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SENATE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

Michael Padilla

AN ACT

RELATING TO TELECOMMUNICATIONS; REQUIRING THE ADOPTION OF RULES TO REDUCE AND PROMOTE THE PARITY OF REGULATION FOR THE TELECOMMUNICATIONS INDUSTRY AND ENCOURAGE A BROADBAND-FOCUSED COMPETITIVE TELECOMMUNICATIONS MARKET; PROHIBITING INDIVIDUAL CONTRACTS FOR TELECOMMUNICATIONS SERVICES TO BE OFFERED ON MATERIALLY DIFFERENT TERMS TO SIMILARLY SITUATED CUSTOMERS WITHOUT CERTAIN PERMISSIONS; CHANGING A MEASURE FOR THE CALCULATION OF A PRESUMPTION OF EFFECTIVE COMPETITION FOR REGULATED TELECOMMUNICATION SERVICES; REPLACING THE APPLICATION PROCESS FOR INDIVIDUAL SERVICE CONTRACTING WITH A TWO-YEAR REQUIREMENT TO RETAIN SUCH CONTRACTS ON FILE; ADDING INFORMATION TO BE INCLUDED IN THE TRIENNIAL REPORTING BY THE PUBLIC REGULATION COMMISSION; REPEALING SECTION 63-9A-2 NMSA 1978 (BEING LAWS 1985, CHAPTER 242, SECTION 2, AS AMENDED BY LAWS 2000, CHAPTER 100, SECTION 3 AND BY LAWS 2000, CHAPTER

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1 102, SECTION 3).

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

4 SECTION 1. Section 63-9A-5 NMSA 1978 (being Laws 1985,
5 Chapter 242, Section 5, as amended) is amended to read:

6 "63-9A-5. REGULATION BY COMMISSION.--

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

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

25 C. On or before December 31, 2021, the commission

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1 shall adopt rules to accelerate a transition away from a
2 regulated telecommunications industry and encourage a
3 broadband-focused competitive market; provided that the adopted
4 rules preserve and do not diminish or expand:

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

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

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

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1 (4) the authority of the commission to
2 establish reasonable and competitively neutral quality of
3 service standards for local exchange service; provided,
4 however, that the enforcement of such standards shall be
5 limited to the commission's fining authority set forth in
6 Section 63-7-23 NMSA 1978 and the authority to seek an
7 injunction set forth in Section 63-9-19 NMSA 1978;

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

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

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

18 [~~G.~~] D. For incumbent local exchange carriers that
19 serve fifty thousand or more access lines within the state, the
20 commission shall adopt relaxed [~~regulations~~] rules that provide
21 for:

22 (1) reduced regulation compared to the level
23 of regulation that applied to that carrier as of January 1,
24 2017;

25 (2) reduced filing requirements for applicants

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1 in rate increase proceedings under the New Mexico
2 Telecommunications Act; and

3 [~~(2)~~] (3) expedited consideration in all
4 proceedings initiated pursuant to the New Mexico
5 Telecommunications Act in order to reduce the cost and burden
6 for incumbent local exchange carriers and other applicants.

7 [~~D. The regulatory requirements and the~~
8 ~~commission's regulation of competitive]~~

9 E. Except for the regulation of rates pursuant to
10 rules adopted in accordance with Section 63-9A-8.1 NMSA 1978
11 and rules adopted pursuant to the Rural Telecommunications Act
12 of New Mexico, no local exchange [~~carriers, competitive access~~
13 providers and interexchange carriers shall be no greater than,
14 and no more extensive than, that of incumbent] carrier shall be
15 placed under greater or more extensive regulatory requirements
16 than any other local exchange [~~carriers that serve fifty~~
17 thousand or more access lines] carrier.

18 [~~E.~~] F. The provisions of the New Mexico
19 Telecommunications Act do not apply to incumbent rural
20 telecommunications carriers."

