

HOUSE STATE GOVERNMENT, ELECTIONS AND INDIAN AFFAIRS
COMMITTEE SUBSTITUTE FOR
HOUSE BILL 385

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING THE RURAL
TELECOMMUNICATIONS ACT OF NEW MEXICO TO MAKE ACCESS TO THE
STATE RURAL UNIVERSAL SERVICE FUND FOR TELECOMMUNICATIONS
CARRIERS ESTABLISHED AFTER ENACTMENT OF THAT ACT COMPARABLE TO
THE ACCESS FOR TELECOMMUNICATIONS CARRIERS ESTABLISHED PRIOR TO
ENACTMENT OF THAT ACT; PROVIDING DEFINITIONS.

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

SECTION 1. Section 63-9H-3 NMSA 1978 (being Laws 1999,
Chapter 295, Section 3, as amended) is amended to read:

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

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

1 to provide service in the area in which service is provided;

2 B. "basic service" means service that is provided
3 to a rural end-user customer that is consistent with the
4 federal act;

5 C. "cable service" means the transmission to
6 subscribers of video programming or other programming service
7 and subscriber interaction, if any, that is required for the
8 selection or use of the video programming or other programming
9 service;

10 D. "commission" means the public regulation
11 commission;

12 E. "comparable carrier" means an eligible
13 telecommunications carrier established prior to enactment of
14 the Rural Telecommunications Act of New Mexico that operates in
15 a similar geographic area and has a comparable amount of
16 telecommunications infrastructure and a similar number of
17 access lines as an eligible telecommunications carrier
18 established after enactment of that act;

19 [~~E.~~] F. "eligible telecommunications carrier" means
20 an eligible telecommunications carrier as defined in the
21 federal act;

22 [~~F.~~] G. "federal act" means the federal
23 Telecommunications Act of 1996;

24 [~~G.~~] H. "fund" means the state rural universal
25 service fund;

1 ~~[H.]~~ I. "incumbent local exchange carrier" means a
2 person that:

3 (1) was designated as an eligible
4 telecommunications carrier by the state corporation commission
5 in Docket #97-93-TC by order dated October 23, 1997, or that
6 provided local exchange service in this state on February 8,
7 1996; or

8 (2) became a successor or assignee of an
9 incumbent local exchange carrier;

10 ~~[I.]~~ J. "incumbent rural telecommunications
11 carrier" means an incumbent local exchange carrier that serves
12 fewer than fifty thousand access lines within the state and has
13 been designated as an eligible telecommunications carrier by
14 the state corporation commission or the public ~~[regulations]~~
15 regulation commission;

16 ~~[J.]~~ K. "local exchange area" means a geographic
17 area encompassing one or more local communities, as described
18 in maps, tariffs or rate schedules filed with the commission,
19 where local exchange rates apply;

20 ~~[K.]~~ L. "local exchange service" means the
21 transmission of two-way interactive switched voice
22 communications furnished by a telecommunications carrier within
23 a local exchange area;

24 ~~[L.]~~ M. "long distance service" means
25 telecommunications service between local exchange areas that

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1 originate and terminate within the state;

2 [M-] N. "private telecommunications service" means
3 a system, including its construction, maintenance or operation
4 for the provision of telecommunications service, or any portion
5 of that service, by a person for the sole and exclusive use of
6 that person and not for resale, directly or indirectly. For
7 purposes of this definition, the person that may use the
8 service includes any affiliates of the person if at least
9 eighty percent of the assets or voting stock of the affiliates
10 is owned by the person. If any other person uses the
11 telecommunications service, whether for hire or not, the
12 private telecommunications service is a public
13 telecommunications service;

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

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1 ~~Θ.]~~ P. "telecommunications carrier" means a person
2 that provides public telecommunications service; and

3 Q. "telecommunications infrastructure" means wireline
4 and wireless facilities and equipment, including towers,
5 structures, cable, microwave antennae and central office
6 equipment, used for the provision of public telecommunications
7 services."

8 SECTION 2. Section 63-9H-6 NMSA 1978 (being Laws 1999,
9 Chapter 295, Section 6, as amended) is amended to read:

10 "63-9H-6. STATE RURAL UNIVERSAL SERVICE FUND--
11 ESTABLISHMENT.--

12 A. The commission shall implement and maintain a
13 "state rural universal service fund" to maintain and support
14 universal service that is provided by eligible
15 telecommunications carriers, including commercial mobile radio
16 services carriers, as are determined by the commission. As
17 used in this section, "universal service" means basic local
18 exchange service, comparable retail alternative services at
19 affordable rates, service pursuant to a low-income telephone
20 assistance plan and broadband internet access service to
21 unserved and underserved areas as determined by the commission.

