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SENATE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TELECOMMUNICATIONS; REQUIRING RULES TO REDUCE REGULATIONS AND PROMOTE THE PARITY OF REGULATION OF TELECOMMUNICATIONS SERVICE PROVIDERS; REQUIRING PERIODIC REPORTS; AMENDING AND REPEALING SECTIONS OF THE NEW MEXICO TELECOMMUNICATIONS ACT.

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

SECTION 1. Section 63-9A-5 NMSA 1978 (being Laws 1985, Chapter 242, Section 5, as amended) is amended to read:

"63-9A-5. REGULATION BY COMMISSION.--

A. Except as otherwise provided in the New Mexico Telecommunications Act, each public telecommunications service is declared to be affected with the public interest and, as such, subject to the provisions of that act, including the regulation thereof as provided in that act.

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1 B. The commission has exclusive jurisdiction to
2 regulate incumbent local exchange carriers that serve fifty
3 thousand or more access lines within the state only in the
4 manner and to the extent authorized by the New Mexico
5 Telecommunications Act, and Subsection B of Section 63-7-1.1
6 NMSA 1978 does not apply; provided, however, that the
7 commission's jurisdiction includes the regulation of wholesale
8 rates, including access charges and interconnection agreements
9 consistent with federal law and its enforcement and
10 determinations of participation in low-income telephone service
11 assistance programs pursuant to the Low Income Telephone
12 Service Assistance Act. [~~The New Mexico Telecommunications Act~~
13 ~~expressly preserves and does~~]

14 C. On or before December 31, 2021, the commission
15 shall adopt regulations to accelerate a transition away from a
16 regulated telecommunications industry and encourage a
17 broadband-focused competitive market; provided that the adopted
18 regulations preserve and do not diminish or expand:

19 (1) the rights and obligations of any entity,
20 including the commission, established pursuant to federal law,
21 including 47 U.S.C. Sections 251 and 252, or established
22 pursuant to any state law, rule, procedure, regulation or order
23 related to interconnection, intercarrier compensation,
24 intercarrier complaints, wholesale rights and obligations or
25 any wholesale rate or schedule that is filed with and

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1 maintained by the commission;

2 (2) the rights and obligations of any
3 competitive telecommunications service provider holding a
4 certificate of public convenience and necessity, or the rights
5 and obligations of any competitive local exchange carrier to
6 obtain such a certificate;

7 (3) the authority of the commission to resolve
8 consumer complaints regarding basic local exchange service;
9 provided, however, that the commission's authority to resolve
10 such complaints shall be limited to resolving issues of
11 consumer protection and shall not include the authority to
12 determine or fix rates, provider of last resort obligations or
13 service quality standards except as expressly set forth in the
14 New Mexico Telecommunications Act;

15 (4) the authority of the commission to
16 establish reasonable and competitively neutral quality of
17 service standards for local exchange service; provided,
18 however, that the enforcement of such standards shall be
19 limited to the commission's fining authority set forth in
20 Section 63-7-23 NMSA 1978 and the authority to seek an
21 injunction set forth in Section 63-9-19 NMSA 1978;

22 (5) the rights and obligations of any entity,
23 including the commission, regarding the fund;

24 (6) the rights and obligations of any entity,
25 including the commission, regarding access to emergency service

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1 to the extent consistent with the Enhanced 911 Act; or

2 (7) the rights and obligations of any entity,
3 including the commission, regarding the administration of
4 slamming and cramming rules, telecommunications relay service
5 and numbering resources to the extent permitted by and
6 consistent with federal law.

7 [~~G.~~] D. For incumbent local exchange carriers that
8 serve fifty thousand or more access lines within the state, the
9 commission shall adopt relaxed regulations that provide for:

10 (1) reduced regulation compared to the level
11 of regulation that applied to that carrier as of January 1,
12 2017;

13 (2) reduced filing requirements for applicants
14 in rate increase proceedings under the New Mexico
15 Telecommunications Act; and

16 [~~(2)~~] (3) expedited consideration in all
17 proceedings initiated pursuant to the New Mexico
18 Telecommunications Act in order to reduce the cost and burden
19 for incumbent local exchange carriers and other applicants.

20 [~~D. The regulatory requirements and the~~
21 ~~commission's regulation of competitive]~~ E. Except for the
22 regulation of rates pursuant to rules adopted in accordance
23 with Section 63-9A-8.1 NMSA 1978 and rules adopted pursuant to
24 the Rural Telecommunications Act of New Mexico, no local
25 exchange [~~carriers, competitive access providers and~~

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1 ~~interexchange carriers shall be no greater than, and no more~~
2 ~~extensive than, that of incumbent] carrier shall be placed~~
3 ~~under greater or more extensive regulatory requirements than~~
4 ~~any other local exchange [carriers that serve fifty thousand or~~
5 ~~more access lines] carrier.~~

6 [E-] F. The provisions of the New Mexico
7 Telecommunications Act do not apply to incumbent rural
8 telecommunications carriers."

