

AN ACT
RELATING TO TELECOMMUNICATIONS; AMENDING AND ENACTING
SECTIONS OF THE NMSA 1978; PROVIDING FOR PENALTIES; MAKING
AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. A new section of the Public Regulation
Commission Act is enacted to read:

"TELECOMMUNICATIONS BUREAU.--

A. The telecommunications bureau is created in
the utility division of the public regulation commission.

B. The telecommunications bureau shall:

(1) review disputes between
telecommunications providers;

(2) investigate each complaint on an
expedited basis;

(3) address other telecommunications-
related duties as required by the New Mexico
Telecommunications Act and the commission; and

(4) recommend actions to the commission.

C. Each complaint shall be resolved by the
commission within sixty days unless extended for good cause
by an order of the commission or hearing examiner that
states with specificity the reason for and length of the
extension."

Section 2. Section 63-7-23 NMSA 1978 (being Laws 1995,
Chapter 175, Section 1, as amended) is amended to read:

"63-7-23. TELECOMMUNICATIONS--ADMINISTRATIVE FINES.--

A. For purposes of this section:

(1) "commission" means the public regulation commission; and

(2) "telecommunications provider" means any telegraph company, telephone company, transmission company, telecommunications common carrier, telecommunications company, cellular service company or pay telephone provider regulated in whole or in part by the commission under law, including the Telephone and Telegraph Company Certification Act, the New Mexico Telecommunications Act, the Cellular Telephone Services Act and Sections 63-9E-1 and 63-9E-3 NMSA 1978.

B. The commission may impose an administrative fine on a telecommunications provider for any act or omission that the provider knew or should have known was a violation of any applicable law or rule or order of the commission.

C. Except in the case of disputes between telecommunications providers, an administrative fine of not more than one thousand dollars (\$1,000) may be imposed for each violation or each of multiple violations arising out of the same facts up to a maximum of twenty-five thousand dollars (\$25,000); or an administrative fine of not more than one thousand dollars (\$1,000) may be imposed for each day of a continuing violation arising out of the same facts up to a maximum of twenty-five thousand dollars (\$25,000). Notwithstanding any other provision of this subsection, the commission may impose an administrative fine not to exceed

twenty-five thousand dollars (\$25,000) for a single violation:

(1) that results in substantial harm to the customers of the telecommunications provider or substantial harm to the public interest; or

(2) for failure to obtain a certificate of public convenience and necessity required by law or for operation outside the scope of that certificate.

D. In the case of disputes between telecommunications providers, an administrative fine of not more than one hundred thousand dollars (\$100,000) may be imposed for the violation of a telecommunications provider interconnection agreement, telecommunications provider wholesale tariff, or commission regulation or order otherwise relating to the provision of services between telecommunications providers. An administrative fine of not more than one hundred thousand dollars (\$100,000) may be imposed for each day of a continuing violation.

E. The amount of the fine should bear a reasonable relationship to the nature and severity of the violation.

F. The commission shall initiate a proceeding to impose an administrative fine by giving written notice to the provider that the commission has facts as set forth in the notice that, if not rebutted, may lead to the imposition of an administrative fine under this section and that the telecommunications provider has an opportunity for a hearing. The commission may only impose an administrative

fine by written order that, in the case of contested proceedings, shall be supported by a preponderance of the evidence.

G. The commission may initiate a proceeding to impose an administrative fine within two years from the date of the commission's discovery of the violation, but in no event shall a proceeding be initiated more than five years after the date of the violation. This limitation shall not run against any act or omission constituting a violation under this section for any period during which the telecommunications provider has fraudulently concealed the violation.

H. The commission shall consider mitigating and aggravating circumstances in determining the amount of administrative fine imposed.

I. For purposes of establishing a violation, the act or omission of any officer, agent or employee of a telecommunications provider, within the scope of such person's authority, duties or employment, shall be deemed the act or omission of the telecommunications provider.

