

AN ACT

RELATING TO TELECOMMUNICATIONS; PROVIDING FOR SEPARATE  
REGULATION OF MID-SIZE CARRIERS.

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

Section 1. Section 63-9A-3 NMSA 1978 (being Laws 1985,  
Chapter 242, Section 3, as amended) is amended to read:

"63-9A-3. DEFINITIONS.--As used in the New Mexico  
Telecommunications Act:

A. "affordable rates" means local exchange service  
rates that promote universal service within a local exchange  
service area, giving consideration to the economic conditions  
and costs to provide service in such area;

B. "cable television service" means the one-way  
transmission to subscribers of video programming or other  
programming service and subscriber interaction, if any, that  
is required for the selection of such video programming or  
other programming service;

C. "commission" means the public regulation  
commission;

D. "competitive telecommunications service" means  
a service that has been determined to be subject to effective  
competition pursuant to Section 63-9A-8 NMSA 1978;

E. "effective competition" means that the  
customers of the service have reasonably available and

comparable alternatives to the service;

F. "fund" means the state rural universal service fund;

G. "local exchange area" means a geographic area encompassing one or more local communities, as described in maps, tariffs or rate schedules filed with the commission, where local exchange rates apply;

H. "local exchange service" means the transmission of two-way interactive switched voice communications furnished by a telecommunications company within a local exchange area;

I. "message telecommunications service" means telecommunications service between local exchange areas within the state for which charges are made on a per-unit basis, not including wide-area telecommunications service, or its equivalent, or individually negotiated contracts for telecommunications services;

J. "mid-size carrier" means a telecommunications company with more than fifty thousand but less than three hundred seventy-five thousand access lines in the state;

K. "noncompetitive telecommunications service" means a service that has not been determined to be subject to effective competition pursuant to Section 63-9A-8 NMSA 1978;

L. "private telecommunications service" means a system, including the construction, maintenance or operation thereof, for the provision of telecommunications service, or

any portion of that service, by a person for the sole and exclusive use of that person and not for resale, directly or indirectly. For purposes of this definition, the person that may use such service includes any affiliates of the person if at least eighty percent of the assets or voting stock of the affiliates is owned by the person. If any other person uses the telecommunications service, whether for hire or not, the private telecommunications service is a public telecommunications service;

M. "public telecommunications service" means the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves or other electromagnetic means originating and terminating in this state regardless of actual call routing. "Public telecommunications service" does not include the provision of terminal equipment used to originate or terminate such service; private telecommunications service; broadcast transmissions by radio, television and satellite broadcast stations regulated by the federal communications commission; radio common carrier services, including mobile telephone service and radio paging; or one-way cable television service; and

N. "telecommunications company" means a person that provides public telecommunications service."

Chapter 108, Section 61) is amended to read:

"63-9A-8.1. CHANGE IN RATES.--

A. At a hearing involving an increase in rates or charges sought by a telecommunications company, the burden of proof to show that the increased rate or charge is just and reasonable shall be upon the company.

B. Unless the commission otherwise orders, no telecommunications company shall make a change in an established rate except after thirty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force, the time when the changed rates will go into effect and other information as the commission by rule requires. The telecommunications company shall also give notice of the proposed changes to other interested persons as the commission may direct. All proposed changes shall be shown by filing new schedules that shall be kept open to public inspection. The commission for good cause shown may allow changes in rates without requiring the thirty days' notice, under conditions that it may prescribe.

C. Whenever a telecommunications company files a complete application proposing new rates, the commission may, upon complaint or upon its own initiative, except as otherwise provided by law, upon reasonable notice, enter upon a hearing concerning the reasonableness of the proposed rates. If the

commission determines a hearing is necessary, it shall suspend the operation of the proposed rates before they become effective but not for a longer initial period than nine months beyond the time when the rates would otherwise go into effect, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months. The commission shall hear and decide cases with reasonable promptness. The commission shall adopt rules identifying criteria for various rate and tariff filings to be eligible for suspension periods shorter than what is allowed by this subsection and to be eligible for summary approval without hearing.

D. If after a hearing the commission finds the proposed rates to be unjust, unreasonable or in any way in violation of law, the commission shall determine the just and reasonable rates to be charged or applied by the telecommunications company for the service in question and shall fix the rates by order to be served upon the telecommunications company; or the commission by its order shall direct the telecommunications company to file new rates respecting such service that are just and reasonable. Those rates shall thereafter be observed until changed as provided by the New Mexico Telecommunications Act.

