

1 SENATE BILL 204

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Michael Padilla

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9  
10 AN ACT

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

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

21 "63-9H-3. DEFINITIONS.--As used in the Rural  
22 Telecommunications Act of New Mexico:

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

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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 has a  
15 similar number of access lines as an eligible  
16 telecommunications carrier established after enactment of that  
17 act;

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

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

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

25 ~~[H.]~~ I. "incumbent local exchange carrier" means a

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1 person that:

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

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

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

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

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

23 [~~L.~~] M. "long distance service" means  
24 telecommunications service between local exchange areas that  
25 originate and terminate within the state;

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

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

25           [Ø-] P. "telecommunications carrier" means a person  
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1 that provides public telecommunications service."

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

4 "63-9H-6. STATE RURAL UNIVERSAL SERVICE FUND--  
5 ESTABLISHMENT.--

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

16 B. The fund shall be financed by a surcharge on  
17 intrastate retail public telecommunications services to be  
18 determined by the commission, excluding services provided  
19 pursuant to a low-income telephone assistance plan billed to  
20 end-user customers by a telecommunications carrier, and  
21 excluding all amounts from surcharges, gross receipts taxes,  
22 excise taxes, franchise fees and similar charges. For the  
23 purpose of funding the fund, the commission has the authority  
24 to apply the surcharge on intrastate retail public  
25 telecommunications services provided by telecommunications

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1 carriers, including commercial mobile radio services and voice  
2 over internet protocol services, at a competitively and  
3 technologically neutral rate or rates to be determined by the  
4 commission. The commission may establish the surcharge as a  
5 percentage of intrastate retail public telecommunications  
6 services revenue or as a fixed amount applicable to each  
7 communication connection. For purposes of this section, a  
8 "communication connection" means a voice-enabled telephone  
9 access line, wireless voice connection, unique voice over  
10 internet protocol service connection or other uniquely  
11 identifiable functional equivalent as determined by the  
12 commission. Such surcharges shall be competitively and  
13 technologically neutral. Money deposited in the fund is not  
14 public money, and the administration of the fund is not subject  
15 to the provisions of law regulating public funds. The  
16 commission shall not apply this surcharge to a private  
17 telecommunications network; to the state, a county, a  
18 municipality or other governmental entity; to a public school  
19 district; to a public institution of higher education; to an  
20 Indian nation, tribe or pueblo; or to Native American customers  
21 who reside on tribal or pueblo land.

22 C. The fund shall be competitively and  
23 technologically neutral, equitable and nondiscriminatory in its  
24 collection and distribution of funds, portable between eligible  
25 telecommunications carriers and additionally shall provide a

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1 specific, predictable and sufficient support mechanism as  
2 determined by the commission that ensures universal service in  
3 the state.

4 D. The commission shall:

5 (1) establish eligibility criteria for  
6 participation in the fund consistent with federal law that  
7 ensure the availability of universal service at affordable  
8 rates. The eligibility criteria shall not restrict or limit an  
9 eligible telecommunications carrier from receiving federal  
10 universal service support;

11 (2) provide for the collection of the surcharge  
12 on a competitively neutral basis and for the administration and  
13 disbursement of money from the fund;

14 (3) determine those services and areas requiring  
15 support from the fund;

16 (4) provide for the separate administration and  
17 disbursement of federal universal service funds consistent with  
18 federal law; and

19 (5) establish affordability benchmark rates for  
20 local residential and business services that shall be utilized  
21 in determining the level of support from the fund. The process  
22 for determining subsequent adjustments to the benchmark shall  
23 be established through a rulemaking.

24 E. All incumbent telecommunications carriers and  
25 competitive carriers already designated as eligible

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1 telecommunications carriers for the fund shall be eligible for  
2 participation in the fund. All other carriers that choose to  
3 become eligible to receive support from the fund may petition  
4 the commission to be designated as an eligible  
5 telecommunications carrier for the fund. The commission may  
6 grant eligible carrier status to a competitive carrier in a  
7 rural area upon a finding that granting the application is in  
8 the public interest. In making a public interest finding, the  
9 commission may consider at least the following items:

10 (1) the impact of designation of an additional  
11 eligible carrier on the size of the fund;

12 (2) the unique advantages and disadvantages of  
13 the competitor's service offering; and

14 (3) any commitments made regarding the quality  
15 of telephone service.

