

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR

SENATE BILL 123

**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 intercarrier disputes;

(2) investigate each complaint on an
expedited basis;

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

1 and the commission; and

2 (4) recommend actions to the commission.

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

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

9 "63-7-23. TELECOMMUNICATIONS--ADMINISTRATIVE FINES.--

10 A. For purposes of this section:

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

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

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

C. Except in the case of intercarrier disputes, an
administrative fine of not more than one thousand dollars

1 (\$1,000) may be imposed for each violation or each of
 2 multiple violations arising out of the same facts up to a
 3 maximum of twenty-five thousand dollars (\$25,000); or an
 4 administrative fine of not more than one thousand dollars
 5 (\$1,000) may be imposed for each day of a continuing
 6 violation arising out of the same facts up to a maximum of
 7 twenty-five thousand dollars (\$25,000). Notwithstanding any
 8 other provision of this subsection, the commission may impose
 9 an administrative fine not to exceed twenty-five thousand
 10 dollars (\$25,000) for a single violation:

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

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

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

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

.131760.4

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

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

19 ~~[F.]~~ H. The commission shall consider mitigating
20 and aggravating circumstances in determining the amount of
21 administrative fine imposed.

22 ~~[G.]~~ I. For purposes of establishing a violation,
23 the act or omission of any officer, agent or employee of a
24 telecommunications provider, within the scope of such
25 person's authority, duties or employment, shall be deemed the
act or omission of the telecommunications provider.

~~[H.]~~ J. Any telecommunications provider or other

1 person aggrieved by an order assessing an administrative fine
 2 may appeal the order to the supreme court of New Mexico. A
 3 notice of appeal shall be filed within thirty days after the
 4 entry of the commission's order. Notice of appeal shall name
 5 the commission as appellee and shall identify the order from
 6 which the appeal is taken.

7 ~~[F.]~~ K. The commission shall promulgate procedural
 8 rules for the implementation of this section."

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

11 "63-9A-2. PURPOSE.--The legislature declares that it
 12 remains the policy of the state of New Mexico to maintain the
 13 availability of access to telecommunications services at
 14 affordable rates. Furthermore, it is the policy of this
 15 state to have comparable ~~[message]~~ telecommunications service
 16 rates, as established by the commission, for comparable
 17 markets or market areas. To the extent that it is consistent
 18 with maintaining availability of access to service at
 19 affordable rates and comparable ~~[message]~~ telecommunications
 20 service rates, it is further the policy of this state to
 21 encourage competition in the provision of public
 22 telecommunications ~~[industry]~~ services, thereby allowing
 23 access by the public to resulting rapid advances in
 24 telecommunications technology. ~~[It is the purpose of the New~~
 25 ~~Mexico Telecommunications Act to permit a regulatory~~
~~framework that will allow an orderly transition from a~~
~~regulated telecommunications industry to a competitive market~~

.131760.4

1 environment] It is further the intent of the legislature that
2 the encouragement of competition in the provision of public
3 telecommunications services will result in greater investment
4 in the telecommunications infrastructure in the state,
5 improved service quality and operations and lower prices for
6 such services."

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

9 "[NEW MATERIAL] IDENTIFYING SUBSIDIES--RULES--PRICE
10 CAPS.--

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

B. No later than January 1, 2001, the commission

1 shall adopt rules that:

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

4 (2) ensure adequate investment in the
5 telecommunications infrastructure of the state;

6 (3) promote availability and deployment of
7 high-speed data services;

8 (4) ensure the accessibility of
9 interconnection by competitive local exchange carriers; and

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

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

21 Section 5. APPROPRIATION.--Seven hundred sixty-two
22 thousand dollars (\$762,000) is appropriated from the general
23 fund to the public regulation commission for expenditure in
24 fiscal years 2000 and 2001 to carry out the provisions of
25 this act. Any unexpended or unencumbered balance remaining
at the end of fiscal year 2001 shall revert to the general
fund.

.131760.4

