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AN ACT

RELATING TO TELECOMMUNICATIONS; EXPANDING THE APPLICATION OF
THE TELECOMMUNICATIONS RELAY SERVICE SURCHARGE TO INCLUDE
MODERN TELECOMMUNICATIONS TECHNOLOGIES; EXEMPTING CERTAIN
TELECOMMUNICATIONS SERVICES CUSTOMERS FROM THE SURCHARGE;
CLARIFYING PROVISIONS OF THE TELECOMMUNICATIONS ACCESS ACT.

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

SECTION 1. Section 63-9F-3 NMSA 1978 (being Laws 1993,
Chapter 54, Section 3, as amended) is amended to read:

"63-9F-3. DEFINITIONS.--As used in the
Telecommunications Access Act:

A. "commission" means the commission for deaf and
hard-of-hearing persons;

B. "communications assistant" means an individual
who translates conversation from text to voice and from voice
to text between two end users of a telecommunications
service;

C. "home service provider" means a
facilities-based carrier or reseller with which a customer
contracts for the provision of wireless communications
services;

D. "impaired" means having an impairment of or
deficit in the ability to hear or speak, or both;

E. "interconnected voice over internet protocol

1 service" means a service that:

2 (1) enables real-time, two-way voice
3 communications;

4 (2) requires a broadband connection from the
5 user's location;

6 (3) requires internet protocol-compatible
7 customer premises equipment; and

8 (4) permits users generally to receive calls
9 that originate on the public-switched telephone network and
10 to terminate calls to the public-switched telephone network;

11 F. "intrastate telecommunications service":

12 (1) means the provision of access lines,
13 special services and intrastate toll services, including for
14 telephone calls originating and terminating in the state; and

15 (2) does not include interconnected voice
16 over internet protocol service or wireless communications
17 service;

18 G. "place of primary use" means the street address
19 representative of where a customer's use of a wireless
20 communications service primarily occurs and that is:

21 (1) the residential street address or the
22 primary business street address of the customer; and

23 (2) within the licensed service area of the
24 home service provider;

25 H. "prepaid consumer" means a person who purchases

1 prepaid wireless communications service in a retail
2 transaction;

3 I. "prepaid wireless communications service" means
4 a wireless communications service that must be paid for in
5 advance and is sold in predetermined units or dollars of
6 which the number declines with use in a known amount;

7 J. "retail transaction" means the purchase of
8 prepaid wireless communications service from a seller for any
9 purpose other than for resale;

10 K. "seller" means a person who sells prepaid
11 wireless communications service to another person;

12 L. "specialized telecommunications equipment"
13 means devices that enable or assist an impaired individual to
14 communicate with another individual using the telephone
15 network;

16 M. "telecommunications company" means an
17 individual, corporation, partnership, joint venture, company,
18 firm, association, proprietorship or other entity that
19 provides public telecommunications services, and includes
20 cellular service companies as defined in Subsection B of
21 Section 63-9B-3 NMSA 1978;

22 N. "telecommunications relay system" means a
23 statewide telecommunications system through which an impaired
24 individual using specialized telecommunications equipment is
25 able to send or receive messages to and from an individual

1 who is not impaired and whose telephone is not equipped with
2 specialized telecommunications equipment and through which
3 the unimpaired individual is able, by using voice
4 communications, to send and receive messages to and from an
5 impaired person; and

6 O. "wireless communications service" means a
7 commercial mobile radio service as defined by Section 20.3 of
8 Title 47 of the Code of Federal Regulations, as amended, but
9 excludes internet access service."

10 SECTION 2. Section 63-9F-11 NMSA 1978 (being Laws 1993,
11 Chapter 54, Section 11, as amended) is amended to read:

12 "63-9F-11. IMPOSITION OF SURCHARGE.--

13 A. A telecommunications relay service surcharge of
14 thirty-three hundredths percent is imposed on the gross
15 amount paid:

16 (1) by customers, except customers whose
17 telephone service rates are reduced as authorized by the Low
18 Income Telephone Service Assistance Act, for intrastate
19 telecommunications services provided in this state;

20 (2) by customers for the intrastate portion
21 of interconnected voice over internet protocol service;

22 (3) by customers for intrastate mobile
23 telecommunications services that originate and terminate in
24 the same state, regardless of where the mobile
25 telecommunications services originate, terminate or pass

1 through, provided by home service providers to customers
2 whose place of primary use is in New Mexico; and

3 (4) by a prepaid consumer in a retail
4 transaction.

5 B. The telecommunications relay service surcharge
6 shall be included on the monthly bill of each customer of a
7 local exchange company or other telecommunications company
8 providing intrastate telecommunications services,
9 interconnected voice over internet protocol services or
10 intrastate mobile telecommunications services and paid at the
11 time of payment of the monthly bill. Receipts from selling
12 those services to any other telecommunications company or
13 provider for resale are not subject to the surcharge. The
14 customer is liable for the payment of the surcharge to the
15 provider of intrastate mobile telecommunications services,
16 the provider of interconnected voice over internet protocol
17 services or the local exchange company or other
18 telecommunications company providing intrastate
19 telecommunications services to the customer.

