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HOUSE BILL 58

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Debbie A. Rodella

FOR THE ECONOMIC AND RURAL DEVELOPMENT COMMITTEE AND THE  
SCIENCE, TECHNOLOGY AND TELECOMMUNICATIONS COMMITTEE

AN ACT

RELATING TO RURAL TELECOMMUNICATIONS; AMENDING THE RURAL  
TELECOMMUNICATIONS ACT OF NEW MEXICO TO AMEND REGULATION OF  
INCUMBENT RURAL TELECOMMUNICATIONS CARRIERS.

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

**SECTION 1.** Section 63-9H-1 NMSA 1978 (being Laws 1999,  
Chapter 295, Section 1) is amended to read:

"63-9H-1. SHORT TITLE.--~~[This act]~~ Chapter 63, Article 9H  
NMSA 1978 may be cited as the "Rural Telecommunications Act of  
New Mexico"."

**SECTION 2.** Section 63-9H-3 NMSA 1978 (being Laws 1999,  
Chapter 295, Section 3) is amended to read:

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

A. "affordable rates" means rates for basic service

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1 that promote universal service within a local exchange service  
2 area, giving consideration to the economic conditions and costs  
3 to provide service in the area in which service is provided;

4 B. "basic service" means service that is provided  
5 to a rural end-user customer that is consistent with the  
6 federal act;

7 C. "cable service" means the transmission to  
8 subscribers of video programming or other programming service  
9 and subscriber interaction, if any, that is required for the  
10 selection or use of the video programming or other programming  
11 service;

12 D. "commission" means the public regulation  
13 commission;

14 E. "eligible telecommunications carrier" means an  
15 eligible telecommunications carrier as defined in the federal  
16 act;

17 F. "federal act" means the federal  
18 Telecommunications Act of 1996;

19 G. "fund" means the state rural universal service  
20 fund;

21 H. "incumbent local exchange carrier" means a  
22 person that:

23 (1) was designated as an eligible  
24 telecommunications carrier by the state corporation commission  
25 in Docket #97-93-TC by order dated October 23, 1997, or that

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1 provided local exchange service in this state on February 8,  
2 1996; or

3 (2) became a successor or assignee of an  
4 incumbent local exchange carrier;

5 I. "incumbent rural telecommunications carrier"  
6 means ~~[a]~~ an incumbent local exchange carrier that serves fewer  
7 than fifty thousand access lines within the state and ~~[was]~~ has  
8 been designated as an eligible telecommunications carrier by  
9 the state corporation commission ~~[on or before November 1,~~  
10 ~~1997, including any successor in interest thereto]~~ or the  
11 public regulations commission;

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

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

19 L. "long distance service" means telecommunications  
20 service between local exchange areas that originate and  
21 terminate within the state;

22 M. "private telecommunications service" means a  
23 system, including its construction, maintenance or operation  
24 for the provision of telecommunications service, or any portion  
25 of that service, by a person for the sole and exclusive use of

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1 that person and not for resale, directly or indirectly. For  
2 purposes of this definition, the person that may use the  
3 service includes any affiliates of the person if at least  
4 eighty percent of the assets or voting stock of the affiliates  
5 is owned by the person. If any other person uses the  
6 telecommunications service, whether for hire or not, the  
7 private telecommunications service is a public  
8 telecommunications service;

9 N. "public telecommunications service" means the  
10 transmission of signs, signals, writings, images, sounds,  
11 messages, data or other information of any nature by wire,  
12 radio, lightwaves or other electromagnetic means originating  
13 and terminating in this state regardless of actual call  
14 routing. "Public telecommunications service" does not include  
15 the provision of terminal equipment used to originate or  
16 terminate the service; private telecommunications service;  
17 broadcast transmissions by radio, television and satellite  
18 broadcast stations regulated by the federal communications  
19 commission; radio common carrier services, including mobile  
20 telephone service and radio paging; or cable service; and

21 O. "telecommunications carrier" means a person that  
22 provides public telecommunications service."

23 SECTION 3. Section 63-9H-4 NMSA 1978 (being Laws 1999,  
24 Chapter 295, Section 4) is amended to read:

25 "63-9H-4. REGULATION BY COMMISSION.--

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1           A. Except as otherwise provided in the Rural  
2 Telecommunications Act of New Mexico or the federal act, each  
3 public telecommunications service is declared to be affected  
4 with the public interest and, as such, subject to the  
5 provisions of those acts, including the regulation thereof as  
6 provided in those acts.

