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AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING THE RURAL
TELECOMMUNICATIONS ACT OF NEW MEXICO TO MAKE ACCESS TO THE
STATE RURAL UNIVERSAL SERVICE FUND FOR TELECOMMUNICATIONS
CARRIERS ESTABLISHED AFTER ENACTMENT OF THAT ACT COMPARABLE
TO THE ACCESS FOR TELECOMMUNICATIONS CARRIERS ESTABLISHED
PRIOR TO ENACTMENT OF THAT ACT; PROVIDING DEFINITIONS.

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

SECTION 1. Section 63-9H-3 NMSA 1978 (being Laws 1999,
Chapter 295, Section 3, as amended) 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 that promote universal service within a local
exchange service area, giving consideration to the economic
conditions and costs to provide service in the area in which
service is provided;

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

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

1 programming service;

2 D. "commission" means the public regulation
3 commission;

4 E. "comparable carrier" means an eligible
5 telecommunications carrier established prior to enactment of
6 the Rural Telecommunications Act of New Mexico that has a
7 similar number of access lines as an eligible
8 telecommunications carrier established after enactment of
9 that act;

10 F. "eligible telecommunications carrier" means an
11 eligible telecommunications carrier as defined in the federal
12 act;

13 G. "federal act" means the federal
14 Telecommunications Act of 1996;

15 H. "fund" means the state rural universal service
16 fund;

17 I. "incumbent local exchange carrier" means a
18 person that:

19 (1) was designated as an eligible
20 telecommunications carrier by the state corporation
21 commission in Docket #97-93-TC by order dated October 23,
22 1997, or that provided local exchange service in this state
23 on February 8, 1996; or

24 (2) became a successor or assignee of an
25 incumbent local exchange carrier;

1 J. "incumbent rural telecommunications carrier"
2 means an incumbent local exchange carrier that serves fewer
3 than fifty thousand access lines within the state and has
4 been designated as an eligible telecommunications carrier by
5 the state corporation commission or the public regulation
6 commission;

7 K. "local exchange area" means a geographic area
8 encompassing one or more local communities, as described in
9 maps, tariffs or rate schedules filed with the commission,
10 where local exchange rates apply;

11 L. "local exchange service" means the transmission
12 of two-way interactive switched voice communications
13 furnished by a telecommunications carrier within a local
14 exchange area;

15 M. "long distance service" means
16 telecommunications service between local exchange areas that
17 originate and terminate within the state;

18 N. "private telecommunications service" means a
19 system, including its construction, maintenance or operation
20 for the provision of telecommunications service, or any
21 portion of that service, by a person for the sole and
22 exclusive use of that person and not for resale, directly or
23 indirectly. For purposes of this definition, the person that
24 may use the service includes any affiliates of the person if
25 at least eighty percent of the assets or voting stock of the

1 affiliates is owned by the person. If any other person uses
2 the telecommunications service, whether for hire or not, the
3 private telecommunications service is a public
4 telecommunications service;

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

17 P. "telecommunications carrier" means a person that
18 provides public telecommunications service."

19 SECTION 2. Section 63-9H-6 NMSA 1978 (being Laws 1999,
20 Chapter 295, Section 6, as amended) is amended to read:

21 "63-9H-6. STATE RURAL UNIVERSAL SERVICE FUND--
22 ESTABLISHMENT.--

23 A. The commission shall implement and maintain a
24 "state rural universal service fund" to maintain and support
25 universal service that is provided by eligible

1 telecommunications carriers, including commercial mobile
2 radio services carriers, as are determined by the commission.
3 As used in this section, "universal service" means basic
4 local exchange service, comparable retail alternative
5 services at affordable rates, service pursuant to a
6 low-income telephone assistance plan and broadband internet
7 access service to unserved and underserved areas as
8 determined by the commission.

