

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 400

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY
Ben Lujan

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING AND ENACTING
SECTIONS OF THE NMSA 1978; PROVIDING FOR PENALTIES; MAKING AN
APPROPRIATION; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Public Regulation
Commission Act is enacted to read:

"[NEW MATERIAL] TELECOMMUNICATIONS COMPLAINTS BUREAU.--

A. The telecommunications complaints bureau is
created in the utility division of the public regulation
commission:

B. The telecommunications complaints bureau shall:
(1) review intercarrier disputes;
(2) investigate each complaint on an
expedited basis; and
(3) recommend actions to the commission.

.131856.1

underscored material = new
~~[bracketed material] = delete~~

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C. Each complaint shall be resolved by the commission within sixty days unless extended for good cause by an order of the commission or hearing examiner that states with specificity the reason for and length of the extension."

Section 2. Section 63-7-23 NMSA 1978 (being Laws 1995, Chapter 175, Section 1, as amended) is amended to read:

"63-7-23. TELECOMMUNICATIONS--ADMINISTRATIVE FINES.--

A. For purposes of this section:

(1) "commission" means the public regulation commission; and

(2) "telecommunications provider" means any telegraph company, telephone company, transmission company, telecommunications common carrier, telecommunications company, cellular service company or pay telephone provider regulated in whole or in part by the commission under law, including the Telephone and Telegraph Company Certification Act, the New Mexico Telecommunications Act, the Cellular Telephone Services Act and Sections 63-9E-1 and 63-9E-3 NMSA 1978.

B. The commission may impose an administrative fine on a telecommunications provider for any act or omission that the provider knew or should have known was a violation of any applicable law or rule or order of the commission.

C. Except in the case of intercarrier disputes, an administrative fine of not more than one thousand dollars (\$1,000) may be imposed for each violation or each of multiple violations arising out of the same facts up to a

underscoring material = new
[bracketed material] = delete

1 maximum of twenty-five thousand dollars (\$25,000); or an
2 administrative fine of not more than one thousand dollars
3 (\$1,000) may be imposed for each day of a continuing
4 violation arising out of the same facts up to a maximum of
5 twenty-five thousand dollars (\$25,000). Notwithstanding any
6 other provision of this subsection, the commission may impose
7 an administrative fine not to exceed twenty-five thousand
8 dollars (\$25,000) for a single violation:

9 (1) that results in substantial harm to the
10 customers of the telecommunications provider or substantial
11 harm to the public interest; or

12 (2) for failure to obtain a certificate of
13 public convenience and necessity required by law or for
14 operation outside the scope of that certificate.

15 D. In the case of intercarrier disputes, an
16 administrative fine of not more than one hundred thousand
17 dollars (\$100,000) may be imposed for each violation of a
18 carrier-to-carrier interconnection agreement or each of
19 multiple violations arising out of the same set of facts, or
20 an administrative fine of not more than one hundred thousand
21 dollars (\$100,000) may be imposed for each day of a
22 continuing violation of a carrier-to-carrier interconnection
23 agreement or violations arising out of the same facts.

24 [~~D.~~] E. The commission shall initiate a proceeding
25 to impose an administrative fine by giving written notice to
the provider that the commission has facts as set forth in
the notice that, if not rebutted, may lead to the imposition

underscored material = new
~~[bracketed material] = delete~~

1 of an administrative fine under this section and that the
2 telecommunications provider has an opportunity for a hearing.
3 The commission may only impose an administrative fine by
4 written order that, in the case of contested proceedings,
5 shall be supported by a preponderance of the evidence.

6 ~~[E.]~~ F. The commission may initiate a proceeding
7 to impose an administrative fine within two years from the
8 date of the commission's discovery of the violation, but in
9 no event shall a proceeding be initiated more than five years
10 after the date of the violation. This limitation shall not
11 run against any act or omission constituting a violation
12 under this section for any period during which the
13 telecommunications provider has fraudulently concealed the
14 violation.

15 ~~[F.]~~ G. The commission shall consider mitigating
16 and aggravating circumstances in determining the amount of
17 administrative fine imposed.

