

underscored material = new
~~[bracketed material] = delete~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 469

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

INTRODUCED BY

Pauline K. Gubbels

AN ACT

RELATING TO TELECOMMUNICATIONS; PROVIDING FOR INTERCONNECTION
AMONG PROVIDERS OF TELECOMMUNICATIONS SERVICES.

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

Section 1. A new section of the New Mexico
Telecommunications Act is enacted to read:

"NEW MATERIAL INTERCONNECTION AMONG PROVIDERS--
DEFINITIONS--AUTHORITY OF COMMISSION--COMPLAINTS--PROCEDURE--
PENALTIES.--

A. As used in this section:

(1) "controlling carrier" means a provider
of telecommunications service that owns or controls
facilities, including required facilities;

(2) "facility" means private property,
whether real or personal, tangible or intangible, that is or
could be used to provide basic local exchange service and

underscored material = new
~~[bracketed material] = delete~~

1 includes proprietary software and any feature, function or
2 element of a controlling carrier's telecommunications
3 network; and

4 (3) "required facility" means a facility
5 without which, or without access to which, the ability of a
6 telecommunications services provider to provide basic local
7 exchange service would be impaired.

8 B. Consistent with the federal Telecommunications
9 Act of 1996, the commission shall establish minimum service
10 quality standards governing the provision of wholesale,
11 interconnection, transport and termination services by a
12 controlling carrier.

13 C. A controlling carrier shall not:

14 (1) discriminate against another provider of
15 telecommunications services by unreasonably refusing or
16 delaying access to or interconnection with the controlling
17 carrier's facilities;

18 (2) discriminate against another provider of
19 telecommunications services by providing access to required
20 facilities on terms or conditions less favorable than those
21 the controlling carrier provides to itself and its
22 affiliates;

23 (3) unreasonably degrade or impair the
24 speed, quality or efficiency of access or any other service,
25 product or facility provided to another provider of
telecommunications services;

(4) fail to disclose in a timely and uniform

1 manner, upon reasonable request and pursuant to a protective
2 agreement concerning proprietary information, all information
3 reasonably necessary for the design of network interface
4 equipment, services or software that will meet the
5 specifications of the controlling carrier's local exchange
6 network;

7 (5) use basic exchange rates directly or
8 indirectly to subsidize or offset the cost of other products
9 or services offered by the controlling carrier;

10 (6) discriminate in favor of itself or an
11 affiliate in the provision and pricing of, or extension of
12 credit for, any telecommunications service;

13 (7) fail to provide a service, product or
14 facility in accordance with applicable contracts and with
15 applicable tariffs and rules of the commission;

16 (8) impose unreasonable discriminatory
17 restrictions on network elements or the resale of its
18 services; or

19 (9) provide telecommunications service to a
20 person acting as a telecommunications provider if the
21 commission has ordered the controlling carrier to discontinue
22 telecommunications service to such person.

23 D. To the extent a service of a controlling
24 carrier is used by another carrier to provide services to
25 customers of the other carrier, prices for wholesale services
and unbundled networks elements, including access, shall be
set by the commission and shall be based upon the long-run

underscored material = new
~~[bracketed material] = delete~~

1 incremental or marginal cost of each service. For services
2 that are or were regulated by the commission according to the
3 traditional rate-of-return regulation, the commission shall
4 conduct a proceeding in which, after determining and
5 establishing the appropriate and relevant costs of providing
6 each service, the commission shall explicitly set the
7 wholesale price for each service at or above cost.

8 E. Prices for retail service shall be subject to a
9 price test by the commission to ensure that individual
10 services or packages of services do not fall below wholesale
11 prices or prices charged for unbundled network elements
12 included in the services. The commission shall not allow the
13 minimum prices for retail services for end users to be set
14 lower than the wholesale rate that competitive local exchange
15 providers pay for the unbundled network elements that make up
16 those retail services.

17 F. Geographic deaveraging of tariffed retail
18 prices for telecommunications services shall be permitted so
19 long as it is accompanied by simultaneous and proportionate
20 deaveraging of the prices of the unbundled network elements
21 that make up those services. The commission shall not allow
22 deaveraging of prices for retail services until the
23 commission allows the deaveraging of the wholesale rates that
24 competitive local exchange providers pay for the unbundled
25 network elements that make up the retail services.

G. A complaint alleging a violation of this
section or of standards adopted by the commission pursuant to

.131743.2

underscoring material = new
~~[bracketed material] = delete~~

1 this section shall be filed with the commission and heard by
2 the commission or, at the commission's discretion, by a
3 hearing officer designated by the commission.

4 H. Before taking action upon an alleged violation
5 of service quality standards, the commission shall give the
6 respondent an opportunity to demonstrate that the violation
7 resulted from the failure of a person providing
8 telecommunications interconnection service to meet that
9 person's interconnection obligations.

10 I. A hearing on a complaint under this section
11 shall be conducted in an expedited manner consistent with the
12 following:

13 (1) the complaint shall be served upon the
14 respondent and filed with the commission;

15 (2) an answer or other responsive pleading
16 to the complaint shall be filed with the commission not more
17 than ten days after receipt of the complaint, and copies of
18 the answer or responsive pleading shall be served upon the
19 complainant and upon the commission;

20 (3) a prehearing conference shall be held
21 not later than fifteen days after the complaint is filed.
22 Hearing on the complaint shall commence not later than thirty
23 days after the complaint is filed. Within forty-five days
24 after the complaint is filed, the commission shall either
25 prepare a final decision or approve as final the decision of
the hearing officer. The final decision shall be issued as
an order of the commission;

.131743.2

underscored material = new
~~[bracketed material] = delete~~

1 (4) if the commission or hearing officer
2 finds that a violation of this section has occurred, the
3 commission shall, within five business days, order the
4 violator to remedy the violation within a specified period of
5 time. The commission may prescribe specific action to be
6 taken by the violator, including submitting a plan for
7 preventing future violations. The commission shall review
8 and approve or disapprove the plan;

9 (5) if the violation continues beyond the
10 time period specified in the commission's order, the
11 commission on its own motion or upon the motion of an
12 interested party may impose penalties on the violator. The
13 commission may order penalties to be in the form of bill
14 credits to the telecommunications provider whose service and
15 customers were affected;

16 (6) if the violator does not meet the goals
17 of its improvement plan within six months or if the plan is
18 disapproved by the commission, additional penalties may be
19 assessed against the violator;

20 (7) except as provided in Paragraph (8) of
21 this subsection, a telecommunications provider shall be
22 liable for a sum of not less than five hundred dollars (\$500)
23 nor more than fifty thousand dollars (\$50,000) for each time
24 that the carrier:

25 (a) violates any provision of this
section;

(b) commits any act prohibited by the

underscored material = new
~~[bracketed material] = delete~~

1 commission or fails to perform any duty enjoined upon the
2 carrier by the commission pursuant to this section;

3 (c) fails to obey any lawful
4 requirement or order made by the commission pursuant to this
5 section; or

6 (d) fails to obey a judgment or decree
7 made by a court upon the application of the commission
8 pursuant to this section; and

9 (8) the total annual penalties imposed on a
10 telecommunications provider under this section shall not
11 exceed two percent of the provider's gross intrastate revenue
12 from the sale of telecommunications services for the calendar
13 year preceding the year in which the penalties are assessed."

14 Section 2. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2000.

16
17
18
19
20
21
22
23
24
25