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HOUSE BILL 194

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

BEN LUJAN

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING THE NEW MEXICO
TELECOMMUNICATIONS ACT TO PROVIDE FOR AN ALTERNATIVE FORM OF
REGULATION OF TELECOMMUNICATIONS COMPANIES; FUNDING A STUDY OF
THE FEASIBILITY OF STATEWIDE EXTENDED AREA SERVICE AND A STUDY
OF WAYS TO INCREASE THE NUMBER OF NEW MEXICO HOUSEHOLDS WITH
TELEPHONE SERVICE; AMENDING AND ENACTING SECTIONS OF THE NMSA
1978; MAKING AN APPROPRIATION; DECLARING AN EMERGENCY.

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

Section 1. A new section of the New Mexico

Telecommunications Act is enacted to read:

" NEW MATERIAL] ADDITIONAL DEFINITIONS. -- As used in the
New Mexico Telecommunications Act:

A. "basic local exchange service" means retail
local exchange service provided to an end-user customer

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1 consisting of one-party, voice-grade, touch-tone access
2 capable of originating and terminating two-way switched,
3 voice-grade telecommunications within a local exchange area,
4 including access to telephone relay systems, directory
5 assistance, a white page directory listing, interexchange
6 carriers and emergency services, including 911 and enhanced
7 911;

8 B. "retail public telecommunications service"
9 means public telecommunications service provided to an end-
10 user customer for the customer's own use and not for resale;

11 C. "unbundled elements" means network elements
12 that the federal Telecommunications Act of 1996 defines and
13 requires certain telecommunications companies to unbundle and
14 provide at technically feasible points to requesting
15 telecommunications carriers as defined in that federal act;
16 and

17 D. "wholesale public telecommunications service"
18 means public telecommunications service, including the
19 provision of unbundled elements, provided by one
20 telecommunications company to another for resale or for the
21 other's use in providing public telecommunications service. "

22 Section 2. A new section of the New Mexico
23 Telecommunications Act is enacted to read:

24 "[NEW MATERIAL] ALTERNATIVE FORM OF REGULATION--
25 RESIDENTIAL RATE PRICE CAP. --

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1 A. Subject to the requirements and limitations of
2 this section, a telecommunications company may file an
3 application with the commission for exclusion from rate-of-
4 return regulation and the rate-making procedures and
5 requirements otherwise provided by state statute.

6 B. As a prerequisite for approval of the
7 application, the applicant shall cap the price for residential
8 basic local exchange service at its level on the date the
9 application is filed. The price cap shall remain in place
10 until the later of two years after the date the application is
11 filed or January 1, 2001 and shall be strictly enforced. No
12 price increase for residential basic local exchange service
13 shall be allowed during the period the price cap is in effect,
14 except for increases authorized by the commission and
15 necessitated by state or federal law, rule or administrative
16 order; franchise fees; or universal service fund surcharges.

17 C. The application shall include a price
18 regulation plan prescribing procedures for establishing and
19 changing prices, terms and conditions for all retail public
20 telecommunications service, including new public
21 telecommunications service not previously introduced, in a
22 manner consistent with any rules adopted by the commission.
23 The procedures shall include streamlined requirements for the
24 commission's review and approval of increases in rates for
25 residential basic local exchange service after expiration of

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1 the price cap required by Subsection B of this section.

2 D. The commission shall approve the application
3 and price regulation plan if the requirements of this section
4 are satisfied. The commission shall review and complete
5 action on the application and price regulation plan within one
6 hundred twenty days after the date the application is filed.
7 If the commission does not act within that period, the
8 application and the price regulation plan shall be deemed
9 approved one hundred twenty days after the date the
10 application is filed.

11 E. The effective date of the price regulation plan
12 approved pursuant to this section for an incumbent local
13 exchange carrier shall be no sooner than January 1, 1999."

14 Section 3. A new section of the New Mexico
15 Telecommunications Act is enacted to read:

16 "[NEW MATERIAL] QUALITY OF SERVICE STANDARDS. --

17 A. The commission may adopt rules establishing
18 minimum statewide service standards and enforcement mechanisms
19 applicable to the provision of wholesale and retail public
20 telecommunications service. Prior to issuing the standards,
21 the commission shall invite and consider comments and
22 information from all interested parties and, to the extent
23 possible, shall seek consensus on the scope and content of the
24 standards.

25 B. The minimum statewide service standards shall

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1 be based on the record before the commission; shall be
2 practical, reasonable and technologically neutral; and shall
3 apply such conditions and prerequisites to the purchaser as
4 may be reasonably necessary to enable the provider to satisfy
5 its obligations. Wholesale public telecommunications service
6 standards shall be imposed and applied in a mutual and
7 reciprocal manner.

8 C. The commission shall establish procedures to
9 monitor and enforce compliance with the standards, which shall
10 include procedures for the expedited hearing and resolution of
11 complaints within one hundred twenty days after filing the
12 complaint. "

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

15 "63-9A-5. [~~REGULATION BY COMMISSION~~] DELEGATION OF
16 AUTHORITY. --

17 A. Except as otherwise provided in the New Mexico
18 Telecommunications Act, each public telecommunications service
19 is declared to be affected with the public interest and, as
20 such, subject to the provisions of that act, including the
21 regulation thereof as [~~hereinafter~~] provided in that act.

