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HOUSE BILL 24

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

John A. Heaton

FOR THE ECONOMIC AND RURAL DEVELOPMENT AND  
TELECOMMUNICATIONS COMMITTEE

AN ACT

RELATING TO TELECOMMUNICATIONS; PROVIDING FOR SEPARATE  
REGULATION OF MID-SIZE CARRIERS.

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

Section 1. Section 63-9A-3 NMSA 1978 (being Laws 1985,  
Chapter 242, Section 3, as amended) is amended to read:

"63-9A-3. DEFINITIONS. -- As used in the New Mexico  
Telecommunications Act:

A. "affordable rates" means local exchange service  
rates that promote universal service within a local exchange  
service area, giving consideration to the economic conditions  
and costs to provide service in such area;

B. "cable television service" means the one-way  
transmission to subscribers of video programming or other  
programming service and subscriber interaction, if any, that is

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1 required for the selection of such video programming or other  
2 programming service;

3 C. "commission" means the public regulation  
4 commission;

5 D. "competitive telecommunications service" means a  
6 service that has been determined to be subject to effective  
7 competition pursuant to Section 63-9A-8 NMSA 1978;

8 E. "effective competition" means that the customers  
9 of the service have reasonably available and comparable  
10 alternatives to the service;

11 F. "fund" means the [~~New Mexico~~] state rural  
12 universal service fund;

13 G. "local exchange area" means a geographic area  
14 encompassing one or more local communities, as described in  
15 maps, tariffs or rate schedules filed with the commission,  
16 where local exchange rates apply;

17 H. "local exchange service" means the transmission  
18 of two-way interactive switched voice communications furnished  
19 by a telecommunications company within a local exchange area;

20 I. "message telecommunications service" means  
21 telecommunications service between local exchange areas within  
22 the state for which charges are made on a per-unit basis, not  
23 including wide-area telecommunications service, or its  
24 equivalent, or individually negotiated contracts for  
25 telecommunications services;

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1                    J. "mid-size carrier" means a telecommunications  
2 company with more than fifty thousand but less than three  
3 hundred seventy-five thousand access lines in the state;

4                    [~~J.~~] K. "noncompetitive telecommunications service"  
5 means a service that has not been determined to be subject to  
6 effective competition pursuant to Section 63-9A-8 NMSA 1978;

7                    [~~K.~~] L. "private telecommunications service" means  
8 a system, including the construction, maintenance or operation  
9 thereof, for the provision of telecommunications service, or  
10 any portion of that service, by a person for the sole and  
11 exclusive use of that person and not for resale, directly or  
12 indirectly. For purposes of this definition, the person that  
13 may use such service includes any affiliates of the person if  
14 at least eighty percent of the assets or voting stock of the  
15 affiliates is owned by the person. If any other person uses  
16 the telecommunications service, whether for hire or not, the  
17 private telecommunications service is a public  
18 telecommunications service;

19                    [~~L.~~] M. "public telecommunications service" means  
20 the transmission of signs, signals, writings, images, sounds,  
21 messages, data or other information of any nature by wire,  
22 radio, lightwaves or other electromagnetic means originating  
23 and terminating in this state regardless of actual call  
24 routing. "Public telecommunications service" does not include  
25 the provision of terminal equipment used to originate or

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1 terminate such service; private telecommunications service;  
2 broadcast transmissions by radio, television and satellite  
3 broadcast stations regulated by the federal communications  
4 commission; radio common carrier services, including mobile  
5 telephone service and radio paging; or one-way cable television  
6 service; and

7 [M-] N. "telecommunications company" means a person  
8 that provides public telecommunications service. "

9 Section 2. Section 63-9A-8.1 NMSA 1978 (being Laws 1998,  
10 Chapter 108, Section 61) is amended to read:

11 "63-9A-8.1. CHANGE IN RATES. --

12 A. At a hearing involving an increase in rates or  
13 charges sought by a telecommunications company, the burden of  
14 proof to show that the increased rate or charge is just and  
15 reasonable shall be upon the company.

