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AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING A SECTION OF THE RURAL TELECOMMUNICATIONS ACT OF NEW MEXICO TO UPDATE STATE RURAL UNIVERSAL SERVICE FUND PROVISIONS AND ESTABLISH A BROADBAND PROGRAM ADMINISTERED BY THE PUBLIC REGULATION COMMISSION TO FACILITATE EXPANSION OF BROADBAND SERVICE IN RURAL AREAS.

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

SECTION 1. Section 63-9H-6 NMSA 1978 (being Laws 1999, Chapter 295, Section 6, as amended) is amended to read:

"63-9H-6. STATE RURAL UNIVERSAL SERVICE FUND-- ESTABLISHMENT.--

A. The commission shall implement and maintain a "state rural universal service fund" to maintain and support universal service that is provided by eligible telecommunications carriers, including commercial mobile radio services carriers, as are determined by the commission. As used in this section, "universal service" means basic local exchange service, comparable retail alternative services at affordable rates, service pursuant to a low-income telephone assistance plan and broadband internet access service to unserved and underserved areas as determined by the commission.

B. The fund shall be financed by a surcharge on

1 intrastate retail public telecommunications services to be  
2 determined by the commission, excluding services provided  
3 pursuant to a low-income telephone assistance plan billed to  
4 end-user customers by a telecommunications carrier, and  
5 excluding all amounts from surcharges, gross receipts taxes,  
6 excise taxes, franchise fees and similar charges. For the  
7 purpose of funding the fund, the commission has the authority  
8 to apply the surcharge on intrastate retail public  
9 telecommunications services provided by telecommunications  
10 carriers, including commercial mobile radio services and  
11 voice over internet protocol services, at a competitively and  
12 technologically neutral rate or rates to be determined by the  
13 commission. The commission may establish the surcharge as a  
14 percentage of intrastate retail public telecommunications  
15 services revenue or as a fixed amount applicable to each  
16 communication connection. For purposes of this section, a  
17 "communication connection" means a voice-enabled telephone  
18 access line, wireless voice connection, unique voice over  
19 internet protocol service connection or other uniquely  
20 identifiable functional equivalent as determined by the  
21 commission. Such surcharges shall be competitively and  
22 technologically neutral. Money deposited in the fund is not  
23 public money, and the administration of the fund is not  
24 subject to the provisions of law regulating public funds.  
25 The commission shall not apply this surcharge to a private

1 telecommunications network; to the state, a county, a  
2 municipality or other governmental entity; to a public school  
3 district; to a public institution of higher education; to an  
4 Indian nation, tribe or pueblo; or to Native American  
5 customers who reside on tribal or pueblo land.

6 C. The fund shall be competitively and  
7 technologically neutral, equitable and nondiscriminatory in  
8 its collection and distribution of funds, portable between  
9 eligible telecommunications carriers and additionally shall  
10 provide a specific, predictable and sufficient support  
11 mechanism as determined by the commission that ensures  
12 universal service in the state.

13 D. The commission shall:

14 (1) establish eligibility criteria for  
15 participation in the fund consistent with federal law that  
16 ensure the availability of universal service at affordable  
17 rates. The eligibility criteria shall not restrict or limit  
18 an eligible telecommunications carrier from receiving federal  
19 universal service support;

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

23 (3) determine those services and areas  
24 requiring support from the fund;

25 (4) provide for the separate administration

1 and disbursement of federal universal service funds  
2 consistent with federal law; and

3 (5) establish affordability benchmark rates  
4 for local residential and business services that shall be  
5 utilized in determining the level of support from the fund.  
6 The process for determining subsequent adjustments to the  
7 benchmark shall be established through a rulemaking.

8 E. All incumbent telecommunications carriers and  
9 competitive carriers already designated as eligible  
10 telecommunications carriers for the fund shall be eligible  
11 for participation in the fund. All other carriers that  
12 choose to become eligible to receive support from the fund  
13 may petition the commission to be designated as an eligible  
14 telecommunications carrier for the fund. The commission may  
15 grant eligible carrier status to a competitive carrier in a  
16 rural area upon a finding that granting the application is in  
17 the public interest. In making a public interest finding,  
18 the commission may consider at least the following items:

19 (1) the impact of designation of an  
20 additional eligible carrier on the size of the fund;

21 (2) the unique advantages and disadvantages  
22 of the competitor's service offering; and

23 (3) any commitments made regarding the  
24 quality of telephone service.

25 F. The commission shall adopt rules, including a

1 provision for variances, for the implementation and  
2 administration of the fund in accordance with the provisions  
3 of this section. The rules shall enumerate the appropriate  
4 uses of fund support and any restrictions on the use of fund  
5 support by eligible telecommunications carriers. The rules  
6 shall require that an eligible telecommunications carrier  
7 receiving support from the fund pursuant to Subsection K, L  
8 or M of this section must expend no less than sixty percent  
9 of the support it receives to deploy and maintain broadband  
10 internet access services in rural areas of the state. The  
11 rules also shall provide for annual reporting by eligible  
12 telecommunications carriers verifying that the reporting  
13 carrier continues to meet the requirements for designation as  
14 an eligible telecommunications carrier for purposes of the  
15 fund and is in compliance with the commission's rules,  
16 including the provisions regarding use of support from the  
17 fund.

