

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 41

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING SECTIONS OF THE NEW MEXICO TELECOMMUNICATIONS ACT; REQUIRING THAT INCUMBENT LOCAL EXCHANGE CARRIERS THAT SERVE FIFTY THOUSAND OR MORE ACCESS LINES BE REGULATED IN THE SAME MANNER AS INCUMBENT RURAL TELECOMMUNICATIONS CARRIERS IN MOST CASES; ESTABLISHING THAT EFFECTIVE COMPETITION EXISTS IN A WIRE CENTER SERVING AREA WHEN VOICE SERVICES ARE PROVIDED TO THE AREA BY TWO OR MORE ALTERNATE PROVIDERS; PROVIDING DEFINITIONS; REQUIRING THE PUBLIC REGULATION COMMISSION TO REPORT THE STEPS TAKEN TO ACHIEVE REGULATORY PARITY AMONG CARRIERS; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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:

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underscored material = new
[bracketed material] = delete

1 "63-9A-3. DEFINITIONS.--As used in the New Mexico
2 Telecommunications Act:

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

7 B. "alternate provider" means a person that
8 provides voice services, regardless of the technology used.
9 Such providers are not limited to telecommunications companies
10 and include cellular service companies, satellite companies and
11 companies that provide service using an interconnected voice-
12 over-internet protocol;

13 [~~B.~~] C. "cable television service" means the one-
14 way transmission to subscribers of video programming or other
15 programming service and subscriber interaction, if any, that is
16 required for the selection of such video programming or other
17 programming service;

18 [~~C.~~] D. "commission" means the public regulation
19 commission;

20 [~~D.~~] E. "competitive telecommunications service"
21 means a service that has been determined to be subject to
22 effective competition pursuant to Section 63-9A-8 NMSA 1978;

23 [~~E.~~] F. "competitive telecommunications service
24 provider" includes competitive carriers holding certificates of
25 public convenience and necessity issued by the commission

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1 pursuant to laws and regulations, including, without
2 limitation, Section 63-9A-6 NMSA 1978;

3 ~~[F.]~~ G. "effective competition" means the
4 competition that results from the customers of the service
5 having reasonably available and comparable alternatives to the
6 service, consistent with the standards set forth in Section
7 63-9A-8 NMSA 1978;

8 ~~[G.]~~ H. "fund" means the state rural universal
9 service fund;

10 ~~[H.]~~ I. "incumbent local exchange carrier" means a
11 person that:

12 (1) was designated as an eligible
13 telecommunications carrier by the state corporation commission
14 in Docket #97-93-TC by order dated October 23, 1997 or that
15 provided local exchange service in New Mexico on February 8,
16 1996; or

17 (2) became a successor or assignee of an
18 incumbent local exchange carrier;

19 ~~[I.]~~ J. "incumbent rural telecommunications
20 carrier" means an incumbent local exchange carrier that serves
21 fewer than fifty thousand access lines within the state and has
22 been designated as an eligible telecommunications company by
23 the state corporation commission or the public regulation
24 commission;

25 ~~[J.]~~ K. "local exchange area" means a geographic

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1 area encompassing one or more local communities, as described
2 in maps, tariffs or rate schedules filed with the commission,
3 where local exchange rates apply;

4 [K.] L. "local exchange service" means the
5 transmission of two-way interactive switched voice
6 communications furnished by a telecommunications company within
7 a local exchange area;

8 [L.] M. "message telecommunications service" means
9 telecommunications service between local exchange areas within
10 the state for which charges are made on a per-unit basis, not
11 including wide-area telecommunications service, or its
12 equivalent, or individually negotiated contracts for
13 telecommunications services;

14 [M.] N. "noncompetitive telecommunications service"
15 means a service that has not been determined to be subject to
16 effective competition pursuant to Section 63-9A-8 NMSA 1978;

17 O. "person" means a natural person, individual,
18 corporation, association, partnership or any other legal
19 entity;

20 [N.] P. "private telecommunications service" means
21 a system, including the construction, maintenance or operation
22 thereof, for the provision of telecommunications service, or
23 any portion of that service, by a person for the sole and
24 exclusive use of that person and not for resale, directly or
25 indirectly. For purposes of this definition, the person that

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1 may use such service includes any affiliates of the person if
2 at least eighty percent of the assets or voting stock of the
3 affiliates is owned by the person. If any other person uses
4 the telecommunications service, whether for hire or not, the
5 private telecommunications service is a public
6 telecommunications service;

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

20 ~~[P.]~~ R. "telecommunications company" means a person
21 that provides public telecommunications service;

22 S. "voice services" means the transmission of
23 signs, signals, writings, images, sounds, messages, data or
24 other information of any nature by wire, radio, light waves or
25 other electromagnetic means, including those voice services

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1 provided by incumbent local exchange carriers, competitive
2 telecommunications service providers, mobile wireless providers
3 and interconnected voice-over-internet protocol service
4 providers;

5 [Q-] T. "wire center" means a facility where local
6 exchange access lines converge and are connected to a switching
7 device that provides access to the public switched network and
8 includes remote switching units and host switching units; and

9 [R-] U. "wire center serving area" means the
10 geographic area of a local exchange area served by a single
11 wire center."