22 B. The fund shall be financed by a surcharge on
23 intrastate retail public telecommunications services to be
24 determined by the commission, excluding services provided
25 pursuant to a low-income telephone assistance plan billed to

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1 end-user customers by a telecommunications carrier, and
2 excluding all amounts from surcharges, gross receipts taxes,
3 excise taxes, franchise fees and similar charges. For the
4 purpose of funding the fund, the commission has the authority
5 to apply the surcharge on intrastate retail public
6 telecommunications services provided by telecommunications
7 carriers, including commercial mobile radio services and voice
8 over internet protocol services, at a competitively and
9 technologically neutral rate or rates to be determined by the
10 commission. The commission may establish the surcharge as a
11 percentage of intrastate retail public telecommunications
12 services revenue or as a fixed amount applicable to each
13 communication connection. For purposes of this section, a
14 "communication connection" means a voice-enabled telephone
15 access line, wireless voice connection, unique voice over
16 internet protocol service connection or other uniquely
17 identifiable functional equivalent as determined by the
18 commission. Such surcharges shall be competitively and
19 technologically neutral. Money deposited in the fund is not
20 public money, and the administration of the fund is not subject
21 to the provisions of law regulating public funds. The
22 commission shall not apply this surcharge to a private
23 telecommunications network; to the state, a county, a
24 municipality or other governmental entity; to a public school
25 district; to a public institution of higher education; to an

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1 Indian nation, tribe or pueblo; or to Native American customers
2 who reside on tribal or pueblo land.

3 C. The fund shall be competitively and
4 technologically neutral, equitable and nondiscriminatory in its
5 collection and distribution of funds, portable between eligible
6 telecommunications carriers and additionally shall provide a
7 specific, predictable and sufficient support mechanism as
8 determined by the commission that ensures universal service in
9 the state.

10 D. The commission shall:

11 (1) establish eligibility criteria for
12 participation in the fund consistent with federal law that
13 ensure the availability of universal service at affordable
14 rates. The eligibility criteria shall not restrict or limit an
15 eligible telecommunications carrier from receiving federal
16 universal service support;

17 (2) provide for the collection of the surcharge
18 on a competitively neutral basis and for the administration and
19 disbursement of money from the fund;

20 (3) determine those services and areas requiring
21 support from the fund;

22 (4) provide for the separate administration and
23 disbursement of federal universal service funds consistent with
24 federal law; and

25 (5) establish affordability benchmark rates for

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1 local residential and business services that shall be utilized
2 in determining the level of support from the fund. The process
3 for determining subsequent adjustments to the benchmark shall
4 be established through a rulemaking.

5 E. All incumbent telecommunications carriers and
6 competitive carriers already designated as eligible
7 telecommunications carriers for the fund shall be eligible for
8 participation in the fund. All other carriers that choose to
9 become eligible to receive support from the fund may petition
10 the commission to be designated as an eligible
11 telecommunications carrier for the fund. The commission may
12 grant eligible carrier status to a competitive carrier in a
13 rural area upon a finding that granting the application is in
14 the public interest. In making a public interest finding, the
15 commission may consider at least the following items:

16 (1) the impact of designation of an additional
17 eligible carrier on the size of the fund;

18 (2) the unique advantages and disadvantages of
19 the competitor's service offering; and

20 (3) any commitments made regarding the quality
21 of telephone service.

22 F. The commission shall adopt rules, including a
23 provision for variances, for the implementation and
24 administration of the fund in accordance with the provisions of
25 this section. The rules shall enumerate the appropriate uses

1 of fund support and any restrictions on the use of fund support
2 by eligible telecommunications carriers. The rules shall
3 require that an eligible telecommunications carrier receiving
4 support from the fund pursuant to Subsection K, L or M of this
5 section must expend no less than sixty percent of the support
6 it receives to deploy and maintain broadband internet access
7 services in rural areas of the state. The rules also shall
8 provide for annual reporting by eligible telecommunications
9 carriers verifying that the reporting carrier continues to meet
10 the requirements for designation as an eligible
11 telecommunications carrier for purposes of the fund and is in
12 compliance with the commission's rules, including the
13 provisions regarding use of support from the fund.

14 G. The commission shall, upon implementation of the
15 fund, select a neutral third-party administrator to collect,
16 administer and disburse money from the fund under the
17 supervision and control of the commission pursuant to
18 established criteria and rules promulgated by the commission.
19 The administrator may be reasonably compensated for the
20 specified services from the surcharge proceeds to be received
21 by the fund pursuant to Subsection B of this section. For
22 purposes of this subsection, the commission shall not be a
23 neutral third-party administrator.

