FISCAL IMPACT REPORT

SPONSOR: HBIC DATE TYPED: 3/15/01 HB 912/HBICS/aHBIC/aHFl#1

SHORT TITLE: PRC Approval of Change of Control SB

ANALYST: Gilbert

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY01	**FY02**	**FY01**	**FY02**		
		Indeterminate - see discussion		Recurring	GF

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files
Attorney General's Office (AGO)
Public Regulatory Commission (PRC)

SUMMARY

Synopsis of HFl Amendment #1

House Floor Amendment #1 to the House Business and Industry Committee Substitute for House Bill 912 clarifies that change of control transactions apply to eligible telecommunications carriers that have more than 500,000 access lines in New Mexico.

The amendment also modifies the definition of an "eligible telecommunications carrier". It removes language that requires such companies to have one hundred thousand or more lines in New Mexico.

Synopsis of HBIC Amendment

The House Business and Industry Committee amendment to the substitute bill for House Bill 912 changes the length of time for extending the period the PRC has to make change of control decisions, as shown below:

> The commission shall render its decision to approve or disapprove a proposed change of control within forty-five days of the date the petition is filed pursuant to Subsection D of this section. If a decision is not rendered by the PRC within the stated time, the petition shall be deemed granted, unless before the forty-fifth day the commission extends the time an additional **forty-five** ~~seventy-five~~ days after finding that good cause exists for an extension."

House Bill 912/HBICS/aHBIC/aHFl#1

Synopsis of Substitute Bill

The House Business and Industry Committee Substitute for House Bill 912 relates to the telecommunications industry in New Mexico, it requires the Public Regulation Commission (PRC) to approve certain changes of control transactions, and enacts a new section of the New Mexico Telecommunications Act. This bill, if enacted, would require prior approval by the PRC of any "change of control transactions" involving "eligible telecommunication carriers," including a mandate that the PRC shall not approve a change in control that will result in diminished service quality to eligible customers as a condition of approval.

Significant Issues

Currently, there is no statute explicitly stating that telecommunications entities need prior approval of the PRC before entering into transactions that affect control. This bill would expressly provide the PRC with the same authority over telecommunication entities that it has over other public utilities.

The bill defines the scope of an "eligible telecommunications carrier" as a company with one hundred thousand or more lines in New Mexico that has been designated by the commission as eligible to receive universal service support in accordance with 47 USCA Section 254, or a person that controls, or is controlled, by an eligible telecommunications carrier.

FISCAL IMPLICATIONS

According to the PRC, passage of this bill would increase costs to the PRC. Additional staff would be required to evaluate and analyze all mergers, consolidations or acquisitions for over 400 telecommunications carriers to determine the impact on the public. The PRC estimates that one hearing examiner, one staff attorney, one technical staff member and one administrative support person would be required at an estimated $240.0 recurring impact to the general fund. PRC rulemakings arising from passage of this bill would also impose administrative costs estimated to be $70.0.

Additionally, the Attorney General may need to intervene and participate in the approval process of any future change of control transaction involving telecommunications carriers to determine if the transaction is in the public interest of residential and small business consumers. As a result, the Attorney General's Office may require appropriations to support such activities.

ADMINISTRATIVE IMPLICATIONS

According to the PRC and the AGO, passage of this bill could significantly increase the workloads of their respective offices.

Passage of csHB912a would require the PRC to amend its current rules and regulations regarding change of control transactions for telecommunications providers. The PRC would also be required to add a new administrative procedure for petitions for change of control transactions, which is not provided for under the current law and regulations. This bill would require most changes in the corporate structure of any of the 400 entities to be investigated and approved or disapproved by the PRC, regardless of the fact that the majority of these change of control transactions have no adverse impact on New Mexico customers.

Passage of this bill may also require the AGO to intervene and participate in the approval process of any future change of control transaction involving telecommunications carriers.

TECHNICAL ISSUES

According to AGO, there is currently litigation pending as to whether the PRC has implicit authority over change of control transactions involving telecommunication carriers. The PRC recently considered the issue when US West, Inc. sought to merge with Qwest Corporation, Inc. The PRC concluded it did not have regulatory authority to approve or disapprove the proposed merger. The PRC's decision is currently before the New Mexico Supreme Court on appeal by the Attorney General. Passage of this bill will not render the appeal moot (see N.M. Const. art. IV, § 34.), but will define the scope of the PRC's regulatory authority in future merger and change of control transaction cases.

CS/HB912a conflicts with PRC rules and regulations that became effective January 1, 2001, which were implemented pursuant to HB400 (passed last year), to permit a regulatory framework that will allow an orderly transition from a regulated telecommunications industry to a competitive market environment by imposing an additional regulatory requirement upon all telecommunication entities. NMSA 63-9A-2. These rules, 17.11.19.14 NMAC and 17.11.21.15 NMAC, require prior written notification for change of control transactions, as defined in csHB912, for intrastate long distance providers and competitive local exchange carriers. csHB912a also conflicts with 17 NMAC 13.5 that requires written notification for change of control transactions for incumbent local exchange carriers.

According to he PRC, csHB912a also conflicts the section 253 of the Federal Telecommunications Act of 1996, which prohibits a state from imposing a local statute or regulation that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service". 47 USC 253. The provision of csHB912a, which requires the PRC to regulate change of control transactions for cellular service companies, section A (3) may also be preempted by federal law.

OTHER SUBSTANTIVE ISSUES

According to the PRC, csHB912a states no specific criteria for approving or disapproving a change of control transaction for a telecommunications carrier and may impose additional regulatory barriers on an industry where the state and federal government are moving towards deregulation and promoting competition.

LG/njw