E. The provisions of this section do not apply to a mid-size carrier."

Section 3. Section 63-9A-8.2 NMSA 1978 (being Laws 2000, Chapter 100, Section 4 and Laws 2000, Chapter 102, Section 4, as amended) is amended to read:

"63-9A-8.2. 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.

D. Rules adopted pursuant to this section shall not be applied to incumbent rural telecommunications carriers as that term is defined in Subsection I of Section 63-9H-3 NMSA 1978.

E. The provisions of this section do not apply to a mid-size carrier."

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

"MID-SIZE CARRIERS--SEPARATE REGULATION.--

A. As used in this section:

(1) "basic services" means retail

telecommunications services that provide residence or business customers with an individual primary line providing voice grade access to the public switched network; and

(2) "non-basic services" means retail telecommunications services that are not a basic service, a switched-access service or a wholesale service governed by an interconnection agreement.

B. The commission shall regulate mid-size carriers separately from other telecommunications companies regulated by the commission in accordance with the provisions of this section and in such a manner as to:

(1) minimize regulatory costs;

(2) differentiate mid-size carriers from other telecommunications companies and establish a level of regulation between the levels of regulation applying to rural carriers and other incumbent local exchange carriers;

(3) ensure the continuance of universal service, investment in telecommunications infrastructure and availability of affordable rates for basic local service; and

(4) encourage competition and economic growth and development through the efficient deployment of telecommunications services in areas of the state served by mid-size carriers.

C. In adopting its rules to regulate mid-size carriers, the commission:

(1) shall consider the operational and technical effects of the following factors that differentiate mid-size carriers from other telecommunications companies:

(a) number of access lines served by mid-size carriers;

(b) types of markets served by mid-size carriers;

(c) prices on file with the commission and charged by other telecommunications companies operating in the state for services comparable to those offered by mid-size carriers;

(d) service quality and consumer protection requirements applicable to mid-size carriers;

(e) historical performance of mid-size carriers pertaining to quality and consumer protection; and

(f) the experience of local exchange carriers operating and providing service within the state under current or previous forms of regulation; and

(2) shall consider rules of general applicability governing all telecommunications carriers in the state.

D. The commission shall adopt rules that prescribe reasonable price ceilings and the means to change prices for basic local services. The commission shall adopt an objective mechanism by which mid-size carriers may periodically adjust

the price ceiling for basic services. In adopting rules to implement this subsection, the commission shall consider using an annual publication published by the federal communications commission or comparable relevant data. This objective mechanism shall be used to establish an indexed price ceiling to limit increases in prices for basic residence local exchange service and basic business local single-line exchange service.

E. The provisions of Subsection D of this section notwithstanding, the commission may increase a mid-size carrier's basic service prices as part of a revenue-neutral price rebalancing to a level above that otherwise allowed by applicable rules.

F. The commission shall adopt rules:

(1) creating reasonable quality of service and consumer protection standards for mid-size carriers;

(2) allowing reasonable pricing flexibility for non-basic services and prescribing an objective mechanism by which mid-size carriers may change prices for non-basic services; and

(3) ensuring that the terms and conditions for non-basic services offered by mid-size carriers further the public interest.

G. Once a mid-size carrier is subject to regulations adopted pursuant to this section, it may introduce or withdraw

non-basic services, bundle and package non-basic services and products with other services and products, including basic services. The services offered shall be priced above cost and provided throughout the mid-size carrier's service area to the extent the necessary facilities are available. The introduction of new services, withdrawal of existing services or price adjustments for non-basic services shall become effective upon a tariff filing and ten days' notice to the commission; provided that the commission may suspend the introduction, withdrawal or adjustment under circumstances limited to:

- (1) ensuring compliance with applicable rules;
- (2) cost considerations; or
- (3) a finding that the tariff filing is not consistent with the public interest.

H. A mid-size carrier may petition the commission for a waiver of a rule for good cause shown."

Section 5. TEMPORARY PROVISION--TRANSITION OF REGULATION--REPORT TO LEGISLATURE.--

A. A mid-size carrier that is regulated under an alternative form of regulation plan on the effective date of this act shall continue to be regulated under the terms of that plan until the plan expires; thereafter, the mid-size carrier shall be regulated pursuant to rules adopted by the commission in accordance with Section 4 of this act.

B. The public regulation commission shall adopt rules to implement the provisions of Section 4 of this act the earlier of sixty days prior to the expiration of a mid-size carrier's alternative form of regulation plan or sixty days prior to the commencement of operations in the state of a new mid-size carrier.

C. The public regulation commission and mid-size carriers shall review the rules adopted in accordance with Section 4 of this act two years after the rules are effective and shall report their findings to the legislature.