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AN ACT

RELATING TO COMMUNICATIONS; AMENDING, REPEALING AND ENACTING  
SECTIONS OF THE NEW MEXICO TELECOMMUNICATIONS ACT TO PROVIDE  
FOR PUBLIC REGULATION COMMISSION JURISDICTION OVER INCUMBENT  
LOCAL EXCHANGE CARRIERS AND THEIR INVESTMENT IN  
TELECOMMUNICATIONS AND BROADBAND INFRASTRUCTURE.

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  
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

1 competition pursuant to Section 63-9A-8 NMSA 1978;

2 E. "competitive telecommunications service  
3 provider" includes competitive carriers holding certificates  
4 of public convenience and necessity issued by the commission  
5 pursuant to laws and regulations, including, without  
6 limitation, Section 63-9A-6 NMSA 1978;

7 F. "effective competition" means the competition  
8 that results from the customers of the service having  
9 reasonably available and comparable alternatives to the  
10 service, consistent with the standards set forth in Section  
11 63-9A-8 NMSA 1978;

12 G. "fund" means the state rural universal service  
13 fund;

14 H. "incumbent local exchange carrier" means a  
15 person that:

16 (1) was designated as an eligible  
17 telecommunications carrier by the state corporation  
18 commission in Docket #97-93-TC by order dated  
19 October 23, 1997 or that provided local exchange service in  
20 New Mexico on February 8, 1996; or

21 (2) became a successor or assignee of an  
22 incumbent local exchange carrier;

23 I. "incumbent rural telecommunications carrier"  
24 means an incumbent local exchange carrier that serves fewer  
25 than fifty thousand access lines within the state and has

1 been designated as an eligible telecommunications company by  
2 the state corporation commission or the public regulation  
3 commission;

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

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

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

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

21 N. "private telecommunications service" means a  
22 system, including the construction, maintenance or operation  
23 thereof, for the provision of telecommunications service, or  
24 any portion of that service, by a person for the sole and  
25 exclusive use of that person and not for resale, directly or

1 indirectly. For purposes of this definition, the person that  
2 may use such service includes any affiliates of the person if  
3 at least eighty percent of the assets or voting stock of the  
4 affiliates is owned by the person. If any other person uses  
5 the telecommunications service, whether for hire or not, the  
6 private telecommunications service is a public  
7 telecommunications service;

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

21 P. "telecommunications company" means a person  
22 that provides public telecommunications service;

23 Q. "wire center" means a facility where local  
24 exchange access lines converge and are connected to a  
25 switching device that provides access to the public switched

1 network and includes remote switching units and host  
2 switching units; and

3 R. "wire center serving area" means the geographic  
4 area of a local exchange area served by a single wire  
5 center."

6 SECTION 2. Section 63-9A-5 NMSA 1978 (being Laws 1985,  
7 Chapter 242, Section 5) is amended to read:

8 "63-9A-5. REGULATION BY COMMISSION.--

9 A. Except as otherwise provided in the New Mexico  
10 Telecommunications Act, each public telecommunications  
11 service is declared to be affected with the public interest  
12 and, as such, subject to the provisions of that act,  
13 including the regulation thereof as provided in that act.

14 B. The commission has exclusive jurisdiction to  
15 regulate incumbent local exchange carriers that serve fifty  
16 thousand or more access lines within the state only in the  
17 manner and to the extent authorized by the New Mexico  
18 Telecommunications Act, and Subsection B of Section 63-7-1.1  
19 NMSA 1978 does not apply; provided, however, that the  
20 commission's jurisdiction includes the regulation of  
21 wholesale rates, including access charges and interconnection  
22 agreements consistent with federal law and its enforcement  
23 and determinations of participation in low-income telephone  
24 service assistance programs pursuant to the Low Income  
25 Telephone Service Assistance Act. The New Mexico

1 Telecommunications Act expressly preserves and does not  
2 diminish or expand:

3 (1) the rights and obligations of any  
4 entity, including the commission, established pursuant to  
5 federal law, including 47 U.S.C. Sections 251 and 252, or  
6 established pursuant to any state law, rule, procedure,  
7 regulation or order related to interconnection, intercarrier  
8 compensation, intercarrier complaints, wholesale rights and  
9 obligations or any wholesale rate or schedule that is filed  
10 with and maintained by the commission;

11 (2) the rights and obligations of any  
12 competitive telecommunications service provider holding a  
13 certificate of public convenience and necessity, or the  
14 rights and obligations of any competitive local exchange  
15 carrier to obtain such a certificate;

