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HOUSE BILL 242

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY  
Georgene Louis

AN ACT

RELATING TO COMMUNICATIONS; AMENDING AND REPEALING SECTIONS OF  
THE NEW MEXICO TELECOMMUNICATIONS ACT TO EQUALIZE REGULATION  
AMONG INCUMBENT LOCAL EXCHANGE CARRIERS.

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

**SECTION 1.** Section 63-9A-2 NMSA 1978 (being Laws 1985,  
Chapter 242, Section 2, as amended by Laws 2000, Chapter 100,  
Section 3 and also by Laws 2000, Chapter 102, Section 3) is  
amended to read:

"63-9A-2. PURPOSE.--The legislature declares that it  
remains the policy of the state of New Mexico to maintain the  
availability of access to telecommunications services at  
affordable rates. Furthermore, it is the policy of this state  
to have comparable telecommunications service rates, as  
established by the commission, for comparable markets or market

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1 areas. To the extent that it is consistent with maintaining  
2 availability of access to service at affordable rates and  
3 comparable telecommunications service rates, it is further the  
4 policy of this state to encourage competition in the provision  
5 of public telecommunications services, thereby allowing access  
6 by the public to resulting rapid advances in telecommunications  
7 technology. It is the purpose of the New Mexico  
8 Telecommunications Act to extend to all consumers and carriers  
9 in the state the benefits of the regulatory flexibility  
10 previously provided only to incumbent rural telecommunications  
11 carriers and to permit a regulatory framework that will allow  
12 an orderly transition from a regulated telecommunications  
13 industry to a competitive market environment. It is further  
14 the intent of the legislature that the encouragement of  
15 competition in the provision of public telecommunications  
16 services will result in greater investment in the  
17 telecommunications infrastructure in the state, improved  
18 service quality and operations and lower prices for such  
19 services."

20 SECTION 2. Section 63-9A-3 NMSA 1978 (being Laws 1985,  
21 Chapter 242, Section 3, as amended) is amended to read:

22 "63-9A-3. DEFINITIONS.--As used in the New Mexico  
23 Telecommunications Act:

24 A. "affordable rates" means local exchange service  
25 rates that promote universal service within a local exchange

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1 service area, giving consideration to the economic conditions  
2 and costs to provide service in such area;

3 B. "cable television service" means the one-way  
4 transmission to subscribers of video programming or other  
5 programming service and subscriber interaction, if any, that is  
6 required for the selection of such video programming or other  
7 programming service;

8 C. "commission" means the public regulation  
9 commission;

10 ~~D. "competitive telecommunications service" means~~  
11 ~~a service that has been determined to be subject to effective~~  
12 ~~competition pursuant to Section 63-9A-8 NMSA 1978;~~

13 ~~E. "effective competition" means that the customers~~  
14 ~~of the service have reasonably available and comparable~~  
15 ~~alternatives to the service;~~

16 ~~F.]~~ D. "fund" means the state rural universal  
17 service fund;

18 E. "incumbent local exchange carrier" means a  
19 person that:

20 (1) was designated as an eligible  
21 telecommunications carrier by the state corporation commission  
22 in Docket #97-93-TC by order dated October 23, 1997 or that  
23 provided local exchange service in this state on February 8,  
24 1996; or

25 (2) became a successor or assignee of an

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1 incumbent local exchange carrier;

2 F. "incumbent rural telecommunications carrier"  
3 means an incumbent local exchange carrier that serves fewer  
4 than fifty thousand access lines within the state and has been  
5 designated as an eligible telecommunications carrier by the  
6 state corporation commission or the public regulation  
7 commission;

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

12 H. "local exchange service" means the transmission  
13 of two-way interactive switched voice communications furnished  
14 by a telecommunications company within a local exchange area;

15 I. "message telecommunications service" means  
16 telecommunications service between local exchange areas within  
17 the state for which charges are made on a per-unit basis, not  
18 including wide-area telecommunications service, or its  
19 equivalent, or individually negotiated contracts for  
20 telecommunications services;

21 ~~[J. "mid-size carrier" means a telecommunications~~  
22 ~~company with more than fifty thousand but less than three~~  
23 ~~hundred seventy-five thousand access lines in the state;~~