21 **SECTION 2.** Section 63-9A-8 NMSA 1978 (being Laws 1985,
22 Chapter 242, Section 8, as amended) is amended to read:

23 "63-9A-8. REGULATION OF RATES AND CHARGES--EFFECTIVE
24 COMPETITION.--

25 A. In accordance with the policy established in the

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1 New Mexico Telecommunications Act, the commission shall, by its
2 own motion or upon petition by any interested party, hold
3 hearings to determine if any public telecommunications service
4 is subject to effective competition in the relevant market
5 area. When the commission has made a determination that a
6 service or part of a service is subject to effective
7 competition, the commission shall, consistent with the purposes
8 of the New Mexico Telecommunications Act [~~modify~~], reduce or
9 eliminate rules, regulations and other requirements applicable
10 to the provision of each such service, including the fixing and
11 determining of specific rates, tariffs or fares for the
12 service. The commission's action may include the detariffing
13 of service or the establishment of minimum rates that will
14 cover the costs for the service. Such modification shall be
15 consistent with the maintenance of the availability of access
16 to local exchange service at affordable rates and comparable
17 message telecommunications service rates, as established by the
18 commission, for comparable markets or market areas, except that
19 volume discounts or other discounts based on reasonable
20 business purposes shall be permitted. [~~Upon petition or~~
21 ~~request of an affected telecommunications company~~] The
22 commission [~~upon a finding that the requirements of Subsection~~
23 ~~B of this section are met~~] shall also modify the same or
24 similar retail regulatory requirements for [~~those~~] all
25 providers of comparable public telecommunications services in

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1 the same relevant markets so that there shall be parity of
2 retail regulatory standards and requirements for all such
3 providers; provided, however, that this subsection shall not be
4 construed to permit the adoption of any new regulatory
5 requirements or standards for providers of comparable
6 telecommunications services.

7 B. In determining whether a service is subject to
8 effective competition, the commission shall consider the
9 following on a wire center serving area basis for each wire
10 center serving area and service for which such a determination
11 [~~of effective competition~~] is requested [~~and separate~~
12 ~~determinations shall be made for residential and business~~
13 ~~services in each wire center serving area~~]:

14 (1) the extent to which services are
15 reasonably available from alternate providers;

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

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

21 (4) the number of other providers offering the
22 same or reasonably comparable services;

23 (5) the presence of at least two facilities-
24 based competitors, including without limitation facilities-
25 based providers of wireless or voice over internet protocol

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1 services, operating in all or part of the wire center servicing
2 area for which a determination of effective competition is
3 requested that are unaffiliated with the petitioning carrier
4 and provide the same or reasonably comparable service of the
5 type for which the finding of effective competition is sought;

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

8 (7) such other factors as the commission deems
9 appropriate.

10 C. [~~If, in the~~] In a proceeding pursuant to
11 Subsection B of this section for a wire center serving area for
12 which a determination of effective competition is requested and
13 where the incumbent local exchange carrier provides basic local
14 exchange service either separately or bundled to less than one-
15 half of the [~~customer locations where such service is available~~
16 ~~at the time the petition is filed~~] housing units and business
17 firms as determined by the latest federal decennial census,
18 using a centroid method where a given census block is allocated
19 to the wire center serving area in which the geographic center
20 of the census block is located, the public interest requires
21 that effective competition be presumed for all regulated
22 telecommunications services provided by the incumbent provider
23 in that wire center serving area; provided, however, that
24 findings and presumptions applied pursuant to this section
25 shall be made [~~separately~~] in the aggregate for residential and

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1 business services and customer locations combined.

2 D. No provider of public telecommunications service
3 may use current revenues earned or expenses incurred in
4 conjunction with any noncompetitive service to subsidize
5 competitive public telecommunications services. In order to
6 avoid cross-subsidization of competitive services by
7 noncompetitive telecommunications services, prices or rates
8 charged for a competitive telecommunications service shall
9 cover the cost for the provision of the service consistent with
10 the provisions of Subsection G of Section 63-9A-8.1 NMSA 1978.
11 In any proceeding held pursuant to this section, the party
12 claiming that the price for a competitive telecommunications
13 service does not cover the cost shall bear the burden of
14 proving that the prices charged for competitive
15 telecommunications services do not cover cost; provided,
16 however, that the commission may require the telecommunications
17 company against whom the complaint is filed to submit a cost
18 study for the service that is the subject of the complaint as
19 part of its examination and determination of the complaint.

20 E. The commission may, upon its own motion or on
21 the petition of an interested party and after notice to all
22 interested parties and customers and a hearing, reclassify any
23 service previously determined to be a competitive
24 telecommunications service if after a hearing the commission
25 finds that a service is not subject to effective competition.

