

1 AN ACT

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

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

17 "63-9A-3. DEFINITIONS.--As used in the New Mexico  
18 Telecommunications Act:

19 A. "affordable rates" means local exchange service  
20 rates that promote universal service within a local exchange  
21 area, giving consideration to the economic conditions and  
22 costs to provide service in such area;

23 B. "alternate provider" means a person that  
24 provides voice services, regardless of the technology used.

25 Such providers are not limited to telecommunications

1 companies and include cellular service companies, satellite  
2 companies and companies that provide service using an  
3 interconnected voice-over-internet protocol;

4 C. "cable television service" means the  
5 one-way transmission to subscribers of video programming or  
6 other programming service and subscriber interaction, if any,  
7 that is required for the selection of such video programming  
8 or other programming service;

9 D. "commission" means the public regulation  
10 commission;

11 E. "competitive telecommunications service" means  
12 a service that has been determined to be subject to effective  
13 competition pursuant to Section 63-9A-8 NMSA 1978;

14 F. "competitive telecommunications service  
15 provider" includes competitive carriers holding certificates  
16 of public convenience and necessity issued by the commission  
17 pursuant to laws and regulations, including, without  
18 limitation, Section 63-9A-6 NMSA 1978;

19 G. "effective competition" means the competition  
20 that results from the customers of the service having  
21 reasonably available and comparable alternatives to the  
22 service, consistent with the standards set forth in Section  
23 63-9A-8 NMSA 1978;

24 H. "fund" means the state rural universal service  
25 fund;

1 I. "incumbent local exchange carrier" means a  
2 person that:

3 (1) was designated as an eligible  
4 telecommunications carrier by the state corporation  
5 commission in Docket #97-93-TC by order dated October 23,  
6 1997 or that provided local exchange service in New Mexico on  
7 February 8, 1996; or

8 (2) became a successor or assignee of an  
9 incumbent local exchange carrier;

10 J. "incumbent rural telecommunications carrier"  
11 means an incumbent local exchange carrier that serves fewer  
12 than fifty thousand access lines within the state and has  
13 been designated as an eligible telecommunications company by  
14 the state corporation commission or the public regulation  
15 commission;

16 K. "local exchange area" means a geographic area  
17 encompassing one or more local communities, as described in  
18 maps, tariffs or rate schedules filed with the commission,  
19 where local exchange rates apply;

20 L. "local exchange service" means the transmission  
21 of two-way interactive switched voice communications  
22 furnished by a telecommunications company within a local  
23 exchange area;

24 M. "message telecommunications service" means  
25 telecommunications service between local exchange areas

1 within the state for which charges are made on a per-unit  
2 basis, not including wide-area telecommunications service, or  
3 its equivalent, or individually negotiated contracts for  
4 telecommunications services;

5 N. "noncompetitive telecommunications service"  
6 means a service that has not been determined to be subject to  
7 effective competition pursuant to Section 63-9A-8 NMSA 1978;

8 O. "person" means a natural person, individual,  
9 corporation, association, partnership or any other legal  
10 entity;

11 P. "private telecommunications service" means a  
12 system, including the construction, maintenance or operation  
13 thereof, for the provision of telecommunications service, or  
14 any portion of that service, by a person for the sole and  
15 exclusive use of that person and not for resale, directly or  
16 indirectly. For purposes of this definition, the person that  
17 may use such service includes any affiliates of the person if  
18 at least eighty percent of the assets or voting stock of the  
19 affiliates is owned by the person. If any other person uses  
20 the telecommunications service, whether for hire or not, the  
21 private telecommunications service is a public  
22 telecommunications service;

23 Q. "public telecommunications service" means the  
24 transmission of signs, signals, writings, images, sounds,  
25 messages, data or other information of any nature by wire,

1 radio, lightwaves or other electromagnetic means originating  
2 and terminating in this state regardless of actual call  
3 routing. "Public telecommunications service" does not  
4 include the provision of terminal equipment used to originate  
5 or terminate such service; private telecommunications  
6 service; broadcast transmissions by radio, television and  
7 satellite broadcast stations regulated by the federal  
8 communications commission; radio common carrier services,  
9 including mobile telephone service and radio paging; or  
10 one-way cable television service;

11 R. "telecommunications company" means a person  
12 that provides public telecommunications service;

13 S. "voice services" means the transmission of  
14 signs, signals, writings, images, sounds, messages, data or  
15 other information of any nature by wire, radio, light waves  
16 or other electromagnetic means, including those voice  
17 services provided by incumbent local exchange carriers,  
18 competitive telecommunications service providers, mobile  
19 wireless providers and interconnected voice-over-internet  
20 protocol service providers;

21 T. "wire center" means a facility where local  
22 exchange access lines converge and are connected to a  
23 switching device that provides access to the public switched  
24 network and includes remote switching units and host  
25 switching units; and

1           U. "wire center serving area" means the geographic  
2 area of a local exchange area served by a single wire  
3 center."