18 ~~[G.]~~ H. For purposes of establishing a violation,
19 the act or omission of any officer, agent or employee of a
20 telecommunications provider, within the scope of such
21 person's authority, duties or employment, shall be deemed the
22 act or omission of the telecommunications provider.

23 ~~[H.]~~ I. Any telecommunications provider or other
24 person aggrieved by an order assessing an administrative fine
25 may appeal the order to the supreme court of New Mexico. A
notice of appeal shall be filed within thirty days after the
entry of the commission's order. Notice of appeal shall name

underscored material = new
[bracketed material] = delete

1 the commission as appellee and shall identify the order from
2 which the appeal is taken.

3 ~~[F.]~~ J. The commission shall promulgate procedural
4 rules for the implementation of this section."

5 Section 3. Section 63-9A-2 NMSA 1978 (being Laws 1985,
6 Chapter 242, Section 2, as amended) is amended to read:

7 "63-9A-2. PURPOSE.--The legislature declares that it
8 remains the policy of the state of New Mexico to maintain the
9 availability of access to telecommunications services at
10 affordable rates. Furthermore, it is the policy of this
11 state to have comparable ~~[message]~~ telecommunications service
12 rates, as established by the commission, for comparable
13 markets or market areas. To the extent that it is consistent
14 with maintaining availability of access to service at
15 affordable rates and comparable ~~[message]~~ telecommunications
16 service rates, it is further the policy of this state to
17 encourage competition in the provision of public
18 telecommunications ~~[industry]~~ services, thereby allowing
19 access by the public to resulting rapid advances in
20 telecommunications technology. ~~[It is the purpose of the New~~
21 ~~Mexico Telecommunications Act to permit a regulatory~~
22 ~~framework that will allow an orderly transition from a~~
23 ~~regulated telecommunications industry to a competitive market~~
24 ~~environment]~~ It is further the intent of the legislature that
25 the encouragement of competition in the provision of public
telecommunications services will result in greater investment
in the telecommunications infrastructure in the state,

underscored material = new
~~[bracketed material] = delete~~

1 improved service quality and operations and lower prices for
2 such services."

3 Section 4. A new section of the New Mexico
4 Telecommunications Act is enacted to read:

5 "[NEW MATERIAL] IDENTIFYING SUBSIDIES--RULES--PRICE
6 CAPS.--

7 A. No later than December 31, 2000, the commission
8 shall review existing rates for public telecommunications
9 services offered by incumbent local exchange carriers with
10 more than fifty thousand access lines and identify all
11 subsidies that are included in the rates. The commission
12 shall issue rules requiring that the identified subsidies
13 appear on customer bills and establish a schedule not later
14 than April 1, 2001 whereby implicit subsidies be eliminated
15 through implementation of the state rural universal service
16 fund or through revenue-neutral rate rebalancing or any other
17 method consistent with the intent of the New Mexico
18 Telecommunications Act. For purposes of this section,
19 "subsidies" means a rate that is priced above the cost of
20 providing a service and that is used to maintain the rate in
21 an area where the cost for the same or another service is
22 higher.

23 B. No later than January 1, 2001, the commission
24 shall issue rules that:

- 25 (1) establish quality of service standards;
(2) ensure adequate investment in the
telecommunications infrastructure of the state;

underscored material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

(3) promote availability and deployment of high-speed data services;

(4) ensure the accessibility of interconnection by competitive local exchange carriers; and

(5) establish an expedited regulatory process for considering matters related to telecommunications services that are pending before the commission.

C. No later than April 1, 2001, the commission shall eliminate rate of return regulation of incumbent telecommunications carriers with more than fifty thousand access lines and implement an alternative form of regulation that establishes reasonable price caps for basic residence and business local exchange services."

Section 5. APPROPRIATION.--Seven hundred sixty-two thousand dollars (\$762,000) is appropriated from the general fund to the public regulation commission for expenditure in fiscal years 2000 and 2001 to carry out the provisions of this act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2001 shall revert to the general fund.

Section 6. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.