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FISCAL IMPACT REPORT

ORIGINAL DATE 02/01/14
 SPONSOR Griego LAST UPDATED 02/12/14 HB _____
 SHORT TITLE Local Telecomm. Regulation Equalization SB 152/aSCORC
 ANALYST Graeser

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY14	FY15	FY16		
NFI	NFI	NFI	Recurring	General Fund GRT
	\$0.0	\$0.0	Recurring	General Fund -- Telecommunications Inspection Fee
	Unknown	Unknown	Recurring	NM Rural Universal Service Fund

(Parenthesis () Indicate Revenue Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY14	FY15	FY16	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		\$0.0	\$0.0	\$0.0	Recurring	PRC operating

(Parenthesis () Indicate Expenditure Decreases)

PRC indicates that regulatory changes as a result of this legislation could be handled with current Commission resources.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

Attorney General's Office (AGO)

Administrative Office of the Courts (AOC)

SUMMARY

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee adopted two amendments, one essentially procedural and one substantive. The procedural amendment changes a technical reference dealing with Public Regulation Commission (PRC) authority and validity under the Rural Telecommunications Act (RTA) to a more stringent reference in the New Mexico Telecommunications Act (NMTA) at 63-9A-11 NMSA 1978, which allows third-parties to file a complaint alleging violation by provider of telecommunications services.

The substantive amendment apparently addresses an objection from the Public Regulation Commission to a provision of the original bill. Per PRC, this major problem was, "...the provision of 'parity of regulatory standards and requirements' without a determination of effective competition. ... the amendment deletes the "orphaned" provision of § 63-9A-8, which was one of the solutions proposed by the Commission in the original FIR."

Synopsis of Original Bill

Senate Bill 152 appears to extend the same level of rate regulation currently applied to relatively small rural incumbent telecommunications carriers to larger carriers, including CenturyLink and Windstream. Per analysis submitted by PRC, "... this bill repeals a substantial portion of the New Mexico Telecommunications Act ('NMTA'), which applies to CenturyLink and Windstream, and replaces it with language from the Rural Telecommunications Act ('RTA'), which applies to incumbent local exchange carriers that serve fewer than 50,000 access lines within the state ('incumbent rural telecommunications carriers'). Since the enactment of the RTA in 1999, incumbent rural telecommunications carriers have been subject to relaxed regulation. This bill would extend the relaxed regulation currently available to incumbent local exchange carriers to CenturyLink and Windstream and eliminate key regulatory provisions of the NMTA."

PRC's analysis continues, "... beyond this, the bill purports to require the Commission to provide 'a parity of regulatory standards and requirements' with other telecommunications providers (i.e. competitive local exchange carriers, which are lightly regulated) for comparable services, without a determination that there is effective competition for those services. The bill would do this by eliminating all portions of existing NMSA 1978, § 63-9A-8 (including the need for an effective competition determination) except for the portion that provides a process for seeking parity. This single provision **could result in the substantial modification of the regulation of the services** provided by CenturyLink or Windstream as long as comparable services are offered (to any degree) in the relevant markets."

EFFECTIVE DATE

July 1, 2014.

FISCAL IMPLICATIONS

Although telecommunications are subject to the Gross Receipts Tax and this proposal has the possibility of moderating telecoms rates, thus reducing State, Municipal and County GRT, any impact would likely be outside the budget period and speculative as to magnitude. It is also possible that this proposal would marginally decrease Corporate Income Tax as moderating rates would also have a collateral effect of decreasing profits of all of the major and small rural telecoms providers. As pointed out in last year's PRC comments on HB 58, this restructuring may also change petitions to the commission for access to the \$26 million balances in the New Mexico Rural Universal Service Fund.

In public testimony, Century-Link indicated that it would continue paying the telecommunications inspection fee imposed at 63-7-20 NMSA 1978.

63-7-20. Utility and carrier inspection; fee.

A. Each utility and carrier doing business in this state which is subject to the control and jurisdiction of the commission by virtue of the provisions of Article 11 of the constitution of New Mexico with respect to its rates and service shall pay annually to the commission a fee in performance of its duties as now provided by law. ... The fee for utilities shall not exceed five hundred eleven thousandths percent (.511%) of its gross receipts from business transacted in New Mexico for the preceding calendar year. ... As used in this section, "utility" includes telephone companies and transmission companies but does not include public utilities subject to the Public Utility Act [62-13-1 NMSA 1978].

This fee generated \$4.096 million for FY 2012.

