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SENATE BILL 122

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

John C. Ryan

AN ACT

RELATING TO TELECOMMUNICATIONS; PROVIDING AN EXCEPTION FOR
FILING INDIVIDUAL CONTRACTS OR TARIFFS TO CERTAIN COMPETITIVE
SERVICE PROVIDERS.

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

SECTION 1. Section 63-9A-8 NMSA 1978 (being Laws 1985,
Chapter 242, Section 8, as amended) is amended to read:

"63-9A-8. REGULATION OF RATES AND CHARGES.--

A. In accordance with the policy established in the
New Mexico Telecommunications Act, the commission shall, by its
own motion or upon petition by any interested party, hold
hearings to determine if any public telecommunications service
is subject to effective competition in the relevant market
area. When the commission has made a determination that a
service or part of a service is subject to effective

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1 competition, the commission shall, consistent with the purposes
2 of the New Mexico Telecommunications Act, modify, reduce or
3 eliminate rules, regulations and other requirements applicable
4 to the provision of such service, including the fixing and
5 determining of specific rates, tariffs or fares for the
6 service. The commission's action may include the detariffing
7 of service or the establishment of minimum rates ~~[which]~~ that
8 will cover the costs for the service. Such modification shall
9 be consistent with the maintenance of the availability of
10 access to local exchange service at affordable rates and
11 comparable message ~~[telecommunication]~~ telecommunications
12 service rates, as established by the commission, for comparable
13 markets or market areas, except that volume discounts or other
14 discounts based on reasonable business purposes shall be
15 permitted. Upon petition or request of an affected
16 telecommunications company, the commission, upon a finding that
17 the requirements of Subsection C of this section are met, shall
18 modify the same or similar regulatory requirements for those
19 providers of comparable public telecommunications services in
20 the same relevant markets so that there shall be parity of
21 regulatory standards and requirements for all such providers.
22 Upon written notice to the commission, a provider of
23 competitive local exchange services or intrastate long-distance
24 services may withdraw any tariff for any service; provided,
25 however, that the provider shall post the rates, terms and

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1 conditions on the provider's publicly accessible web site.

2 B. In determining whether a service is subject to
3 effective competition, the commission shall consider the
4 following:

5 (1) the extent to which services are
6 reasonably available from alternate providers in the relevant
7 market area;

8 (2) the ability of alternate providers to make
9 functionally equivalent or substitute services readily
10 available at competitive rates, terms and conditions; and

11 (3) existing economic or regulatory barriers.

12 C. No provider of public telecommunications service
13 may use current revenues earned or expenses incurred in
14 conjunction with any noncompetitive service to subsidize
15 competitive public telecommunications services. In order to
16 avoid cross-subsidization of competitive services by
17 noncompetitive telecommunications services, prices or rates
18 charged for a competitive telecommunications service shall
19 cover the cost for the provision of the service. In any
20 proceeding held pursuant to this section, the party providing
21 the service shall bear the burden of proving that the prices
22 charged for competitive telecommunications services cover cost.

23 D. The commission may, upon its own motion or on
24 the petition of an interested party and after notice to all
25 interested parties and customers and a hearing, reclassify any

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1 service previously determined to be a competitive
2 telecommunications service if after a hearing the commission
3 finds that a service is not subject to effective competition."

4 SECTION 2. Section 63-9A-9 NMSA 1978 (being Laws 1985,
5 Chapter 242, Section 9, as amended) is amended to read:

6 "63-9A-9. REGULATION OF INDIVIDUAL CONTRACTS TO
7 FACILITATE COMPETITION.--

8 A. In accordance with the provisions of this
9 section, the commission shall regulate the rates, charges and
10 service conditions for individual contracts for public
11 telecommunications services in a manner ~~[which]~~ that
12 facilitates effective competition and shall authorize the
13 provision of all or any portion of a public telecommunications
14 service under stated or negotiated terms to any person or
15 entity that has acquired or is preparing to acquire, through
16 construction, lease or any other form of acquisition, similar
17 public telecommunications services from an alternate source.

18 B. At any time, the provider of public
19 telecommunications services may file a verified application
20 with the commission for authorization to provide a public
21 telecommunications service on an individual contract basis.
22 The application shall describe the telecommunications services
23 to be offered, the party to be served and the parties offering
24 the service, together with such other information and in such
25 form as the commission may prescribe. Such additional

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1 information shall be reasonably related to the determination of
2 the existence of a competitive offer. A determination of
3 effective competition pursuant to Section 63-9A-8 NMSA 1978
4 shall not be necessary to file an application or to have an
5 application granted by the commission pursuant to this section.

6 C. The commission shall approve or deny any such
7 application within ten days or such other period as shall be
8 established by the commission, not to exceed sixty days, giving
9 consideration to the requirements of any contract negotiations.
10 If the commission has not acted on any application within the
11 time period established, the application shall be deemed
12 granted. The commission shall deny the application only upon a
13 finding that the application fails to set forth prescribed
14 information or that the subject or comparable services are not
15 being offered to the customer by parties other than the
16 applicant or that the contract fails to cover the costs of the
17 service.

18 D. Within ten days after the conclusion of
19 negotiations, the provider of public telecommunications
20 services shall file with the commission the final contract or
21 other evidence of the service to be provided, together with the
22 charges and other conditions of the service, which shall be
23 maintained by the commission on a confidential basis subject to
24 an appropriate protective order.

25 E. Notwithstanding the provisions of this section,

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1 a provider of competitive local exchange services or intrastate
2 long-distance telecommunications services to business customers
3 in New Mexico is not required to file the individual contract."

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