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SENATE BILL 3

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Roman M. Maes III

AN ACT

**RELATING TO TELECOMMUNICATIONS; DEREGULATING CARRIERS THAT
PROVIDE WIRELESS TELECOMMUNICATIONS SERVICES; AMENDING LAWS
1998, CHAPTER 108, SECTION 82; AMENDING AND REPEALING SECTIONS
OF THE NMSA 1978; DECLARING AN EMERGENCY.**

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

**Section 1. Section 63-7-1.1 NMSA 1978 (being Laws 1998,
Chapter 108, Section 52) is amended to read:**

**"63-7-1.1. COMMISSION POWERS AND DUTIES--TRANSPORTATION
AND TRANSMISSION COMPANIES AND COMMON CARRIERS--TELEPHONE AND
TELEGRAPH COMPANIES. --**

**A. With respect to transportation and transmission
companies and common carriers, the commission shall:**

**(1) fix, determine, supervise, regulate and
control all charges and rates of railway, express, telegraph,**

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1 telephone, sleeping car and other transportation and
2 transmission companies and common carriers within the state;

3 (2) determine any matters of public
4 convenience and necessity with respect to matters subject to
5 its regulatory authority as provided by law;

6 (3) require railway companies and other
7 common carriers to provide and maintain adequate equipment,
8 depots, stockpens, station buildings, agents and facilities
9 for the accommodation of shippers and passengers and for
10 receiving and delivering freight and express and to provide
11 and maintain necessary crossings, culverts, sidings and other
12 facilities for convenience and safety whenever in the
13 commission's judgment the public interest demands;

14 (4) require railway companies, transportation
15 companies and common carriers to provide [~~such~~] reasonable
16 safety appliances and use [~~such~~] reasonable safety practices
17 as may be necessary and proper for the safety of employees and
18 the public as required by federal or state laws and rules;

19 (5) receive customer complaints concerning
20 wireless telecommunications services and work with carriers
21 that provide wireless telecommunications services to obtain
22 resolution of the complaints;

23 [~~(5)~~] (6) change, amend and rescind rates;

24 [~~(6)~~] (7) enforce its rules through
25 administrative sanctions and in the courts; and

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1 [~~(7)~~] (8) carry out all other duties and have
2 all other powers provided by law.

3 B. In fixing rates of telephone and telegraph
4 companies, due consideration shall be given to the earnings,
5 investments and expenditures as a whole within the state. The
6 commission shall include in that consideration the earnings,
7 investments and expenditures derived from or related to the
8 sale of directory advertising and other directory listing
9 services.

10 C. The commission may subpoena witnesses and
11 documents, enforce its subpoenas through any court and,
12 through the court, punish for contempt.

13 D. The commission has the power, after notice and
14 hearing of record, to determine and decide any question and to
15 issue orders relating to its powers and duties.

16 E. An interested party may appeal from a final
17 order of the commission by filing a notice of appeal with the
18 supreme court asking for review of the order within thirty
19 days of the final order. The appellant shall pay to the
20 commission any costs of preparing and transmitting the record
21 to the court.

22 F. The pendency of an appeal shall not
23 automatically stay the order appealed from. The appellant may
24 seek to obtain a stay from the commission or the supreme
25 court.

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1 G. The appeal shall be on the record of the
2 hearing before the commission and shall be governed by the
3 appellate rules applicable to administrative appeals. The
4 supreme court shall affirm the commission's order unless it
5 is:

6 (1) arbitrary, capricious or an abuse of
7 discretion;

8 (2) not supported by substantial evidence in
9 the record; or

10 (3) otherwise not in accordance with law.