22 B. The commission shall have general and exclusive
23 power and jurisdiction to regulate every telecommunications
24 company with respect to its rates and service regulations for
25 public telecommunications service in accordance with the

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1 provisions and subject to the limitations and reservations of
2 the New Mexico Telecommunications Act. The commission may do
3 all things reasonably necessary and appropriate to implement
4 the provisions of the federal Telecommunications Act of 1996
5 and to exercise the authority and to perform the duties that
6 the federal act provides may be performed by a state
7 commission.

8 C. Consistent with the New Mexico
9 Telecommunications Act and the federal Telecommunications Act
10 of 1996, the commission shall have full power and authority
11 to:

12 (1) hear and resolve complaints between and
13 among telecommunications companies and between customers and
14 telecommunications companies, including without limitation
15 those relating to service quality, interconnection, access to
16 ducts and rights of way, provision of unbundled elements,
17 tariffs for public telecommunications service and rates and
18 charges for all regulated services; and

19 (2) make and enforce rules to implement the
20 federal Telecommunications Act of 1996. "

21 Section 5. 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. --

24 A. In accordance with the policy established in
25 the New Mexico Telecommunications Act, the commission shall,

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

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1 that there shall be parity of regulatory standards and
2 requirements for all such providers.

3 B. In determining whether a service is subject to
4 effective competition, the commission shall consider the
5 following:

6 (1) the extent to which services are
7 reasonably available from alternate providers in the relevant
8 market area;

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

12 (3) existing economic or regulatory barriers.

13 C. No provider of public telecommunications
14 service may use current revenues earned or expenses incurred
15 in conjunction with any noncompetitive service to subsidize
16 competitive public telecommunications service. In order to
17 avoid cross-subsidization of competitive services by
18 noncompetitive telecommunications services, prices or rates
19 charged for a competitive telecommunications service shall
20 cover the cost for the provision of the service. In any
21 proceeding held pursuant to this section, the party providing
22 the service shall bear the burden of proving that the prices
23 charged for competitive telecommunications services cover
24 cost.

25 D. The commission may, upon its own motion or on

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1 the petition of an interested party and after notice to all
2 interested parties and customers and a hearing, reclassify any
3 service previously determined to be a competitive
4 telecommunications service if after a hearing the commission
5 finds that a service is not subject to effective competition.

6 E. Notwithstanding any provision of this section
7 to the contrary, each telecommunications company shall have
8 the same flexibility in marketing and pricing its services in
9 any relevant market area as any telecommunications company
10 with which it is competing in that area. "

11 Section 6. APPROPRIATION. --

12 A. Seventy-five thousand dollars (\$75,000) is
13 appropriated from the general fund to the following agencies
14 for expenditure in fiscal year 1999 for the following
15 purposes:

16 (1) twenty-five thousand dollars (\$25,000) to
17 the state corporation commission to conduct a study of the
18 feasibility of statewide extended area service and to report
19 its findings to the revenue stabilization and tax policy
20 committee for its consideration and recommendations, including
21 proposed legislation, to the first session of the forty-fourth
22 legislature; and

23 (2) fifty thousand dollars (\$50,000) to the
24 legislative council service to conduct a study and develop
25 legislation for the consideration of the revenue stabilization

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1 and tax policy committee and any other appropriate interim
2 committee determining and providing for ways to increase the
3 number of New Mexico households with telephone service and to
4 make that service as affordable as possible, applying the
5 principles of competition and universal service funding.

6 B. Any unexpended or unencumbered balance
7 remaining from the appropriations in Subsection A of this
8 section at the end of fiscal year 1999 shall revert to the
9 general fund.

10 Section 7. EMERGENCY.--It is necessary for the public
11 peace, health and safety that this act take effect
12 immediately.

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3 **FORTY-THIRD LEGISLATURE**
4 **SECOND SESSION, 1998**
5
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7

8 **February 9, 1998**
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11 **Mr. Speaker:**
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13 **Your RULES AND ORDER OF BUSINESS COMMITTEE, to**
14 **whom has been referred**
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16 **HOUSE BILL 194**
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19 **has had it under consideration and finds same to be GERMANE**
20 **in accordance with constitutional provisions.**
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22 **Respectfully submitted,**
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R. David Pederson, Chairman

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Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

Excused: Nicely, Olguin, Rodella, Ryan, Sanchez, Taylor, J.G.,
Williams, S.M

Absent: None

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1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

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6 February 14, 1998

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8 Mr. Speaker:

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10 Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to
11 whom has been referred

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13 HOUSE BILL 194

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15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

17 1. On page 3, line 24, strike "increases" and insert in
18 lieu thereof "changes".

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20 and thence referred to the BUSINESS AND INDUSTRY
21 COMMITTEE.

FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

HCPAC/HB 194

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Respectfully submitted,

Gary K. King, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 5 For 2 Against

Yes: 5

No: King, Trujillo Knauer

Excused: Pederson, Sandel, Vaughn

Absent: None

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