16 (3) the authority of the commission to  
17 resolve consumer complaints regarding basic local exchange  
18 service; provided, however, that the commission's authority  
19 to resolve such complaints shall be limited to resolving  
20 issues of consumer protection and shall not include the  
21 authority to determine or fix rates, provider of last resort  
22 obligations or service quality standards except as expressly  
23 set forth in the New Mexico Telecommunications Act;

24 (4) the authority of the commission to  
25 establish reasonable quality of service standards; provided,

1 however, that the enforcement of such standards shall be  
2 limited to the commission's fining authority set forth in  
3 Section 63-7-23 NMSA 1978 and the authority to seek an  
4 injunction set forth in Section 63-9-19 NMSA 1978;

5 (5) the rights and obligations of any  
6 entity, including the commission, regarding the fund;

7 (6) the rights and obligations of any  
8 entity, including the commission, regarding access to  
9 emergency service to the extent consistent with the Enhanced  
10 911 Act; or

11 (7) the rights and obligations of any  
12 entity, including the commission, regarding the  
13 administration of slamming and cramming rules,  
14 telecommunications relay service and numbering resources to  
15 the extent permitted by and consistent with federal law.

16 C. For incumbent local exchange carriers that  
17 serve fifty thousand or more access lines within the state,  
18 the commission shall adopt relaxed regulations that provide  
19 for:

20 (1) reduced filing requirements for  
21 applicants in rate increase proceedings under the New Mexico  
22 Telecommunications Act; and

23 (2) expedited consideration in all  
24 proceedings initiated pursuant to the New Mexico  
25 Telecommunications Act in order to reduce the cost and burden

1 for incumbent local exchange carriers and other applicants.

2 D. The regulatory requirements and the  
3 commission's regulation of competitive local exchange  
4 carriers, competitive access providers and interexchange  
5 carriers shall be no greater than, and no more extensive  
6 than, that of incumbent local exchange carriers that serve  
7 fifty thousand or more access lines.

8 E. The provisions of the New Mexico  
9 Telecommunications Act do not apply to incumbent rural  
10 telecommunications carriers."

11 SECTION 3. Section 63-9A-8 NMSA 1978 (being Laws 1985,  
12 Chapter 242, Section 8, as amended) is amended to read:

13 "63-9A-8. REGULATION OF RATES AND CHARGES--EFFECTIVE  
14 COMPETITION.--

15 A. In accordance with the policy established in  
16 the New Mexico Telecommunications Act, the commission shall,  
17 by its own motion or upon petition by any interested party,  
18 hold hearings to determine if any public telecommunications  
19 service is subject to effective competition in the relevant  
20 market area. When the commission has made a determination  
21 that a service or part of a service is subject to effective  
22 competition, the commission shall, consistent with the  
23 purposes of the New Mexico Telecommunications Act, modify,  
24 reduce or eliminate rules, regulations and other requirements  
25 applicable to the provision of such service, including the



1 fixing and determining of specific rates, tariffs or fares  
2 for the service. The commission's action may include the  
3 detariffing of service or the establishment of minimum rates  
4 that will cover the costs for the service. Such modification  
5 shall be consistent with the maintenance of the availability  
6 of access to local exchange service at affordable rates and  
7 comparable message telecommunications service rates, as  
8 established by the commission, for comparable markets or  
9 market areas, except that volume discounts or other discounts  
10 based on reasonable business purposes shall be permitted.

11 Upon petition or request of an affected telecommunications  
12 company, the commission, upon a finding that the requirements  
13 of Subsection B of this section are met, shall modify the  
14 same or similar retail regulatory requirements for those  
15 providers of comparable public telecommunications services in  
16 the same relevant markets so that there shall be parity of  
17 retail regulatory standards and requirements for all such  
18 providers; provided, however, that this subsection shall not  
19 be construed to permit the adoption of any new regulatory  
20 requirements or standards for providers of comparable  
21 telecommunications services.

