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FISCAL IMPACT REPORT

SPONSOR: Griego DATE TYPED: 02/17/03 HB _____

SHORT TITLE: Universal Service Act of New Mexico SB 628

ANALYST: Padilla

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	Indeterminate – see narrative			Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
		\$10,000.0	Recurring	New Fund – Universal Service Fund

(Parenthesis () Indicate Revenue Decreases)

Relates to Senate Bill 629 and House Bill 715
Also relates to Senate Bill 530 and House Bill 636

SOURCES OF INFORMATION

LFC Files

Responses Received From
Attorney General
Public Regulation Commission

SUMMARY

Synopsis of Bill

Senate Bill 628 repeals the current state Rural Universal Service Fund and establishes the Universal Service Act of New Mexico. The bill would allow the imposition of a 1.5 percent sur-

charge on customers' monthly intrastate telecommunications bills in order to create the Universal Service Fund ("Fund"). The Fund would provide money directly to telecommunications carriers in New Mexico to provide, maintain and upgrade their facilities needed to provide basic telephone service at affordable rates.

The bill also:

- Repeals Section 63-9H-6 NMSA 1978 which contains current statutory language regarding the existing state Rural Universal Service Fund.
- Creates a seven-member New Mexico Universal Service Board, which is administratively attached to the PRC. The Board members are selected by the PRC for two-year terms.
- Requires the Board to select a third-party administrator of the Fund.
- Gives the administrator considerable authority, including the ability to set the rate of the surcharge and to approve projects for funding.
- Establishes that the amount of the surcharge will be determined by the administrator so that \$10,000.0 is available annually for distribution to eligible telecommunications carriers.
- Establishes that the surcharge is paid by consumers and collected by the service providers.

The fund itself would be used as follows:

- The Fund is available only to eligible telecommunications carriers that contribute to the fund.
- The Fund can be used for projects that meet the criteria for support and that have been approved by the administrator.
- Applications for funding must include a description of the project and an explanation of how the project furthers the goals of universal service.
- Only projects in local exchange areas of less than 5,000 access lines shall be supported.
- If the demands on the Fund exceed the funding available, the bill gives preference to projects that benefit end users without access to basic service and residential customers.

Significant Issues

FUND AND DETERMINATION OF NEED: The need for the Fund is unclear. Significant funding for universal service has long been provided at the federal level, financed by customers through surcharges on their phone bills. The AG's office reports that current funding nationwide is approximately \$1.617 billion. New Mexico's telecommunications carriers currently receive considerable funds through the federal universal service mechanism. In 2001, the Federal Communications Commission modified its existing universal service support mechanism for rural local telephone companies to ensure that telephone service is affordable and reasonably comparable throughout the U.S. The FCC's modifications mean that eligible carriers will begin receiving additional federal funds in July, 2003. It is estimated that federal funding for rural carriers will nearly double over the next five years.

The PRC explains that the bill essentially renames a fund that currently exists under statute. The state Rural Universal Service Fund currently contains approximately \$2,000.0.

Both the PRC and the AG point out that there has been no determination of need for the Fund created by this bill or for the establishment of the Fund at \$10,000.0. The PRC believes a determination of need should be based on a definition of acceptable costs, an established rate of return for investor-owned carriers, a distribution system that offers carriers to choose the best technologies and to balance the needs of all its customers.

SURCHARGE: This bill would impose a new 1.5% surcharge on most intrastate telecommunications bills to pay for the Fund. Federal and state taxes and surcharges currently imposed on consumers' telecommunications bill are considerable, comprising approximately 40% of the total average bill for basic landline service. If the Fund is in fact not needed (see above paragraph), the AG's office believes consumers will be "over-taxed."

ADMINISTRATION OF THE FUND: While the bill extensively defines the make-up of the board, authority for the use of the fund and the rate of the surcharge is solely with the administrator. The functions of the Board are limited. The Board appoints the administrator but simply receives the administrator's decisions with no opportunity to offer input. The bill requires the administrator to be completely independent of the PRC.

FISCAL IMPLICATIONS

Senate Bill 628 creates a new fund financed by a new surcharge on telecommunications services. The Attorney General's office points out that the surcharge this bill would impose is, in effect, a tax. Combined with other taxes and potential surcharges, the new surcharge could price low and fixed income customers out of the market for basic services.

The PRC believes there will be significant fiscal implications for the PRC. See below under "administrative implications."

ADMINISTRATIVE IMPLICATIONS

The bill does not limit the amount of the Fund that can be used for administrative expenses, which include the expenses of the board, the expenses and compensation of the administrator, and the audit costs of an independent accounting firm.

The bill imposes a number of requirements on the PRC but does not appear to provide funds for this purpose. There are no provisions, for example, for staff for the Board or for the cost of rulemaking by the PRC. If the intent of the bill is for the PRC's expenses to come out of the Fund, the PRC questions the need for the bureaucracy of the Board.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

This bill relates to Senate Bill 629 and House Bill 715, which deal with rural telecommunications carriers. It also relates to Senate Bill 530 and House Bill 636, which create two new funds for telecommunications projects.

OTHER SUBSTANTIVE ISSUES

The AG's office believes this bill may conflict with the Alternative Forms of Regulation (AFORs) currently in place for Qwest and Valor. The Fund would allow Qwest or Valor to re-

cover costs for providing basic telephone service. However, pursuant to its AFOR, Qwest was ordered to invest \$788 million in its infrastructure.

The PRC believes the repeal of the existing state Rural Universal Service Fund may conflict with the Commission's RUSF rules enacted in December 1999 and the PRC's Final Order on Utility Case No. 3223, currently on appeal in the New Mexico Supreme Court.

The PRC believes the bill's description of the administrator strongly suggests the National Exchange Carrier Association (NECA). The PRC notes that it has already chosen an administration of the state Rural Universal Service Fund (RUSF). NECA applied for the position but did not win the bid.

POSSIBLE QUESTIONS

1. How many New Mexico households currently do not have access to basic telephone service at affordable rates?
2. How many of those households would be assisted by this bill?
3. How much would an average customer's bill increase as a result of SB 628?
4. Which carriers would most likely make use of the Fund?
5. Why isn't the federal Universal Service Fund sufficient?
6. If the administrator controls the Fund, what is the purpose of the Board?
7. How much will the Administrator of this fund be paid?
8. Does this bill conflict with the two Alternative Form of Regulation (AFOR) proceedings currently in use by Qwest and Valor?

LP/prr