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SENATE BILL 747

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

INTRODUCED BY

Shannon Robinson

AN ACT

RELATING TO TELECOMMUNICATIONS; PROVIDING FOR REGULATION OF  
ADVERTISING RATES IN PUBLISHED DIRECTORIES.

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

Section 1. Section 63-9A-3 NMSA 1978 (being Laws 1985,  
Chapter 242, Section 3, as amended) is amended to read:

"63-9A-3. DEFINITIONS. --As used in the New Mexico  
Telecommunications Act:

A. "affordable rates" means local exchange service  
rates that promote universal service within a local exchange  
service area, giving consideration to the economic conditions  
and costs to provide service in such area;

B. "cable television service" means the one-way  
transmission to subscribers of video programming or other  
programming service and subscriber interaction, if any, that

1 is required for the selection of such video programming or  
2 other programming service;

3 C. "commission" means the public regulation  
4 commission;

5 D. "competitive telecommunications service" means  
6 a service that has been determined to be subject to effective  
7 competition pursuant to Section 63-9A-8 NMSA 1978;

8 E. "effective competition" means that the  
9 customers of the service have reasonably available and  
10 comparable alternatives to the service;

11 F. "fund" means the New Mexico universal service  
12 fund;

13 G. "local exchange area" means a geographic area  
14 encompassing one or more local communities, as described in  
15 maps, tariffs or rate schedules filed with the commission,  
16 where local exchange rates apply;

17 H. "local exchange service" means the transmission  
18 of two-way interactive switched voice communications furnished  
19 by a telecommunications company within a local exchange area;

20 I. "message telecommunications service" means  
21 telecommunications service between local exchange areas within  
22 the state for which charges are made on a per-unit basis, not  
23 including wide-area telecommunications service, or its  
24 equivalent, or individually negotiated contracts for  
25 telecommunications services;

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1 J. "noncompetitive telecommunications service"  
2 means a service that has not been determined to be subject to  
3 effective competition pursuant to Section 63-9A-8 NMSA 1978;

4 K. "private telecommunications service" means a  
5 system, including the construction, maintenance or operation  
6 thereof, for the provision of telecommunications service, or  
7 any portion of that service, by a person for the sole and  
8 exclusive use of that person and not for resale, directly or  
9 indirectly. For purposes of this definition, the person that  
10 may use such service includes any affiliates of the person if  
11 at least eighty percent of the assets or voting stock of the  
12 affiliates is owned by the person. If any other person uses  
13 the telecommunications service, whether for hire or not, the  
14 private telecommunications service is a public  
15 telecommunications service;

16 L. "public telecommunications service" means the  
17 transmission of signs, signals, writings, images, sounds,  
18 messages, data or other information of any nature by wire,  
19 radio, lightwaves or other electromagnetic means originating  
20 and terminating in this state regardless of actual call  
21 routing and includes the publication of commercial directories  
22 of customers. "Public telecommunications service" does not  
23 include the provision of terminal equipment used to originate  
24 or terminate such service; private telecommunications service;  
25 broadcast transmissions by radio, television and satellite

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1 broadcast stations regulated by the federal communications  
2 commission; radio common carrier services, including mobile  
3 telephone service and radio paging; or one-way cable  
4 television service; and

5 M "telecommunications company" means a person that  
6 provides public telecommunications service. "

7 Section 2. Section 63-9A-8 NMSA 1978 (being Laws 1985,  
8 Chapter 242, Section 8, as amended) is amended to read:

9 "63-9A-8. REGULATION OF RATES AND CHARGES. --

10 A. In accordance with the policy established in the  
11 New Mexico Telecommunications Act, the commission shall, by  
12 its own motion or upon petition by any interested party, hold  
13 hearings to determine if any public telecommunications service  
14 is subject to effective competition in the relevant market  
15 area. When the commission has made a determination that a  
16 service or part of a service is subject to effective  
17 competition, the commission shall, consistent with the  
18 purposes of the New Mexico Telecommunications Act, modify,  
19 reduce or eliminate rules, regulations and other requirements  
20 applicable to the provision of such service, including the  
21 fixing and determining of specific rates, tariffs or fares for  
22 the service, including advertising rates in commercial  
23 directories. The commission's action may include the  
24 detariffing of service or the establishment of minimum rates  
25 which will cover the costs for the service. Such modification

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1 shall be consistent with the maintenance of the availability  
2 of access to local exchange service at affordable rates and  
3 comparable message [~~telecommunication~~] telecommunications  
4 service rates, as established by the commission, for  
5 comparable markets or market areas, except that volume  
6 discounts or other discounts based on reasonable business  
7 purposes shall be permitted. Upon petition or request of an  
8 affected telecommunications company, the commission, upon a  
9 finding that the requirements of Subsection C of this section  
10 are met, shall modify the same or similar regulatory  
11 requirements for those providers of comparable public  
12 telecommunications services in the same relevant markets so  
13 that there shall be parity of regulatory standards and  
14 requirements for all such providers.

15 B. In determining whether a service is subject to  
16 effective competition, the commission shall consider the  
17 following:

18 (1) the extent to which services are reasonably  
19 available from alternate providers in the relevant market  
20 area;

21 (2) the ability of alternate providers to make  
22 functionally equivalent or substitute services readily  
23 available at competitive rates, terms and conditions; and

24 (3) existing economic or regulatory barriers.

25 C. No provider of public telecommunications service

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1 may use current revenues earned or expenses incurred in  
2 conjunction with any noncompetitive service to subsidize  
3 competitive public telecommunications services. In order to  
4 avoid cross-subsidization of competitive services by  
5 noncompetitive telecommunications services, prices or rates  
6 charged for a competitive telecommunications service shall  
7 cover the cost for the provision of the service. In any  
8 proceeding held pursuant to this section, the party providing  
9 the service shall bear the burden of proving that the prices  
10 charged for competitive telecommunications services cover  
11 cost.

12 D. The commission may, upon its own motion or on the  
13 petition of an interested party and after notice to all  
14 interested parties and customers and a hearing, reclassify any  
15 service previously determined to be a competitive  
16 telecommunications service if after a hearing the commission  
17 finds that a service is not subject to effective competition. "