22 B. In determining whether a service is subject to  
23 effective competition, the commission shall consider the  
24 following on a wire center serving area basis for each wire  
25 center serving area and service for which a determination of

1 effective competition is requested, and separate  
2 determinations shall be made for residential and business  
3 services in each wire center serving area:

4 (1) the extent to which services are  
5 reasonably available from alternate providers;

6 (2) the ability of alternate providers to  
7 make functionally equivalent or substitute services readily  
8 available at competitive rates, terms and conditions;

9 (3) existing economic, technological,  
10 regulatory or other barriers to market entry and exit;

11 (4) the number of other providers offering  
12 the same or reasonably comparable services;

13 (5) the presence of at least two  
14 facilities-based competitors, including without limitation  
15 facilities-based providers of wireless or voice over internet  
16 protocol services, operating in all or part of the wire  
17 center for which a determination of effective competition is  
18 requested that are unaffiliated with the petitioning carrier  
19 and provide the same or reasonably comparable service of the  
20 type for which the finding of effective competition is  
21 sought;

22 (6) the ability of the petitioning provider  
23 to affect prices or deter competition; and

24 (7) such other factors as the commission  
25 deems appropriate.

1           C. If, in the wire center serving area for which a  
2 determination of effective competition is requested, the  
3 incumbent local exchange carrier provides basic local  
4 exchange service either separately or bundled to less than  
5 one-half of the customer locations where such service is  
6 available at the time the petition is filed, the public  
7 interest requires that effective competition be presumed for  
8 all regulated telecommunications services provided by the  
9 incumbent provider in that wire center serving area;  
10 provided, however, that findings and presumptions applied  
11 pursuant to this section shall be made separately for  
12 residential and business services and customer locations.

13           D. No provider of public telecommunications  
14 service may use current revenues earned or expenses incurred  
15 in conjunction with any noncompetitive service to subsidize  
16 competitive public telecommunications services. In order to  
17 avoid cross-subsidization of competitive services by  
18 noncompetitive telecommunications services, prices or rates  
19 charged for a competitive telecommunications service shall  
20 cover the cost for the provision of the service consistent  
21 with the provisions of Subsection G of Section 63-9A-8.1 NMSA  
22 1978. In any proceeding held pursuant to this section, the  
23 party claiming that the price for a competitive  
24 telecommunications service does not cover the cost shall bear  
25 the burden of proving that the prices charged for competitive

1 telecommunications services do not cover cost; provided,  
2 however, that the commission may require the  
3 telecommunications company against whom the complaint is  
4 filed to submit a cost study for the service that is the  
5 subject of the complaint as part of its examination and  
6 determination of the complaint.

7 E. The commission may, upon its own motion or on  
8 the petition of an interested party and after notice to all  
9 interested parties and customers and a hearing, reclassify  
10 any service previously determined to be a competitive  
11 telecommunications service if after a hearing the commission  
12 finds that a service is not subject to effective competition.

13 F. If a wire center service area is deregulated  
14 pursuant to a determination of effective competition, for  
15 those wire center service areas where that service is  
16 deregulated, the petitioning telecommunications company shall  
17 no longer be eligible to claim an exemption from the  
18 application of the Unfair Practices Act or the Antitrust  
19 Act."

20 SECTION 4. Section 63-9A-8.1 NMSA 1978 (being Laws  
21 1998, Chapter 108, Section 61, as amended) is amended to  
22 read:

23 "63-9A-8.1. CHANGE IN RATES.--

24 A. Rates for retail public telecommunications  
25 services provided by an incumbent local exchange carrier that

1 serves fifty thousand or more access lines within the state  
2 shall be subject to regulation by the commission only in the  
3 manner and to the extent authorized by this section.

4 B. An incumbent local exchange carrier that serves  
5 fifty thousand or more access lines within the state shall  
6 file tariffs for all retail public telecommunications  
7 services that, other than residential local exchange service,  
8 shall be effective after ten days' notice to its customers  
9 and the commission. An incumbent local exchange carrier that  
10 serves fifty thousand or more access lines within the state  
11 shall remain subject to complaint by an interested party  
12 subject to Section 63-9A-11 NMSA 1978.

13 C. An incumbent local exchange carrier that serves  
14 fifty thousand or more access lines within the state may  
15 increase its rates for residential local exchange service in  
16 the manner provided in Subsection B of this section to comply  
17 with requirements imposed by any federal or state law or  
18 rule. The procedures of Subsections D, E and F of this  
19 section shall not apply to increases under this subsection.

20 D. Except as provided in Subsection C of this  
21 section, rates for residential local exchange service may be  
22 increased by an incumbent local exchange carrier that serves  
23 fifty thousand or more access lines within the state only  
24 after sixty days' notice to all affected subscribers. The  
25 notice of increase shall include:

- 1 (1) the reasons for the rate increase;
- 2 (2) a description of the affected service;
- 3 (3) an explanation of the right of the
- 4 subscriber to petition the commission for a public hearing on
- 5 the rate increase;
- 6 (4) a list of local exchange areas that are
- 7 affected by the proposed rate increase; and
- 8 (5) the dates, times and places for the
- 9 public informational meetings required by this section.

