F I S C A L I M P A C T R E P O R T

		ORIGINAL DATE	2/26/07		
SPONSOR	Lujan, B.	**LAST UPDATED**		**HB**	1129
SHORT TITLE	CABLE TV PROVIDER RATE CHANGE EXPLANATIONS			**SB**	
				ANALYST	Earnest

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	**FY08**		
NFI	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY07	**FY08**	**FY09**		
	$0.1*	$0.1*	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

*Unknown but possible positive revenue impact from assessment of new penalties.

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Regulation Commission (PRC)
Office of the Attorney General (AOG)

SUMMARY

Synopsis of Bill

House Bill 1129 enacts a new provision of the New Mexico Telecommunications Act, Section 63-9A-1 to 63-9A-20, to require cable television service operators to deliver written notice of any increase in cable television rates to the Public Regulation Commission (PRC) within thirty days of the effective date of that increase. The notice must request that the PRC set a date, time and place for a public meeting where the cable operator shall explain and discuss the need and rationale for the increase. If that notice is not given, then PRC must, by its own motion or upon the request of an interested party, order the cable operator to appear at a public meeting.

PRC shall impose civil penalties of $1,000/ day, up to $10,000 on a cable operator who fails without good cause to comply with the notice requirements or fails to attend a public meeting as required and for each day the operator does not contact the Commission to schedule another meeting. The operator may appeal the imposition of a penalty to the District Court.

FISCAL IMPLICATIONS

The fiscal impact would be limited but potentially positive due to new penalties for non-compliance.

SIGNIFICANT ISSUES

Under federal law, regulation of rates and service quality of the cable television industry is shared between the Federal Communications Commission (FCC) and the local franchising authority, typically local governments in New Mexico. The local government is allowed to determine and collect a "franchise fee" consisting of a percentage of the cable company's annual revenues; that franchise fee may vary from one local government to another.

Both OAG and PRC question whether the state has authority under federal law to regulate the cable television industry. Although not directly prescribing state regulation, this bill gives additional authority to the PRC, including the imposition of penalties, over cable providers.

According to OAG:

> The authority of the state to regulate cable television rates or to punish cable operators for failing to comply with state laws attempting to regulate those rates is questionable. However, this bill appears to be an attempt to confer authority on the Public Regulation Commission to regulate the imposition of rate changes by compelling attendance by cable operators at "meetings" and imposing other requirements on those operators with regard to rate changes.
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> Title III of the Federal Telecommunications Act of 1996 eliminated regulation of "non-basic" (e.g. pay-per-channel, tiered channel services beyond basic cable rates, or pay-per-view) cable television. Neither the Federal Communications Commission, nor the state, has the authority to regulate those rates, or to punish cable operators for failing to comply with state laws regarding those rates. Furthermore, small cable operators are also exempt from state or federal rate regulation. (http://www.fcc.gov/mb/facts/csgen.html.) However, this bill does not distinguish between basic cable rates and non-basic rates, and does not refer to small cable operators which are not subject to any regulation.
>
> Furthermore, the authority of the Public Regulation Commission to regulate any cable television rates or the conduct of cable operators with respect to *any* rate changes is uncertain. Regulation of basic cable services rates has been delegated to "local

franchising authorities" who are certified by the Federal Communications Commission. It does not appear that the Public Regulation Commission has received that designation.

Furthermore, Section 301 of the federal act amended 47 U.S.C. 552 to govern notice to subscribers of rate changes. That amendment provides "*A cable operator may provide notice of service and rate changes to subscribers using any reasonable written means at its sole discretion"*. Given the possible preemptive effect of that amendment, it is unclear as to the authority of the state to require that a cable operator provide additional notice to the Public Regulation Commission of a rate change, or to require a cable operator to attend a "meeting" regarding a rate change, or to impose penalties on a cable operator who does not comply with those requirements.

The bill allows the Commission to impose a penalty on a cable operator who fails to attend a public "meeting" for the day of the scheduled hearing, and "for each business day after the date of the meeting that the cable operator does not contact the commission to schedule another meeting". However, it does not appear to consider those "meetings" to be hearings involving usual due process protections. It does not provide any right to a hearing before imposition of penalties. Referring to mandatory hearings as "meetings" does not exempt those proceedings from due process requirements.

Imposing a penalty based upon failing to attend a "meeting", or failing to contact the Commission to schedule a meeting, may be construed as an improper exercise of the state's police power to penalize certain conduct implicating the right of free association and other individual rights. This is especially significant considering the PRC's apparent lack of authority to regulate cable television rates.

PRC indicates that the only authority it has over cable television is the power to assess a penalty upon a cable provider for each occurrence of cramming or slamming or for each disconnection or threat to disconnect (Sections 63-9G-1 through 9 NMSA 1978). PRC staff understands that the FCC refers any questions or complaints regarding rates for basic service and equipment, installation and service charges to a customer's local government/franchising authority. This shared jurisdiction between the FCC and the local government may call into question the authority of the PRC to enforce the civil penalties provided for in this bill. Furthermore, it is not clear whether the duty of the cable company to report the increase to the PRC "within 30 days of the effective date of an increase of its rates" is a requirement for the cable company to file 30 days before or after the effective date. This question is raised because the daily penalty liability commences on the "effective date of the increase."

ADMINISTRATIVE IMPLICATIONS

PRC indicates that any administrative implications could be managed with current resources.

TECHNICAL ISSUES

According to PRC, the definition section of the New Mexico Telecommunications Act specifically exempts "one-way cable television service" from its regulation of "public telecommunications service", the critical phrase that defines the scope of regulation under the NM Telecommunications Act. Also, rural telecommunications companies are exempted from regulation under the NM Telecommunications Act and are regulated pursuant to the Rural

Telecommunications Act of New Mexico (Sections 63-9H-1 et al); would that mean that a cable company that operates in a rural telecommunications company's territory is not subject to the provisions of this bill?

OTHER SUBSTANTIVE ISSUES

PRC questions whether this bill gives PRC authority to regulate cable rates or simply provides a forum for the airing of public grievances.

ALTERNATIVES

PRC offers the following alternative:

> A more effective remedy may be a bill that mandated local governments/franchising authorities to have a public hearing before they would allow a cable company to implement any price increases. In that type of context, the local government/franchising authority would have to acknowledge the conflict between the rationale for the increase and the ultimate result of the increase: i.e. an increase in revenue to the cable television provider and more revenue coming into the local government through an increase in revenues upon which the local government bases its franchise fee percentage.

BE/nt