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**SENATE BILL 263**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Timothy Z. Jennings**

**AN ACT**

**RELATING TO TELECOMMUNICATIONS; ALLOWING PERSONS TO RECEIVE  
TELECOMMUNICATIONS SERVICES FROM PROVIDERS OUTSIDE A  
CERTIFICATED SERVICE AREA; AMENDING THE NEW MEXICO  
TELECOMMUNICATIONS ACT.**

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

**Section 1. Section 63-9A-6 NMSA 1978 (being Laws 1985,  
Chapter 242, Section 6, as amended) is amended to read:**

**"63-9A-6. CERTIFICATE REQUIRED. --**

**A. No public telecommunications service shall be  
offered in this state except in accordance with the provisions  
of the New Mexico Telecommunications Act.**

**B. No public telecommunications service shall be  
offered within this state without the telecommunications  
company first having obtained from the commission a**

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1 certificate declaring that the operation is in the present or  
2 future public convenience and necessity, unless the operation  
3 is otherwise authorized by the New Mexico Telecommunications  
4 Act.

5 C. The commission shall have full power and  
6 authority to determine matters of public convenience and  
7 necessity relating to the issuance of a certificate of public  
8 convenience and necessity to a provider of public  
9 telecommunications service; provided, however, that in keeping  
10 with the purposes of the New Mexico Telecommunications Act,  
11 the commission shall not deny an applicant a certificate on  
12 the grounds of need if it is shown that the applicant  
13 possesses adequate financial resources and technical  
14 competency to provide the service. It shall be within the  
15 discretion of the commission to determine when and upon what  
16 conditions plant, equipment or services may be provided under  
17 certificates of public convenience and necessity, by more than  
18 one person, and the commission may attach to the exercise of  
19 rights granted by the certificate such terms and conditions  
20 as, in its judgment, the public convenience and necessity may  
21 require or as otherwise authorized.

22 D. Notwithstanding the provisions of Subsection C  
23 of this section, any telecommunications company with less than  
24 one hundred thousand access lines holding a certificate of  
25 public convenience and necessity to provide local exchange

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1 service to the public shall have the exclusive right to  
2 provide local exchange service within its certificated service  
3 territory and shall not be subject to competition in the  
4 provision of local exchange service in its certificated  
5 service territory unless the commission issues a variance  
6 pursuant to Section 63-9A-6.3 NMSA 1978 or determines that  
7 public convenience and necessity require additional plant or  
8 equipment for the provision of local exchange service within  
9 the certificated service territory of the existing  
10 telecommunications company and a certificate of public  
11 convenience and necessity is granted pursuant to Subsection E  
12 of this section.

13 E. In determining whether public convenience and  
14 necessity require an additional certificate to provide local  
15 exchange service in a certificated service territory, the  
16 commission shall, in a proceeding in which the  
17 telecommunications company certificated in the affected area  
18 is a party, consider and determine upon substantial evidence  
19 that the following conditions exist:

20 (1) the existing telecommunications company  
21 is inadequate to meet the reasonable needs and convenience of  
22 the public;

23 (2) the proposed second plant or equipment  
24 would eliminate such inadequacy;

25 (3) it is economically feasible to operate

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1 the proposed second plant or equipment successfully and  
2 continuously for the furnishing of local exchange service;

3 (4) the applicant for the second plant or  
4 equipment has sufficient financial resources to provide the  
5 proposed local exchange service properly and continuously;

6 (5) the applicant for the second plant or  
7 equipment has competent and experienced management and  
8 personnel to provide the proposed local exchange service;

9 (6) the applicant for the second plant or  
10 equipment is willing and able to conform to the constitution  
11 of New Mexico and laws of New Mexico and the rules and  
12 regulations of the commission;

13 (7) the applicant for the second plant or  
14 equipment is in every respect willing and able to provide the  
15 proposed local exchange service properly; and

16 (8) granting the additional certificate to  
17 the applicant shall not have a significant adverse impact on  
18 the existing telecommunications company.

19 F. All certificates of public convenience and  
20 necessity shall:

21 (1) continue in force, notwithstanding the  
22 provisions of this section [~~63-9A-2 NMSA 1978~~]; and

23 (2) remain subject to all terms and  
24 conditions imposed by statute or commission order at the time  
25 of issuance or in connection with any subsequent amendment,

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1 notwithstanding the provisions of [~~that~~] this section. "

2 Section 2. A new section of the New Mexico  
3 Telecommunications Act, Section 63-9A-6.3 NMSA 1978, is  
4 enacted to read:

5 "63-9A-6.3. [NEW MATERIAL] EXCEPTION TO EXCLUSIVE  
6 CERTIFICATED SERVICE AREAS. --

7 A. A person in a certificated service area granted  
8 pursuant to Section 63-9A-6 NMSA 1978 who has requested but is  
9 not receiving service from the telecommunications company  
10 holding the certificate of convenience and necessity for that  
11 area may request and receive service from another  
12 telecommunications company willing to provide service to that  
13 customer.

14 B. If a telecommunications company agrees to  
15 provide service to a person requesting service outside its  
16 certificated service area in accordance with Subsection A of  
17 this section, the company shall notify the commission, which  
18 shall issue a variance to the company's certificate allowing  
19 the company to provide the service in another company's  
20 certificated territory. "