

**NMPRC PRESENTATION
TO
SCIENCE, TECHNOLOGY, AND TELECOMMUNICATIONS COMMITTEE**

November 5, 2019

**TELECOMMUNICATIONS REGULATION AND BROADBAND ACCESS
EXPANSION IN NEW MEXICO**

- I. Overview of NM telecommunications regulation
 - a. Most of the PRC’s telecommunications jurisdiction derives from two state statutes
 - i. New Mexico Telecommunications Act (the “Act”) [Sections 63-9A-1 *et seq.*, NMSA 1978]
 1. The Act applies to “incumbent local exchange carriers [(“ILECs”)] that serve fifty thousand or more access lines within the state” [Section 63-9A-5.B]
 2. This category currently includes only CenturyLink (“Qwest Corporation dba CenturyLink QC”)
 3. The Act also provides very limited jurisdiction over competitive local exchange carriers (“CLECs”) and intrastate long-distance carriers
 - ii. Rural Telecommunications Act of New Mexico (the “Rural Act”), [Sections 63-9H-1 *et seq.*, NMSA 1978]
 1. The Rural Act applies to “incumbent rural telecommunications carriers” (“rural ILECs”), which are ILECs “serving fewer than fifty thousand access lines within the state . . .” [Sections 63-9H-3.I, 63-9H-4.B]

2. The Rural Act established the State Rural Universal Service Fund (“SRUSF”), which is administered by the PRC, including the PRC’s Broadband Program [Section 63-9H-6]
- b. The Commission also regulates in areas of authority delegated to state commissions by federal law. For example, certification of eligible telecommunications carriers (“ETCs”) for receipt of federal universal service fund support:
 - i. Federal Connect America Fund support – to expand voice and broadband service access in high-cost, rural areas
 - ii. Federal Lifeline program – to make voice and broadband service more affordable for qualifying low-income consumers
- II. Senate Bill 53 (“SB 53”)
- a. Amended the Act in 2017.
 - i. SB 53 reduced the PRC’s regulatory authority with regard to the one telecommunications carrier subject to the Act, CenturyLink
 - ii. In the years immediately prior to the effective date of SB 53, CenturyLink had been regulated by the Commission as a “mid-size carrier,” a category that was removed from the Act by SB 53. [NMSA 1978, § 63-9A-5.1 (repealed 2017)]
 - b. SB 53 enacted the following significant changes:
 - i. Limits PRC jurisdiction over rate changes to only those that involve rate increases in residential local exchange service; eliminating jurisdiction over rates for business service and non-basic services;

- ii. Limits PRC jurisdiction over customer complaints to only those complaints that concern consumer protection issues; eliminating jurisdiction over complaints concerning pricing or quality of service;
 - iii. Expands the circumstances under which a particular service in a particular geographic area can be considered subject to “effective competition,” and thus, subject to a further reduced level of regulation;
 - iv. Reduces filing requirements for rate increase proceedings; and
 - v. Requires expedited consideration in all proceedings initiated pursuant to the Act
- c. The PRC’s July 31, 2019 report to the Legislature concerning impacts on rates, service quality, incumbent local exchange carrier employment, investment in telecommunications infrastructure, and the availability and deployment of high speed data services since the passage of SB 53 [Section 63-9A-21]
- i. Rates - several notable rate increases have occurred, but there have also been some decreases
 - ii. Service quality – customer complaints to the PRC have continued to fall; quality of service measurements have largely held steady, with exception of out-of-service clearance rate
 - iii. Employment – NM employment fell from 471 employees in 2017 to 395 in 2018
 - iv. Infrastructure investment - NM broadband investment decreased from approx. \$36.5 million in 2017 to approx. \$28.0 million in 2018

- v. Deployment of high-speed data / broadband services – NM residential and business broadband subscribers fell from 233,847 in June 2017 to 213,989 in Dec. 2018
- d. The PRC’s activities regarding implementation of SB 53
 - i. The PRC has adopted Quality of Service and Customer Protection rules applicable to CenturyLink as a Large Incumbent Local Exchange Carrier (“LILEC”), and will next proceed with a pricing rulemaking
 - ii. The PRC is currently considering CenturyLink’s Petition Requesting a Determination of Effective Competition for Retail Residential Telecommunications Services [PRC Docket No. 18-00295-UT]
 - 1. The hearing has been completed
 - 2. A final decision is anticipated in early 2020

III. Senate Bill 308 (“SB 308”)

- a. Amended the Rural Act in 2017
- b. Largely focused upon shifting the SRUSF to support broadband access more effectively
 - i. Established Broadband Program within the SRUSF – a minimum of five million dollars to be awarded annually by the PRC [Section 63-9H-6.N]
 - ii. Requires that telecommunications carriers receiving SRUSF support outside of the Broadband Program expend at least sixty percent of their support on rural broadband access [Section 63-9H-6.F]

IV. PRC efforts concerning broadband access

- a. The PRC awarded approx. \$5 million to four carriers in 2018 Broadband Program application cycle

- b. The PRC awarded approx. \$4.8 million to four carriers in 2019 Broadband Program application cycle
 - i. PRC granted all applications in full, having received approx. \$4.8 million worth of applications
 - ii. For 2018 and 2019, applicants were the same four carriers with one exception: CenturyLink, Windstream, Smith Bagley, and ENMR Rural Telephone Coop (which, in 2019, applied via an affiliate, Plateau Telecommunications)
 - c. The PRC is currently considering amendments to PRC's SRUSF rule, 17.11.10 NMAC, including the Broadband Program provisions of the rule [PRC Docket No. 19-00286-UT]
 - d. The PRC is currently collecting comments and recommendations regarding the PRC's upcoming report to the Legislature concerning the Broadband Program (due December 31, 2019), pursuant to SB 308 [Section 63-9H-6.O]
- V. Potential approaches for broadband access expansion
- a. Legislative incentives to promote infrastructure sharing
 - i. Streamline permitting and agreement processes for pole attachments, trench sharing, etc.
 - ii. Incentivize public-private partnerships
 - iii. Incentivize cross-industry partnerships – among rural electric cooperatives, telecommunications carriers, and internet service providers
 - iv. Designate a lead agency to coordinate telecom/broadband efforts
 - b. Develop and improve resources for determining which geographical areas lack access to broadband service

- i. FCC’s broadband access map is currently unhelpful as insufficiently detailed
 - ii. NMDoIT has been developing a more detailed access map – expand availability of this map within state government and beyond and accelerate the development of the map
 - c. Existing law and regulation relating to infrastructure for broadband deployment
 - i. FCC has adopted new rules governing pole attachments for “small-cell” (5G) deployment (states may opt-out of these rules)
 - ii. NMDoT is currently revising its right-of-way rules, which affect telecommunications and broadband infrastructure access
 - iii. The Legislature, in 2018, passed SB 14, the Wireless Consumer Advanced Infrastructure Investment Act, governing timing and costs of small-cell deployment for municipalities and counties
 - d. Consider how to overcome low income levels as a barrier to broadband access
 - i. State and federal funds largely focus on expanding broadband access to rural areas as “high cost” areas for infrastructure construction and maintenance
 - ii. Low-income areas, whether urban or rural, may also suffer from lack of broadband access not necessarily due to cost of construction and maintenance
 - iii. Federal Lifeline support, and the SRUSF LITAP matching amount to qualifying low-income consumers make access somewhat more affordable but may not be enough