7           B. The commission has exclusive jurisdiction to  
8 regulate incumbent rural telecommunications carriers only in  
9 the manner and to the extent authorized by the Rural  
10 Telecommunications Act of New Mexico, and Section 63-7-1.1 NMSA  
11 1978 does not apply; provided, however, that the commission's  
12 jurisdiction includes the regulation of wholesale rates,  
13 including access charges and interconnection agreements  
14 consistent with federal law and its enforcement and a  
15 determination of participation in low-income telephone service  
16 assistance programs pursuant to the Low Income Telephone  
17 Service Assistance Act.

18           C. The commission shall adopt rules consistent with  
19 the requirement for relaxed regulation for incumbent rural  
20 telecommunications carriers set forth in the Rural  
21 Telecommunications Act of New Mexico that provide for:

22                   (1) reduced filing requirements for applicants  
23 in rate increase proceedings under the Rural Telecommunications  
24 Act of New Mexico and proceedings under that act seeking  
25 payments from the fund; and

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1                   (2) expedited consideration in all proceedings  
2 initiated pursuant to the Rural Telecommunications Act of New  
3 Mexico in order to reduce the cost and burden for incumbent  
4 rural telecommunications carriers."

5           SECTION 4. Section 63-9H-6 NMSA 1978 (being Laws 1999,  
6 Chapter 295, Section 6, as amended) is amended to read:

7           "63-9H-6. STATE RURAL UNIVERSAL SERVICE FUND--  
8 ESTABLISHMENT.--

9           A. No later than January 1, 2000, the commission  
10 shall implement a "state rural universal service fund" to  
11 maintain and support at affordable rates those public  
12 telecommunications services as are determined by the  
13 commission. All of the balances in the existing New Mexico  
14 universal service fund as of July 1, 1999 shall be transferred  
15 into the state rural universal service fund.

16           B. The fund shall be financed by a surcharge on  
17 intrastate retail public telecommunications services to be  
18 determined by the commission, excluding services provided  
19 pursuant to a low-income telephone assistance plan billed to  
20 end-user customers by a telecommunications carrier, and  
21 excluding all amounts from surcharges, gross receipts taxes,  
22 excise taxes, franchise fees and similar charges. For the  
23 purpose of funding the fund, the commission has the authority  
24 to apply the surcharge on intrastate retail public  
25 telecommunications services provided by telecommunications

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1 carriers and to comparable retail alternative services provided  
2 by telecommunications carriers, including commercial mobile  
3 radio services, at a competitively and technologically neutral  
4 rate or rates to be determined by the commission. In  
5 prescribing competitively and technologically neutral surcharge  
6 rates, the commission may make distinctions between services  
7 subject to a surcharge, but it shall require all carriers  
8 subject to the surcharge to apply uniform surcharge rates for  
9 the same or comparable services. Money deposited in the fund  
10 is not public money, and the administration of the fund is not  
11 subject to the provisions of law regulating public funds. The  
12 commission shall not apply this surcharge to a private  
13 telecommunications network; to the state, a county, a  
14 municipality or other governmental entity; to a public school  
15 district; to a public institution of higher education; or to an  
16 Indian nation, tribe or pueblo.

17 C. The fund shall be competitively and  
18 technologically neutral, equitable and nondiscriminatory in its  
19 collection and distribution of funds, portable between eligible  
20 telecommunications carriers and additionally shall provide a  
21 specific, predictable and sufficient support mechanism as  
22 determined by the commission that reduces intrastate switched  
23 access charges to interstate switched access charge levels in a  
24 revenue-neutral manner and ensures universal service in the  
25 state.

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- 1                   D. The commission shall:
- 2                   (1) establish eligibility criteria for
- 3 participation in the fund consistent with federal law that
- 4 ensure the availability of service at affordable rates. The
- 5 eligibility criteria shall not restrict or limit an eligible
- 6 telecommunications carrier from receiving federal universal
- 7 service support;
- 8                   (2) provide for the collection of the
- 9 surcharge on a competitively neutral basis and for the
- 10 administration and disbursement of money from the fund;
- 11                   (3) determine those services requiring support
- 12 from the fund;
- 13                   (4) provide for the separate administration
- 14 and disbursement of federal universal service funds consistent
- 15 with federal law; and
- 16                   (5) establish affordability benchmark rates
- 17 for local residential and business services that shall be
- 18 utilized in determining the level of support from the fund.
- 19 The process for determining subsequent adjustments to the
- 20 benchmark shall be established through a rulemaking.

