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FISCAL IMPACT REPORT

SPONSOR Harden ORIGINAL DATE 2/10/09
LAST UPDATED _____ HB _____
SHORT TITLE Study Telecommunication Service Provider Equity SJM 12
ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY09	FY10	FY11	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Minor			Non- Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

Relates to

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

Senate Joint Memorial 12 requests the Public Regulation Commission (PRC) to study whether to regulate other cable, wireless internet, voice over internet protocol (VoIP), and local exchange service providers or to stop its regulation of Qwest.

The Public Regulation Commission is to do this by polling a cross-section of New Mexico consumers and gauge their views as to whether Qwest should be regulated even though no other telecommunications service provider is regulated.

A representative of the Public Regulation Commission is to report the commission's findings and recommendations to the appropriate interim legislative committee by October 2009.

FISCAL IMPLICATIONS

Implementing the directives contained in this bill would have a minor administrative impact including staff time and appropriate supporting resources to conduct a poll.

SIGNIFICANT ISSUES

According to the PRC, the Senate Joint Memorial proposes certain legal and factual findings that are internally inconsistent, as well as inconsistent with current law. The joint memorial does not take into account the fact that Qwest controls a significant share of the telecommunications infrastructure in the state and the implications of that control on the ability of other providers to compete.

SJM12 attempts to describe the current state of competition in, and state regulation of, telecommunications in New Mexico, and in particular the competitive status of Qwest Corporation within those markets. There are certain factual and legal inaccuracies and incorrect assumptions in this description as described by the PRC in the technical issues section.

PERFORMANCE IMPLICATIONS

The joint memorial may conflict with proceedings currently pending before the PRC to determine more precisely the nature and extent of competition within Qwest's service territory. It would be premature to undertake the tasks set forth in the joint memorial prior to resolving the factual and legal issues presently under review in the PRC proceeding.

ADMINISTRATIVE IMPLICATIONS

The joint memorial would necessitate a significant expenditure of PRC staff time and resources to conduct the study, polling and reporting requirement. At least one full time equivalent (FTE) economist would need to be devoted to this endeavor, in addition to clerical support, postage and printing, as well as data processing. It is doubtful that these tasks could be effectively accomplished within the timeframe established by the joint memorial.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related to SB445

TECHNICAL ISSUES

The first paragraph of the joint memorial incorrectly states the current regulatory regime. The PRC does not regulate the services of cable, wireless internet or voice over internet services. Additionally, the PRC does not regulate Qwest's Digital Subscriber Line ("DSL") offerings.

The second paragraph of the joint memorial does not accurately describe the process for Qwest to implement promotional offerings pursuant to its Alternative Form of Regulation, as implemented by a Commission order pursuant to Section 63-9A-8.2C. Currently Qwest promotional offerings "shall be effective upon 5 business days of filing with the Commission," subject to challenge, and only if the proposed prices do not cover cost; if the non-price terms do not comply with law or Commission rules; or if the offerings are not otherwise in the public interest upon review by Commission staff. Qwest has successfully implemented promotions pursuant to this provision that have not been challenged.

The third paragraph declares that Qwest is not competitive, as a result of regulation by the PRC. The factual premise of this statement has not been proven, which is the reason the PRC has

initiated the proceeding referenced above. The conclusion similarly is unsubstantiated at this time.

The fourth paragraph contains a sweeping factual conclusion that is incorrect; there are numerous providers who do report annually to the PRC, pursuant to PRC rules and regulations.

The fifth paragraph refers to that portion of the existing Telecommunications Act regarding “effective competition.” That provision is part of the legislative plan for orderly transition from a regulated industry to a competitive market environment, consistent with maintaining availability of access to service at affordable rates.

The eighth paragraph repeats a contention by Qwest that its loss of “customers” is attributable to unregulated competitors. There is no basis for this conclusion, as there may be other reasons, such as customers upgrading to high speed services, or migrating to a regulated competitor who is a wholesale customer of Qwest. Moreover, there is no showing that Qwest is losing overall revenue.

The study requested by the joint memorial entails a complex inquiry into overlapping state and federal jurisdictional issues, which are presently in an uncertain condition at the national level. Until those issues are resolved, any study by the PRC would be costly, time consuming, and of little probative value. The state of Texas recently completed a competition study at a cost of 1400 person hours over a period of nine months. Other states have spent substantial sums on privately contracted studies.

The resolution that the PRC “poll a cross-section of New Mexico consumers” lacks specific parameters and so would be extremely difficult to implement.

DL/mc