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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 1/27/15

**SPONSOR** Padilla **LAST UPDATED** \_\_\_\_\_ **HB** \_\_\_\_\_

**SHORT TITLE** PRC Jurisdiction Over Local Phone Carriers **SB** 193

**ANALYST** Clark

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		
	No Fiscal Impact			

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Regulation Commission (PRC)  
 Department of Information Technology (DoIT)  
 Department of Public Safety (DPS)

### SUMMARY

#### Synopsis of Bill

Senate Bill 193 amends the New Mexico Telecommunications Act to substantially reduce Public Regulation Commission (PRC) authority over “incumbent local exchange carriers” serving more than 50 thousand access lines (telephone lines) within the state (and thereby releasing certain incumbent carriers from the higher level of regulation adopted in 1985 prior to the large-scale introduction of wireless communications and the elevated need for broadband internet access). The bill makes extensive changes to the definitions section of the act and redefines its purpose by extending to all consumers and carriers in the state “the benefits of the regulatory flexibility previously provided only to incumbent rural telecommunications carriers” and by adding greater investment in broadband infrastructure in the explanation of legislative intent.

PRC provided the following detailed background and bill summary.

Currently, New Mexico statutes provide a three-tier regulatory framework for incumbent local exchange carriers (ILECs). ILECs that serve fewer than 50 thousand access lines in the state (“incumbent rural telecommunications carriers”) are regulated under the Rural Telecommunications Act (RTA), which provides for relaxed regulation relative to other ILECs. ILECs that serve more than 50 thousand access lines but fewer than 375 thousand

access lines in the state (currently, only Windstream) are classified as mid-size carriers under the New Mexico Telecommunications Act (NMTA). Mid-size carriers have more regulation than incumbent rural telecommunications carriers but less than the third category, which applies to carriers with 375 thousand or more access lines in the state. Currently, CenturyLink falls within this category, although there is a pending case at PRC (Case No 14-00068-UT), in which CenturyLink claims to have fewer than 375 thousand access lines in the state and therefore asserts that it should be regulated as a mid-size carrier.

This bill would collapse the existing three-tier regulatory framework into a two-tier regulatory framework. Incumbent rural telecommunications carriers would continue to be regulated as they are today under RTA. However, Windstream and CenturyLink, as carriers with over 50 thousand access lines in the state, would be subject to a new regulatory scheme that is more relaxed than their current regulation and quite similar to the regulation of incumbent rural telecommunications carriers.

In addition, the bill amends the existing mechanism by which PRC can further relax the regulation of CenturyLink or Windstream upon a determination of effective competition (Section 63-9A-8 NMSA 1978). Consistent with a recent PRC case, Case No. 11-00340-UT, this determination would be made separately for residential and business services on a per-wire center service area basis. However, the bill adds a presumption of effective competition for all regulated telecommunications services (either residential or business) provided by the carrier in a wire center if the carrier provides basic local exchange service either separately or bundled to less than one-half of the customer locations served at the time the petition is filed. On the other hand, the bill would allow PRC to re-regulate basic local exchange service pursuant to NMTA after July 31, 2019, if it finds (following a hearing and findings of fact and conclusions of law) that such reregulation is necessary to protect the public interest.

## **FISCAL IMPLICATIONS**

There is no significant fiscal impact.

## **SIGNIFICANT ISSUES**

By reducing the regulation on ILECs serving more than 50 thousand access lines, it is possible, but not required, that CenturyLink and Windstream could redistribute resources toward the growing need for broadband infrastructure, as indicated in the updated purpose statement of the bill. It would also bring regulation for these carriers much more in line with existing regulations for incumbent rural telecommunications carriers.

PRC submitted the following analysis.

With respect to carriers serving more than 50 thousand access lines in the state (currently, Windstream and CenturyLink):

1. Rates would no longer be subject to a price cap. Residential rate increases (other than those required to comply with law) would be reviewed by the commission only upon written protest signed by 2-1/2 percent of the affected subscribers or upon the

commission staff's own motion for good cause.

