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FISCAL IMPACT REPORT

SPONSOR Padilla **ORIGINAL DATE** 1/24/17
LAST UPDATED 3/10/17 **HB** _____

SHORT TITLE PRC Jurisdiction Over Local Exchanges **SB** 53/aSJC

ANALYST Martinez

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY17	FY18	FY19		
See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications

(Parenthesis () Indicate Expenditure Decreases)

Duplicates House Bill 57.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

Department of Information Technology (DoIT)

SUMMARY

Synopsis of Senate Judiciary Committee Amendment

The Senate Judiciary Committee amendment strikes all of Section 1, the “Purpose,” section of SB 53.

The amendment also strikes “may,” and inserts, “shall,” in the following sentence in Section 8;

“the commission shall regulate basic local exchange service pursuant to the New Mexico Telecommunications Act.”

Synopsis of Bill

Senate Bill 53 is an act relating to communications; amending, repealing and enacting sections of the New Mexico Telecommunications Act (NMTA) to provide for Public Regulation Commission jurisdiction over incumbent local exchange carriers and their investment in telecommunications and broadband infrastructure.

FISCAL IMPLICATIONS

This bill would eliminate mid-size carrier rulemaking requirements (pricing, quality of service, and consumer protection) for CenturyLink QC and Windstream, along with other rulemaking requirements implied in NMSA 63-9A-8.2. 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 the NMTA on consumers. It may also increase the likelihood of cases to determine effective competition in the near term. These matters can be handled with current Public Regulation Commission resources; however, the PRC is currently affected by funding shortfalls and significant staff shortages.

Such a change of the telecommunication industry could potentially save or increase the telecommunication costs for the State of New Mexico millions each year. The Department of Information Technology (DoIT) pays over 20 vendors for telecommunication services with annual expenditures of \$17 million. The largest amount paid the vendors CenturyLink, over \$12 million, and Verizon, approximately \$4.8 million. Another five of the telecommunications vendors are paid over \$100,000 annually and potentially meet the criteria of more than 50,000 access lines. The size of DoIT's involvement with these carriers means that even a small change in rates could have large fiscal implications for DoIT.

SIGNIFICANT ISSUES

Currently, New Mexico statutes provide a three-tier regulatory framework for incumbent local exchange carriers ("ILECs"). ILECs that serve fewer than 50,000 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 50,000 access lines but fewer than 375,000 access lines in the state (currently Windstream and Centurylink Qwest Corporation) 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 375,000 or more access lines in the state. However, because Century Link QC was determined to be a mid-size carrier in Case No. 14-00068-UT in April of 2015 by having less than 375,000 access lines, functionally there are only two forms of regulation currently.

This bill would collapse the existing statutory three-tier regulatory framework into a two-tier regulatory framework. Incumbent rural telecommunications carriers would continue to be regulated as they are today under the RTA. Because the only factor distinguishing between the two tiers of regulation is the number of access lines, and the language from the RTA has been incorporated into the proposed legislation, there appears to be no significant difference between the two types of regulatory treatment.

In addition, the bill amends the existing mechanism by which the Commission can further relax the regulation of CenturyLink or Windstream upon a determination of effective competition (NMSA 1978, § 63-9A-8). Consistent with a recent Commission case, Case No. 11-00340-UT in August of 2013, 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. There is a “claw-back” provision that would allow the Commission to re-regulate basic local exchange service pursuant to the NMTA after July 31, 2021, if it finds (following a hearing and findings of fact and conclusions of law) that such reregulation is necessary to protect the public interest. The Commission must report to the legislature by July 31, 2019 as to the impact of the legislation that is passed.

The Public Regulation Commission states that with respect to carriers serving more than 50,000 access lines in the state (currently, Windstream and CenturyLink) the following would be significant issues:

1. The only opportunity for review of rates would be for basic local residential rate increases (other than those required to comply with law), which may be reviewed by the Commission only upon written protest signed by 100 of the affected subscribers or upon the Commission staff’s own motion for good cause. All other retail services, both business and residential, would not be subject to protest or review by the Commission.
2. The Commission shall adopt “relaxed regulations” that provide for reduced filing requirements for rate increase proceedings and expedited consideration of all proceedings under the NMTA.
3. The Commission may establish “reasonable” quality of service standards, but enforcement of such standards would be limited to the Commission’s fining authority under NMSA 1978, § 63-7-23 or by seeking an injunction in district court under NMSA 1978, § 63-9-19. The Commission’s fining authority under NMSA 1978, § 63-7-23 is as follows:
 - a. For disputes involving consumers, the maximum fine is \$1,000 per violation up to a maximum of \$25,000 for multiple violations arising out of the same facts, or \$1,000 per day of a continuing violation up to \$25,000 (although a fine of \$25,000 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 \$100,000 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 \$ 100,000 may be imposed for each day of a continuing violation.
4. 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 the NMTA. Since the rulemaking requirements in NMSA 63-9A-5.1 and 63-9A-8.2 are removed in this revision, it may be argued that there will be no quality of service or consumer protection rules applicable to incumbent local exchange carriers operating in the state prior to the Commission promulgating rules for carriers over 50,000 access lines subject to this section.

5. Current regulation of CenturyLink and Windstream's promotions in terms of frequency, duration, and non-discrimination would be eliminated and replaced by a statutory provision that gives the companies complete discretion in the provision and withdrawal of promotions.
6. The bill preserves and would not diminish or expand rights or obligations with respect to:
 - a. Interconnection, intercarrier compensation, intercarrier complaints, 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.
7. 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. It is unclear whether this provision allows a challenge that requires Centurylink QC or Windstream to offer noncompetitive services above cost, although there is a prohibition for any noncompetitive service to subsidize a competitive service.
8. The bill states that 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 50,000 access lines in the state.
9. The Commission shall review the impact of provisions of the 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, 2019, and shall report its findings to the legislature. The review shall investigate the impact on rates, service quality, and incumbent local exchange company employment, investment in telecommunications infrastructure and the availability and deployment of high speed data services. The review requires an objective assessment by the Commission; however the opinions may be subjective reflecting individual opinions of the varying interested parties. 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 NMSA 1978, § 63-9A-8, 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, 2021, the Commission may reregulate basic services that have been deregulated pursuant to the NMTA.

ADMINISTRATIVE IMPLICATIONS

If amended, the Act will require a ten (10) day notice to customers and the Public Regulation Commission (PRC) for rate changes. Previously, it required a notice of thirty (30) days to the PRC. Changes in rates will require administrative labor in order to ensure bills are properly remitted. Decreasing the notification period for such changes may put a strain on administrative resources required to implement these changes.

DUPLICATION

Duplicate bill to House Bill 57.

ALTERNATIVES

Status quo, or rather than reforming a single telecommunications statute, the legislature could implement comprehensive telecommunications reform in a future session.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The existing three-tiered statutory framework would remain intact, with Windstream and CenturyLink QC regulated as mid-size carriers under NMSA 1978 § 63-9A-5. Windstream and CenturyLink would still have the opportunity for relaxed regulation under the existing effective competition process in NMSA 1978, § 63-9A-8.

JM/sb/al/jle