

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (www.nmlegis.gov). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Rodella ORIGINAL DATE 01/22/13 58/aHBIC/aSCORC/
LAST UPDATED 03/13/13 HB aSJC

SHORT TITLE Rural Telecomm Carrier Regulation SB

ANALYST Weber/Cerny/Clark

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY13 | FY14 | FY15 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|--------------|------|------|------|----------------------|------------------------------|------------------|
| Total | | NFI | | NFI | | |

SOURCES OF INFORMATION

LFC Files

Responses Received From
Public Regulation Commission (PRC)

SUMMARY

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to House Bill 58 includes “and other applicants” in the provision for expedited consideration in all proceedings initiated to reduce the cost and burden for incumbent rural telecommunications carriers. Additionally, the amendment expands eligibility for the state rural universal service fund to include not just public telecommunications services but also “comparable retail alternative services provided by telecommunications carriers that have been designated as eligible telecommunications carriers, including commercial mobile radio services carriers”.

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amendment to House Bill 58 as amended by the House Business and Industry Committee adds to Section 4J for the Public Regulation Commission to “establish a cap on the surcharge” to the surcharge paid by end-user customers.

Synopsis of HBIC Amendment

1. On page 9, line 22, strike "no later than November 1, 2005." and insert in lieu thereof a period and:

"The rules shall enumerate the appropriate uses of fund support and any restrictions on the use of fund support by eligible telecommunications carriers and shall provide for annual reporting by eligible telecommunications carriers verifying that the reporting carrier continues to meet the requirements for designation as an eligible telecommunications carrier for purposes of the fund and is in compliance with the commission's rules, including the provisions regarding use of support from the fund."

This change provides for updated rules related to the fund and guidelines for those rules.

2. On page 11, line 19, after "finding", insert ", based on factors that may include a carrier's revenues, expenses or investment,"

This change provides criteria for authorizing payments from the fund.

3. On page 11, line 25, after "fund", insert ", 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 change allows for an extension of three months for deciding if fund payment should be authorized.

4. On page 14, line 9, remove the brackets and line-through.

This maintains the PRC's staff authority to review rate increases for good cause.

5. On page 15, line 18, after the first instance of "carrier", insert a comma and remove the bracket and line-through from "based on".

This maintains revenue, expenses and investment as criteria for rate adjustment decision making.

6. On page 15, line 20, after the bracket, insert "factors that may include the carrier's revenues, expenses or investment,".

This statement is just a language structure change to make 5 operable.

Synopsis of Original Bill

The Public Regulation Commission reports that House Bill 58 (HB 58) revises portions of NMSA 1978 63-9H, Rural Telecommunications Act (RTA). This act covers the statutory regulation of Rural Telecommunications Carriers (RTCs) who are identified as serving fewer than 50,000 access lines (63-9H.3.I). There are currently 15 Rural Telecommunications Carriers in New Mexico, all of which are telephone cooperatives with the exception of 5 carriers; Frontier Communications, CenturyTel of the Southwest, Tularosa Basin Telephone Company, Western New Mexico Telephone Company and Sacred Wind Communications.

The proposed bill revises the definition of an incumbent rural carrier and eliminates the requirement that a RTC be designated prior to 1979, and that they have reduced access charges in order to be eligible for New Mexico Rural Universal Service Fund (NMRUSF) monies (see NMSA 63-9H-6). The bill also requires the Commission to promulgate rules to streamline procedures for NMRUSF funding requests, rate and other proceedings at the PRC for RTCs

under the RTA. The bill also allows for the implementation of automatic rate increases upon notice to customers and the Commission for basic residential local exchange service for “requirements imposed by federal state law or rule”, but maintains the notice, public hearing, protest, and potential Commission action currently in place under Sections 63-9H-4. C, D and E as amended by this bill for “other types” of basic residential local exchange rate increases. The bill eliminates Staff’s ability to protest a residential rate increase. The bill also eliminates the requirement that the Commission review general rate cases through traditional rate making principles (review of investments, expenses and revenues). This final change may also affect whether the Commission may apply those same principles to a request for NMRUSF funds by an eligible transmission carrier (ETC) as defined under the federal act.

FISCAL IMPLICATIONS

None related to the General Fund.

SIGNIFICANT ISSUES

The PRC comments on each change.

NMSA 63-9H-1 through 6, Definitions and NMRUSF

Changes to NMSA 63-9H-3.I, 63-9H-4.B and 63-9H-6.L. The language change appears to clear the way for an incumbent rural telecommunications carrier as defined under this act to apply to the NMRUSF irrespective of the date they were designated as an RTC in New Mexico or whether they previously went through the process of access rate reductions. This affects very few carriers. See Other Substantive Issues.

Additional Language to NMSA 63-9H-4.C. Additional language has been added which directs the PRC to adopt rules consistent with relaxed regulation for RTCs under the RTA, including applications to the NMRUSF and expedited consideration for all proceedings for RTCs at the PRC.

Additional Language to NMSA 63-9H-6.L. This adds language which requires the Commission to conclude a proceeding for a request for NMRUSF monies within 6 months. If the Commission requires in-depth information and review, it may be difficult for the Commission to conclude the proceeding within that span of time.

Language stricken in first line of NMSA 63-9H-6.L. This eliminates language which requires applicants for NMRUSF monies to request those monies in a rate case proceeding pursuant to Subsection F of NMSA 63-9H-7. NMSA 63-9H-7 sets the conditions for a rate case proceedings for RTCs under the RTA, including the review of revenue, expenses, and investment under traditional rate making principles (this language is stricken also). It is not clear if this change, in conjunction with the elimination of ratemaking language in NMSA 63-9H-7, eliminates the PRC’s ability to review a petitioning carrier’s investments, expenses, or revenues in reviewing an application for NMRUSF monies.

