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HOUSE BILL 187

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

INTRODUCED BY

Luciano "Lucky" Varela

AN ACT

RELATING TO TELECOMMUNICATIONS ACCESS; TRANSFERRING THE
ADMINISTRATION OF THE TELECOMMUNICATIONS ACCESS ACT FROM THE
GENERAL SERVICES DEPARTMENT TO THE COMMISSION FOR DEAF AND
HARD-OF-HEARING PERSONS; PROVIDING THAT THE TELECOMMUNICATIONS
ACCESS FUND MAY BE APPROPRIATED FOR THE EXPENSES OF THE
COMMISSION FOR DEAF AND HARD-OF-HEARING PERSONS.

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

Section 1. Section 63-9F-1 NMSA 1978 (being Laws 1993,
Chapter 54, Section 1) is amended to read:

"63-9F-1. SHORT TITLE. -- ~~[This act]~~ Chapter 63, Article 9F
NMSA 1978 may be cited as the "Telecommunications Access Act". "

Section 2. Section 63-9F-3 NMSA 1978 (being Laws 1993,
Chapter 54, Section 3, as amended) is amended to read:

"63-9F-3. DEFINITIONS. -- As used in the Telecommunications
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1 Access Act:

2 A. "commission" means the commission for deaf and
3 hard-of-hearing persons;

4 B. "communications assistant" means an individual
5 who translates conversation from text to voice and from voice
6 to text between two end users of a telecommunications service;

7 [~~C.~~] "~~department~~" ~~means the general services~~
8 ~~department;~~

9 ~~D.~~] C. "impaired" means having an impairment of or
10 deficit in the ability to hear or speak, or both;

11 [~~E.~~] D. "intrastate telephone services" means all
12 charges for access lines, special services and intrastate toll
13 services, including all calls originating and terminating in
14 the state;

15 [~~F.~~] E. "specialized telecommunications equipment"
16 means devices that [~~when connected to a telephone~~] enable or
17 assist an impaired individual to communicate with another
18 individual using the telephone network;

19 [~~G.~~] F. "telecommunications company" means an
20 individual, corporation, partnership, joint venture, company,
21 firm, association, proprietorship or other entity that provides
22 public telecommunications services, and includes cellular
23 service companies as defined in Subsection B of Section 63-9B-3
24 NMSA 1978; and

25 [~~H.~~] G. "telecommunications relay system" means a

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1 statewide telecommunications system through which an impaired
2 individual using specialized telecommunications equipment is
3 able to send or receive messages to and from an individual who
4 is not impaired and whose telephone is not equipped with
5 specialized telecommunications equipment and through which the
6 unimpaired individual is able, by using voice communications,
7 to send and receive messages to and from an impaired person. "

8 Section 3. Section 63-9F-6 NMSA 1978 (being Laws 1993,
9 Chapter 54, Section 6) is amended to read:

10 "63-9F-6. TELECOMMUNICATIONS RELAY SYSTEM --

11 A. The [department, in consultation with the]
12 commission shall [establish] administer a telecommunications
13 relay system that enables impaired individuals to communicate
14 with unimpaired individuals. [~~The department shall implement~~
15 ~~the telecommunications relay system no later than July 26,~~
16 ~~1993.~~]

17 B. The [department, after consultation with the]
18 commission shall invite proposals or bids, or both, from
19 telecommunications companies to design and implement a
20 telecommunications relay system. The [department] commission
21 shall comply with the provisions of the Procurement Code in
22 contracting for the services and property required. [~~It~~] The
23 commission shall consider the factors of price and the interest
24 of the community of impaired individuals in having access to a
25 high quality and technologically advanced system. New Mexico

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1 residency shall be given a weight of five percent of the total
2 weight of all evaluation factors in a proposal evaluation. Any
3 business that qualifies as a "resident business" as defined in
4 Section 13-1-21 NMSA 1978 shall receive a five percent
5 preference. In the procurement process, ~~[it]~~ the commission
6 shall request and consider the recommendations of the
7 ~~communications~~ assistants who have provided the voice relay
8 service used in the state ~~[prior to the effective date of the~~
9 ~~Telecommunications Access Act]~~.

10 C. If the ~~[department]~~ commission determines that
11 no proposal or bid is acceptable after review, the ~~[department]~~
12 commission may provide the telecommunications relay system.

