

HOUSE JUDICIARY COMMITTEE
SUBSTITUTE FOR HOUSE BILL 400

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

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:

"NEW MATERIAL 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

1 duties as required by the New Mexico Telecommunications Act
2 and the commission; and

3 (4) recommend actions to the commission.

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

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

10 "63-7-23. TELECOMMUNICATIONS--ADMINISTRATIVE FINES.--

11 A. For purposes of this section:

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

14 (2) "telecommunications provider" means any
15 telegraph company, telephone company, transmission company,
16 telecommunications common carrier, telecommunications
17 company, cellular service company or pay telephone provider
18 regulated in whole or in part by the commission under law,
19 including the Telephone and Telegraph Company Certification
20 Act, the New Mexico Telecommunications Act, the Cellular
21 Telephone Services Act and Sections 63-9E-1 and 63-9E-3 NMSA
22 1978.

23 B. The commission may impose an administrative
24 fine on a telecommunications provider for any act or omission
25 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

1 telecommunications providers, an administrative fine of not
 2 more than one thousand dollars (\$1,000) may be imposed for
 3 each violation or each of multiple violations arising out of
 4 the same facts up to a maximum of twenty-five thousand
 5 dollars (\$25,000); or an administrative fine of not more than
 6 one thousand dollars (\$1,000) may be imposed for each day of
 7 a continuing violation arising out of the same facts up to a
 8 maximum of twenty-five thousand dollars (\$25,000).

9 Notwithstanding any other provision of this subsection, the
 10 commission may impose an administrative fine not to exceed
 11 twenty-five thousand dollars (\$25,000) for a single
 12 violation:

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

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

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

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1 imposed for each day of a continuing violation.

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

4 [~~D.~~] F. The commission shall initiate a proceeding
5 to impose an administrative fine by giving written notice to
6 the provider that the commission has facts as set forth in
7 the notice that, if not rebutted, may lead to the imposition
8 of an administrative fine under this section and that the
9 telecommunications provider has an opportunity for a hearing.
10 The commission may only impose an administrative fine by
11 written order that, in the case of contested proceedings,
12 shall be supported by a preponderance of the evidence.

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

22 [~~F.~~] H. The commission shall consider mitigating
23 and aggravating circumstances in determining the amount of
24 administrative fine imposed.

25 [~~G.~~] 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

1 person's authority, duties or employment, shall be deemed the
2 act or omission of the telecommunications provider.

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

10 ~~[I.]~~ K. The commission shall promulgate procedural
11 rules for the implementation of this section."

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

14 "63-9A-2. PURPOSE.--The legislature declares that it
15 remains the policy of the state of New Mexico to maintain the
16 availability of access to telecommunications services at
17 affordable rates. Furthermore, it is the policy of this
18 state to have comparable ~~[message]~~ telecommunications service
19 rates, as established by the commission, for comparable
20 markets or market areas. To the extent that it is consistent
21 with maintaining availability of access to service at
22 affordable rates and comparable ~~[message]~~ telecommunications
23 service rates, it is further the policy of this state to
24 encourage competition in the provision of public
25 telecommunications ~~[industry]~~ services, thereby allowing
access by the public to resulting rapid advances in
telecommunications technology. It is the purpose of the New

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1 Mexico Telecommunications Act to permit a regulatory
2 framework that will allow an orderly transition from a
3 regulated telecommunications industry to a competitive market
4 environment. It is further the intent of the legislature
5 that the encouragement of competition in the provision of
6 public telecommunications services will result in greater
7 investment in the telecommunications infrastructure in the
8 state, improved service quality and operations and lower
9 prices for such services."

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

12 "[NEW MATERIAL] IDENTIFYING SUBSIDIES--RULES--PRICE
13 CAPS.--

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

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

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

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

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

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

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

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

23 Section 5. APPROPRIATION.--Two hundred fifty thousand
24 dollars (\$250,000) is appropriated from the general fund to
25 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

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1 public regulation commission for expenditure in fiscal year
2 2001 to carry out the provisions of this act. Any unexpended
3 or unencumbered balance remaining at the end of fiscal year
4 2001 shall revert to the general fund.

5 Section 6. EMERGENCY.--It is necessary for the public
6 peace, health and safety that this act take effect
7 immediately.