12 SECTION 2. Section 63-9A-5 NMSA 1978 (being Laws 1985,
13 Chapter 242, Section 5, as amended) is amended to read:

14 "63-9A-5. REGULATION BY COMMISSION.--

15 A. Except as otherwise provided in the New Mexico
16 Telecommunications Act, each public telecommunications service
17 is declared to be affected with the public interest and, as
18 such, subject to the provisions of that act, including the
19 regulation thereof as provided in that act.

20 B. Except in cases regarding the fixing of rates
21 pursuant to Section 63-7-1.1 NMSA 1978, the commission has
22 exclusive jurisdiction to regulate incumbent local exchange
23 carriers that serve fifty thousand or more access lines within
24 the state [~~only in the manner and~~] to the extent authorized by
25 the New Mexico Telecommunications Act [~~and Subsection B of~~

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1 ~~Section 63-7-1.1 NMSA 1978 does not apply~~]; provided ~~[however]~~
2 that:

3 (1) the commission's jurisdiction includes the
4 regulation of wholesale rates, including access charges and
5 interconnection agreements consistent with federal law and its
6 enforcement and determinations of participation in low-income
7 telephone service assistance programs pursuant to the Low
8 Income Telephone Service Assistance Act ~~[The New Mexico~~
9 ~~Telecommunications Act expressly preserves and does not~~
10 ~~diminish or expand]~~; and

11 (2) incumbent local exchange carriers
12 regulated pursuant to this section shall be regulated in the
13 same manner as incumbent rural telecommunications carriers are
14 regulated pursuant to the Rural Telecommunications Act of New
15 Mexico.

16 C. Any rules adopted by the commission for the
17 regulation of incumbent local exchange carriers pursuant to the
18 New Mexico Telecommunications Act shall preserve and not alter:

19 (1) the rights and obligations of any entity,
20 including the commission, established pursuant to federal law,
21 including 47 U.S.C. Sections 251 and 252, or established
22 pursuant to any state law, rule, procedure, regulation or order
23 related to interconnection, intercarrier compensation,
24 intercarrier complaints, wholesale rights and obligations or
25 any wholesale rate or schedule that is filed with and

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1 maintained by the commission;

2 (2) the rights and obligations of any
3 competitive telecommunications service provider holding a
4 certificate of public convenience and necessity, or the rights
5 and obligations of any competitive [~~local-exchange~~] carrier to
6 obtain such a certificate;

7 (3) the authority of the commission to resolve
8 consumer complaints regarding basic local exchange service;
9 provided, however, that the commission's authority to resolve
10 such complaints shall be limited to resolving issues of
11 consumer protection and shall not include the authority to
12 determine or fix rates, provider of last resort obligations or
13 service quality standards except as expressly set forth in the
14 New Mexico Telecommunications Act;

15 (4) the authority of the commission to
16 establish reasonable quality of service standards; provided,
17 however, that the enforcement of such standards shall be
18 limited to the commission's fining authority set forth in
19 Section 63-7-23 NMSA 1978 and the authority to seek an
20 injunction set forth in Section 63-9-19 NMSA 1978;

21 (5) the rights and obligations of any entity,
22 including the commission, regarding the fund;

23 (6) the rights and obligations of any entity,
24 including the commission, regarding access to emergency service
25 to the extent consistent with the Enhanced 911 Act; or

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1 (7) the rights and obligations of any entity,
2 including the commission, regarding the administration of
3 slamming and cramming rules, telecommunications relay service
4 and numbering resources to the extent permitted by and
5 consistent with federal law.

