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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>SJC</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>2/14/23</u>
<b>SHORT TITLE</b> <u>Local Telecomm Carrier Changes</u>	<b>BILL</b> <u>CS/Senate Bill</u>
	<b>NUMBER</b> <u>41/SJCS</u>
	<b>ANALYST</b> <u>Hitzman</u>

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	No fiscal impact	No fiscal impact	No fiscal impact			

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

NM Effective Competition Final Order – PRC Docket #18-00295-UT

#### Responses Received From

Department of Transportation (NMDOT)

Public Regulation Commission (PRC)

Department of Information Technology (DoIT)

## SUMMARY

### Synopsis of SJC Substitute for Senate Bill 41

The Senate Judiciary Committee Substitute for Senate Bill 41 (SB41) amends the New Mexico Telecommunications Act regarding provisions applicable to incumbent local exchange carriers serving more than 50 thousand access lines in the state, a category the Public Regulation Commission (PRC) designates as “large incumbent local exchange carrier,” or LILEC. Currently, the only telecommunications carrier falling within this category is CenturyLink QC.<sup>1</sup> The bill amends the act to include definitions of “alternate provider,” meaning a person that provides voice services, regardless of technology used, including cellular service companies, satellite companies, and companies providing interconnected voice-over-internet protocol (VoIP). The bill also expands the definition of “voice services” in the act to mean the transmission of signs, signals, writings, images, sounds, messages, data, or other information by

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<sup>1</sup> The act was amended in 2017, eliminating the mid-size carrier category and establishing LILECs with only CenturyLink in that tier, but 2017 amendments maintained PRC authority to establish quality of service standards for issues like outages.

wire, radio, light waves, or other electromagnetic means, including the same above carrier types.

The bill requires PRC to regulate LILECs and rural incumbent local exchange carriers (ILECs) equally, creating parity of regulation, and strikes language requiring PRC to adopt relaxed regulations for LILECs in specified areas.

SB41 also amends the effective competition provisions of the act requiring PRC to look at whether there is effective competition present in a specified wire center area, which is generally a town or service area. SB41 strikes language allowing the PRC to choose among the options of modifying, reducing, or eliminating regulations where effective competition is present, instead requiring PRC to eliminate such regulations. The PRC would be required to look at the availability of access at affordable rates comparable in both urban and rural markets.

The bill clarifies the definition of effective competition, existing when “voice services are available to business customers from two or more alternate providers not affiliated with the incumbent local exchange carrier in the wire center serving area and are available to residential customers from two or more alternate providers not affiliated with the incumbent local exchange carrier in the wire center serving area, regardless of technology, regulation status, or state or federal funding status of the entity. Further, when an alternate provider other than the incumbent local exchange carrier has been awarded funding to provide broadband service, effective competition for all regulated telecommunications services in that wire center serving area shall exist.

The bill further clarifies reporting requirements of PRC to the Legislature, requiring reporting on effective competition areas, and identifying steps taken by the commission to implement parity of regulation. The bill also repeals the section of the NMSA regarding telephone and telegraph company telecommunications services.

The effective date of this bill is July 1, 2023.

## **FISCAL IMPLICATIONS**

The bill does not contain an appropriation or create a new program or service, so there is no estimated fiscal impact for implementing the bill other than very minimal costs to undergo rulemaking at PRC.

However, current law prohibits public telecommunications service providers from utilizing current revenues earned or expenses incurred from a noncompetitive service to subsidize competitive public telecommunications services. According to the Department of Information Technology (DoIT), this is to avoid cross-subsidization of competitive services by noncompetitive telecommunications services. DoIT notes, “This amendment would level the playing field for all [plain old telephone service] (POTS) providers by ensuring all telephone services are treated the same by the PRC.” Because SB41 relates to POTS and does not affect broadband providers who offer voice-over-internet protocol (VoIP) as part of broadband packaged services, the revenue from noncompetitive services might be used to subsidize competitive services in that they “may” apply their profit to subsidize VoIP to earn higher subscription rates, for example bundling with VoIP services.