21                   E. All incumbent telecommunications carriers and

22 competitive carriers already designated as eligible

23 telecommunications carriers for the fund shall be eligible for

24 participation in the fund. All other carriers that choose to

25 become eligible to receive support from the fund may petition

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1 the commission to be designated as an eligible  
2 telecommunications carrier for the fund. The commission may  
3 grant eligible carrier status to a competitive carrier in a  
4 rural area upon a finding that granting the application is in  
5 the public interest. In making a public interest finding, the  
6 commission shall consider at least the following items:

7 (1) whether granting eligible carrier status  
8 to multiple carriers in a designated area is likely to result  
9 in more customer choice;

10 (2) the impact of designation of an additional  
11 eligible carrier on the size of the fund;

12 (3) the unique advantages and disadvantages of  
13 the competitor's service offering;

14 (4) any commitments made regarding the quality  
15 of telephone service; and

16 (5) the competitive carrier's willingness and  
17 ability to offer service throughout the designated service  
18 areas within a reasonable time frame.

19 F. The commission shall adopt rules, including a  
20 provision for variances, for the implementation and  
21 administration of the fund in accordance with the provisions of  
22 this section no later than November 1, 2005.

23 G. The commission shall, upon implementation of the  
24 fund, select a neutral third party administrator to collect,  
25 administer and disburse money from the fund under the

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1 supervision and control of the commission pursuant to  
2 established criteria and rules promulgated by the commission.  
3 The administrator may be reasonably compensated for the  
4 specified services from the surcharge proceeds to be received  
5 by the fund pursuant to Subsection B of this section. For  
6 purposes of this subsection, the commission shall not be a  
7 neutral third party administrator.

8 H. The fund established by the commission shall  
9 ensure the availability of local telecommunications service as  
10 determined by the commission at affordable rates in rural high  
11 cost areas of the state.

12 I. Beginning April 1, 2006, the commission shall  
13 commence the phase-in of reductions in intrastate switched  
14 access charges. By May 1, 2008, the commission shall ensure  
15 that intrastate switched access charges are equal to interstate  
16 switched access charges established by the federal  
17 communications commission as of January 1, 2006. Nothing in  
18 this section shall preclude the commission from considering  
19 further adjustments to intrastate switched access charges based  
20 on changes to interstate switched access charges after May 1,  
21 2008.

22 J. To ensure that providers of intrastate retail  
23 communications service contribute to the fund and to further  
24 ensure that the surcharge to be paid by the end-user customer  
25 will be held to a minimum, no later than November 1, 2005, the

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1 commission shall adopt rules, or take other appropriate action,  
2 to require all such providers to participate in a plan to  
3 ensure accurate reporting.

4 K. The commission shall authorize payments from the  
5 fund to incumbent local exchange carriers in combination with  
6 revenue-neutral rate rebalancing up to the affordability  
7 benchmark rates, in an amount equal to the reduction in  
8 revenues that occurs as a result of reduced intrastate switched  
9 access charges. The commission shall determine the methodology  
10 to be used to authorize payments to all other carriers that  
11 apply for and receive eligible carrier status. Any reductions  
12 in charges for access services resulting from compliance with  
13 this section shall be passed on for the benefit of consumers in  
14 New Mexico.

15 L. ~~[In a rate proceeding filed pursuant to~~  
16 ~~Subsection F of Section 63-9H-7 NMSA 1978]~~ The commission may  
17 also authorize payments from the fund to incumbent rural  
18 telecommunications carriers serving in high-cost areas of the  
19 state ~~[that have reduced access charges]~~ upon a finding by the  
20 commission that such payments are needed to ensure the  
21 widespread availability and affordability of residential local  
22 exchange service. The commission shall decide cases filed  
23 pursuant to this subsection with reasonable promptness, with or  
24 without a hearing, but no later than six months following the  
25 filing of an application seeking payments from the fund.

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1 M. By December 1, 2008, the fund administrator  
2 shall make a report to the commission and the legislature. The  
3 report shall include the effects of access reductions. The  
4 report shall also make recommendations for any changes to the  
5 structure, size or purposes of the fund."

6 SECTION 5. Section 63-9H-7 NMSA 1978 (being Laws 1999,  
7 Chapter 295, Section 7, as amended) is amended to read:

8 "63-9H-7. REGULATION OF RETAIL RATES OF INCUMBENT RURAL  
9 TELECOMMUNICATIONS CARRIER.--

10 A. Rates for retail rural public telecommunications  
11 services provided by an incumbent rural telecommunications  
12 carrier shall be subject to regulation by the commission only  
13 in the manner and to the extent authorized by this section.

