaptewa for her comment and the opportunity to speak. Ms. Willock stated that Resound Networks was the largest RDOF recipient in the State of New Mexico. In response to Ms. Crociata's question about reporting, she noted that with the Connect America funds there is strict recording and this is probably something that could be requested from the FCC. She noted that as large as New Mexico is there are not a lot of RDOF recipients and that Resound meets every other week with OBAE, where they are able to give updates on the status of their deployment. She noted that probably the OBAE project managers are also doing this with other carriers, but she does not see any of these representatives in today's meeting. She suggested contacting these project managers about this. She gave information about the timelines for projects, stating that the timeline for each project begins with receiving their notice to proceed and then extending for six years, which in some cases could be as far out as 2029.

Chair Sekaquaptewa thanked Ms. Willock for this comment. She noted that the letter presented by the Mapping Group did support amnesty and that unspecified sanctions should be considered. In her opinion this could have been a little more specific, giving possible options for sanctions. She again noted the timing for this letter with the public comment period ending tomorrow.

Mr. Viorica noted that in addition to the request for comments period ending tomorrow, the FCC process allows for a reply to comments stage, which will most likely last 30 days or may start in 30 days. He suggested that during this next step or phase the Council could take a look at all the comments filed by other states, gather additional information related to where the projects in New Mexico stand, and then still submit a reply to comments in this next stage. He stated that he did not believe this process, whatever that may be, will affect the number of areas eligible for BEAD, that there will not be a decision by the FCC which will suddenly change the status of these locations in time for the BEAD process to take these into account and make them eligible for BEAD projects. As mentioned previously, he reiterated that it is very important for the Council to have clarity on the status of these projects and their chances of being successful in covering the locations under their respective awards. He asked if Ms. Misti Willock would be willing to share where the Resound awards are at this point, and is it likely that 40% of the awards under RDOF are going to be available to subscribers by their deadlines.

Ms. Willock stated that Resound is already way ahead of schedule, having received their notice to proceed in January 2023, and at this point they should be 10% complete, but they are actually closer to 20%. She stated that she is not comfortable sharing additional information in a public meeting but would be happy to extend an invitation to one of their meetings where she can share information online, as it has pieces of their network included and this is sensitive information, as the Council is aware. She stated that the Resound project is a bit different from the "fiber to the home" concept as they are focused on fiber for middle mile and fiber to homes that cannot be reached for Tarana, so that's a little bit different. If this involved fiber to the home she would expect to need every bit of four years to accomplish this, but they should be finished by the end of 2026, 100% throughout their seven state footprint. She asked if this answered the question.

Mr. Viorica stated that this did answer his question.

Chair Sekaquaptewa asked for clarification, if 40% completion by the end of the funding period was considered success or the goal line.

Ms. Willock stated, that no, the goal is 100% complete in four years. She added that they may be finished sooner, depending on middle mile assets. She offered to include Chair Sekaquaptewa in their meetings with OBAE.

Chair Sekaquaptewa thanked her for this clarification and invitation.

Mr. Taxali stated that a lot of these points were being discussed earlier today with Director Lovelace and that Mr. Viorica has nicely summarized the key points. From the New Mexico perspective there is a need to better understand where all of the awardees stand, having heard from Resound, which is great. He noted that he spoke with Johnny Montoya at Windstream earlier today and they are having no issues and plan to honor their commitments. He also commented that Kit Carson is on track. CDEC may not get to all of their units, but this is due to tribal consent issues. He stated that looking at the situational analysis New Mexico is probably not in as dire a situation as some others states such as Mississippi or Illinois, noting that their largest awardees are advocating for amnesty. He added that OBAE is not planning to file comments but they will definitely be interested in seeing what other states will be saying and what the FCC may say in response to the comments

filed. He commented that the position of one of the other states he has been working with is that if the FCC were to provide amnesty that it would be very difficult for that state, as they already do not have enough funding to get fiber or fixed wireless to all their unserved, underserved and CAIs. So if NTIA were to simply put those locations back on the map without providing more funding it would be a very unfortunate circumstance. From a professional standpoint it would make good sense that the FCC put money back in the state coffers and gave details of how that might be implemented.

He also noted that he had participated in the C-Block Auction in the 1990's, where a number of companies had asked for amnesty and an amnesty with harsh penalties was arrived at. This was a very different situation, however, the Commission at the time was very hesitant to grant blanket amnesty without harsh penalties. In light of this, the FCC will likely be very hesitant to grant blanket amnesty and the FCC would have to go through an elaborate rulemaking process to find ways to allocate these RDOF funds back to the states, both of which will take a lot of time. He gave some details regarding this and that normally the FCC does not transfer USF funds to state government offices, but there is precedent and he cited the New York State Broadband Auction in 2015, and that some states will use this precedent argument to make sure this does not become an unfunded mandate and allow funding to go back to the states. He added that OBAE will probably remain on the sidelines and observe what other states may or may not file in terms of comments and the FCC will post all comments publicly, then reply to comments can be filed by April 9<sup>th</sup>. OBAE will be particularly interested in what other states have to say about the unfunded mandate concept and the FCC transferring funds back to the states. He reiterated that New Mexico is in a much better position than many states are at this time.

