

AN ACT

RELATING TO RURAL TELECOMMUNICATIONS; AMENDING THE RURAL TELECOMMUNICATIONS ACT OF NEW MEXICO TO AMEND REGULATION OF INCUMBENT RURAL TELECOMMUNICATIONS CARRIERS.

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

SECTION 1. Section 63-9H-1 NMSA 1978 (being Laws 1999, Chapter 295, Section 1) is amended to read:

"63-9H-1. SHORT TITLE.--Chapter 63, Article 9H NMSA 1978 may be cited as the "Rural Telecommunications Act of New Mexico"."

SECTION 2. Section 63-9H-3 NMSA 1978 (being Laws 1999, Chapter 295, Section 3) is amended to read:

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

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

B. "basic service" means service that is provided to a rural end-user customer that is consistent with the federal act;

C. "cable service" means the transmission to subscribers of video programming or other programming service

and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service;

D. "commission" means the public regulation commission;

E. "eligible telecommunications carrier" means an eligible telecommunications carrier as defined in the federal act;

F. "federal act" means the federal Telecommunications Act of 1996;

G. "fund" means the state rural universal service fund;

H. "incumbent local exchange carrier" means a person that:

(1) was designated as an eligible telecommunications carrier by the state corporation commission in Docket #97-93-TC by order dated October 23, 1997, or that provided local exchange service in this state on February 8, 1996; or

(2) became a successor or assignee of an incumbent local exchange carrier;

I. "incumbent rural telecommunications carrier" means an incumbent local exchange carrier that serves fewer than fifty thousand access lines within the state and has been designated as an eligible telecommunications carrier by the

state corporation commission or the public regulations commission;

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

K. "local exchange service" means the transmission of two-way interactive switched voice communications furnished by a telecommunications carrier within a local exchange area;

L. "long distance service" means telecommunications service between local exchange areas that originate and terminate within the state;

M. "private telecommunications service" means a system, including its construction, maintenance or operation for the provision of telecommunications service, or any portion of that service, by a person for the sole and exclusive use of that person and not for resale, directly or indirectly. For purposes of this definition, the person that may use the service includes any affiliates of the person if at least eighty percent of the assets or voting stock of the affiliates is owned by the person. If any other person uses the telecommunications service, whether for hire or not, the private telecommunications service is a public telecommunications service;

N. "public telecommunications service" means the

transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, lightwaves or other electromagnetic means originating and terminating in this state regardless of actual call routing. "Public telecommunications service" does not include the provision of terminal equipment used to originate or terminate the service; private telecommunications service; broadcast transmissions by radio, television and satellite broadcast stations regulated by the federal communications commission; radio common carrier services, including mobile telephone service and radio paging; or cable service; and

O. "telecommunications carrier" means a person that provides public telecommunications service."

SECTION 3. Section 63-9H-4 NMSA 1978 (being Laws 1999, Chapter 295, Section 4) is amended to read:

"63-9H-4. REGULATION BY COMMISSION.--

A. Except as otherwise provided in the Rural Telecommunications Act of New Mexico or the federal act, each public telecommunications service is declared to be affected with the public interest and, as such, subject to the provisions of those acts, including the regulation thereof as provided in those acts.

B. The commission has exclusive jurisdiction to regulate incumbent rural telecommunications carriers only in the manner and to the extent authorized by the Rural

Telecommunications Act of New Mexico, and Section 63-7-1.1 NMSA 1978 does not apply; provided, however, that the commission's jurisdiction includes the regulation of wholesale rates, including access charges and interconnection agreements consistent with federal law and its enforcement and a determination of participation in low-income telephone service assistance programs pursuant to the Low Income Telephone Service Assistance Act.

C. The commission shall adopt rules consistent with the requirement for relaxed regulation for incumbent rural telecommunications carriers set forth in the Rural Telecommunications Act of New Mexico that provide for:

(1) reduced filing requirements for applicants in rate increase proceedings under the Rural Telecommunications Act of New Mexico and proceedings under that act seeking payments from the fund; and

(2) expedited consideration in all proceedings initiated pursuant to the Rural Telecommunications Act of New Mexico in order to reduce the cost and burden for incumbent rural telecommunications carriers and other applicants."

SECTION 4. Section 63-9H-6 NMSA 1978 (being Laws 1999, Chapter 295, Section 6, as amended) is amended to read:

"63-9H-6. STATE RURAL UNIVERSAL SERVICE FUND--
ESTABLISHMENT.--

A. No later than January 1, 2000, the commission

shall implement a "state rural universal service fund" to maintain and support at affordable rates those public telecommunications services and comparable retail alternative services provided by telecommunications carriers that have been designated as eligible telecommunications carriers, including commercial mobile radio services carriers, as are determined by the commission. All of the balances in the existing New Mexico universal service fund as of July 1, 1999 shall be transferred into the state rural universal service fund.