16 B. Unless the commission otherwise orders, no  
17 telecommunications company shall make a change in an  
18 established rate except after thirty days' notice to the  
19 commission, which notice shall plainly state the changes  
20 proposed to be made in the rates then in force, the time when  
21 the changed rates will go into effect and other information as  
22 the commission by rule requires. The telecommunications  
23 company shall also give notice of the proposed changes to other  
24 interested persons as the commission may direct. All proposed  
25 changes shall be shown by filing new schedules that shall be

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1 kept open to public inspection. The commission for good cause  
2 shown may allow changes in rates without requiring the thirty  
3 days' notice, under conditions that it may prescribe.

4 C. Whenever a telecommunications company files a  
5 complete application proposing new rates, the commission may,  
6 upon complaint or upon its own initiative, except as otherwise  
7 provided by law, upon reasonable notice, enter upon a hearing  
8 concerning the reasonableness of the proposed rates. If the  
9 commission determines a hearing is necessary, it shall suspend  
10 the operation of the proposed rates before they become  
11 effective but not for a longer initial period than nine months  
12 beyond the time when the rates would otherwise go into effect,  
13 unless the commission finds that a longer time will be  
14 required, in which case the commission may extend the period  
15 for an additional three months. The commission shall hear and  
16 decide cases with reasonable promptness. The commission shall  
17 adopt rules identifying criteria for various rate and tariff  
18 filings to be eligible for suspension periods shorter than what  
19 is allowed by this subsection and to be eligible for summary  
20 approval without hearing.

21 D. If after a hearing the commission finds the  
22 proposed rates to be unjust, unreasonable or in any way in  
23 violation of law, the commission shall determine the just and  
24 reasonable rates to be charged or applied by the  
25 telecommunications company for the service in question and

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1 shall fix the rates by order to be served upon the  
2 telecommunications company; or the commission by its order  
3 shall direct the telecommunications company to file new rates  
4 respecting such service that are just and reasonable. Those  
5 rates shall thereafter be observed until changed as provided by  
6 the New Mexico Telecommunications Act.

7 E. The provisions of this section do not apply to a  
8 mid-size carrier."

9 Section 3. Section 63-9A-8.2 NMSA 1978 (being Laws 2000,  
10 Chapter 100, Section 4 and Laws 2000, Chapter 102, Section 4,  
11 as amended) is amended to read:

12 "63-9A-8.2. IDENTIFYING SUBSIDIES--RULES--PRICE CAPS.--

13 A. No later than December 31, 2000, the commission  
14 shall review existing rates for public telecommunications  
15 services offered by incumbent local exchange carriers with more  
16 than fifty thousand access lines and identify all subsidies  
17 that are included in the rates. The commission shall issue  
18 rules requiring that the identified subsidies appear on  
19 customer bills and establish a schedule not later than April 1,  
20 2001 whereby implicit subsidies be eliminated through  
21 implementation of the state rural universal service fund or  
22 through revenue-neutral rate rebalancing or any other method  
23 consistent with the intent of the New Mexico Telecommunications  
24 Act.

25 B. No later than January 1, 2001, the commission

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1 shall adopt rules that:

2 (1) establish consumer protection and quality-  
3 of-service standards;

4 (2) ensure adequate investment in the  
5 telecommunications infrastructure in both urban and rural areas  
6 of the state;

7 (3) promote availability and deployment of high-  
8 speed data services in both urban and rural areas of the state;

9 (4) ensure the accessibility of interconnection  
10 by competitive local exchange carriers in both urban and rural  
11 areas of the state; and

12 (5) establish an expedited regulatory process  
13 for considering matters related to telecommunications services  
14 that are pending before the commission.

15 C. No later than April 1, 2001, but in no case prior  
16 to the adoption of the rules required in Subsection B of this  
17 section, the commission shall eliminate rate of return  
18 regulation of incumbent telecommunications carriers with more  
19 than fifty thousand access lines and implement an alternative  
20 form of regulation that includes reasonable price caps for  
21 basic residence and business local exchange services.

22 D. Rules adopted pursuant to this section shall not  
23 be applied to incumbent rural telecommunications carriers as  
24 that term is defined in Subsection I of Section 63-9H-3 NMSA  
25 1978.