11 H. In the case of a failure or refusal of any
12 person to comply with an order of the commission within the
13 time prescribed in the order or within thirty days after the
14 order is entered, whichever is later, unless a stay has been
15 granted, the commission shall seek enforcement of the order in
16 the district court. The enforcement hearing shall be held on
17 an expedited basis. At the hearing, the sole question shall
18 be whether the person has failed to comply with or violated
19 the order. "

20 Section 2. Section 63-7-23 NMSA 1978 (being Laws 1995,
21 Chapter 175, Section 1, as amended by Laws 2000, Chapter 100,
22 Section 2 and also by Laws 2000, Chapter 102, Section 2) is
23 amended to read:

24 "63-7-23. TELECOMMUNICATIONS-- ADMINISTRATIVE FINES. --

25 A. For purposes of this section:

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

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

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

15 C. Except in the case of disputes between
16 telecommunications providers, an administrative fine of not
17 more than one thousand dollars (\$1,000) may be imposed for
18 each violation or each of multiple violations arising out of
19 the same facts up to a maximum of twenty-five thousand dollars
20 (\$25,000); or an administrative fine of not more than one
21 thousand dollars (\$1,000) may be imposed for each day of a
22 continuing violation arising out of the same facts up to a
23 maximum of twenty-five thousand dollars (\$25,000).

24 Notwithstanding any other provision of this subsection, the
25 commission may impose an administrative fine not to exceed

. 139810. 1

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1 twenty-five thousand dollars (\$25,000) for a single violation:

2 (1) that results in substantial harm to the
3 customers of the telecommunications provider or substantial
4 harm to the public interest; or

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

8 D. In the case of disputes between
9 telecommunications providers, an administrative fine of not
10 more than one hundred thousand dollars (\$100,000) may be
11 imposed for the violation of a telecommunications provider
12 interconnection agreement, telecommunications provider
13 wholesale tariff or commission [~~regulation~~] rule or order
14 otherwise relating to the provision of services between
15 telecommunications providers. An administrative fine of not
16 more than one hundred thousand dollars (\$100,000) may be
17 imposed for each day of a continuing violation.

18 E. The amount of the fine should bear a reasonable
19 relationship to the nature and severity of the violation.

20 F. The commission shall initiate a proceeding to
21 impose an administrative fine by giving written notice to the
22 telecommunications provider that the commission has facts as
23 set forth in the notice that, if not rebutted, may lead to the
24 imposition of an administrative fine under this section and
25 that the telecommunications provider has an opportunity for a

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1 hearing. The commission may only impose an administrative
2 fine by written order that, in the case of contested
3 proceedings, [~~shall be~~] is supported by a preponderance of the
4 evidence.

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

14 H. The commission shall consider mitigating and
15 aggravating circumstances in determining the amount of
16 administrative fine imposed.

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

22 J. [~~Any~~] A telecommunications provider or other
23 person aggrieved by an order assessing an administrative fine
24 may appeal the order to the supreme court of New Mexico. A
25 notice of appeal shall be filed within thirty days after the

. 139810. 1

1 entry of the commission's order. Notice of appeal shall name
2 the commission as appellee and shall identify the order from
3 which the appeal is taken.

4 K. The commission shall promulgate procedural
5 rules for the implementation of this section."

6 Section 3. Section 63-9A-8.2 NMSA 1978 (being Laws 2000,
7 Chapter 100, Section 4 and Laws 2000, Chapter 102, Section 4,
8 as amended) is amended to read:

9 "63-9A-8.2. IDENTIFYING SUBSIDIES--RULES--PRICE CAPS.--

10 A. No later than December 31, 2000, the commission
11 shall review existing rates for public telecommunications
12 services offered by incumbent local exchange carriers with
13 more than fifty thousand access lines and identify all
14 subsidies that are included in the rates. The commission
15 shall issue rules requiring that the identified subsidies
16 appear on customer bills and establish a schedule not later
17 than April 1, 2001 whereby implicit subsidies be eliminated
18 through implementation of the state rural universal service
19 fund or through revenue-neutral rate rebalancing or any other
20 method consistent with the intent of the New Mexico
21 Telecommunications Act.