14 B. An incumbent rural telecommunications carrier  
15 shall file tariffs for all retail public telecommunications  
16 services that, other than residential local exchange service,  
17 [~~which~~] shall be effective after ten days' notice to its  
18 customers and the commission [~~and publication in a local~~  
19 ~~newspaper in the incumbent service area~~]. An incumbent rural  
20 telecommunications carrier shall remain subject to complaint by  
21 an interested party subject to Section 63-9H-10 NMSA 1978.

22 C. An incumbent rural telecommunications carrier  
23 may increase its rates for residential local exchange service  
24 in the manner provided in Subsection B of this section to  
25 comply with requirements imposed by any federal or state law or

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1 rule. The procedures of Subsections D, E and F of this section  
2 shall not apply to increases under this subsection.

3 D. Except as provided in Subsection C of this  
4 section, rates for residential local exchange service may be  
5 increased by an incumbent rural telecommunications carrier only  
6 after sixty days' notice to all affected subscribers. The  
7 notice of increase shall include:

8 (1) the reasons for the rate increase;

9 (2) a description of the affected service;

10 (3) an explanation of the right of the  
11 subscriber to petition the commission for a public hearing on  
12 the rate increase;

13 (4) a list of local exchange areas that are  
14 affected by the proposed rate increase; and

15 (5) the dates, times and places for the public  
16 informational meetings required by this section.

17 ~~[D. An incumbent rural telecommunications carrier~~  
18 ~~may increase its rates for residential local exchange service~~  
19 ~~in the manner otherwise provided in this section as necessary~~  
20 ~~to recover a reasonable allocation of costs incurred due to~~  
21 ~~requirements imposed by any federal or state law or rule.]~~

22 E. An incumbent rural telecommunications carrier  
23 that proposes to increase its rates for residential local  
24 exchange service pursuant to Subsection D of this section shall  
25 hold at least one public informational meeting in each public

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1 regulation commissioner's district as established by the Public  
2 Regulation Commission Apportionment Act in which there is a  
3 local exchange area affected by the rate change.

4 ~~[E.]~~ F. Residential local exchange service rates  
5 increased by an incumbent rural telecommunications carrier  
6 pursuant to ~~[Subsection]~~ Subsections D and E of this section  
7 shall be reviewed by the commission only upon written protest  
8 signed by two and one-half percent of all affected subscribers  
9 ~~[or upon the commission staff's own motion for good cause].~~  
10 The protest shall specifically set forth the particular rate or  
11 charge as to which review is requested, the reasons for the  
12 requested review and the relief that the persons protesting  
13 desire. If a proper protest is presented to the commission  
14 within sixty days from the date notice of the rate change was  
15 sent to affected subscribers of an incumbent rural  
16 telecommunications carrier, the commission may accept and file  
17 the complaint and, upon proper notice, may suspend the rates at  
18 issue during the pendency of the proceedings and reinstate the  
19 rates previously in effect and shall hold and complete a  
20 hearing thereon within ninety days after filing to determine if  
21 the rates as proposed are fair, just and reasonable. The  
22 commission may, within sixty days after close of the hearing,  
23 enter an order adjusting the rates at issue, except that the  
24 commission shall not set any rate below the intrastate cost of  
25 providing the service, which shall include the cost methodology

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1 and rate of return authorized by the federal communications  
2 commission. In the order, the commission may order a refund of  
3 amounts collected in excess of the rates and charges as  
4 approved at the hearing, which may be paid as a credit against  
5 billings for future services. If the complaint is denied, the  
6 commission shall enter an order denying the complaint within  
7 sixty days after the close of the hearing, and the rates shall  
8 be deemed approved. For purposes of this section, cost shall  
9 also include a reasonable amount of joint and common costs  
10 incurred by the telecommunications carrier in its operations  
11 and may include other accounting adjustments authorized by the  
12 commission.

13 ~~[F.]~~ G. An incumbent rural telecommunications  
14 carrier ~~[that serves less than five percent of the state's~~  
15 ~~aggregate statewide subscriber lines]~~ may at any time elect to  
16 file an application with the commission requesting the  
17 commission to prescribe fair, just and reasonable rates for the  
18 carrier ~~[based on the carrier's revenue, expenses and~~  
19 ~~investment in accordance with traditional rate-making~~  
20 ~~principles]~~ in a manner consistent with the policy calling for  
21 relaxed regulation of incumbent rural telecommunications  
22 carriers expressed in Section 63-9H-2 NMSA 1978 and Subsection  
23 C of Section 63-9H-4 NMSA 1978. The commission shall decide  
24 cases filed under this subsection with reasonable promptness  
25 but no later than nine months following the filing of an

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