## SIGNIFICANT ISSUES

According to PRC, all incumbent local exchange carriers (ILECs) in the state that serve fewer than 50 thousand access lines are considered rural ILECs and are subject to the Rural Telecommunications Act of New Mexico. SB41 would achieve parity by requiring PRC to regulate LILECs under the NMTA in the same manner that rural ILECs are regulated under the RTA. However, the only telecommunications carrier that would be affected by this bill is CenturyLink QC, otherwise known as Lumen. The bill, therefore, achieves parity by removing regulations that only currently apply to CenturyLink QC. Further, PRC does not currently have authority to regulate broadband services.

In 2019, CenturyLink asked PRC to find that its retail residential telecommunications services in all 65 of its wire centers in New Mexico are subject to effective competition under Section 63-9A-8(C) of the NMTA. In a final order published by PRC (*Petition of CenturyLink QC regarding effective competition for retail residential services*, Docket No. 18-00295-UT), effective competition is determined by “whether the incumbent is no longer serving 50% or more of the residential locations it was serving.” In the order, CenturyLink argues that it “serves less than a fifth of the New Mexico telecommunications marketplace, and may not be able to sustain continued investment in New Mexico if the Commission continues to single out CenturyLink for regulation.”

In a response by the Communication Workers of America union, the union notes concerns with the methods by which CenturyLink determined an area served, noting that the ways in which a wire center area was defined and the allocation of housing units to those specified wire center areas could misconstrue the actual availability of service and therefore the percentage of market share covered in that area. The final order finds, “CenturyLink has not shown that it provides basic local exchange service to less than 50% of the customer locations in its wire centers ‘where such service is available.’” However, proponents have argued that vagueness of the existing law resulted in various ways to make a determination of “effective competition” and argues that “such service” is not limited to CenturyLink’s basic local exchange service, but extends to VoIP and wireless, which it says are functionally equivalent to basic local exchange service. SB41 would implement provisions basically equating these services, including VoIP and POTS services, bringing parity to the regulations of those services regardless of technology or carrier type.

SB41 would also eliminate the multi-factor test for determining whether effective competition is present, replacing it with a simpler analysis that would require a determination that effective competition exists in any wire center serving area when voice services are reasonably available from two or more alternate providers within the wire center serving area. In the alternative, effective competition must be determined present if any alternate provider of service, other than the LILEC, receives federal or state support to serve the area. This would result in a much narrower interpretation of what is considered to be effective competition, which could impact the application of regulations such as quality of service or customer satisfaction metrics on carriers.

SB41 would also require PRC to modify regulations applicable to other carriers providing comparable services in the wire center serving area that has been found subject to effective competition. The current statute requires this as well, but only on a petition filed by an affected carrier and only on PRC’s application of the analysis that is applied to any petitioner seeking a finding of effective competition.

## PERFORMANCE IMPLICATIONS

Proponents of the bill believe establishing parity of regulation for all landline telecom providers, regardless of technology, will allow more competition in New Mexico’s market and will promote more broadband investments.

The bill does not relieve any company of its obligation to provide service and would not require PRC to eliminate regulations regarding quality of service and customer satisfaction when effective competition is established. Nothing in the bill precludes PRC from establishing reasonable service quality standards within some limits as specified in the act.

## ADMINISTRATIVE IMPLICATIONS

SB41 would require PRC to undertake a rulemaking proceeding to amend its rules concerning LILECs. According to DoIT, this bill also helps ensure the availability of 911 services.

## POSSIBLE QUESTIONS

What else will CenturyLink be able to do under SB41 that they cannot do now?

Would the commission still need to conduct proceedings in order to establish effective competition, even though the bill specifies that effective competition is deemed to exist if meeting the requirement of having two alternate providers in a single wire center area?

What would be the role of the commission in determining quality of service standards under the provisions of this bill and what methods would the commission be able to use to implement such standards?

What is the significance of redefining “voice services?”

What implication will this amendment have for lifeline services?

How to address the lack of security of VoIP without a secure back channel?

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