. 148767. 3

1           E. The provisions of this section do not apply to a  
2 mid-size carrier. "

3           Section 4. A new section of the New Mexico  
4 Telecommunications Act is enacted to read:

5           "[NEW MATERIAL] MID-SIZE CARRIERS-- SEPARATE REGULATION. --

6           A. As used in this section:

7                   (1) "basic services" means retail  
8 telecommunications services that provide residence or business  
9 customers with an individual primary line providing voice grade  
10 access to the public switched network; and

11                   (2) "non-basic services" means retail  
12 telecommunications services that are not a basic service, a  
13 switched-access service or a wholesale service governed by an  
14 interconnection agreement.

15           B. The commission shall regulate mid-size carriers  
16 separately from other telecommunications companies regulated by  
17 the commission in accordance with the provisions of this  
18 section and in such a manner as to:

19                   (1) minimize regulatory costs;  
20                   (2) differentiate mid-size carriers from other  
21 telecommunications companies and establish a level of  
22 regulation between the levels of regulation applying to rural  
23 carriers and other incumbent local exchange carriers;

24                   (3) ensure the continuance of universal service,  
25 investment in telecommunications infrastructure and

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1 availability of affordable rates for basic local service; and  
2 (4) encourage competition and economic growth  
3 and development through the efficient deployment of  
4 telecommunications services in areas of the state served by  
5 mid-size carriers.

6 C. In adopting its rules to regulate mid-size  
7 carriers, the commission:

8 (1) shall consider the operational and technical  
9 effects of the following factors that differentiate mid-size  
10 carriers from other telecommunications companies:

11 (a) number of access lines served by mid-  
12 size carriers;

13 (b) types of markets served by mid-size  
14 carriers;

15 (c) prices on file with the commission and  
16 charged by other telecommunications companies operating in the  
17 state for services comparable to those offered by mid-size  
18 carriers;

19 (d) service quality and consumer protection  
20 requirements applicable to mid-size carriers;

21 (e) historical performance of mid-size  
22 carriers pertaining to quality and consumer protection; and

23 (f) the experience of local exchange  
24 carriers operating and providing service within the state under  
25 current or previous forms of regulation; and

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1                   (2) shall consider rules of general  
2 applicability governing all telecommunications carriers in the  
3 state.

4                   D. The commission shall adopt rules that prescribe  
5 reasonable price ceilings and the means to change prices for  
6 basic local services. The commission shall adopt an objective  
7 mechanism by which mid-size carriers may periodically adjust  
8 the price ceiling for basic services. In adopting rules to  
9 implement this subsection, the commission shall consider using  
10 an annual publication published by the federal communications  
11 commission or comparable relevant data. This objective  
12 mechanism shall be used to establish an indexed price ceiling  
13 to limit increases in prices for basic residence local exchange  
14 service and basic business local single-line exchange service.

15                   E. The provisions of Subsection D of this section  
16 notwithstanding, the commission may increase a mid-size  
17 carrier's basic service prices as part of a revenue-neutral  
18 price rebalancing to a level above that otherwise allowed by  
19 applicable rules.

20                   F. The commission shall adopt rules:

21                         (1) creating reasonable quality of service and  
22 consumer protection standards for mid-size carriers;

23                         (2) allowing reasonable pricing flexibility for  
24 non-basic services and prescribing an objective mechanism by  
25 which mid-size carriers may change prices for non-basic

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1 services; and

2 (3) ensuring that the terms and conditions for  
3 non-basic services offered by mid-size carriers further the  
4 public interest.

5 G. Once a mid-size carrier is subject to regulations  
6 adopted pursuant to this section, it may introduce or withdraw  
7 non-basic services, bundle and package non-basic services and  
8 products with other services and products, including basic  
9 services. The services offered shall be priced above cost and  
10 provided throughout the mid-size carrier's service area to the  
11 extent the necessary facilities are available. The  
12 introduction of new services, withdrawal of existing services  
13 or price adjustments for non-basic services shall become  
14 effective upon a tariff filing and ten days' notice to the  
15 commission; provided that the commission may suspend the  
16 introduction, withdrawal or adjustment under circumstances  
17 limited to:

- 18 (1) ensuring compliance with applicable rules;  
19 (2) cost considerations; or  
20 (3) a finding that the tariff filing is not  
21 consistent with the public interest.

22 H. A mid-size carrier may petition the commission for  
23 a waiver of a rule for good cause shown. "

24 Section 5. TEMPORARY PROVISION--TRANSITION OF  
25 REGULATION--REPORT TO LEGISLATURE. --

. 148767. 3