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

24 (1) establish consumer protection and
25 quality-of-service standards;

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1 (2) ensure adequate investment in the
2 telecommunications infrastructure in both urban and rural
3 areas of the state;

4 (3) promote availability and deployment of
5 high-speed data services in both urban and rural areas of the
6 state;

7 (4) ensure the accessibility of
8 interconnection by competitive local exchange carriers in both
9 urban and rural areas of the state; and

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

13 C. No later than April 1, 2001, but in no case
14 prior to the adoption of the rules required in Subsection B of
15 this section, the commission shall eliminate rate of return
16 regulation of incumbent telecommunications carriers with more
17 than fifty thousand access lines and implement an alternative
18 form of regulation that includes reasonable price caps for
19 basic residence and business local exchange services.

20 D. Rules adopted pursuant to this section shall
21 not be applied to carriers that provide wireless
22 telecommunications services or to incumbent rural
23 telecommunications carriers as that term is defined in
24 Subsection I of Section 63-9H-3 NMSA 1978. "

25 Section 4. Section 63-9G-2 NMSA 1978 (being Laws 1999,

. 139810. 1

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1 Chapter 138, Section 2) is amended to read:

2 "63-9G-2. DEFINITIONS. --As used in the Cramming and
3 Slamming Act:

4 A. "billing aggregator" means a person that bills
5 customers for goods or services provided by others and that
6 uses a local exchange company as a billing agent;

7 B. "commission" means the public regulation
8 commi ssi on;

9 C. "cramming" means:

10 (1) charging a customer for
11 telecommu nications services that were not authorized by the
12 customer;

13 (2) charging a customer for goods or services
14 that are not telecommu nications services; or

15 (3) using a sweepstakes, contest or drawing
16 entry form as authorization to change or add
17 telecommu nications services to a customer's telephone bill;

18 D. "customer" means the person whose name appears
19 on the telephone bill or the person responsible for payment of
20 the telephone bill;

21 E. "local exchange company" means a provider that
22 provides local exchange services;

23 F. "local exchange services" means the
24 transmission of two-way interactive commu nications within a
25 local exchange area described in maps, tariffs or rate

. 139810. 1

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1 schedules filed with the commission where local exchange rates
2 apply;

3 G. "provider" means a telephone company,
4 transmission company, telecommunications common carrier,
5 telecommunications company, [~~cellular or other wireless~~
6 ~~telecommunications service company~~] cable television service,
7 telecommunications reseller, billing aggregator or other
8 person that bills directly or has a billing contract with a
9 local exchange company. "Provider" does not include a carrier
10 that provides cellular telecommunications services or other
11 radio common carrier services, including mobile telephone
12 services and radio paging services;

13 H. "slamming" means:

14 (1) changing a customer's provider without
15 the customer's authorization; or

16 (2) using a sweepstakes, contest or drawing
17 entry form as authorization to change a customer's provider;
18 and

19 I. "telecommunications service" means the
20 transmission of signs, signals, writings, images, sounds,
21 messages, data or other information of any nature by wire,
22 radio, lightwaves or other electromagnetic means or goods and
23 services related to the transmission of information that are
24 provided by the provider; provided that a good or service that
25 does not meet the definition of "telecommunications service"

. 139810. 1

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1 does not become a telecommunications service merely because it
2 is bundled with a telecommunications service for marketing or
3 billing purposes. "

4 Section 5. Laws 1998, Chapter 108, Section 82 is amended
5 to read:

6 "Section 82. DELAYED REPEAL. --The following are repealed
7 effective July 1, 2003:

8 A. the Public Utility Act;

9 B. Chapter 63, Article 7 NMSA 1978;

10 C. the Telephone and Telegraph Company
11 Certification Act; and

12 D. the New Mexico Telecommunications Act [~~and~~

13 E. ~~the Cellular Telephone Services Act~~]. "

14 Section 6. REPEAL. --Sections 63-9B-1 through 63-9B-6,
15 63-9B-8 through 63-9B-10 and 63-9B-14 NMSA 1978 (being Laws
16 1987, Chapter 296, Sections 1 through 6, 8 through 10 and 14,
17 as amended) are repealed.

18 Section 7. EMERGENCY. --It is necessary for the public
19 peace, health and safety that this act take effect
20 immediately.