9 B. The fund shall be financed by a surcharge on
10 intrastate retail public telecommunications services to be
11 determined by the commission, excluding services provided
12 pursuant to a low-income telephone assistance plan billed to
13 end-user customers by a telecommunications carrier, and
14 excluding all amounts from surcharges, gross receipts taxes,
15 excise taxes, franchise fees and similar charges. For the
16 purpose of funding the fund, the commission has the authority
17 to apply the surcharge on intrastate retail public
18 telecommunications services provided by telecommunications
19 carriers, including commercial mobile radio services and
20 voice over internet protocol services, at a competitively and
21 technologically neutral rate or rates to be determined by the
22 commission. The commission may establish the surcharge as a
23 percentage of intrastate retail public telecommunications
24 services revenue or as a fixed amount applicable to each
25 communication connection. For purposes of this section, a

1 "communication connection" means a voice-enabled telephone
2 access line, wireless voice connection, unique voice over
3 internet protocol service connection or other uniquely
4 identifiable functional equivalent as determined by the
5 commission. Such surcharges shall be competitively and
6 technologically neutral. Money deposited in the fund is not
7 public money, and the administration of the fund is not
8 subject to the provisions of law regulating public funds.
9 The commission shall not apply this surcharge to a private
10 telecommunications network; to the state, a county, a
11 municipality or other governmental entity; to a public school
12 district; to a public institution of higher education; to an
13 Indian nation, tribe or pueblo; or to Native American
14 customers who reside on tribal or pueblo land.

15 C. The fund shall be competitively and
16 technologically neutral, equitable and nondiscriminatory in
17 its collection and distribution of funds, portable between
18 eligible telecommunications carriers and additionally shall
19 provide a specific, predictable and sufficient support
20 mechanism as determined by the commission that ensures
21 universal service in the state.

22 D. The commission shall:

23 (1) establish eligibility criteria for
24 participation in the fund consistent with federal law that
25 ensure the availability of universal service at affordable

1 rates. The eligibility criteria shall not restrict or limit
2 an eligible telecommunications carrier from receiving federal
3 universal service support;

4 (2) provide for the collection of the surcharge
5 on a competitively neutral basis and for the administration
6 and disbursement of money from the fund;

7 (3) determine those services and areas
8 requiring support from the fund;

9 (4) provide for the separate administration and
10 disbursement of federal universal service funds consistent
11 with federal law; and

12 (5) establish affordability benchmark rates for
13 local residential and business services that shall be
14 utilized in determining the level of support from the fund.
15 The process for determining subsequent adjustments to the
16 benchmark shall be established through a rulemaking.

17 E. All incumbent telecommunications carriers and
18 competitive carriers already designated as eligible
19 telecommunications carriers for the fund shall be eligible
20 for participation in the fund. All other carriers that
21 choose to become eligible to receive support from the fund
22 may petition the commission to be designated as an eligible
23 telecommunications carrier for the fund. The commission may
24 grant eligible carrier status to a competitive carrier in a
25 rural area upon a finding that granting the application is in

1 the public interest. In making a public interest finding,
2 the commission may consider at least the following items:

3 (1) the impact of designation of an additional
4 eligible carrier on the size of the fund;

5 (2) the unique advantages and disadvantages of
6 the competitor's service offering; and

7 (3) any commitments made regarding the quality
8 of telephone service.

9 F. The commission shall adopt rules, including a
10 provision for variances, for the implementation and
11 administration of the fund in accordance with the provisions
12 of this section. The rules shall enumerate the appropriate
13 uses of fund support and any restrictions on the use of fund
14 support by eligible telecommunications carriers. The rules
15 shall require that an eligible telecommunications carrier
16 receiving support from the fund pursuant to Subsection K, L
17 or M of this section must expend no less than sixty percent
18 of the support it receives to deploy and maintain broadband
19 internet access services in rural areas of the state. The
20 rules also shall provide for annual reporting by eligible
21 telecommunications carriers verifying that the reporting
22 carrier continues to meet the requirements for designation as
23 an eligible telecommunications carrier for purposes of the
24 fund and is in compliance with the commission's rules,
25 including the provisions regarding use of support from the

1 fund.

2 G. The commission shall, upon implementation of the
3 fund, select a neutral third-party administrator to collect,
4 administer and disburse money from the fund under the
5 supervision and control of the commission pursuant to
6 established criteria and rules promulgated by the commission.
7 The administrator may be reasonably compensated for the
8 specified services from the surcharge proceeds to be received
9 by the fund pursuant to Subsection B of this section. For
10 purposes of this subsection, the commission shall not be a
11 neutral third-party administrator.

12 H. The fund established by the commission shall
13 ensure the availability of universal service as determined by
14 the commission at affordable rates in rural areas of the
15 state; provided, however, that nothing in this section shall
16 be construed as granting any authority to the commission to
17 impose the surcharge on or otherwise regulate broadband
18 internet access services.

