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FISCAL IMPACT REPORT

SPONSOR: Marquardt DATE TYPED: 3/7/03 HB 639/aHBIC

SHORT TITLE: Wireless Carriers Regulatory Act SB _____

ANALYST: Maloy

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	\$1.0	See Narrative	Recurring	General Fund

SOURCES OF INFORMATION

Responses Received From

Public Regulatory Commission (PRC)

Office of the Attorney General (AGO)

SUMMARY

Synopsis of HBIC Amendment

The House Business and Industries Committee has amended House Bill 639 as follows:

1. The addition of a new provision requiring that, as part of the registration process, the carrier provide the name, address, telephone, and e-mail contact information for the entity/person responsible for payment of the carrier inspection fee; and
2. The addition of a provision clearly stating that, once the commission makes a determination that competition exists in the wireless carrier service industry, the commission may reduce, or all together eliminate, regulatory requirements.

Synopsis of Original Bill

House Bill 639 creates the Wireless Carriers Regulatory Act to provide improved regulation of wireless telecommunications services. The regulatory body responsible for administration of the Act is the PRC.

HB 639 sets forth the following:

1. Section 3 requires a “wireless carrier,” as defined in Section 2 of the Bill, to file an informational form with the PRC, and pay a registration fee of not more than \$50 before operating in New Mexico.
2. Section 5 directs the PRC to create rules setting forth Quality of Service Standards for wireless carriers operating in New Mexico.
3. Section 6 of the Bill authorizes the PRC to impose an administrative fine on any wireless carrier that violates the provisions of the Wireless Carriers Regulatory Act.

Significant Issues

1. This Bill should be read in conjunction with the Cellular Telephone Services Act, NMSA 1978, §§ 63-9b-1 *et. seq.* (repealed effective July 1, 2003) and other provisions of the New Mexico Telecommunications Act.
2. Repeal of the Repealer: The Cellular Telephone Services Act, NMSA 1978, §§ 63-9b-1 *et. seq.* is repealed as of July 1, 2003. Being introduced in this 2003 legislative session are bill(s) that would, in part, extend the acts relevant to the analysis herein by repealing the law that repealed the acts. Such bill(s) are commonly referred to as “Repeal of the Repealer.” *See, e.g.,* Senate Bill 350 which is entitled the “Repeal of Public Utility and Telecom Laws.”
3. Wireless Regulation: The federal communications commission (FCC) regulates the entry and rates charged by wireless carriers. 42 U.S.C. § 332(c)(3)(A) (2001). Though federal regulation preempts state regulation of entry and rates charged, states are permitted to regulate other “terms and conditions”. Further, state law causes of action for damages have not been pre-empted. *See* 47 USC § 332(c)(3). Causes of action for damages arising under state law could include, but are not limited to, fraud in the inducement, negligent misrepresentation, deceptive trade practices, or breach of contract.
4. According to the PRC, others states have litigated the extent of the federal entry preemption and the courts have concluded that states do have authority to require telecommunications service providers doing business in the state to contribute annually to state-run universal service programs, holding that this form of regulation is not rate regulation.
5. The Cellular Telephone Services Act, among other things, authorizes the PRC to issue “reasonable rules” governing cellular phone service (NMSA 1978, § 63-9B-4), hold administrative hearings on complaints alleging violations of the Act or rules issued thereunder (NMSA 1978, § 63-9B-5), levy administrative fines, (NMSA 1978, § 63-7-23). To that end, the PRC has issued a consumer protection rule, 17.11.16 NMAC, that provides for the PRC’s regulatory authority over wireless carriers’ fair marketing practices, policies regarding disconnection of service, consumer access to pricing information, and a carrier’s duty to investigate complaints.
6. This bill would require the PRC to create rules setting forth quality of service standards. Establishing quality of service standards would establish certainty for wireless carriers in that they would know the standards to which they will be accountable. Certainty is a benefit to any company. For the consumers, meaningful quality of service rules should

result in better service being offered.

FISCAL IMPLICATIONS

The PRC will be collecting a \$50 registration fee for every wireless carrier to operate within New Mexico. This money will go to the general fund. At this time, because there exists approximately 20 wireless providers in New Mexico, the PRC estimates \$1.0 in registration fees to be collected from current operators.

Fees and penalties assessed by the PRC for violations of the Act will also go to the general fund.

It is unclear if the \$50 fee is intended to be a one-time registration, or a renewal fee. Will the PRC have discretion regarding the fee in the rule making process? This will dictate how much revenue will be recurring to the general fund.

ADMINISTRATIVE IMPLICATIONS

The PRC will use existing FTE and budget resources in the administration of this program.

RELATIONSHIP

This Bill has a relationship with the Cellular Telephone Services Act, NMSA 1978, §§ 63-9b-1 *et. seq.* (repealed as of July 1, 2003) and NMSA 1978, § 8-8-8, as discussed above. It also has a relationship to the Cramming and Slamming Act, NMSA 1978, § 63-9G-1 *et. seq.*, and various provision of the New Mexico Telecommunications Act, which are discussed under “Amendments” below.

AMENDMENTS

The Attorney General’s Office recommends the following amendments:

1. Amend Section 2.B. of the Bill, which provides the definition of wireless carriers should be amended as follows:

B. "wireless carrier" means a person offering mobile radio or telephony service, radio paging service or wireless telecommunications service for a fee in New Mexico intrastate commerce.

This proposal is intended to eliminate any ambiguity that all types of mobile services are subject to the provisions of this Bill.
2. Amend NMSA 1978, § 63-7-23 (A)(2) (repealed effective July 1, 2003) such that the definition of “telecommunications provider” includes “wireless carriers,” as defined in this Bill, and bring “wireless carriers” within the scope of the administrative fines that may be imposed by the PRC.
3. Amend NMSA 1978, § 63-9G-2.G such that the definition of “provider” includes “wireless carriers,” as defined in this Bill, such that “wireless carriers” are subject to the Cramming and Slamming Act, NMSA 1978, §§ 63-9G-1 *et. seq.*

The PRC recommends the following amendments:

4. The bill does not specify any standards for imposing administrative fines. Section 6 should cross reference NMSA 1978, §63-7-23 and its standards for imposing fines on telecommunications carriers by inserting the clause “pursuant to NMSA 1978, § 63-7-23” after the word “fine” and before the words “any wireless carrier” on page 3, line 10, so that the sentence reads: “The commission may administratively fine pursuant to NMSA 1978, §63-7-23 any wireless carrier that violates the provisions of the Wireless Carriers Regulatory Act.”
5. Add a new number (4) under Section 4.A on p. 2 that says, “the name, address, telephone number and email address of a contact person concerning payment of the Utility and Carrier Inspection Fee as described in 63-7-20 NMSA 1978.”

SJM/njw:sb:yr