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1 F. If a wire center [~~service~~] servicing area is
2 deregulated pursuant to a determination of effective
3 competition, for those wire center [~~service~~] servicing areas
4 where that service is deregulated, the petitioning
5 telecommunications company shall no longer be eligible to claim
6 an exemption from the application of the Unfair Practices Act
7 or the Antitrust Act."

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

10 "63-9A-9. REGULATION OF INDIVIDUAL CONTRACTS TO
11 FACILITATE COMPETITION.--

12 A. In accordance with the provisions of this
13 section, the commission shall regulate the rates, charges and
14 service conditions for individual contracts for public
15 telecommunications services in a manner that facilitates
16 effective competition and shall authorize the provision of all
17 or any portion of a public telecommunications service under
18 stated or negotiated terms to any person or entity that has
19 acquired or is preparing to acquire, through construction,
20 lease or any other form of acquisition, similar public
21 telecommunications services from an alternate source.

22 B. [~~At any time, the~~] A provider of public
23 telecommunications services [~~may file a verified application~~
24 ~~with the commission for authorization~~] shall retain a copy of
25 any contract or agreement permitted pursuant to this section to

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1 provide a public telecommunications service on an individual
2 contract basis [~~The application shall describe the~~
3 ~~telecommunications services to be offered, the party to be~~
4 ~~served and the parties offering the service, together with such~~
5 ~~other information and in such form as the commission may~~
6 ~~prescribe. Such additional information shall be reasonably~~
7 ~~related to the determination of the existence of a competitive~~
8 ~~offer. A determination of effective competition pursuant to~~
9 ~~Section 63-9A-8 NMSA 1978 shall not be necessary to file an~~
10 ~~application or to have an application granted by the commission~~
11 ~~pursuant to this section.~~

12 G. ~~The commission shall approve or deny any such~~
13 ~~application within ten days or such other period as shall be~~
14 ~~established by the commission, not to exceed sixty days, giving~~
15 ~~consideration to the requirements of any contract negotiations.~~
16 ~~If the commission has not acted on any application within the~~
17 ~~time period established, the application shall be deemed~~
18 ~~granted] for a minimum of two years after the contract or~~
19 ~~agreement is expired or terminated.~~

20 C. The commission shall deny [~~the application~~] an
21 individual contract only upon a finding that [~~the application~~
22 ~~fails to set forth prescribed information or that~~] the subject
23 or comparable services are not being offered to the customer by
24 other parties [~~other than the applicant~~] or that the contract
25 fails to cover the costs of the service, as provided in

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1 Subsection G of Section 63-9A-8.1 NMSA 1978.

2 D. No provider of telecommunications services shall
3 use individual contracts permitted pursuant to this section to
4 offer services on materially different terms and conditions
5 than the provider would make available to other similarly
6 situated customers, unless otherwise permitted by law or the
7 commission.

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

19 **SECTION 4.** Section 63-9A-21 NMSA 1978 (being Laws 2017,
20 Chapter 71, Section 7) is amended to read:

21 "63-9A-21. COMMISSION REVIEW OF IMPACTS.--

22 A. The commission shall review the impact of
23 provisions of the New Mexico Telecommunications Act on
24 residential and business consumers in urban and rural areas of
25 the state every three years, the first review to be completed

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1 by July 31, 2019, and shall report its findings to the
2 legislature. The review shall investigate the impact on rates,
3 service quality, incumbent local exchange carrier employment,
4 investment in telecommunications infrastructure and the
5 availability and deployment of high speed data services. The
6 review shall also include a report on:

7 (1) the steps the commission has taken to
8 implement parity of regulation among local exchange carriers
9 consistent with the purposes of the New Mexico
10 Telecommunications Act;

11 (2) those wire center serving areas that have
12 been deemed to have effective competition; and

13 (3) any wire centers no longer subject to
14 carrier of last resort obligations.

15 B. For any wire center serving an area deregulated
16 pursuant to the provisions of Section 63-9A-8 NMSA 1978, if the
17 commission finds that reregulation of basic local exchange
18 service is necessary to protect the public interest following a
19 hearing and findings of fact and conclusions of law, after July
20 31, 2021, the commission shall regulate basic local exchange
21 service pursuant to the New Mexico Telecommunications Act."

22 **SECTION 5. REPEAL.**--Section 63-9A-2 NMSA 1978 (being Laws
23 1985, Chapter 242, Section 2, as amended by Laws 2000, Chapter
24 100, Section 3 and by Laws 2000, Chapter 102, Section 3) is
25 repealed.