16 F. The commission shall adopt rules, including a  
17 provision for variances, for the implementation and  
18 administration of the fund in accordance with the provisions of  
19 this section. The rules shall enumerate the appropriate uses  
20 of fund support and any restrictions on the use of fund support  
21 by eligible telecommunications carriers. The rules shall  
22 require that an eligible telecommunications carrier receiving  
23 support from the fund pursuant to Subsection K, L or M of this  
24 section must expend no less than sixty percent of the support  
25 it receives to deploy and maintain broadband internet access

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1 services in rural areas of the state. The rules also shall  
2 provide for annual reporting by eligible telecommunications  
3 carriers verifying that the reporting carrier continues to meet  
4 the requirements for designation as an eligible  
5 telecommunications carrier for purposes of the fund and is in  
6 compliance with the commission's rules, including the  
7 provisions regarding use of support from the fund.

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

18 H. The fund established by the commission shall  
19 ensure the availability of universal service as determined by  
20 the commission at affordable rates in rural areas of the state;  
21 provided, however, that nothing in this section shall be  
22 construed as granting any authority to the commission to impose  
23 the surcharge on or otherwise regulate broadband internet  
24 access services.

25 I. The commission shall ensure that intrastate

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1 switched access charges are equal to interstate switched access  
2 charges established by the federal communications commission as  
3 of January 1, 2006. Nothing in this section shall preclude the  
4 commission from considering further adjustments to intrastate  
5 switched access charges based on changes to interstate switched  
6 access charges.

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

14 K. The commission shall authorize payments from the  
15 fund to incumbent local exchange carriers, in combination with  
16 revenue-neutral rate rebalancing up to the affordability  
17 benchmark rates. Beginning in 2018, the commission shall make  
18 access reduction support payments in the amount made from the  
19 fund in base year 2014, adjusted each year thereafter by:

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

24 (2) changes in the affordability benchmark rates  
25 that have occurred since 2014.

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1 L. The commission shall determine the methodology to  
2 be used to authorize payments to all other carriers that apply  
3 for and receive eligible carrier status; provided ~~however~~  
4 that:

5 (1) an eligible incumbent telecommunications  
6 carrier that is not eligible for funding pursuant to rate  
7 rebalancing in Subsection K of this section and that has been  
8 previously authorized pursuant to Subsection M of this section  
9 for need-based support may apply for ongoing fund support;

10 (2) the commission shall award an applicant  
11 ongoing fund support at no less than the average access line  
12 amount of funding support for comparable carriers; provided  
13 that an eligible telecommunications carrier receiving fund  
14 support pursuant to this subsection shall not offer basic local  
15 exchange residential and business services at rate levels lower  
16 than the rates for such services charged by any of the  
17 comparable carriers used for the determination of the level of  
18 support;

19 (3) the commission shall act upon a request for  
20 ongoing fund support within one hundred twenty days of the  
21 filing of the request; and

22 (4) nothing in this section shall limit the  
23 commission's authority to adopt rules pursuant to Subsection F  
24 of this section regarding appropriate uses of fund support and  
25 any restrictions on the use of the fund support by eligible

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1 telecommunications carriers.

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

18 N. The commission shall adopt rules that establish  
19 and implement a broadband program to provide funding to  
20 eligible telecommunications carriers for the construction and  
21 maintenance of facilities capable of providing broadband  
22 internet access service. Such rules shall require that the  
23 commission consider applications for funding on a technology-  
24 neutral basis and shall require that the awards of support be  
25 consistent with federal universal service support programs and

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1 be based on the best use of the fund for rural areas of the  
2 state. Each year, a minimum of five million dollars  
3 (\$5,000,000) of the fund shall be dedicated to the broadband  
4 program.

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

13 P. By December 31, 2019, the commission shall make a  
14 report to the legislature regarding the status of the fund,  
15 including relevant data relating to implementation of the  
16 broadband program and expansion of broadband internet access  
17 services in rural areas of the state. The report shall also  
18 make recommendations for any changes to the structure, size and  
19 purposes of the fund and whether the cap on the fund provided  
20 for in Subsection O of this section should be modified,  
21 maintained or eliminated."