NMSA 63-9H-7 Regulation of Retail Rates of RTCs.

Language stricken in NMSA 63-9H-7.B., eliminates the requirement that an RTC publish notice in a local newspaper in the RTCs service area for rate increases for residential local exchange

service by the RTC. It is unclear whether this form of notification is particularly useful in notifying RTC residential customers of those proposed rate increases. Bill stuffers or other forms of notification may be more effective.

New Subsection NMSA 63-9H-7.C. This new language allows residential local exchange rate increases to go into effect subject to current Subsection B of this Section of the RTA if the reason for the rate increase is to comply with requirements imposed by any federal or state law or rule. Current Subsection B allows all RTC rate filings for all services other than some residential local exchange service to go into effect automatically within 10 days without opportunity for Commission review. This new language will also make this applicable for residential local exchange rate increases that are increased to comply with requirements imposed by any federal or state law or rule under the new Subsection C. The application of the language allowing for residential local exchange increases to “comply with requirements imposed by any federal or state law or rule” is very expansive and could be interpreted in many ways. The FCC is implementing many changes to the Federal Universal Service Fund (FUSF) from which RTCs receive money, including the requirement that RTCs may have to increase basic local exchange rates to continue to receive FUSF monies.

New language in Subsection NMSA 63-9H-D. For those residential rates increases which are not construed to be initiated to “comply with requirements imposed by any federal and state law or rule” under the new Subsection C, the current review procedures under new renamed Subsections D, E and F will continue to apply, with the exception of the stricken language in current Subsection D.

Stricken Language in current Subsection NMSA 63-9H-D. This language required a RTC who wishes to increase rates for residential local exchange service to do so in a manner which would recover a reasonable allocation of costs due to requirements imposed by federal or state law or rule. Striking this language removes the responsibility by an RTC to show a reasonable allocation of costs to the PRC for that type of residential local exchange rate increase. If the new Subsection C is added to this Section of the statute, any reasons for residential local exchange rate increases that are initiated in order to comply with requirements imposed by any federal and state law or rule will go into effect automatically under the new proposed Subsection C.

Elimination of language to new Subsection NMSA 63-9H-F. The elimination of this language removes the option that Commission Staff may file a motion for good cause to review a proposed local residential rate increase by an RTC.

Elimination of language in the 2nd and 3rd lines in renamed NMSA 63-9H Subsection G. This change strikes language stating that an RTC that serves less than five percent of the state’s aggregate statewide subscriber lines may file an application for a rate increase under this Subsection. RTCs are defined in Subsection NMSA 63-9H-3.I as an incumbent local exchange carrier that serves fewer than 50,000 access lines. This is the definition that is generally referred to and the elimination of this language should not affect in any meaningful way who qualifies as an RTC under the RTA.

Elimination and addition of other language in NMSA 63-9H-G. Language requiring review of carrier rates based on investments, revenues, and expenses is eliminated, and additional language is added requiring rate cases to take 9 months but no more than 12 months by the Commission. Since all rate increases excluding residential local exchange rate increase which are not initiated

to comply with requirements imposed by any federal or state law or rule will automatically go into effect without the opportunity for Commission review, it is unlikely the Commission will have the opportunity to review a rate case proceeding under the manner in which this bill revises the RTA. This timeline for rate cases comports with the timeline for utility rate proceedings under the Public Utility Act NMSA 62.

ADMINISTRATIVE IMPLICATIONS

The PRC feels HB 58 may allow for streamlined access to the New Mexico Rural Universal Service Fund, which in turn may increase the number of petitions for access to those monies at the PRC. However, those petitions may be more streamlined and therefore less burdensome administratively. Also, there will be a reduced opportunity for residential local exchange rate reviews due to the elimination of the opportunity for Commission review due to “requirements imposed by federal state law or rule,” and the option of Commission review upon notification by PRC Staff.

OTHER SUBSTANTIVE ISSUES

Whether Sacred Wind Communications is eligible to access the NMRUSF as a rural telecommunications carrier through the filing of a rate case is the subject of appeal of the Final Order of the Commission in Case No. 10-00315-UT by Sacred Wind to the State Supreme Court (State Supreme Court Case No. 33750). See changes to sections NMSA 63-9H-3.I, 63.9H.4.B, and 63-9H-6.L.

The NMRUSF was established by the PRC in 2006 and has a current fund balance of approximately \$26 million dollars. This is a non-public fund administered by an independent administrator selected by the Commission. Approximately \$24 million is paid to rural carriers and Windstream Communications (Mid-Size carrier under NMSA 63-9A-5) for the lost revenues from the reduction in intrastate access rates to interstate levels under NMSA 63-9H-6. An additional approximately \$2 million is used to reimburse ETCs for the state fund match of \$3.50 per month per customer for federal telephone lifeline service. Currently the ETCs reimbursed under the NMRUSF include all of the incumbent local exchange carriers in the state including the RTCs, Windstream and CenturyLink (CenturyLink only for state lifeline match). Several other wireless providers who receive federal high cost support also draw NMRUSF state matching monies from the NMRUSF for the state lifeline match. Carrier payments are collected through a current surcharge of 3.45% levied on all customer bills for all intrastate telecommunications services provided in the state, with some exceptions listed in NMAC 17.11.10, NMRUSF Rule. The Commission allows for carrier application to the fund to allow for the disbursement of additional monies for the further provision of local telecommunications services (see NMAC 17.11.10.25). The surcharge is subject to change annually by the Commission. Additional requests for monies from the NMRUSF may increase the demand on the fund and in turn increase the NMRUSF surcharge percentage.

MW:CC:JC/blm:svb