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FISCAL IMPACT REPORT

SPONSOR Padilla **ORIGINAL DATE** 1/28/21 **LAST UPDATED** 2/1/21 **HB** _____
SHORT TITLE Parity of Regulation of Telecommunication **SB** 24
ANALYST Martinez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY21	FY22	FY23	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

Senate Bill 24 would amend the New Mexico Telecommunications Act (NMTA), NMSA 1978, 63-9A-1, most recently amended in 2017 (Senate Bill 53). Changes primarily impact quality of service rules applicable to large incumbent local exchange carriers (local telephone companies that held a regional monopoly before the market was opened to competition, or their successors),

a

category of carrier created in 2017. Changes include

1. On or before December 31, 2021, the commission shall adopt rules to accelerate a transition away from a regulated telecommunications industry and encourage a broadband-focused competitive market.
2. The commission shall adopt relaxed rules for large incumbent local exchange carriers that provide for (1) reduced regulation compared with the level of regulation that applied to that carrier as of January 1, 2017, and (2) reduced filing requirements for applicants in rate increase proceedings under the New Mexico Telecommunications Act.
3. No local exchange carrier shall be placed under greater or more extensive regulatory requirements than any other local exchange carrier.
4. No provider of telecommunications services shall use individual contracts to offer services on materially different terms and conditions than the provider would make

available to other similarly situated customers, unless otherwise permitted by law or the commission.

5. The commission shall review the impact of the steps the commission has taken to implement parity of regulation among local exchange carriers consistent with the purposes of the New Mexico Telecommunications Act.

FISCAL IMPLICATIONS

SB24 does not carry an appropriation and will not have a fiscal impact on the Public Regulation Commission.

SIGNIFICANT ISSUES

There is currently one pending appeal before the NM Supreme Court related to this bill.

1. New Mexico Public Regulation Commission Docket No. 18-00295-UT.

The Public Regulation Commission (PRC) provided the following:

The bill's proposed changes to 63-9A-5 relate to the Commission's adoption of quality of service rules in the New Mexico Public Regulation Commission's (the "Commission") Order Adopting Quality of Service and Consumer Protection Rules for Large Incumbent Local Exchange Carriers, issued on October 30, 2019, in Commission Docket No. 17-00186-UT.

That order was the subject of an appeal by Qwest Corporation dba CenturyLink QC to the NM Supreme Court. On January 28, 2021, the Court issued its Dispositional Order of Affirmance, affirming the Commission's order. In that order, for relevant purposes, the Commission adopted quality of service rules applicable to "Large Incumbent Local Exchange Carriers," or "LILECs," a name coined by the Commission to apply to the new category of incumbent local exchange carriers ("ILECs") resulting from the 2017 amendments to the NMTA – namely, those ILECs serving more than 50,000 access lines in the state. Currently, that category includes only CenturyLink QC. All other ILECs in the state are classified as "Rural ILECs" – namely, those ILECs serving fewer than 50,000 access lines in the state.

The 2017 amendments to the NMTA eliminated the intermediate category into which CenturyLink QC had fallen up until that time – the "mid-size carrier" category. This necessitated the Commission's repeal of rules applicable to mid-size carriers and replacement of those rules with rules applicable to LILECs.

The 2017 amendments provided that the NMTA "expressly preserves and does not diminish or expand . . . the authority of the commission to establish reasonable quality of service standards . . ." NMSA 1978, § 63-9A-5.A(4) (2017).

The bill includes proposed changes to this section that would specifically require the Commission to adopt rules providing for "reduced regulation compared to the level of regulation that applied to that carrier as of January 1, 2017...." [Bill, 63-9A-5(D) (1).] Similarly, the bill would require that "[o]n or before December 31, 2021, the commission shall adopt rules to accelerate a transition away from a regulated telecommunications industry and encourage a broadband-focused competitive market...." [Bill, 63-9A-5(C).]

With regard to this reference to a “broadband-focused competitive market,” there is some ambiguity. The Commission has no authority to regulate broadband service. The Legislature has the power to regulate broadband service as the Federal Communications Commission has relinquished that power. *Mozilla Corp. v. FCC*, 940 F.3d 1 (D.C. Cir. 2019). This bill would not authorize the Commission to regulate broadband service. It is unclear how the Commission would encourage a broadband-focused competitive market.

The NMTA pertains only to “local exchange service,” or voice service, and it is not clear in the bill how lowering the level of regulation of voice service would encourage growth in the broadband market. As an aside, the Commission promotes increased broadband access through project-specific grants via the Commission’s Broadband Program, as mandated by the Rural Telecommunications Act of New Mexico (the “RTA”). NMSA 1978, § 63-9H-6(N).