6 ~~[G. For incumbent local exchange carriers that~~
7 ~~serve fifty thousand or more access lines within the state, the~~
8 ~~commission shall adopt relaxed regulations that provide for:~~

9 (1) ~~reduced filing requirements for applicants~~
10 ~~in rate increase proceedings under the New Mexico~~
11 ~~Telecommunications Act; and~~

12 (2) ~~expedited consideration in all proceedings~~
13 ~~initiated pursuant to the New Mexico Telecommunications Act in~~
14 ~~order to reduce the cost and burden for incumbent local~~
15 ~~exchange carriers and other applicants.~~

16 ~~D. The regulatory requirements and the commission's~~
17 ~~regulation of competitive local exchange carriers, competitive~~
18 ~~access providers and interexchange carriers shall be no greater~~
19 ~~than, and no more extensive than, that of incumbent local~~
20 ~~exchange carriers that serve fifty thousand or more access~~
21 ~~lines.~~

22 ~~E.]~~ D. The provisions of the New Mexico
23 Telecommunications Act do not apply to incumbent rural
24 telecommunications carriers."

25 SECTION 3. Section 63-9A-8 NMSA 1978 (being Laws 1985,
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1 Chapter 242, Section 8, as amended) is amended to read:

2 "63-9A-8. REGULATION OF RATES AND CHARGES--EFFECTIVE
3 COMPETITION.--

4 A. In accordance with the policy established in the
5 New Mexico Telecommunications Act, the commission shall, by its
6 own motion or upon petition by any interested party, [~~hold~~
7 ~~hearings to~~] determine if [~~any public telecommunications~~
8 ~~service~~] a wire center serving area is subject to effective
9 competition [~~in the relevant market area~~]. When the commission
10 has made a determination that a [~~service or part of a service~~]
11 wire center serving area is subject to effective competition,
12 the commission shall, consistent with the purposes of the New
13 Mexico Telecommunications Act, [~~modify, reduce or~~] eliminate
14 rules, regulations and other requirements applicable to the
15 provision of [~~such service, including the fixing and~~
16 ~~determining of specific rates, tariffs or fares for the~~
17 ~~service~~] telecommunications services within that wire center
18 serving area. The commission's action [~~may~~] shall include the
19 detariffing of service [~~or~~] and may include the establishment
20 of minimum rates that will cover the costs for the service.
21 Such [~~modification~~] action shall be consistent with the
22 maintenance of the availability of access to local exchange
23 service and message telecommunications service at affordable
24 rates [~~and comparable message telecommunications service rates~~]
25 comparable in both urban and rural markets as established by

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1 the commission, ~~[for comparable markets or market areas]~~ except
 2 that volume discounts or other discounts based on reasonable
 3 business purposes shall be permitted. ~~[Upon petition or~~
 4 ~~request of an affected telecommunications company]~~ The
 5 commission ~~[upon a finding that the requirements of Subsection~~
 6 ~~B of this section are met]~~ shall also modify the same or
 7 similar retail regulatory requirements for those providers of
 8 comparable public telecommunications services in the same
 9 relevant markets so that there shall be parity of retail
 10 regulatory standards and requirements for all such providers;
 11 provided, however, that this subsection shall not be construed
 12 to permit the adoption of any new regulatory requirements or
 13 standards for providers of comparable telecommunications
 14 services.

15 ~~[B. In determining whether a service is subject to~~
 16 ~~effective competition the commission shall consider the~~
 17 ~~following on a wire center serving area basis for each wire~~
 18 ~~center serving area and service for which a determination of~~
 19 ~~effective competition is requested, and separate determinations~~
 20 ~~shall be made for residential and business services in each~~
 21 ~~wire center serving area:~~

22 ~~(1) the extent to which services are~~
 23 ~~reasonably available from alternate providers~~

24 ~~(2) the ability of alternate providers to make~~
 25 ~~functionally equivalent or substitute services readily~~

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1 ~~available at competitive rates, terms and conditions;~~

2 ~~(3) existing economic, technological,~~
3 ~~regulatory or other barriers to market entry and exit;~~

4 ~~(4) the number of other providers offering the~~
5 ~~same or reasonably comparable services;~~

6 ~~(5) the presence of at least two facilities-~~
7 ~~based competitors, including without limitation facilities-~~
8 ~~based providers of wireless or voice over internet protocol~~
9 ~~services, operating in all or part of the wire center for which~~
10 ~~a determination of effective competition is requested that are~~
11 ~~unaffiliated with the petitioning carrier and provide the same~~
12 ~~or reasonably comparable service of the type for which the~~
13 ~~finding of effective competition is sought;~~

14 ~~(6) the ability of the petitioning provider to~~
15 ~~affect prices or deter competition; and~~

16 ~~(7) such other factors as the commission deems~~
17 ~~appropriate.~~

18 ~~G. If, in the wire center serving area for which a~~
19 ~~determination of effective competition is requested, the~~
20 ~~incumbent local exchange carrier provides basic local exchange~~
21 ~~service either separately or bundled to less than one-half of~~
22 ~~the customer locations where such service is available at the~~
23 ~~time the petition is filed, the public interest requires that~~
24 ~~effective competition be presumed for all regulated~~
25 ~~telecommunications services provided by the incumbent provider~~