24 ~~K. "noncompetitive telecommunications service"~~  
25 ~~means a service that has not been determined to be subject to~~

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1 ~~effective competition pursuant to Section 63-9A-8 NMSA 1978;~~

2           ~~H.~~ J. "private telecommunications service" means a  
3 system, including the construction, maintenance or operation  
4 thereof, for the provision of telecommunications service, or  
5 any portion of that service, by a person for the sole and  
6 exclusive use of that person and not for resale, directly or  
7 indirectly. For purposes of this definition, the person that  
8 may use such service includes any affiliates of the person if  
9 at least eighty percent of the assets or voting stock of the  
10 affiliates is owned by the person. If any other person uses  
11 the telecommunications service, whether for hire or not, the  
12 private telecommunications service is a public  
13 telecommunications service;

14           ~~M.~~ K. "public telecommunications service" means  
15 the transmission of signs, signals, writings, images, sounds,  
16 messages, data or other information of any nature by wire,  
17 radio, lightwaves or other electromagnetic means originating  
18 and terminating in this state regardless of actual call  
19 routing. "Public telecommunications service" does not include  
20 the provision of terminal equipment used to originate or  
21 terminate such service; private telecommunications service;  
22 broadcast transmissions by radio, television and satellite  
23 broadcast stations regulated by the federal communications  
24 commission; radio common carrier services, including mobile  
25 telephone service and radio paging; or one-way cable television

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1 service; and

2 [N-] L. "telecommunications company" means a person  
3 that provides public telecommunications service."

4 SECTION 3. Section 63-9A-5 NMSA 1978 (being Laws 1985,  
5 Chapter 242, Section 5) is amended to read:

6 "63-9A-5. REGULATION BY COMMISSION.--

7 A. Except as otherwise provided in the New Mexico  
8 Telecommunications Act, each public telecommunications service  
9 is declared to be affected with the public interest and, as  
10 such, subject to the provisions of that act, including the  
11 regulation thereof as [~~hereinafter~~] provided in that act.

12 B. The commission has exclusive jurisdiction to  
13 regulate incumbent local exchange carriers that serve more than  
14 fifty thousand access lines within the state only in the manner  
15 and to the extent authorized by the New Mexico  
16 Telecommunications Act, and Section 63-7-1.1 NMSA 1978 does not  
17 apply; provided, however, that the commission's jurisdiction  
18 includes the regulation of wholesale rates, including access  
19 charges and interconnection agreements consistent with federal  
20 law and its enforcement and determinations of participation in  
21 low-income telephone service assistance programs pursuant to  
22 the Low Income Telephone Service Assistance Act.

23 C. For incumbent local exchange carriers that serve  
24 more than fifty thousand access lines within the state, the  
25 commission shall adopt relaxed regulations that provide for:

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1                   (1) reduced filing requirements for applicants  
2 in rate increase proceedings under the New Mexico  
3 Telecommunications Act;

4                   (2) expedited consideration in all proceedings  
5 initiated pursuant to the New Mexico Telecommunications Act in  
6 order to reduce the cost and burden for incumbent local  
7 exchange carriers and other applicants; and

8                   (3) regulations not to be applicable to  
9 incumbent rural telecommunications carriers."

10           SECTION 4. Section 63-9A-8 NMSA 1978 (being Laws 1985,  
11 Chapter 242, Section 8, as amended) is amended to read:

12           "63-9A-8. REGULATION OF RATES AND CHARGES.--

13           ~~[A. In accordance with the policy established in the~~  
14 ~~New Mexico Telecommunications Act, the commission shall, by its~~  
15 ~~own motion or upon petition by any interested party, hold~~  
16 ~~hearings to determine if any public telecommunications service~~  
17 ~~is subject to effective competition in the relevant market~~  
18 ~~area. When the commission has made a determination that a~~  
19 ~~service or part of a service is subject to effective~~  
20 ~~competition, the commission shall, consistent with the purposes~~  
21 ~~of the New Mexico Telecommunications Act, modify, reduce or~~  
22 ~~eliminate rules, regulations and other requirements applicable~~  
23 ~~to the provision of such service, including the fixing and~~  
24 ~~determining of specific rates, tariffs or fares for the~~  
25 ~~service. The commission's action may include the detariffing~~