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

6           "63-9A-5. REGULATION BY COMMISSION.--

7           A. Except as otherwise provided in the New Mexico  
8 Telecommunications Act, each public telecommunications  
9 service is declared to be affected with the public interest  
10 and, as such, subject to the provisions of that act,  
11 including the regulation thereof as provided in that act.

12           B. Except in cases regarding the fixing of rates  
13 pursuant to Section 63-7-1.1 NMSA 1978, the commission has  
14 exclusive jurisdiction to regulate incumbent local exchange  
15 carriers that serve fifty thousand or more access lines  
16 within the state to the extent authorized by the New Mexico  
17 Telecommunications Act; provided that:

18           (1) the commission's jurisdiction includes  
19 the regulation of wholesale rates, including access charges  
20 and interconnection agreements consistent with federal law  
21 and its enforcement and determinations of participation in  
22 low-income telephone service assistance programs pursuant to  
23 the Low Income Telephone Service Assistance Act; and

24           (2) incumbent local exchange carriers  
25 regulated pursuant to this section shall be regulated in the

1 same manner as incumbent rural telecommunications carriers  
2 are regulated pursuant to the Rural Telecommunications Act of  
3 New Mexico.

4 C. Any rules adopted by the commission for the  
5 regulation of incumbent local exchange carriers pursuant to  
6 the New Mexico Telecommunications Act shall preserve and not  
7 alter:

8 (1) the rights and obligations of any  
9 entity, including the commission, established pursuant to  
10 federal law, including 47 U.S.C. Sections 251 and 252, or  
11 established pursuant to any state law, rule, procedure,  
12 regulation or order related to interconnection, intercarrier  
13 compensation, intercarrier complaints, wholesale rights and  
14 obligations or any wholesale rate or schedule that is filed  
15 with and maintained by the commission;

16 (2) the rights and obligations of any  
17 competitive telecommunications service provider holding a  
18 certificate of public convenience and necessity, or the  
19 rights and obligations of any competitive carrier to obtain  
20 such a certificate;

21 (3) the authority of the commission to  
22 resolve consumer complaints regarding basic local exchange  
23 service; provided, however, that the commission's authority  
24 to resolve such complaints shall be limited to resolving  
25 issues of consumer protection and shall not include the

1 authority to determine or fix rates, provider of last resort  
2 obligations or service quality standards except as expressly  
3 set forth in the New Mexico Telecommunications Act;

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

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

12 (6) the rights and obligations of any  
13 entity, including the commission, regarding access to  
14 emergency service to the extent consistent with the Enhanced  
15 911 Act; or

16 (7) the rights and obligations of any  
17 entity, including the commission, regarding the  
18 administration of slamming and cramming rules,  
19 telecommunications relay service and numbering resources to  
20 the extent permitted by and consistent with federal law.

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

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



1 "63-9A-8. REGULATION OF RATES AND CHARGES--EFFECTIVE  
2 COMPETITION.--

3 A. In accordance with the policy established in  
4 the New Mexico Telecommunications Act, the commission shall,  
5 by its own motion or upon petition by any interested party,  
6 determine if a wire center serving area is subject to  
7 effective competition. When the commission has made a  
8 determination that a wire center serving area is subject to  
9 effective competition, the commission shall, consistent with  
10 the purposes of the New Mexico Telecommunications Act,  
11 eliminate rules, regulations and other requirements  
12 applicable to the provision of telecommunications services  
13 within that wire center serving area. The commission's  
14 action shall include the detariffing of service and may  
15 include the establishment of minimum rates that will cover  
16 the costs for the service. Such action shall be consistent  
17 with the maintenance of the availability of access to local  
18 exchange service and message telecommunications service at  
19 affordable rates comparable in both urban and rural markets  
20 as established by the commission, except that volume  
21 discounts or other discounts based on reasonable business  
22 purposes shall be permitted. The commission shall also  
23 modify the same or similar retail regulatory requirements for  
24 those providers of comparable public telecommunications  
25 services in the same relevant markets so that there shall be

1 parity of retail regulatory standards and requirements for  
2 all such providers; provided, however, that this subsection  
3 shall not be construed to permit the adoption of any new  
4 regulatory requirements or standards for providers of  
5 comparable telecommunications services.

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

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

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

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

22 C. In addition to establishment of effective  
23 competition pursuant to Subsection B of this section and upon  
24 notice to the commission, when an alternate provider other  
25 than the incumbent local exchange carrier has been awarded

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

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

25 E. The commission may, upon its own motion or on

1 the petition of an interested party and after notice to all  
2 interested parties and customers and a hearing, reclassify  
3 any service previously determined to be a competitive  
4 telecommunications service if after a hearing the commission  
5 finds that a service is not subject to effective competition.

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

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

15 "63-9A-21. COMMISSION REVIEW OF IMPACTS.--

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

22 (1) investigate the impact on rates, service  
23 quality, incumbent local exchange carrier employment,  
24 investment in telecommunications infrastructure and the  
25 availability and deployment of high speed data services;

1 (2) report on the wire center serving areas  
2 that have been deemed to have effective competition and any  
3 wire centers no longer subject to carrier of last resort  
4 obligations; and

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

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

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

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

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