1 ~~in that wire center serving area; provided, however, that~~
2 ~~findings and presumptions applied pursuant to this section~~
3 ~~shall be made separately for residential and business services~~
4 ~~and customer locations.]~~

5 B. Effective competition pursuant to the New Mexico
6 Telecommunications Act shall exist in a wire center serving
7 area when voice services are available to business customers
8 from two or more alternate providers not affiliated with the
9 incumbent local exchange carrier in the wire center serving
10 area and are available to residential customers from two or
11 more alternate providers not affiliated with the incumbent
12 local exchange carrier in the wire center serving area,
13 regardless of:

14 (1) the technology used to provide the voice
15 services;

16 (2) whether the voice services are regulated
17 or unregulated; or

18 (3) whether the voice services are provided by
19 alternate providers that receive state or federal funding
20 assistance.

21 C. In addition to establishment of effective
22 competition pursuant to Subsection B of this section and upon
23 notice to the commission, when an alternate provider other than
24 the incumbent local exchange carrier has been awarded funding
25 to provide broadband service within a wire center serving area

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1 pursuant to a state or federal broadband assistance or
2 deployment program, effective competition for all regulated
3 telecommunications services in that wire center serving area
4 shall exist.

5 D. No provider of public telecommunications service
6 may use current revenues earned or expenses incurred in
7 conjunction with any noncompetitive service to subsidize
8 competitive public telecommunications services. In order to
9 avoid cross-subsidization of competitive services by
10 noncompetitive telecommunications services, prices or rates
11 charged for a competitive telecommunications service shall
12 cover the cost for the provision of the service consistent with
13 the provisions of Subsection G of Section 63-9A-8.1 NMSA 1978.
14 In any proceeding held pursuant to this section, the party
15 claiming that the price for a competitive telecommunications
16 service does not cover the cost shall bear the burden of
17 proving that the prices charged for competitive
18 telecommunications services do not cover cost; provided,
19 however, that the commission may require the telecommunications
20 company against whom the complaint is filed to submit a cost
21 study for the service that is the subject of the complaint as
22 part of its examination and determination of the complaint.

23 E. The commission may, upon its own motion or on
24 the petition of an interested party and after notice to all
25 interested parties and customers and a hearing, reclassify any

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1 service previously determined to be a competitive
2 telecommunications service if after a hearing the commission
3 finds that a service is not subject to effective competition.

4 F. If a wire center [~~service~~] servicing area is
5 deregulated pursuant to a determination of effective
6 competition, for those wire center [~~service~~] servicing areas
7 where that service is deregulated, the petitioning
8 telecommunications company shall no longer be eligible to claim
9 an exemption from the application of the Unfair Practices Act
10 or the Antitrust Act."

11 SECTION 4. Section 63-9A-21 NMSA 1978 (being Laws 2017,
12 Chapter 71, Section 7) is amended to read:

13 "63-9A-21. COMMISSION REVIEW OF IMPACTS.--

14 A. The commission shall review the impact of
15 provisions of the New Mexico Telecommunications Act on
16 residential and business consumers in urban and rural areas of
17 the state every three years, the first review to be completed
18 by July 31, 2019, and shall report its findings to the
19 legislature. The review shall:

20 (1) investigate the impact on rates, service
21 quality, incumbent local exchange carrier employment,
22 investment in telecommunications infrastructure and the
23 availability and deployment of high speed data services; [~~The~~
24 ~~review shall also include a report on those~~]

25 (2) report on the wire center servicing areas

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1 that have been deemed to have effective competition and any
2 wire centers no longer subject to carrier of last resort
3 obligations; and

4 (3) specify the steps the commission has taken
5 to implement parity of regulation among all incumbent local
6 exchange carriers consistent with the provisions of the New
7 Mexico Telecommunications Act.

8 B. For any wire center serving an area deregulated
9 pursuant to the provisions of Section 63-9A-8 NMSA 1978, if the
10 commission finds that reregulation of basic local exchange
11 service is necessary to protect the public interest following a
12 hearing and findings of fact and conclusions of law, after July
13 31, ~~[2021]~~ 2023, the commission shall regulate basic local
14 exchange service pursuant to the New Mexico Telecommunications
15 Act."

16 **SECTION 5. REPEAL.**--Section 63-9A-2 NMSA 1978 (being Laws
17 1985, Chapter 242, Section 2, as amended) is repealed.

18 **SECTION 6. EFFECTIVE DATE.**--The effective date of the
19 provisions of this act is July 1, 2023.