

AN ACT
RELATING TO TELECOMMUNICATIONS; ENACTING THE STATE UNIVERSAL
SERVICE FUND ACT; REPEALING AND ENACTING SECTIONS OF THE
NMSA 1978.

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

Section 1. A new section of Chapter 63, Article 9A
NMSA 1978 is enacted to read:

"SHORT TITLE.--Sections 1 through 3 of this act may be
cited as the "State Universal Service Fund Act"."

Section 2. A new section of Chapter 63, Article 9A
NMSA 1978 is enacted to read:

"PURPOSE.--The purpose of the State Universal Service
Fund Act is to:

- A. provide equal treatment for all
telecommunications carriers;
- B. provide price stability for residence and
business telecommunications customers during the transition
to a deregulated market;
- C. eliminate subsidies in the current prices of
telecommunications services in order to further competition
in the telecommunications market in New Mexico; and
- D. create a statewide universal service fund to
ensure affordable local telecommunications service in all
communities."

Section 3. A new section of Chapter 63, Article 9A
NMSA 1978 is enacted to read:

"UNIVERSAL SERVICE FUND.--

- A. The "universal service fund" is created in the
state treasury. The balance of the New Mexico universal

service fund is transferred to the universal service fund on July 1, 1999. No later than January 1, 2000, the commission shall implement the provisions of this section. The universal service fund shall be used to maintain and support at affordable prices those retail public telecommunications services identified by the commission and offered in those areas of the state found to be of low density and high cost.

B. Collection for and distribution of money from the universal service fund shall be competitively neutral, equitable and nondiscriminatory and targeted to low density and high cost areas, and shall provide a specific, predictable and sufficient support mechanism that reduces implicit subsidies and assures universal service in the state.

C. Money for the universal service fund shall be produced by the imposition of competitively neutral and uniform surcharge rates on all retail public telecommunications services revenue, excluding revenue from services provided pursuant to a low-income telephone assistance plan billed to end-user customers by a telecommunications carrier and excluding revenue from surcharges, gross receipts taxes, excise taxes, franchise fees and similar charges. The commission shall apply the surcharge to all end-user retail public telecommunications services provided in the state by telecommunications carriers and to comparable retail alternative services provided by telecommunications carriers and non-telecommunications carriers. When the commission determines that a commercial mobile radio services provider qualifies as an eligible telecommunications carrier pursuant to

federal law, the commission shall apply the surcharge to all end-user retail public telecommunications services provided in the state by that commercial mobile radio services provider. In prescribing a competitively neutral surcharge rate, the commission shall require telecommunications carriers and non-telecommunications carriers to apply uniform surcharge rates for the same or comparable services. Money deposited in the universal service fund is not public money, and the administration of the universal service fund is not subject to the provisions of law regulating public funds.

D. The commission shall:

(1) consistent with federal law, establish eligibility criteria for participation in the universal service fund that:

(a) ensure the availability of service at affordable prices without unreasonably increasing prices to local exchange service and long distance service customers;

(b) ensure eligible telecommunications carriers, as defined in the federal Telecommunications Act of 1996, a reasonable profit on supported services in geographic areas requiring support from the universal service fund;

(c) do not require any investigations of the costs or prices of a telecommunications carrier receiving support from the universal service fund, other than that provided for in Subsection E of this section; and

(d) do not restrict or limit an eligible telecommunications carrier from receiving federal

universal service support;

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

(3) determine those geographic areas of existing wire centers that are low density or high cost in nature;

(4) determine those retail public telecommunications services requiring support from the universal service fund;

(5) provide for the separate administration and disbursement of federal universal service funds consistent with federal law; and

(6) determine which telecommunications carriers meet the eligibility criteria for participation in the low-income telephone service assistance program in the Low Income Telephone Service Assistance Act and provide for payment to those telecommunications carriers for reduced-rate assistance that is provided pursuant to Section 63-9C-4 NMSA 1978 and that is not otherwise supported by federal or state funding.

E. The commission shall promulgate rules for the implementation and administration of the universal service fund in accordance with the provisions of this section. The cost basis for establishing the universal service fund and determining the rate of distribution of the universal service fund for areas served by a telecommunications carrier with less than fifty thousand access lines shall be the same cost of providing the supported service by geographic area determined by the federal communications

commission. The cost basis for establishing the universal service fund and determining the rate of distribution of the new fund for areas served by telecommunications carriers with over fifty thousand access lines shall be the forward-looking economic cost of providing the supported service in the geographic area as determined by the commission.

F. The commission shall select a neutral third party administrator to collect, administer and disburse money from the universal service fund under the supervision and control of the commission pursuant to the established criteria and the rules promulgated by the commission. The administrator may be reasonably compensated for the services from the surcharge proceeds to be received by the universal service fund pursuant to Subsection C of this section. The neutral third party administrator shall consult with an advisory board established by the commission composed of representatives from all participating providers. The commission shall not be a neutral third party administrator.

G. To ensure that telecommunications carriers providing intrastate long distance service contribute to the universal service fund, no later than December 31, 1999, the commission shall promulgate rules and take other appropriate action to require telecommunications carriers providing intrastate long distance service to participate in any plan to ensure accurate reporting of intrastate retail long distance revenues.

H. Switched access charges, among other retail public telecommunications services except residence dial tone access line service, shall be considered for reductions as an offset to payments received by a telecommunications

carrier from the universal service fund."

Section 4. Section 63-9C-4 NMSA 1978 (being Laws 1987, Chapter 197, Section 4) is amended to read:

"63-9C-4. LOW-INCOME ASSISTANCE RATES--COMMISSION AUTHORITY.--

A. A local exchange company shall provide assistance in the form of reduced rates to residential customers who meet the eligibility criteria of one or more need-based assistance programs administered by the department or by the federal government.

B. The commission shall promulgate rules for the implementation of the Low Income Telephone Service Assistance Act for local exchange companies who provide such assistance. The commission shall adopt a delivery structure for its program that is cost effective and coordinated with the department.

C. The commission shall structure the implementation of the Low Income Telephone Service Assistance Act in a manner that will result in funding of low-income programs in an amount at least equal to what is necessary to secure the maximum amount of federal matching funds for low-income telephone assistance programs. A local exchange company may obtain support from the state universal service fund pursuant to the State Universal Service Fund Act for reduced-rate assistance that is provided pursuant to this section and that is not otherwise supported by federal or state funding."

Section 5. Section 63-9C-5 NMSA 1978 (being Laws 1987, Chapter 197, Section 5) is amended to read:

"63-9C-5. WAIVERS.--

A. In addition to any reduced rates provided by local exchange companies that provide residential local exchange service to low-income New Mexicans, the commission shall apply to the appropriate governmental agency for a waiver of the federal end-user common line charges and any other assessments or surcharges that, pursuant to federal or state law and rules, are at any time, subject to waiver with respect to recipients of low-income telephone service assistance. Upon receipt of a waiver, the commission shall notify the local exchange companies providing low-income telephone service assistance and the monthly telephone bill shall reflect the waiver of the federal end-user common line charges or other assessments or surcharges.

B. Recipients of low-income telephone service assistance shall not be surcharged or otherwise pay assessments that contribute to the state universal service fund pursuant to the State Universal Service Fund Act."

Section 6. REPEAL.--Section 63-9A-6.1 NMSA 1978 (being Laws 1987, Chapter 21, Section 4, as amended) is repealed.