B. The fund shall be financed by a surcharge on intrastate retail public telecommunications services to be determined by the commission, excluding services provided pursuant to a low-income telephone assistance plan billed to end-user customers by a telecommunications carrier, and excluding all amounts from surcharges, gross receipts taxes, excise taxes, franchise fees and similar charges. For the purpose of funding the fund, the commission has the authority to apply the surcharge on intrastate retail public telecommunications services provided by telecommunications carriers and to comparable retail alternative services provided by telecommunications carriers, including commercial mobile radio services, at a competitively and technologically neutral rate or rates to be determined by the commission. In prescribing competitively and technologically neutral

surcharge rates, the commission may make distinctions between services subject to a surcharge, but it shall require all carriers subject to the surcharge to apply uniform surcharge rates for the same or comparable services. Money deposited in the fund is not public money, and the administration of the fund is not subject to the provisions of law regulating public funds. The commission shall not apply this surcharge to a private telecommunications network; to the state, a county, a municipality or other governmental entity; to a public school district; to a public institution of higher education; or to an Indian nation, tribe or pueblo.

C. The fund shall be competitively and technologically neutral, equitable and nondiscriminatory in its collection and distribution of funds, portable between eligible telecommunications carriers and additionally shall provide a specific, predictable and sufficient support mechanism as determined by the commission that reduces intrastate switched access charges to interstate switched access charge levels in a revenue-neutral manner and ensures universal service in the state.

D. The commission shall:

(1) establish eligibility criteria for participation in the fund consistent with federal law that ensure the availability of service at affordable rates. The eligibility criteria shall not restrict or limit an eligible

telecommunications carrier from receiving federal universal service support;

(2) provide for the collection of the surcharge on a competitively neutral basis and for the administration and disbursement of money from the fund;

(3) determine those services requiring support from the fund;

(4) provide for the separate administration and disbursement of federal universal service funds consistent with federal law; and

(5) establish affordability benchmark rates for local residential and business services that shall be utilized in determining the level of support from the fund. The process for determining subsequent adjustments to the benchmark shall be established through a rulemaking.

E. All incumbent telecommunications carriers and competitive carriers already designated as eligible telecommunications carriers for the fund shall be eligible for participation in the fund. All other carriers that choose to become eligible to receive support from the fund may petition the commission to be designated as an eligible telecommunications carrier for the fund. The commission may grant eligible carrier status to a competitive carrier in a rural area upon a finding that granting the application is in the public interest. In making a public interest finding, the

commission shall consider at least the following items:

(1) whether granting eligible carrier status to multiple carriers in a designated area is likely to result in more customer choice;

(2) the impact of designation of an additional eligible carrier on the size of the fund;

(3) the unique advantages and disadvantages of the competitor's service offering;

(4) any commitments made regarding the quality of telephone service; and

(5) the competitive carrier's willingness and ability to offer service throughout the designated service areas within a reasonable time frame.

F. The commission shall adopt rules, including a provision for variances, for the implementation and administration of the fund in accordance with the provisions of this section. The rules shall enumerate the appropriate uses of fund support and any restrictions on the use of fund support by eligible telecommunications carriers and shall provide for annual reporting by eligible telecommunications carriers verifying that the reporting carrier continues to meet the requirements for designation as an eligible telecommunications carrier for purposes of the fund and is in compliance with the commission's rules, including the provisions regarding use of support from the fund.

G. The commission shall, upon implementation of the fund, select a neutral third party administrator to collect, administer and disburse money from the fund under the supervision and control of the commission pursuant to established criteria and rules promulgated by the commission. The administrator may be reasonably compensated for the specified services from the surcharge proceeds to be received by the fund pursuant to Subsection B of this section. For purposes of this subsection, the commission shall not be a neutral third party administrator.

H. The fund established by the commission shall ensure the availability of local telecommunications service as determined by the commission at affordable rates in rural high cost areas of the state.

I. Beginning April 1, 2006, the commission shall commence the phase-in of reductions in intrastate switched access charges. By May 1, 2008, the commission shall ensure that intrastate switched access charges are equal to interstate switched access charges established by the federal communications commission as of January 1, 2006. Nothing in this section shall preclude the commission from considering further adjustments to intrastate switched access charges based on changes to interstate switched access charges after May 1, 2008.

J. To ensure that providers of intrastate retail

communications service contribute to the fund and to further ensure that the surcharge to be paid by the end-user customer will be held to a minimum, no later than November 1, 2005, the commission shall adopt rules, or take other appropriate action, to require all such providers to participate in a plan to ensure accurate reporting, and shall establish a cap on the surcharge.

K. The commission shall authorize payments from the fund to incumbent local exchange carriers in combination with revenue-neutral rate rebalancing up to the affordability benchmark rates, in an amount equal to the reduction in revenues that occurs as a result of reduced intrastate switched access charges. The commission shall determine the methodology to be used to authorize payments to all other carriers that apply for and receive eligible carrier status. Any reductions in charges for access services resulting from compliance with this section shall be passed on for the benefit of consumers in New Mexico.

