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AN ACT
RELATING TO TELECOMMUNICATIONS; AMENDING THE RURAL
TELECOMMUNICATIONS ACT OF NEW MEXICO; PROVIDING FOR THE USE
OF THE STATE RURAL UNIVERSAL SERVICE FUND FOR CONSUMER
BROADBAND.

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 by Laws 2021, Chapter 118,
Section 2 and by Laws 2021, Chapter 120, Section 9) 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 M or N 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. Notwithstanding the provisions of Subsection K
13 of this section, the annual amount of access reduction
14 support payments for an eligible incumbent local exchange
15 carrier in 2024, 2025 and 2026 shall be equal to the annual
16 access reduction support payments for that eligible incumbent
17 local exchange carrier for the year 2023. Access reduction
18 support payments shall be terminated after December 31, 2026.

19 M. The commission shall determine the methodology
20 to be used to authorize payments to all other carriers that
21 apply for and receive eligible carrier status; provided that:

22 (1) an eligible incumbent telecommunications
23 carrier that is not eligible for funding pursuant to rate
24 rebalancing in Subsection K of this section and that has been
25 previously authorized pursuant to Subsection N of this

1 section for need-based support may apply for ongoing fund
2 support;

3 (2) the commission shall award an applicant
4 ongoing fund support at no less than the average access line
5 amount of funding support for comparable carriers; provided
6 that an eligible telecommunications carrier receiving fund
7 support pursuant to this subsection shall not offer basic
8 local exchange residential and business services at rate
9 levels lower than the rates for such services charged by any
10 of the comparable carriers used for the determination of the
11 level of support;

12 (3) the commission shall act upon a request
13 for ongoing fund support within one hundred twenty days of
14 the filing of the request; and

15 (4) nothing in this section shall limit the
16 commission's authority to adopt rules pursuant to Subsection
17 F of this section regarding appropriate uses of fund support
18 and any restrictions on the use of the fund support by
19 eligible telecommunications carriers.

20 N. 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 O. 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 broadband infrastructure. Each year, an
15 amount equal to thirty million dollars (\$30,000,000) less the
16 amounts expended pursuant to Subsections K, L, M and N of
17 this section shall be dedicated to the broadband program.

18 P. Rules adopted pursuant to Subsection O of this
19 section shall require that the commission:

20 (1) consider applications for funding on a
21 technology-neutral basis;

22 (2) submit applications for funding to the
23 connect New Mexico council for prioritization and alignment
24 with the statewide broadband plan to ensure digital equity
25 and digital inclusion; and

1 (3) require that the awards of support be
2 consistent with federal universal service support programs.

3 Q. The total obligations of the fund determined by
4 the commission pursuant to this section, plus administrative
5 expenses and a prudent fund balance, shall not exceed a cap
6 of thirty million dollars (\$30,000,000) per year. The
7 commission shall evaluate the amount of the cap in an
8 appropriate proceeding to be completed by June 30, 2019 and
9 consider whether, based on the then-current status of the
10 fund, the cap should be modified, maintained or eliminated.

11 R. By October 1 of each year, the commission shall
12 make a report to the legislature regarding the status of the
13 fund, including:

14 (1) relevant data relating to implementation
15 of the broadband program and the progress toward digital
16 equity and digital inclusion in rural areas of the state;

17 (2) recommendations for changes to the
18 structure, size and purposes of the fund and whether the cap
19 on the fund provided for in Subsection Q of this section
20 should be modified, maintained or eliminated; and

21 (3) the service areas that received funding
22 awards from the broadband program and the amounts of those
23 awards.

24 S. The 2025 annual report made pursuant to
25 Subsection R of this section shall include an assessment of

1 the state rural universal service fund that addresses:

2 (1) whether to repurpose the access
3 reduction support funds into the commission's broadband
4 support program;

5 (2) a methodology for determining broadband
6 support levels that is consistent with the requirements of
7 Subsection C of this section and accounts, at a minimum, for
8 broadband costs, potential revenues from deployed
9 infrastructure and existing federal support mechanisms;

10 (3) the appropriate size of the fund;

11 (4) criteria for awarding funding;

12 (5) the impact of proposed changes on per-
13 connection assessments; and

14 (6) whether all sellers of prepaid
15 telecommunications services should be required to collect
16 state rural universal service fund assessments at the point
17 of sale, similar to the methodology for collecting 911
18 emergency surcharges pursuant to Section 63-9D-5 NMSA 1978."

19 SECTION 2. EFFECTIVE DATE.--The effective date of the
20 provisions of this act is July 1, 2023. _____

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