10 E. An incumbent local exchange carrier that serves  
11 fifty thousand or more access lines within the state that  
12 proposes to increase its rates for residential local exchange  
13 service pursuant to Subsection D of this section shall hold  
14 at least one public informational meeting in each public  
15 regulation commission district as established by the Public  
16 Regulation Commission Apportionment Act in which there is a  
17 local exchange area affected by the rate change.

18 F. Residential local exchange service rates  
19 increased by an incumbent local exchange carrier that serves  
20 fifty thousand or more access lines within the state pursuant  
21 to Subsections D and E of this section shall be reviewed by  
22 the commission only upon written protest signed by at least  
23 one hundred affected subscribers or upon the commission  
24 staff's own motion for good cause. The protest shall  
25 specifically set forth the particular rate or charge as to

1 which review is requested, the reasons for the requested  
2 review and the relief that the persons protesting desire. If  
3 a proper protest is presented to the commission within sixty  
4 days from the date that notice of the rate change was sent to  
5 affected subscribers of an incumbent local exchange carrier,  
6 the commission may accept and file the complaint and, upon  
7 proper notice, may suspend the rates at issue during the  
8 pendency of the proceedings and reinstate the rates  
9 previously in effect and shall hold and complete a hearing  
10 thereon within ninety days after filing to determine if the  
11 rates as proposed are fair, just and reasonable. The  
12 commission may, within sixty days after close of the hearing,  
13 enter an order adjusting the rates at issue, except that the  
14 commission shall not set any rate below the intrastate cost  
15 of providing the service. In the order, the commission may  
16 order a refund of amounts collected in excess of the rates  
17 and charges as approved at the hearing, which may be paid as  
18 a credit against billings for future services. If the  
19 complaint is denied, the commission shall enter an order  
20 denying the complaint within sixty days after the close of  
21 the hearing, and the rates shall be deemed approved. For  
22 purposes of this section, cost shall also include a  
23 reasonable amount of joint and common costs incurred by the  
24 incumbent local exchange carrier that serves fifty thousand  
25 or more access lines within the state in its operations and

1 may include other accounting adjustments authorized by the  
2 commission.

3 G. Rates for local exchange, vertical and  
4 long-distance service to retail residential and business  
5 end-user customers charged by incumbent local exchange  
6 carriers that serve fifty thousand or more access lines may  
7 be reduced to a level equal to, but not below, the intrastate  
8 cost. The rate for a service, excluding basic service, must  
9 cover the cost of the service, including the imputed rate of  
10 wholesale service elements as may be required by the  
11 commission. The cost of long-distance service shall also  
12 include any interexchange access rates charged to another  
13 telecommunications company for the service.

14 H. An incumbent local exchange carrier that serves  
15 fifty thousand or more access lines within the state may  
16 offer or discontinue offering retail special incentives,  
17 discounts, packaged offerings, temporary rate waivers or  
18 other promotions and may offer individual contracts."

19 SECTION 5. Section 63-9A-9 NMSA 1978 (being Laws 1985,  
20 Chapter 242, Section 9, as amended) is amended to read:

21 "63-9A-9. REGULATION OF INDIVIDUAL CONTRACTS TO  
22 FACILITATE COMPETITION.--

23 A. In accordance with the provisions of this  
24 section, the commission shall regulate the rates, charges and  
25 service conditions for individual contracts for public



1 telecommunications services in a manner that facilitates  
2 effective competition and shall authorize the provision of  
3 all or any portion of a public telecommunications service  
4 under stated or negotiated terms to any person or entity that  
5 has acquired or is preparing to acquire, through  
6 construction, lease or any other form of acquisition, similar  
7 public telecommunications services from an alternate source.

8           B. At any time, the provider of public  
9 telecommunications services may file a verified application  
10 with the commission for authorization to provide a public  
11 telecommunications service on an individual contract basis.  
12 The application shall describe the telecommunications  
13 services to be offered, the party to be served and the  
14 parties offering the service, together with such other  
15 information and in such form as the commission may prescribe.  
16 Such additional information shall be reasonably related to  
17 the determination of the existence of a competitive offer. A  
18 determination of effective competition pursuant to Section  
19 63-9A-8 NMSA 1978 shall not be necessary to file an  
20 application or to have an application granted by the  
21 commission pursuant to this section.