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1 ~~of service or the establishment of minimum rates which will~~  
2 ~~cover the costs for the service. Such modification shall be~~  
3 ~~consistent with the maintenance of the availability of access~~  
4 ~~to local exchange service at affordable rates and comparable~~  
5 ~~message telecommunication service rates, as established by the~~  
6 ~~commission, for comparable markets or market areas, except that~~  
7 ~~volume discounts or other discounts based on reasonable~~  
8 ~~business purposes shall be permitted.]~~

9 A. Rates for retail public telecommunications  
10 services provided by an incumbent local exchange carrier that  
11 serves more than fifty thousand access lines within the state  
12 shall be subject to regulation by the commission only in the  
13 manner and to the extent authorized by this section.

14 B. An incumbent local exchange carrier that serves  
15 more than fifty thousand access lines within the state shall  
16 file tariffs for all retail public telecommunications services  
17 that, other than residential local exchange service, shall be  
18 effective after ten days' notice to its customers and the  
19 commission. An incumbent local exchange carrier that serves  
20 more than fifty thousand access lines within the state shall  
21 remain subject to complaint by an interested party subject to  
22 Section 63-9H-10 NMSA 1978.

23 C. An incumbent local exchange carrier that serves  
24 more than fifty thousand access lines within the state may  
25 increase its rates for residential local exchange service in

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1 the manner provided in Subsection B of this section to comply  
2 with requirements imposed by any federal or state law or rule.  
3 The procedures of Subsections D, E and F of this section shall  
4 not apply to increases under this subsection.

5 D. Except as provided in Subsection C of this  
6 section, rates for residential local exchange service may be  
7 increased by an incumbent local exchange carrier that serves  
8 more than fifty thousand access lines within the state only  
9 after sixty days' notice to all affected subscribers. The  
10 notice of increase shall include:

11 (1) the reasons for the rate increase;  
12 (2) a description of the affected service;  
13 (3) an explanation of the right of the  
14 subscriber to petition the commission for a public hearing on  
15 the rate increase;

16 (4) a list of local exchange areas that are  
17 affected by the proposed rate increase; and

18 (5) the dates, times and places for the public  
19 informational meetings required by this section.

20 E. An incumbent local exchange carrier that serves  
21 more than fifty thousand access lines within the state that  
22 proposes to increase its rates for residential local exchange  
23 service pursuant to Subsection D of this section shall hold at  
24 least one public informational meeting in each public  
25 regulation commissioner's district as established by the Public

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1 Regulation Commission Apportionment Act in which there is a  
2 local exchange area affected by the rate change.

3 F. Residential local exchange service rates increased  
4 by an incumbent local exchange carrier that serves more than  
5 fifty thousand access lines within the state pursuant to  
6 Subsections D and E of this section shall be reviewed by the  
7 commission only upon written protest signed by two and one-half  
8 percent of all affected subscribers or upon the commission  
9 staff's own motion for good cause. The protest shall  
10 specifically set forth the particular rate or charge as to  
11 which review is requested, the reasons for the requested review  
12 and the relief that the persons protesting desire. If a proper  
13 protest is presented to the commission within sixty days from  
14 the date notice of the rate change was sent to affected  
15 subscribers of an incumbent local exchange carrier that is not  
16 an incumbent rural telecommunications carrier, the commission  
17 may accept and file the complaint and, upon proper notice, may  
18 suspend the rates at issue during the pendency of the  
19 proceedings and reinstate the rates previously in effect and  
20 shall hold and complete a hearing thereon within ninety days  
21 after filing to determine if the rates as proposed are fair,  
22 just and reasonable. The commission may, within sixty days  
23 after close of the hearing, enter an order adjusting the rates  
24 at issue, except that the commission shall not set any rate  
25 below the intrastate cost of providing the service. In the

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1 order, the commission may order a refund of amounts collected  
2 in excess of the rates and charges as approved at the hearing,  
3 which may be paid as a credit against billings for future  
4 services. If the complaint is denied, the commission shall  
5 enter an order denying the complaint within sixty days after  
6 the close of the hearing, and the rates shall be deemed  
7 approved. For purposes of this section, cost shall also  
8 include a reasonable amount of joint and common costs incurred  
9 by the incumbent local exchange carrier that serves more than  
10 fifty thousand access lines within the state in its operations  
11 and may include other accounting adjustments authorized by the  
12 commission.