20 C. For the purposes of the surcharge imposed on a
21 retail transaction pursuant to Paragraph (4) of Subsection A
22 of this section:

23 (1) the surcharge shall be collected by the
24 seller from the prepaid consumer with respect to each retail
25 transaction occurring in this state. The amount of the

1 surcharge shall be either separately stated on an invoice,
2 receipt or other similar document that is provided to the
3 prepaid consumer by the seller or otherwise disclosed to the
4 prepaid consumer;

5 (2) for the purposes of Paragraph (1) of
6 this subsection, a retail transaction that is effected in
7 person by a prepaid consumer at a business location of the
8 seller shall be treated as occurring in this state if that
9 business location is in this state, and any other retail
10 transaction is treated as occurring in this state if the
11 retail transaction is treated as occurring in this state for
12 purposes of the Gross Receipts and Compensating Tax Act;

13 (3) the surcharge is the liability of the
14 prepaid consumer and not of the seller or any provider,
15 except that the seller shall be liable to remit all
16 surcharges collected from the prepaid consumer as provided in
17 this subsection, including all such surcharges that the
18 seller is deemed to collect where the amount of the surcharge
19 has not been separately stated on an invoice, receipt or
20 other similar document provided to the prepaid consumer by
21 the seller;

22 (4) the amount of the surcharge that is
23 collected by a seller from a prepaid consumer, if such amount
24 is separately stated on an invoice, receipt or other similar
25 document provided to the prepaid consumer by the seller,

1 shall not be included in the base for measuring any tax, fee,
2 surcharge or other charge that is imposed by this state, any
3 political subdivision of this state or any intergovernmental
4 agency;

5 (5) when prepaid wireless communications
6 service is sold with one or more other products or services
7 for a single, non-itemized price, the percentage specified in
8 Subsection A of this section shall apply to the entire
9 non-itemized price unless the seller elects to apply such
10 percentage to:

11 (a) if the amount of the prepaid
12 wireless communications service is disclosed to the prepaid
13 consumer as a dollar amount, such dollar amount; or

14 (b) if the seller can identify the
15 portion of the price that is attributable to the prepaid
16 wireless communications service by reasonable and verifiable
17 standards from its books and records that are kept in the
18 regular course of business for other purposes, including
19 non-tax purposes, such portion;

20 (6) if a minimal amount of prepaid wireless
21 communications service is sold with a prepaid wireless device
22 for a single, non-itemized price, the seller may elect not to
23 apply the percentage specified in Subsection A of this
24 section to such transaction. For the purposes of this
25 paragraph, an amount of service denominated as ten minutes or

1 less, or five dollars (\$5.00) or less, is minimal;

2 (7) surcharges collected by sellers shall be
3 remitted to the taxation and revenue department at the times
4 and in the manner provided with respect to the Gross Receipts
5 and Compensating Tax Act. The department shall establish
6 registration and payment procedures that substantially
7 coincide with the registration and payment procedures that
8 apply to the Gross Receipts and Compensating Tax Act. A
9 seller shall be permitted to deduct and retain three percent
10 of surcharges that are collected by the seller from the
11 prepaid consumer;

12 (8) the audit and appeal procedures
13 applicable to the Gross Receipts and Compensating Tax Act
14 shall apply to the surcharge;

15 (9) the taxation and revenue department
16 shall establish procedures by which a seller of prepaid
17 wireless communications services may document that a sale is
18 not a retail transaction, which procedures shall
19 substantially coincide with the procedures for documenting
20 sale for resale transactions for the Gross Receipts and
21 Compensating Tax Act; and

22 (10) notwithstanding Paragraph (1) of this
23 subsection, if a 911 surcharge is imposed on prepaid wireless
24 communications service pursuant to the Enhanced 911 Act, the
25 taxation and revenue department shall promulgate rules to

1 permit sellers to combine the surcharge imposed pursuant to
2 this section and the surcharge imposed pursuant the Enhanced
3 911 Act into a single surcharge on the invoice, receipt or
4 other similar document that is provided to the prepaid
5 consumer. The department shall ensure that appropriate
6 surcharge revenues are directed proportionately to the
7 respective 911 and telecommunications relay service funds.

8 D. A telecommunications company providing
9 intrastate telecommunications services, a home service
10 provider providing intrastate mobile telecommunications
11 services and a seller of interconnected voice over internet
12 protocol services shall, on sales subject to the
13 telecommunications relay service surcharge, assess and
14 collect the surcharge and remit the surcharge collected
15 monthly to the taxation and revenue department on or before
16 the twenty-fifth day of the month following collection. The
17 department shall administer and enforce the collection of the
18 surcharge in accordance with the Tax Administration Act.

19 E. The taxation and revenue department shall
20 transfer to the telecommunications access fund the amount of
21 the telecommunications relay service surcharge collected less
22 any amount deducted in accordance with Subsection F of this
23 section. Transfer of the net receipts from the surcharge to
24 the telecommunications access fund shall be made within the
25 month following the month in which the surcharge is

1 collected.

2 F. The taxation and revenue department may deduct
3 an amount not to exceed three percent of the
4 telecommunications relay service surcharge collected as a
5 charge for the administrative costs of collection and shall
6 remit that amount to the state treasurer for deposit in the
7 general fund each month.

8 G. The commission shall report to the revenue
9 stabilization and tax policy committee annually by September
10 30 the following information with respect to the prior fiscal
11 year:

12 (1) the amount and source of revenue
13 received by the telecommunications access fund;

14 (2) the amount and category of expenditures
15 from the fund; and

16 (3) the balance of the fund on that June
17 30."

18 SECTION 3. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2017. _____

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