9 SECTION 2. Section 63-9A-8 NMSA 1978 (being Laws 1985,
10 Chapter 242, Section 8, as amended) is amended to read:

11 "63-9A-8. REGULATION OF RATES AND CHARGES--EFFECTIVE
12 COMPETITION.--

13 A. In accordance with the policy established in the
14 New Mexico Telecommunications Act, the commission shall, by its
15 own motion or upon petition by any interested party, hold
16 hearings to determine if any public telecommunications service
17 is subject to effective competition in the relevant market
18 area. When the commission has made a determination that a
19 service or part of a service is subject to effective
20 competition, the commission shall, consistent with the purposes
21 of the New Mexico Telecommunications Act [~~modify~~], reduce or
22 eliminate rules, regulations and other requirements applicable
23 to the provision of each such service, including the fixing and
24 determining of specific rates, tariffs or fares for the
25 service. The commission's action may include the detariffing

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1 of service or the establishment of minimum rates that will
2 cover the costs for the service. Such modification shall be
3 consistent with the maintenance of the availability of access
4 to local exchange service at affordable rates and comparable
5 message telecommunications service rates, as established by the
6 commission, for comparable markets or market areas, except that
7 volume discounts or other discounts based on reasonable
8 business purposes shall be permitted. ~~[Upon petition or~~
9 ~~request of an affected telecommunications company]~~ The
10 commission ~~[upon a finding that the requirements of Subsection~~
11 ~~B of this section are met]~~ shall also modify the same or
12 similar retail regulatory requirements for ~~[those]~~ all
13 providers of comparable public telecommunications services in
14 the same relevant markets so that there shall be parity of
15 retail regulatory standards and requirements for all such
16 providers; provided, however, that this subsection shall not be
17 construed to permit the adoption of any new regulatory
18 requirements or standards for providers of comparable
19 telecommunications services.

20 B. In determining whether a service is subject to
21 effective competition, the commission shall consider the
22 following on a wire center serving area basis for each wire
23 center serving area and service for which such a determination
24 ~~[of effective competition]~~ is requested ~~[and separate~~
25 ~~determinations shall be made for residential and business~~

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1 ~~services in each wire center serving area~~]:

2 (1) the extent to which services are
3 reasonably available from alternate providers;

4 (2) the ability of alternate providers to make
5 functionally equivalent or substitute services readily
6 available at competitive rates, terms and conditions;

7 (3) existing economic, technological,
8 regulatory or other barriers to market entry and exit;

9 (4) the number of other providers offering the
10 same or reasonably comparable services;

11 (5) the presence of at least two facilities-
12 based competitors, including without limitation facilities-
13 based providers of wireless or voice over internet protocol
14 services, operating in all or part of the wire center for which
15 a determination of effective competition is requested that are
16 unaffiliated with the petitioning carrier and provide the same
17 or reasonably comparable service of the type for which the
18 finding of effective competition is sought;

19 (6) the ability of the petitioning provider to
20 affect prices or deter competition; and

21 (7) such other factors as the commission deems
22 appropriate.

23 C. ~~[If, in the]~~ In a proceeding pursuant to
24 Subsection B of this section for a wire center serving area for
25 which a determination of effective competition is requested and

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1 where the incumbent local exchange carrier provides basic local
2 exchange service either separately or bundled to less than one-
3 half of the ~~[customer locations where such service is available~~
4 ~~at the time the petition is filed]~~ housing units and business
5 firms as determined by the latest federal decennial census,
6 using a centroid method where a given census block is allocated
7 to the wire center area in which the geographic center of the
8 census block is located, the public interest requires that
9 effective competition be presumed for all regulated
10 telecommunications services provided by the incumbent provider
11 in that wire center serving area; provided, however, that
12 findings and presumptions applied pursuant to this section
13 shall be made ~~[separately]~~ in the aggregate for residential and
14 business services and customer locations combined.

15 D. No provider of public telecommunications service
16 may use current revenues earned or expenses incurred in
17 conjunction with any noncompetitive service to subsidize
18 competitive public telecommunications services. In order to
19 avoid cross-subsidization of competitive services by
20 noncompetitive telecommunications services, prices or rates
21 charged for a competitive telecommunications service shall
22 cover the cost for the provision of the service consistent with
23 the provisions of Subsection G of Section 63-9A-8.1 NMSA 1978.
24 In any proceeding held pursuant to this section, the party
25 claiming that the price for a competitive telecommunications

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1 service does not cover the cost shall bear the burden of
2 proving that the prices charged for competitive
3 telecommunications services do not cover cost; provided,
4 however, that the commission may require the telecommunications
5 company against whom the complaint is filed to submit a cost
6 study for the service that is the subject of the complaint as
7 part of its examination and determination of the complaint.

8 E. The commission may, upon its own motion or on
9 the petition of an interested party and after notice to all
10 interested parties and customers and a hearing, reclassify any
11 service previously determined to be a competitive
12 telecommunications service if after a hearing the commission
13 finds that a service is not subject to effective competition.