2. The commission would no longer have authority to regulate increases in business rates.
3. The commission shall adopt “relaxed regulations” that provide for reduced filing requirements for rate increase proceedings and expedited consideration of all proceedings under NMTA.
4. The commission may establish “reasonable” quality of service standards, but enforcement of such standards would be limited to the commission’s fining authority under Section 63-7-23 NMSA 1978 or by seeking an injunction in district court under Section 63-9-19 NMSA 1978. The commission’s fining authority under Section 63-7-23 NMSA 1978 is as follows:
  - a. For disputes involving consumers, the maximum fine is \$1,000 per violation up to a maximum of \$25 thousand for multiple violations arising out of the same facts, or \$1,000 per day of a continuing violation up to \$25 thousand (although a fine of \$25 thousand for single violation can be imposed if there is substantial harm or if the carrier fails to obtain a certificate or acts outside the scope of its certificate).
  - b. For disputes between telecom providers, the commission may impose a fine of up to \$100 thousand for a violation of a telecommunications provider interconnection agreement, telecommunications provider wholesale tariff, or commission regulation, or order otherwise relating to the provision of services between telecommunications providers. An administrative fine of not more than \$100 thousand may be imposed for each day of a continuing violation.
5. The commission’s authority to resolve customer complaints would be limited to complaints regarding basic local exchange service and issues of consumer protection and would not include the authority to determine or fix rates, provider of last resort obligations, or service quality standards except as expressly set forth in NMTA.
6. The commission could not impose investment requirements.
7. Current regulation of CenturyLink’s promotions in terms of frequency, duration, and non-discrimination (in CenturyLink’s current alternative form of regulation) would be eliminated.
8. The bill preserves and would not diminish or expand rights or obligations with respect to:
  - a. Interconnection, intercarrier compensation, intercarrier complaints, or wholesale services and rates;
  - b. The state rural universal service fund;
  - c. Access to emergency service to the extent consistent with the Enhanced 911 Act; and
  - d. Slamming and cramming rules, telecommunications relay services, and numbering resources to the extent consistent with federal law.

9. If there is a complaint that a carrier's rate for a competitive telecommunications service does not cover cost, the burden of proof would shift to the complainant, but the commission could order the carrier to submit a cost study for the service that is the subject of the complaint.
10. The regulatory requirements and the commission's regulation of competitive local exchange carriers, competitive access providers, and interexchange carriers shall be no greater than, and no more extensive than, that of incumbent local exchange carriers that serve more than 50 thousand access lines in the state.
11. The commission shall review the impact of provisions of NMTA on residential and business consumers in urban and rural areas of the state every three years, the first review to be completed by July 1, 2017, and shall report its findings to the Legislature. The review shall investigate the impact on rates, service quality, incumbent local exchange company employment, investment in telecommunications infrastructure, and the availability and deployment of high speed data services. The review shall also include a report on those wire centers that have been deemed to have effective competition and any wire centers no longer subject to carrier of last resort obligations. For any wire center serving an area deregulated pursuant to the provision of Section 63-9A-8 NMSA 1978, if the commission finds that reregulation of basic local exchange service is necessary to protect the public interest following a hearing and findings of fact and conclusions of law, after July 31, 2019, the commission may regulate basic service pursuant to NMTA.

## **ADMINISTRATIVE IMPLICATIONS**

PRC reported the following administrative implications.

This bill would eliminate an alternative form of regulation case for CenturyLink approximately every four years. On the other hand, it will create the need for (a) new rulemaking regarding service quality standards, reduced filing requirements and expedited consideration of proceedings; and (b) a triennial review and report by the commission of the impact of NMTA on consumers. It may also increase the likelihood of cases to determine effective competition in the near term. However, these matters can be handled with current commission resources.

## **TECHNICAL ISSUES**

There is a typographical error on page 8, line 14: "finding" should be "fining".

## **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

PRC reports CenturyLink would be reclassified as a mid-size carrier if it prevails in pending Case No. 14-00068-UT.

JC/bb