18 G. The commission shall, upon implementation of  
19 the fund, select a neutral third-party administrator to  
20 collect, administer and disburse money from the fund under  
21 the supervision and control of the commission pursuant to  
22 established criteria and rules promulgated by the commission.  
23 The administrator may be reasonably compensated for the  
24 specified services from the surcharge proceeds to be received  
25 by the fund pursuant to Subsection B of this section. For

1 purposes of this subsection, the commission shall not be a  
2 neutral third-party administrator.

3 H. The fund established by the commission shall  
4 ensure the availability of universal service as determined by  
5 the commission at affordable rates in rural areas of the  
6 state; provided, however, that nothing in this section shall  
7 be construed as granting any authority to the commission to  
8 impose the surcharge on or otherwise regulate broadband  
9 internet access services.

10 I. The commission shall ensure that intrastate  
11 switched access charges are equal to interstate switched  
12 access charges established by the federal communications  
13 commission as of January 1, 2006. Nothing in this section  
14 shall preclude the commission from considering further  
15 adjustments to intrastate switched access charges based on  
16 changes to interstate switched access charges.

17 J. To ensure that providers of intrastate retail  
18 communications service contribute to the fund and to further  
19 ensure that the surcharge determined pursuant to Subsection B  
20 of this section to be paid by the end-user customer will be  
21 held to a minimum, the commission shall adopt rules, or take  
22 other appropriate action, to require all such providers to  
23 participate in a plan to ensure accurate reporting.

24 K. The commission shall authorize payments from  
25 the fund to incumbent local exchange carriers, in combination

1 with revenue-neutral rate rebalancing up to the affordability  
2 benchmark rates. Beginning in 2018, the commission shall  
3 make access reduction support payments in the amount made  
4 from the fund in base year 2014, adjusted each year  
5 thereafter by:

6 (1) the annual percentage change in the  
7 number of access lines served by the incumbent local exchange  
8 carriers receiving such support for the prior calendar year,  
9 as compared to base year 2014; and

10 (2) changes in the affordability benchmark  
11 rates that have occurred since 2014.

12 L. The commission shall determine the methodology  
13 to be used to authorize payments to all other carriers that  
14 apply for and receive eligible carrier status; provided,  
15 however, that nothing in this section shall limit the  
16 commission's authority to adopt rules pursuant to  
17 Subsection F of this section regarding appropriate uses of  
18 fund support and any restrictions on the use of the fund  
19 support by eligible telecommunications carriers.

20 M. The commission may also authorize payments from  
21 the fund to incumbent rural telecommunications carriers or to  
22 telecommunications carriers providing comparable retail  
23 alternative services that have been designated as eligible  
24 telecommunications carriers serving in rural areas of the  
25 state upon a finding, based on factors that may include a

1 carrier's regulated revenues, expenses or investment, by the  
2 commission that such payments are needed to ensure the  
3 widespread availability and affordability of universal  
4 service. The commission shall decide cases filed pursuant to  
5 this subsection with reasonable promptness, with or without a  
6 hearing, but no later than six months following the filing of  
7 an application seeking payments from the fund, unless the  
8 commission finds that a longer time will be required, in  
9 which case the commission may extend the period for an  
10 additional three months.

11 N. The commission shall adopt rules that establish  
12 and implement a broadband program to provide funding to  
13 eligible telecommunications carriers for the construction and  
14 maintenance of facilities capable of providing broadband  
15 internet access service. Such rules shall require that the  
16 commission consider applications for funding on a  
17 technology-neutral basis and shall require that the awards of  
18 support be consistent with federal universal service support  
19 programs and be based on the best use of the fund for rural  
20 areas of the state. Each year, a minimum of five million  
21 dollars (\$5,000,000) of the fund shall be dedicated to the  
22 broadband program.

23 O. The total obligations of the fund determined by  
24 the commission pursuant to this section, plus administrative  
25 expenses and a prudent fund balance, shall not exceed a cap

1 of thirty million dollars (\$30,000,000) per year. The  
2 commission shall evaluate the amount of the cap in an  
3 appropriate proceeding to be completed by June 30, 2019 and  
4 consider whether, based on the then-current status of the  
5 fund, the cap should be modified, maintained or eliminated.

6 P. By December 31, 2019, the commission shall make  
7 a report to the legislature regarding the status of the fund,  
8 including relevant data relating to implementation of the  
9 broadband program and expansion of broadband internet access  
10 services in rural areas of the state. The report shall also  
11 make recommendations for any changes to the structure, size  
12 and purposes of the fund and whether the cap on the fund  
13 provided for in Subsection O of this section should be  
14 modified, maintained or eliminated." \_\_\_\_\_

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