22           C. The commission shall approve or deny any such  
23 application within ten days or such other period as shall be  
24 established by the commission, not to exceed sixty days,  
25 giving consideration to the requirements of any contract

1 negotiations. If the commission has not acted on any  
2 application within the time period established, the  
3 application shall be deemed granted. The commission shall  
4 deny the application only upon a finding that the application  
5 fails to set forth prescribed information or that the subject  
6 or comparable services are not being offered to the customer  
7 by parties other than the applicant or that the contract  
8 fails to cover the costs of the service, as provided in  
9 Subsection G of Section 63-9A-8.1 NMSA 1978.

10 D. The telecommunications company shall file with  
11 the commission the final contract or other evidence of the  
12 service to be provided, together with the charges and other  
13 conditions of service, upon request by the commission. If  
14 such contract or evidence is requested, it shall be  
15 maintained by the commission on a confidential basis subject  
16 to an appropriate protective order. Any interested party may  
17 receive copies of filings made pursuant to this section upon  
18 request to the commission and execution of an appropriate  
19 confidentiality agreement, if applicable."

20 SECTION 6. Section 63-9A-11 NMSA 1978 (being Laws 1985,  
21 Chapter 242, Section 11) is amended to read:

22 "63-9A-11. COMPLAINT ALLEGING VIOLATION BY PROVIDER OF  
23 TELECOMMUNICATIONS SERVICES.--

24 A. Complaint may be made by any interested party  
25 setting forth any act or omission by a provider of

1 telecommunications services alleged to be in violation of any  
2 provision of the New Mexico Telecommunications Act or any  
3 order or rule of the commission issued pursuant to that act.

4 B. Upon filing of the complaint, the commission  
5 shall set the time and place of hearing, if a hearing is  
6 required, and at least ten days' notice of the hearing shall  
7 be given to the party complained of. Service of notice of  
8 the hearing shall be made in any manner giving actual notice.

9 C. All matters upon which complaint may be founded  
10 may be joined in one hearing and a complaint is not defective  
11 for misjoinder or nonjoinder of parties or causes, either  
12 before the commission or on review by the courts. The  
13 persons the commission allows to intervene shall be joined  
14 and heard, along with the complainant and the party  
15 complained of.

16 D. The burden shall be on the party complaining to  
17 show a violation of a provision of the New Mexico  
18 Telecommunications Act or an order or rule of the commission  
19 issued pursuant to that act.

20 E. After conclusion of the hearing, the commission  
21 shall make and file an order containing its findings of fact  
22 and decision. A copy of the order shall be served upon the  
23 party complained of or that party's attorney.

24 F. Conduct of the hearings and rendering of  
25 decisions shall be governed by the rules of practice and

1 procedure promulgated by the commission."

2 SECTION 7. A new section of the New Mexico  
3 Telecommunications Act is enacted to read:

4 "COMMISSION REVIEW OF IMPACTS.--The commission shall  
5 review the impact of provisions of the New Mexico  
6 Telecommunications Act on residential and business consumers  
7 in urban and rural areas of the state every three years, the  
8 first review to be completed by July 31, 2019, and shall  
9 report its findings to the legislature. The review shall  
10 investigate the impact on rates, service quality, incumbent  
11 local exchange carrier employment, investment in  
12 telecommunications infrastructure and the availability and  
13 deployment of high speed data services. The review shall  
14 also include a report on those wire center serving areas that  
15 have been deemed to have effective competition and any wire  
16 centers no longer subject to carrier of last resort  
17 obligations. For any wire center serving an area deregulated  
18 pursuant to the provisions of Section 63-9A-8 NMSA 1978, if  
19 the commission finds that reregulation of basic local  
20 exchange service is necessary to protect the public interest  
21 following a hearing and findings of fact and conclusions of  
22 law, after July 31, 2021, the commission shall regulate basic  
23 local exchange service pursuant to the New Mexico  
24 Telecommunications Act."

25 SECTION 8. REPEAL.--Sections 63-9A-5.1, 63-9A-5.2 and

1 63-9A-8.2 NMSA 1978 (being Laws 2004, Chapter 3, Sections 4  
2 and 5; and Laws 2000, Chapter 100, Section 4 and Laws 2000,  
3 Chapter 102, Section 4, as amended) are repealed. \_\_\_\_\_

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