13 D. The telecommunications relay system shall:

14 (1) be available statewide for operation
15 twenty-four hours a day every day of the year;

16 (2) relay all messages promptly and
17 accurately;

18 (3) protect and maintain the privacy of
19 individuals using the system;

20 (4) preserve the confidentiality of all
21 telephone ~~communications~~; and

22 (5) conform to all applicable standards
23 established by state and federal laws and ~~[any]~~ regulations
24 adopted pursuant to those laws."

25 Section 4. Section 63-9F-8 NMSA 1978 (being Laws 1993,

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1 Chapter 54, Section 8, as amended) is amended to read:

2 "63-9F-8. COMMISSION DUTIES--POWER TO AUDIT. -- [The
3 ~~commission shall advise the department concerning the~~
4 ~~administration of the specialized telecommunications equipment~~
5 ~~program and the telecommunications relay system. The~~
6 ~~commission shall:~~

7 A. ~~create policies, procedures and regulations~~
8 ~~governing the administration of the specialized~~
9 ~~telecommunications equipment program and review and recommend~~
10 ~~policies, procedures and regulations governing the~~
11 ~~administration of the telecommunications relay system;~~

12 B. ~~assist the department in]~~

13 A. The commission shall perform all actions
14 necessary to carry out the provisions of the Telecommunications
15 Access Act, including:

16 (1) promulgating and administering such
17 policies, procedures and rules as are necessary to comply with
18 the purpose of that act and to ensure that the specialized
19 telecommunications equipment program and the relay system are
20 in compliance with the applicable state and federal laws and
21 rules adopted pursuant to those laws;

22 (2) obtaining certification from the federal
23 communications commission that the telecommunications relay
24 system is in compliance with applicable federal rules; [and
25 regulations;

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1 ~~C. review and comment upon the department's budget~~
2 ~~request for administration of the specialized~~
3 ~~telecommunications equipment program and the telecommunications~~
4 ~~relay system;~~

5 ~~D. monitor]~~

6 (3) making expenditures for the specialized
7 telecommunications equipment program and the telecommunications
8 relay system;

9 ~~[E. monitor]~~ (4) ensuring the quality of the
10 telecommunications relay system and the satisfaction of its
11 users;

12 ~~[F. identify]~~ (5) identifying the need for
13 specialized telecommunications equipment by impaired
14 individuals;

15 ~~[G. identify]~~ (6) identifying the problems
16 that impaired individuals have in acquiring specialized
17 telecommunications equipment; and

18 ~~[H. obtain]~~ (7) providing funding for the
19 specialized telecommunications equipment program [~~and~~

20 ~~I. perform other duties necessary to advise the~~
21 ~~department in the administration of the provisions of the~~
22 ~~Telecommunications Access Act].~~

23 B. The commission may require an annual audit of
24 each telecommunications company participating in the
25 telecommunications relay system to account for all surcharges

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1 billed and collected pursuant to the Telecommunications Access
2 Act. "

3 Section 5. Section 63-9F-9 NMSA 1978 (being Laws 1993,
4 Chapter 54, Section 9) is amended to read:

5 "63-9F-9. LIMIT ON LIABILITY. --The commission [~~the~~
6 ~~department~~] and the provider of the telecommunications relay
7 system and their employees shall not be liable for any claims,
8 actions, damages or causes of action arising out of or
9 resulting from the establishment, participation in or operation
10 of the telecommunications relay system except for gross
11 negligence or intentional acts. "

12 Section 6. Section 63-9F-11 NMSA 1978 (being Laws 1993,
13 Chapter 54, Section 11, as amended) is amended to read:

14 "63-9F-11. IMPOSITION OF SURCHARGE. --

15 A. A telecommunications relay service surcharge of
16 thirty-three hundredths [~~of one~~] percent is imposed on the
17 gross amount paid by customers for:

18 (1) intrastate telephone services, other than
19 mobile telecommunications services, provided in this state; and

20 (2) intrastate mobile telecommunications
21 services that originate and terminate in the same state,
22 regardless of where the mobile telecommunications services
23 originate, terminate or pass through, provided by home service
24 providers to customers whose place of primary use is in New
25 Mexico.

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1 B. The telecommunications relay service surcharge
2 shall be included on the monthly bill of each customer of a
3 local exchange company or other telecommunications company
4 providing intrastate telephone services or intrastate mobile
5 telecommunications services and paid at the time of payment of
6 the monthly bill. Receipts from selling a service to any other
7 telecommunications company or provider for resale shall not be
8 subject to the surcharge. The customer shall be liable for the
9 payment of this surcharge to the local exchange company or
10 other telecommunications company providing intrastate telephone
11 services to the customer. For the purposes of [~~this~~
12 ~~subsection~~] Subsections A and B of this section, "home service
13 provider", "mobile telecommunications services" and "place of
14 primary use" have the meanings given in the federal Mobile
15 Telecommunications Sourcing Act.

