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FISCAL IMPACT REPORT

SPONSOR Carraro DATE TYPED 2/15/05 HB _____

SHORT TITLE Community Access to Media & Information Act SB 491

ANALYST Rosen

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
	NFI		NFI		

(Parenthesis () Indicate Expenditure Decreases)

Duplicates HB959

SOURCES OF INFORMATION

Responses Received From
 Attorney General's Office (AGO)
 Public Regulation Commission (PRC)

FOR THE ECONOMIC AND RURAL DEVELOPMENT AND TELECOMMUNICATIONS COMMITTEE

SUMMARY

Synopsis of Bill

Senate Bill 491 provides for delivery of a minimum amount of public access information through services provided by service providers of communications, information and digital services, and for funding of entities providing public access information through a percentage of revenues of those service providers as negotiated in franchise agreements between service providers and political subdivisions. This bill provides for a public needs assessment for communications and information needs of a community prior to the negotiation of a franchise agreement between a service provider and a political subdivision, and every 5 years thereafter, or upon a change of ownership of a service provider, and public procedural processes for doing so (Section 4).

Section 2 – defines 1) access management organization, 2) political subdivision, 3) public, educational, and government access, and 4) service provider.

- 1) Mandates that a minimum of 10% of the bandwidth and spectrum or channels (whichever is greater) be made available for public use in franchise agreements between service providers and political subdivisions, to include methods by which entities are to use the bandwidth or spectrum (Subsection 3(A)).
- 2) Provides compensation of between 3 and 5% of gross revenues of the service provider as determined by a transparent audit mechanism (Subsection 3(B)). If a needs assessment determines that there is a community need for public access information, then:
 - a) No less than 2% per annum will be passed through to an access management organization for general operations (Section 4(E)(1)).
 - b) A minimum of 1% additional will be set aside for the facilities and equipment to be collected by the political subdivision to be passed through to a public, educational and government access operation (See def. and Section 4(E)(2)).

Section 5 - Mandates that cable and satellite services shall carry public, educational, and government access where they carry commercial channels.

Section 6 - States that a communications and information service provider be capable of broadcasting emergency alerts in their systems.

Section 7 – Defines abandonment of a cable system if a service provider has not come to agreement or entered into a mutually agreed extension of an agreement with a political subdivision.

Section 8 – Mandates diversity of programming and sets conditions for non-discrimination by a service provider or a political subdivision.

Section 9 – States that the political subdivision and the service provider file a report each year with the PRC certifying compliance with this provision of the statute.

Section 10 – States a service subscriber may take action according to the provisions of the bill.

Significant Issues

According to PRC, PRC has no enforcement authority over cable provision of media and information. The Federal Cable Act delegates the oversight allowed in that Act to the Federal Communication Commission and to the franchising authority of local governments. In return, the local governments assess a franchise fee. Therefore, PRC believes it would only be a repository of public records associated with the filing and that it is questionable whether PRC has the authority to enforce the filing requirements, or the authority and responsibility to deal with non-compliance.

According to AGO, there are several significant issues to consider:

- This bill may be subject to challenge as being overly vague. For example, funding for the “access management organization” comes from a percentage of the revenue of the service provider as determined by a “transparent audit” but provides no definition of “revenue”. Is it net or gross, revenue derived from its worldwide operations, those in New Mexico, or those in the political sub-division?
- The bill potentially creates an unfunded mandate. During the negotiations for a franchise

agreement, both the service provider and the political sub-division are to conduct a needs assessment and hearings, but no provision is made on how either entity would fund such undertakings.

- The bill may unintentionally actually create disincentives for service providers to carry local channels, because those service providers that do not provide local channels do not have to provide for public access channels.
- There is a large body of law governing public access channels. It is an area that has been partially pre-empted by the Federal Communications Commission.
- The bill appears to accommodate the possibility of a service provider acting as an access management organization, as long as certain conditions are met, and the provisions of this act do not bind service providers that do not provide local channels to a political sub-division.

ADMINISTRATIVE IMPLICATIONS

PRC reports its role is essentially ministerial in acceptance of required filings pursuant to Section 9.

TECHNICAL ISSUES

The bill defines “political subdivision” as “a unit of state government with a population of three thousand five hundred or more.” AGO reports this definition of “political subdivision” is very different from that contained in the Hospital Funding Act (4-48B-3 NMSA). Also, the term is used, but not defined, in numerous New Mexico statutes and cases.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL?

Access will still have to be negotiated with the local franchising authority and AGO indicates it is unclear whether a New Mexico municipality (“political sub-division”) needs a specific, statutory grant of authority to negotiate community access channels on cable television systems.

JR/yr