J. Any telecommunications provider or other person aggrieved by an order assessing an administrative fine may appeal the order to the supreme court of New Mexico. A notice of appeal shall be filed within thirty days after the entry of the commission's order. Notice of appeal shall name the commission as appellee and shall identify the order from which the appeal is taken.

K. The commission shall promulgate procedural

rules for the implementation of this section."

Section 3. Section 63-9A-2 NMSA 1978 (being Laws 1985, Chapter 242, Section 2, as amended) is amended to read:

"63-9A-2. PURPOSE.--The legislature declares that it remains the policy of the state of New Mexico to maintain the availability of access to telecommunications services at affordable rates. Furthermore, it is the policy of this state to have comparable telecommunications service rates, as established by the commission, for comparable markets or market areas. To the extent that it is consistent with maintaining availability of access to service at affordable rates and comparable telecommunications service rates, it is further the policy of this state to encourage competition in the provision of public telecommunications services, thereby allowing access by the public to resulting rapid advances in telecommunications technology. It is the purpose of the New Mexico Telecommunications Act to permit a regulatory framework that will allow an orderly transition from a regulated telecommunications industry to a competitive market environment. It is further the intent of the legislature that the encouragement of competition in the provision of public telecommunications services will result in greater investment in the telecommunications infrastructure in the state, improved service quality and operations and lower prices for such services."

Section 4. A new section of the New Mexico Telecommunications Act is enacted to read:

"IDENTIFYING SUBSIDIES--RULES--PRICE CAPS.--

A. No later than December 31, 2000, the commission shall review existing rates for public telecommunications services offered by incumbent local exchange carriers with more than fifty thousand access lines and identify all subsidies that are included in the rates. The commission shall issue rules requiring that the identified subsidies appear on customer bills and establish a schedule not later than April 1, 2001 whereby implicit subsidies be eliminated through implementation of the state rural universal service fund or through revenue-neutral rate rebalancing or any other method consistent with the intent of the New Mexico Telecommunications Act.

B. No later than January 1, 2001, the commission shall adopt rules that:

(1) establish consumer protection and quality of service standards;

(2) ensure adequate investment in the telecommunications infrastructure in both urban and rural areas of the state;

(3) promote availability and deployment of high-speed data services in both urban and rural areas of the state;

(4) ensure the accessibility of interconnection by competitive local exchange carriers in both urban and rural areas of the state; and

(5) establish an expedited regulatory process for considering matters related to telecommunications services that are pending before the

commission.

C. No later than April 1, 2001, but in no case prior to the adoption of the rules required in Subsection B of this section, the commission shall eliminate rate of return regulation of incumbent telecommunications carriers with more than fifty thousand access lines and implement an alternative form of regulation that includes reasonable price caps for basic residence and business local exchange services."

Section 5. A new section of the New Mexico Telecommunications Act is enacted to read:

"TELEPHONE SERVICE--SERIOUSLY ILL INDIVIDUALS.--
Basic local exchange telephone service shall not be discontinued to any residence where a seriously or chronically ill person is residing if the person responsible for the telephone service charges does not have the financial resources to pay the charges and if a licensed physician, physician assistant, osteopathic physician, osteopathic physician's assistant or certified nurse practitioner certifies that discontinuance of service might endanger that person's health or life and the certificate is delivered to a manager or officer of the provider of the local exchange service at least two days prior to the due date of a billing for telephone service. The commission shall provide by rule the procedure necessary to carry out this section."

Section 6. APPROPRIATION.--Two hundred fifty thousand dollars (\$250,000) is appropriated from the general fund to

the public regulation commission for expenditure in fiscal years 2000 and 2001 and four hundred thousand dollars (\$400,000) is appropriated from the general fund to the public regulation commission for expenditure in fiscal year 2001 to carry out the provisions of this act. Any unexpended or unencumbered balance remaining at the end of fiscal year 2001 shall revert to the general fund.

Section 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately. _____