SIGNIFICANT ISSUES

Despite the amendments to the bill addressing technical issues, the PRC opposes the relaxed regulatory regime for large telecommunications carriers as proposed in this bill. On February 5, 2014, the Commission voted 3-1 to oppose this bill.

Per PRC's analysis, "... under the NMTA, CenturyLink and Windstream are subject to the following regulation, the statutory authority for which would be repealed by the bill:

1. Price-cap regulation of rates, including business rates. (The bill would eliminate the Commission's authority to regulate business rates.)
2. Service quality standards
3. Investment requirements or goals
4. Consumer protection provisions
5. Alternative Form of Regulation ("AFOR") process. (CenturyLink only; Windstream is exempt due to its status as a mid-size carrier)
6. Regulation of promotions in terms of frequency, duration, and non-discrimination per the AFOR (CenturyLink only). (The bill would require rates to cover the cost of service.)"

PRC's analysis continues,

"...as to CenturyLink and Windstream, the bill also effectively repeals §63-7-1.1 NMSA 1978 (which identifies the Commission's power and duties with respect to 'telephone and telegraph companies') by stating that the provision does not apply. This is consistent with the RTA, under which this statute no longer applies to incumbent rural telecommunications carriers. Also consistent with the RTA, the bill would maintain the Commission's authority over wholesale rates, access charges, and interconnection agreements. These powers and duties include ratemaking and related considerations; the ability to subpoena witnesses and documents, enforce subpoenas through any court, and through the court, punish for contempt; and the power, after notice and hearing of record, to determine and decide questions and issue orders."

"The RTA provides that 'it is necessary to provide disparate regulatory treatment between rural telephone carriers and non-rural telephone carriers.' (NMSA 1978, § 63-9H-2). In contradiction of this language, this bill provides that the purpose of the NMTA is to 'extend to all consumers and carriers in the state the benefits of

the regulatory flexibility previously provided only to incumbent rural telecommunications carriers.’ However, as discussed in Technical Issues items A. 1 and 2 below, this bill creates some differences between the regulation of CenturyLink and Windstream on the one hand, and the incumbent rural telecommunications carriers, on the other, that might resolve this conflict.”

“The mechanism by which this bill extends such regulatory flexibility is the almost verbatim importation of significant provisions of the RTA into the NMTA.” (PRC analysis ends.)

RELATIONSHIP

HB 23 of this session amends a 1999 law regulating retail rates of Rural Telecommunications providers and is apparently a final correction to last year’s HB 58 (Laws 2013, Chapter 194) to restructure rate setting for “Rural Incumbent Telecommunications Carriers.”

TECHNICAL ISSUES

PRC submits the following comments relative to technical issues contained in the bill.

- The bill provides for the following differences in regulation between rural incumbent telecommunications carriers under the RTA and CenturyLink and Windstream under the NMTA:
- There is no provision under which CenturyLink or Windstream could file a rate case to have the Commission prescribe fair, just, and reasonable rates for the carriers. (This provision under the RTA has not been utilized by the incumbent rural telecommunications carriers since the RTA was enacted in 1999.)
- The Commission would have the authority to adopt “regulations not to be applicable to incumbent rural telecommunications carriers.” The potential impact of this provision is unclear in light of the purpose of extending regulatory flexibility “previously provided only to incumbent rural telecommunications carriers” (as discussed above) and the directive that CenturyLink and Windstream be regulated by the Commission “only in the manner and to the extent authorized by the [NMTA]” (as discussed above).
- The repeal of portions of the NMTA would call into question the validity of existing rules that cite those provisions as statutory authority for those rules.

ALTERNATIVES

PRC submits that a viable alternative to this somewhat abrupt proposed change would be for the Legislature to instruct the industry and the PRC to propose comprehensive telecommunications regulatory reform and to submit that agreement to the legislature during the interim. PRC indicates, “...rather than having two statutes that largely duplicate each other, the legislature could implement comprehensive telecommunications regulatory reform, resulting in a single, comprehensive statute.”

Lacking a comprehensive solution, PRC recommends that the bill should be modified either to restore all of § 63-9A-8 and related definitions or delete all of it. Keeping only part of the section distorts the purpose of the section and would deregulate CenturyLink and Windstream beyond their stated objective of being on a level playing field with the rural carriers.”

SCORC adopted the second of these alternatives in their substantive amendment.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The existing three-tiered telecommunications regulatory framework, which provides disparate regulation depending on the number of access lines a carrier serves in the state), would remain intact.

LG/svb:ds:jl