14 F. If a wire center service area is deregulated
15 pursuant to a determination of effective competition, for those
16 wire center service areas where that service is deregulated,
17 the petitioning telecommunications company shall no longer be
18 eligible to claim an exemption from the application of the
19 Unfair Practices Act or the Antitrust Act."

20 SECTION 3. Section 63-9A-9 NMSA 1978 (being Laws 1985,
21 Chapter 242, Section 9, as amended) is amended to read:

22 "63-9A-9. REGULATION OF INDIVIDUAL CONTRACTS TO
23 FACILITATE COMPETITION.--

24 A. In accordance with the provisions of this
25 section, the commission shall regulate the rates, charges and

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1 service conditions for individual contracts for public
2 telecommunications services in a manner that facilitates
3 effective competition and shall authorize the provision of all
4 or any portion of a public telecommunications service under
5 stated or negotiated terms to any person or entity that has
6 acquired or is preparing to acquire, through construction,
7 lease or any other form of acquisition, similar public
8 telecommunications services from an alternate source.

9 B. ~~[At any time, the provider]~~ All providers of
10 public telecommunications services ~~[may file a verified~~
11 ~~application with the commission for authorization]~~ shall retain
12 copies of any contracts or agreements to provide a public
13 telecommunications service on an individual contract basis
14 ~~[The application shall describe the telecommunications services~~
15 ~~to be offered, the party to be served and the parties offering~~
16 ~~the service, together with such other information and in such~~
17 ~~form as the commission may prescribe. Such additional~~
18 ~~information shall be reasonably related to the determination of~~
19 ~~the existence of a competitive offer. A determination of~~
20 ~~effective competition pursuant to Section 63-9A-8 NMSA 1978~~
21 ~~shall not be necessary to file an application or to have an~~
22 ~~application granted by the commission pursuant to this section.~~

23 C. ~~The commission shall approve or deny any such~~
24 ~~application within ten days or such other period as shall be~~
25 ~~established by the commission, not to exceed sixty days, giving~~

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1 ~~consideration to the requirements of any contract negotiations.~~
2 ~~If the commission has not acted on any application within the~~
3 ~~time period established, the application shall be deemed~~
4 ~~granted. The commission shall deny the application only upon a~~
5 ~~finding that the application fails to set forth prescribed~~
6 ~~information or that the subject or comparable services are not~~
7 ~~being offered to the customer by parties other than the~~
8 ~~applicant or that the contract fails to cover the costs of the~~
9 ~~service, as provided in Subsection G of Section 63-9A-8.1 NMSA~~
10 ~~1978] permitted by this section for a minimum of two years~~
11 ~~after each contract or agreement is expired or terminated.~~

12 C. No provider of telecommunications services shall
13 unreasonably discriminate among customers or classes of
14 customers in an agreement permitted pursuant to this section.

15 D. [The] Upon request by the commission, a
16 telecommunications company shall file with the commission the
17 final contract or other evidence of the service to be provided,
18 together with the charges and other conditions of service [upon
19 request by the commission]. If such contract or evidence is
20 requested, it shall be maintained by the commission on a
21 confidential basis subject to an appropriate protective order.
22 Any interested party may receive copies of filings made
23 pursuant to this section upon request to the commission and
24 execution of an appropriate confidentiality agreement, if
25 applicable."

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1 SECTION 4. Section 63-9A-21 NMSA 1978 (being Laws 2017,
2 Chapter 71, Section 7) is amended to read:

3 "63-9A-21. COMMISSION REVIEW OF IMPACTS.--

4 A. The commission shall review the impact of
5 provisions of the New Mexico Telecommunications Act on
6 residential and business consumers in urban and rural areas of
7 the state every three years, the first review to be completed
8 by July 31, 2019, and shall report its findings to the
9 legislature. The review shall investigate the impact on rates,
10 service quality, incumbent local exchange carrier employment,
11 investment in telecommunications infrastructure and the
12 availability and deployment of high speed data services. The
13 review shall also include a report on:

14 (1) the steps the commission has taken to
15 implement parity of regulation among local exchange carriers
16 consistent with the purposes of the New Mexico
17 Telecommunications Act;

18 (2) those wire center serving areas that have
19 been deemed to have effective competition; and

20 (3) any wire centers no longer subject to
21 carrier of last resort obligations.

22 B. For any wire center serving an area deregulated
23 pursuant to the provisions of Section 63-9A-8 NMSA 1978, if the
24 commission finds that reregulation of basic local exchange
25 service is necessary to protect the public interest following a

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1 hearing and findings of fact and conclusions of law, after July
2 31, 2021, the commission shall regulate basic local exchange
3 service pursuant to the New Mexico Telecommunications Act."

4 SECTION 5. REPEAL.--Section 63-9A-2 NMSA 1978 (being Laws
5 1985, Chapter 242, Section 2, as amended) is repealed.

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