19 I. The commission shall ensure that intrastate
20 switched access charges are equal to interstate switched
21 access charges established by the federal communications
22 commission as of January 1, 2006. Nothing in this section
23 shall preclude the commission from considering further
24 adjustments to intrastate switched access charges based on
25 changes to interstate switched access charges.

1 J. To ensure that providers of intrastate retail
2 communications service contribute to the fund and to further
3 ensure that the surcharge determined pursuant to Subsection B
4 of this section to be paid by the end-user customer will be
5 held to a minimum, the commission shall adopt rules, or take
6 other appropriate action, to require all such providers to
7 participate in a plan to ensure accurate reporting.

8 K. The commission shall authorize payments from the
9 fund to incumbent local exchange carriers, in combination
10 with revenue-neutral rate rebalancing up to the affordability
11 benchmark rates. Beginning in 2018, the commission shall
12 make access reduction support payments in the amount made
13 from the fund in base year 2014, adjusted each year
14 thereafter by:

15 (1) the annual percentage change in the number
16 of access lines served by the incumbent local exchange
17 carriers receiving such support for the prior calendar year,
18 as compared to base year 2014; and

19 (2) changes in the affordability benchmark
20 rates that have occurred since 2014.

21 L. The commission shall determine the methodology
22 to be used to authorize payments to all other carriers that
23 apply for and receive eligible carrier status; provided that:

24 (1) an eligible incumbent telecommunications
25 carrier that is not eligible for funding pursuant to rate

1 rebalancing in Subsection K of this section and that has been
2 previously authorized pursuant to Subsection M of this
3 section for need-based support may apply for ongoing fund
4 support;

5 (2) the commission shall award an applicant
6 ongoing fund support at no less than the average access line
7 amount of funding support for comparable carriers; provided
8 that an eligible telecommunications carrier receiving fund
9 support pursuant to this subsection shall not offer basic
10 local exchange residential and business services at rate
11 levels lower than the rates for such services charged by any
12 of the comparable carriers used for the determination of the
13 level of support;

14 (3) the commission shall act upon a request for
15 ongoing fund support within one hundred twenty days of the
16 filing of the request; and

17 (4) nothing in this section shall limit the
18 commission's authority to adopt rules pursuant to Subsection
19 F of this section regarding appropriate uses of fund support
20 and any restrictions on the use of the fund support by
21 eligible telecommunications carriers.

22 M. The commission may also authorize payments from
23 the fund to incumbent rural telecommunications carriers or to
24 telecommunications carriers providing comparable retail
25 alternative services that have been designated as eligible

1 telecommunications carriers serving in rural areas of the
2 state upon a finding, based on factors that may include a
3 carrier's regulated revenues, expenses or investment, by the
4 commission that such payments are needed to ensure the
5 widespread availability and affordability of universal
6 service. The commission shall decide cases filed pursuant to
7 this subsection with reasonable promptness, with or without a
8 hearing, but no later than six months following the filing of
9 an application seeking payments from the fund, unless the
10 commission finds that a longer time will be required, in
11 which case the commission may extend the period for an
12 additional three months.

13 N. The commission shall adopt rules that establish
14 and implement a broadband program to provide funding to
15 eligible telecommunications carriers for the construction and
16 maintenance of facilities capable of providing broadband
17 internet access service. Such rules shall require that the
18 commission consider applications for funding on a
19 technology-neutral basis and shall require that the awards of
20 support be consistent with federal universal service support
21 programs and be based on the best use of the fund for rural
22 areas of the state. Each year, a minimum of five million
23 dollars (\$5,000,000) of the fund shall be dedicated to the
24 broadband program.

25 O. The total obligations of the fund determined by

1 the commission pursuant to this section, plus administrative
2 expenses and a prudent fund balance, shall not exceed a cap
3 of thirty million dollars (\$30,000,000) per year. The
4 commission shall evaluate the amount of the cap in an
5 appropriate proceeding to be completed by June 30, 2019 and
6 consider whether, based on the then-current status of the
7 fund, the cap should be modified, maintained or eliminated.

8 P. By December 31, 2019, the commission shall make
9 a report to the legislature regarding the status of the fund,
10 including relevant data relating to implementation of the
11 broadband program and expansion of broadband internet access
12 services in rural areas of the state. The report shall also
13 make recommendations for any changes to the structure, size
14 and purposes of the fund and whether the cap on the fund
15 provided for in Subsection O of this section should be
16 modified, maintained or eliminated." _____

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