L. The commission may also authorize payments from the fund to incumbent rural telecommunications carriers or to telecommunications carriers providing comparable retail alternative services that have been designated as eligible telecommunications carriers serving in high-cost areas of the state upon a finding, based on factors that may include a carrier's revenues, expenses or investment, by the commission

that such payments are needed to ensure the widespread availability and affordability of residential local exchange service. The commission shall decide cases filed pursuant to this subsection with reasonable promptness, with or without a hearing, but no later than six months following the filing of an application seeking payments from the fund, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months.

M. By December 1, 2008, the fund administrator shall make a report to the commission and the legislature. The report shall include the effects of access reductions. The report shall also make recommendations for any changes to the structure, size or purposes of the fund."

SECTION 5. Section 63-9H-7 NMSA 1978 (being Laws 1999, Chapter 295, Section 7, as amended) is amended to read:

"63-9H-7. REGULATION OF RETAIL RATES OF INCUMBENT RURAL TELECOMMUNICATIONS CARRIER.--

A. Rates for retail rural public telecommunications services provided by an incumbent rural telecommunications carrier shall be subject to regulation by the commission only in the manner and to the extent authorized by this section.

B. An incumbent rural telecommunications carrier shall file tariffs for all retail public telecommunications

services that, other than residential local exchange service, shall be effective after ten days' notice to its customers and the commission. An incumbent rural telecommunications carrier shall remain subject to complaint by an interested party subject to Section 63-9H-10 NMSA 1978.

C. An incumbent rural telecommunications carrier may increase its rates for residential local exchange service in the manner provided in Subsection B of this section to comply with requirements imposed by any federal or state law or rule. The procedures of Subsections D, E and F of this section shall not apply to increases under this subsection.

D. Except as provided in Subsection C of this section, rates for residential local exchange service may be increased by an incumbent rural telecommunications carrier only after sixty days' notice to all affected subscribers. The notice of increase shall include:

- (1) the reasons for the rate increase;
- (2) a description of the affected service;
- (3) an explanation of the right of the subscriber to petition the commission for a public hearing on the rate increase;
- (4) a list of local exchange areas that are affected by the proposed rate increase; and
- (5) the dates, times and places for the public informational meetings required by this section.

E. An incumbent rural telecommunications carrier that proposes to increase its rates for residential local exchange service pursuant to Subsection D of this section shall hold at least one public informational meeting in each public regulation commissioner's district as established by the Public Regulation Commission Apportionment Act in which there is a local exchange area affected by the rate change.

F. Residential local exchange service rates increased by an incumbent rural telecommunications carrier pursuant to Subsections D and E of this section shall be reviewed by the commission only upon written protest signed by two and one-half percent of all affected subscribers or upon the commission staff's own motion for good cause. The protest shall specifically set forth the particular rate or charge as to which review is requested, the reasons for the requested review and the relief that the persons protesting desire. If a proper protest is presented to the commission within sixty days from the date notice of the rate change was sent to affected subscribers of an incumbent rural telecommunications carrier, the commission may accept and file the complaint and, upon proper notice, may suspend the rates at issue during the pendency of the proceedings and reinstate the rates previously in effect and shall hold and complete a hearing thereon within ninety days after filing to determine if the rates as proposed are fair, just and reasonable. The commission may, within

sixty days after close of the hearing, enter an order adjusting the rates at issue, except that the commission shall not set any rate below the intrastate cost of providing the service, which shall include the cost methodology and rate of return authorized by the federal communications commission. In the order, the commission may order a refund of amounts collected in excess of the rates and charges as approved at the hearing, which may be paid as a credit against billings for future services. If the complaint is denied, the commission shall enter an order denying the complaint within sixty days after the close of the hearing, and the rates shall be deemed approved. For purposes of this section, cost shall also include a reasonable amount of joint and common costs incurred by the telecommunications carrier in its operations and may include other accounting adjustments authorized by the commission.

G. An incumbent rural telecommunications carrier may at any time elect to file an application with the commission requesting the commission to prescribe fair, just and reasonable rates for the carrier, based on the carrier's revenue, expenses and investment in accordance with traditional rate-making principles factors that may include the carrier's revenues, expenses or investment, in a manner consistent with the policy calling for relaxed regulation of incumbent rural telecommunications carriers expressed in

Section 63-9H-2 NMSA 1978 and Subsection C of Section 63-9H-4 NMSA 1978. The commission shall decide cases filed under this subsection with reasonable promptness but no later than nine months following the filing of an application, unless the commission finds that a longer time will be required, in which case the commission may extend the period for an additional three months.

H. Rates for local exchange, vertical and long distance service to retail end-user customers may be reduced to a level equal to, but not below, the intrastate cost, which shall include the cost methodology and rate of return authorized by the federal communications commission. If an incumbent rural telecommunications carrier loses its exemption pursuant to Section 251 of the federal act, the rate for a service, excluding basic service, must cover the cost of the service, including the imputed rate of wholesale service elements as may be required by the commission. The cost of long distance service must also include any interexchange access rates charged to another telecommunications carrier for the service.

I. An incumbent rural telecommunications carrier operating pursuant to this section shall have the ability to offer or discontinue offering special incentives, discounts, packaged offerings, temporary rate waivers or other promotions, or to offer individual contracts." _____