16 ~~[B.—Every]~~ C. A telecommunications company
17 providing intrastate telephone services shall be responsible
18 for assessing, collecting and remitting the telecommunications
19 relay service surcharge to the taxation and revenue department.
20 The amount of the telecommunications relay service surcharge
21 collected by a telecommunications company shall be remitted
22 monthly to the taxation and revenue department, on or before
23 the twenty-fifth of the month following collection, which shall
24 administer and enforce the collection of the surcharge pursuant
25 to the provisions of the Tax Administration Act.

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1 ~~[C.]~~ D. The taxation and revenue department shall
2 remit to the telecommunications access fund the amount of the
3 telecommunications relay service surcharge collected less any
4 amount deducted pursuant to the provisions of Subsection ~~[D]~~ E
5 of this section. Transfer of the net receipts from the
6 surcharge to the telecommunications access fund shall be made
7 within the month following the month in which the surcharge is
8 collected.

9 ~~[D.]~~ E. The taxation and revenue department may
10 deduct an amount not to exceed three percent of the
11 telecommunications relay service surcharge collected as a
12 charge for the administrative costs of collection, which amount
13 shall be remitted to the state treasurer for deposit in the
14 general fund each month.

15 ~~[E.]~~ F. The ~~[general services department]~~
16 commission shall report to the revenue stabilization and tax
17 policy committee annually by September 30 the following
18 information with respect to the prior fiscal year:

19 (1) the amount and source of revenue received
20 by the telecommunications access fund;

21 (2) the amount and category of expenditures
22 from the fund; and

23 (3) the balance of the fund on that June 30."

24 Section 7. Section 63-9F-12 NMSA 1978 (being Laws 1993,
25 Chapter 54, Section 12) is amended to read:

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1 "63-9F-12. TELECOMMUNICATIONS ACCESS FUND--

2 ESTABLISHED.--There is created in the state treasury the
3 "telecommunications access fund". Money appropriated to the
4 fund or accruing to it through gifts, grants, fees, surcharges,
5 penalties or bequests shall be delivered to the state treasurer
6 for deposit in the fund. The fund shall be invested as other
7 state funds are invested. Disbursements from the fund shall be
8 made upon warrants drawn by the secretary of finance and
9 administration pursuant to vouchers signed by the [~~secretary of~~
10 ~~general services. The department~~] executive director of the
11 commission. The commission shall administer the fund. Money
12 in the fund is appropriated to the commission for the purpose
13 of carrying out the provisions of the Telecommunications Access
14 Act. The [~~department and the~~] commission may request the state
15 budget division of the department of finance and administration
16 to approve the expenditure of funds deposited in the
17 telecommunications access fund for the purpose of defraying
18 salary and other necessary expenses incurred by the [~~department~~
19 ~~and the~~] commission in the administration of the provisions of
20 the Telecommunications Access Act. The state budget division
21 may approve the expenditure of not more than ten percent of the
22 amount deposited in the telecommunications access fund during
23 any fiscal year for [~~administrative~~] expenses incurred by the
24 commission in administering that act. In addition, money in
25 the fund shall be available for appropriation by the

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1 legislature to the commission for the performance of its duties
2 pursuant to Chapter 28, Article 11B NMSA 1978. Any unexpended
3 or unencumbered balance remaining in the fund at the end of any
4 fiscal year shall not revert. "

5 Section 8. TEMPORARY PROVISION--TRANSFER. --On the
6 effective date of this act:

7 A. all records, equipment, supplies and other
8 property of the general services department relating to the
9 department's duties pursuant to the Telecommunications Access
10 Act shall be transferred to the commission for deaf and hard-
11 of-hearing persons; and

12 B. all contracts of the general services department
13 relating to the department's duties pursuant to the
14 Telecommunications Access Act shall be binding on the
15 commission for deaf and hard-of-hearing persons.

16 Section 9. REPEAL. --Sections 63-9F-5 and 63-9F-7 NMSA
17 1978 (being Laws 1993, Chapter 54, Sections 5 and 7, as
18 amended) are repealed.

19 Section 10. EFFECTIVE DATE. --The effective date of the
20 provisions of this act is July 1, 2005.