Chair Sekaquaptewa stated once again that the issue with this letter going out was that it could not come from OBAE since state agencies cannot participate or submit comments, but this Council as an independent entity can do so.

General Counsel Vanessa Willock stated that Chair Sekaquaptewa is correct and that OBAE's position at this point is that they will not be providing or submitting public comment, but may possibly reply to comments, whereas the Council may move forward and submit a comment.

Chair Sekaquaptewa asked Mr. Mantos again what the decision was regarding his position. Mr. Mantos replied that he is no longer a Cabinet Secretary but works through the Governor's Office and as such he has to be cautious. Chair Sekaquaptewa asked again what was said in the e-mail Mr. Mantos received about this. Mr. Mantos said that originally there were no objections to him sending a letter, but then there was word that there might be some, so the decision was that if this was sent from the Council that would be acceptable.

Counsel Willock added that if the letter were to go out from the Council best practice would be for Chair Sekaquaptewa to sign off on it.

Chair Sekaquaptewa stated she had forgotten about the reply to comments phase and this would give more time for everyone to digest the issues. She commented that if changing the status of these locations would not affect BEAD then she was unsure if providing a comment at this point would be appropriate, especially considering the funding issue this poses.

Mr. Viorica noted that given today's discussion the impact of the amnesty issue appears to be relatively small for New Mexico, however, there are tribal areas that will be affected. He suggested an alternative approach would be for the Council to focus on requesting an easier avenue of release for the awardees in tribal areas, who did not get tribal consent, which would clear the way for tribal led projects funded through the Tribal Broadband Connectivity Program and others to move forward without potential interference in these overlapping areas.

Chair Sekaquaptewa stated that CDEC does require tribal consent, but the issue will be with the RDOF and CAF-2 duplications.

Mr. Enjady voiced his agreement with amnesty, however, with respect to tribal projects, the tribes looking for sustainability funding should get this funding going forward since funding has been made available for those areas. This was his comment within the NTTA comments. With respect to the short timeframe associated with submitting this letter he agreed that waiting and using the reply to comment period would be the best avenue.

Chair Sekaquaptewa and Mr. Taxali both gave reference to an RDOF awardee that had not obtained tribal consent and the resulting situation regarding funding.

Ms. Crociata stated that she agreed with Chair Sekaquaptewa and Mr. Enjady with regard to waiting for the reply to comments period, having more time to digest additional information.

Mr. Mantos stated he had not heard a motion to approve this letter, and if the desire is to wait there are two options; 1) set it aside, as has been mentioned it is not very strong, it supports the amnesty program with unspecified penalties and does not go as deep as others have or may prefer, or 2) wait to see what other states say and then comment on the comments.

Chair Sekaquaptewa replied that a lot can be said within the reply to comments, especially referencing comments from other states. She noted that a motion to table could be entertained with a plan to meet again before April 8<sup>th</sup>, and questioned whether this constituted a month for the reply to comments. She asked what the work path would be if this letter is tabled, and what other data would be available, especially pertaining to CAF-2.

Mr. Enjady endorsed maintaining the original thoughts proposed and then wait for the reply comments to formulate these together for the reply comments.

Mr. Viorica thanked Mr. Mantos for his efforts composing this letter under such a short timeframe. He agreed with Mr. Enjady that New Mexico use this opportunity to express a position, and this letter has been tremendously important in spurring this conversation, which has been very informative and beneficial to all involved. He strongly recommended that this Council dedicate time to develop and articulate some policy recommendations from the Council, so there is better clarity of what New Mexico and this Council expect from organizations wanting to provide broadband in New Mexico.

**3. Vote on approval of letter of Amnesty for FCC RDOF CAF- Kimball Sekaquaptewa**

**MOTION:** Mr. Viorica moved to table this letter and work to develop a better, or more informed response for reply comments. This was seconded by Ms. Crociata. There being no opposition the motion to table this letter but submit for the reply to comment period passed.

Mr. Mantos stated that this was a great discussion and he has no qualms about using this letter or not. He agreed that given more time more information can be gathered.

Chair Sekaquaptewa agreed this would facilitate getting this composed in a more legal format. She thanked Mr. Mantos for taking the lead and motivating the Council to get the conversation started.

Mr. Mantos deferred to take credit for this, as this really came out of the Mapping Working Group and he simply brought this forward as Chair of that group.

Chair Sekaquaptewa asked Mr. Mantos to thank the Working Group on behalf of the Council.

**4. Adjournment – Kimball Sekaquaptewa**

Chair Sekaquaptewa called for a motion to adjourn. Mr. Mantos so moved, seconded by Mr. Enjady. There being no opposition and no further business before the Council the meeting was adjourned at 4:12 p.m.