The bill also appears to require “parity” of regulation between LILECs and Rural ILECs. The proposed language is ambiguous, though, on this point. It does not clearly require parity between regulation applicable to LILECs and regulation applicable to Rural ILECs, instead referring to “any other local exchange carrier.” This is concerning because that reference could include competitive local exchange carriers (“CLECs”) which are subject to barely any regulation at all at the state level. The NMTA prevents the Commission from regulating CLECs any more extensively than it regulates Rural ILECs. NMSA 1978, § 63-9A-5(D). The bill would also eliminate that provision. It is unclear what the Bill would require with regard to the level of regulation allowable for CLECs vis-à-vis LILECs and Rural ILECs.

The bill’s proposed changes to 63-9A-8 include some changes that would be more general in nature and some specifically at a decision by the Commission, described below. Existing law sets out procedures for determining if “effective competition” exists. The bill would narrow the Commission’s authority with regard to any action the Commission would take with regard to the level of regulation applicable to a carrier in any specific area in which the carrier had been found to be subject to effective competition. The bill would delete the word “modify,” only allowing the Commission to effect a “reduction” or “elimination” of regulation. [Bill, 63-9A-8(A).]

The bill would also require the Commission, upon finding a petitioning carrier to be subject to effective competition in a market area, to modify regulations applicable to other carriers serving the same area congruent with the modifications made for the petitioning carrier. [Bill, 63-9A-8(A).] The bill would eliminate the requirement that such other carriers also file petitions seeking such relief.

The bill would eliminate the requirement that markets for business or residential services be addressed and analyzed separately when determining whether effective competition exists. [Bill, 63-9A-8(B).]

The bill’s proposed changes to 63-9A-8(C) relate to the Commission’s Final Order Adopting Recommended Decision, issued on February 26, 2020, in which the Commission denied CenturyLink QC’s Petition Requesting a Determination of Effective Competition for Retail Residential Telecommunications Services Pursuant to NMSA 1978, Section 63-9A-8(C), in Commission Docket No. 18-00295-UT. That order is

currently the subject of an appeal pending before the NM Supreme Court by CenturyLink QC.

The bill would eliminate the reference to “customer locations where [the petitioning ILEC’s] service is available at the time the petition is filed,” the interpretation of which is a principal issue in the pending appeal. The bill would instead allow the petitioning ILEC to refer to all housing units and business firms in the area “where the [ILEC] provides basic local exchange service,” presumably, the ILEC’s entire service area with regard to any particular wire center. This would probably result in a test that is easier for the ILEC to meet than that provided by the current NMTA as interpreted by the Commission.

The bill would provide for the centroid allocation method thus expressly providing for a method of allocating housing units and business firms from census block to wire center.

The bill proposes changes to 63-9A-9, concerning customers that negotiate individual contracts with the carrier instead of being subject to generally applicable tariffs. The bill would eliminate the possibility (not a requirement) that a carrier would file an application for approval of such a contract with the Commission. The bill would still allow for Commission review of such contracts without an application process. The bill would include language requiring that services provided through individual contracts be provided on terms not materially different than those on which such services are provided to other similarly situated customers, unless permitted by the Commission or otherwise allowed by law.

The bill proposes changes to 63-9A-21, concerning the Commission’s reporting duties to the Legislature. The bill would add a requirement that the Commission report on the steps the Commission has taken “to implement parity of regulation among local exchange carriers consistent with the purposes of the New Mexico Telecommunications Act.”

The bill would repeal 63-9A-2, the “Policy” section of the NMTA. This section sets out three main goals: widespread availability of telecommunications services, affordable rates throughout the state, and promoting competition, but only to the extent it is consistent with the first two goals.

There is no effective date of this bill. It is assumed that the effective date is 90 days following adjournment of the Legislature.

ADMINISTRATIVE IMPLICATIONS

The Public Regulation Commission (PRC) provided the following:

This bill would require the Commission to undertake and to complete a rulemaking concerning the quality of service rules applicable to LILECs, as discussed above, by the end of 2021.

This FIR reflects PRC’s technical staff’s analysis consistent with Commission policy, rules, and precedent, but does not reflect a position ratified by a vote of the full Commission.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Public Regulation Commission (PRC) provided the following:

Continuation of the status quo with regard to regulation of LILECs, unless the NM Supreme Court overturns either or both Commission orders currently under review on appeal.

JM/sb/rl/al