24 H. The fund established by the commission shall
25 ensure the availability of universal service as determined by

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1 the commission at affordable rates in rural areas of the state;
2 provided, however, that nothing in this section shall be
3 construed as granting any authority to the commission to impose
4 the surcharge on or otherwise regulate broadband internet
5 access services.

6 I. The commission shall ensure that intrastate
7 switched access charges are equal to interstate switched access
8 charges established by the federal communications commission as
9 of January 1, 2006. Nothing in this section shall preclude the
10 commission from considering further adjustments to intrastate
11 switched access charges based on changes to interstate switched
12 access charges.

13 J. To ensure that providers of intrastate retail
14 communications service contribute to the fund and to further
15 ensure that the surcharge determined pursuant to Subsection B
16 of this section to be paid by the end-user customer will be
17 held to a minimum, the commission shall adopt rules, or take
18 other appropriate action, to require all such providers to
19 participate in a plan to ensure accurate reporting.

20 K. The commission shall authorize payments from the
21 fund to incumbent local exchange carriers, in combination with
22 revenue-neutral rate rebalancing up to the affordability
23 benchmark rates. Beginning in 2018, the commission shall make
24 access reduction support payments in the amount made from the
25 fund in base year 2014, adjusted each year thereafter by:

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1 (1) the annual percentage change in the number
 2 of access lines served by the incumbent local exchange carriers
 3 receiving such support for the prior calendar year, as compared
 4 to base year 2014; and

5 (2) changes in the affordability benchmark rates
 6 that have occurred since 2014.

7 L. The commission shall determine the methodology to
 8 be used to authorize payments to all other carriers that apply
 9 for and receive eligible carrier status; provided [~~however~~]
 10 that:

11 (1) funding for an eligible telecommunications
 12 carrier that is an incumbent rural telecommunications carrier
 13 that is not eligible for funding pursuant to rate rebalancing
 14 in Subsection K of this section, but that has been authorized
 15 for funding based on a determination of financial need, may
 16 apply for ongoing funding support based on its operating costs.
 17 If the commission finds that the applicant's operation costs
 18 are comparable to, or higher than, comparable carriers
 19 receiving support pursuant to rate rebalancing in Subsection K
 20 of this section, the commission shall award the applicant
 21 ongoing support at no less than the average amount of funding
 22 support provided to comparable carriers on a per-access line
 23 basis;

24 (2) funding for an eligible telecommunications
 25 carrier currently receiving funding based on a determination of

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1 need shall not be recalculated until the term of its current
2 funding approval has expired; and

3 (3) nothing in this section shall limit the
4 commission's authority to adopt rules pursuant to Subsection F
5 of this section regarding appropriate uses of fund support and
6 any restrictions on the use of the fund support by eligible
7 telecommunications carriers.

8 M. The commission may also authorize payments from
9 the fund to incumbent rural telecommunications carriers or to
10 telecommunications carriers providing comparable retail
11 alternative services that have been designated as eligible
12 telecommunications carriers serving in rural areas of the state
13 upon a finding, based on factors that may include a carrier's
14 regulated revenues, expenses or investment, by the commission
15 that such payments are needed to ensure the widespread
16 availability and affordability of universal service. The
17 commission shall decide cases filed pursuant to this subsection
18 with reasonable promptness, with or without a hearing, but no
19 later than six months following the filing of an application
20 seeking payments from the fund, unless the commission finds
21 that a longer time will be required, in which case the
22 commission may extend the period for an additional three
23 months.

24 N. The commission shall adopt rules that establish
25 and implement a broadband program to provide funding to

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1 eligible telecommunications carriers for the construction and
2 maintenance of facilities capable of providing broadband
3 internet access service. Such rules shall require that the
4 commission consider applications for funding on a technology-
5 neutral basis and shall require that the awards of support be
6 consistent with federal universal service support programs and
7 be based on the best use of the fund for rural areas of the
8 state. Each year, a minimum of five million dollars
9 (\$5,000,000) of the fund shall be dedicated to the broadband
10 program.

11 O. The total obligations of the fund determined by
12 the commission pursuant to this section, plus administrative
13 expenses and a prudent fund balance, shall not exceed a cap of
14 thirty million dollars (\$30,000,000) per year. The commission
15 shall evaluate the amount of the cap in an appropriate
16 proceeding to be completed by June 30, 2019 and consider
17 whether, based on the then-current status of the fund, the cap
18 should be modified, maintained or eliminated.

19 P. By December 31, 2019, the commission shall make a
20 report to the legislature regarding the status of the fund,
21 including relevant data relating to implementation of the
22 broadband program and expansion of broadband internet access
23 services in rural areas of the state. The report shall also
24 make recommendations for any changes to the structure, size and
25 purposes of the fund and whether the cap on the fund provided

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1 for in Subsection 0 of this section should be modified,
2 maintained or eliminated."

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underscoring material = new
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