13 G. Rates for local exchange, vertical and long  
14 distance service to retail end-user customers may be reduced to  
15 a level equal to, but not below, the intrastate cost. If an  
16 incumbent local exchange carrier that serves more than fifty  
17 thousand access lines within the state loses or lacks an  
18 exemption pursuant to federal law, the rate for a service,  
19 excluding basic service, must cover the cost of the service,  
20 including the imputed rate of wholesale service elements as may  
21 be required by the commission. The cost of long distance  
22 service must also include any interexchange access rates  
23 charged to another telecommunications carrier for the service.

24 H. An incumbent local exchange carrier that serves  
25 more than fifty thousand access lines within the state shall

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1 have the ability to offer or discontinue offering special  
2 incentives, discounts, packaged offerings, temporary rate  
3 waivers or other promotions, or to offer individual contracts.

4 I. Upon petition or request of an affected  
5 telecommunications company, the commission, upon a finding that  
6 the requirements of [~~Subsection C of~~] this section are met,  
7 shall modify the same or similar regulatory requirements for  
8 those providers of comparable public telecommunications  
9 services in the same relevant markets so that there shall be  
10 parity of regulatory standards and requirements for all such  
11 providers.

12 [~~B. In determining whether a service is subject to~~  
13 ~~effective competition, the commission shall consider the~~  
14 ~~following:~~

15 (1) ~~the extent to which services are reasonably~~  
16 ~~available from alternate providers in the relevant market area;~~

17 (2) ~~the ability of alternate providers to make~~  
18 ~~functionally equivalent or substitute services readily~~  
19 ~~available at competitive rates, terms and conditions; and~~

20 (3) ~~existing economic or regulatory barriers.~~

21 G. ~~No provider of public telecommunications service~~  
22 ~~may use current revenues earned or expenses incurred in~~  
23 ~~conjunction with any noncompetitive service to subsidize~~  
24 ~~competitive public telecommunications services. In order to~~  
25 ~~avoid cross-subsidization of competitive services by~~

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1 ~~noncompetitive telecommunications services, prices or rates~~  
2 ~~charged for a competitive telecommunications service shall~~  
3 ~~cover the cost for the provision of the service. In any~~  
4 ~~proceeding held pursuant to this section, the party providing~~  
5 ~~the service shall bear the burden of proving that the prices~~  
6 ~~charged for competitive telecommunications services cover cost.~~

7 ~~D. The commission may, upon its own motion or on the~~  
8 ~~petition of an interested party and after notice to all~~  
9 ~~interested parties and customers and a hearing, reclassify any~~  
10 ~~service previously determined to be a competitive~~  
11 ~~telecommunications service if after a hearing the commission~~  
12 ~~finds that a service is not subject to effective competition.]"~~

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

15 "63-9A-9. REGULATION OF INDIVIDUAL CONTRACTS TO  
16 FACILITATE COMPETITION.--

17 A. In accordance with the provisions of this section,  
18 the commission shall regulate the rates, charges and service  
19 conditions for individual contracts for public  
20 telecommunications services in a manner [~~which~~] that  
21 facilitates effective competition and shall authorize the  
22 provision of all or any portion of a public telecommunications  
23 service under stated or negotiated terms to any person or  
24 entity that has acquired or is preparing to acquire, through  
25 construction, lease or any other form of acquisition, similar

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1 public telecommunications services from an alternate source.

2 B. At any time, the provider of public  
3 telecommunications services may file a verified application  
4 with the commission for authorization to provide a public  
5 telecommunications service on an individual contract basis.  
6 The application shall describe the telecommunications services  
7 to be offered, the party to be served and the parties offering  
8 the service, together with such other information and in such  
9 form as the commission may prescribe. Such additional  
10 information shall be reasonably related to the determination of  
11 the existence of a competitive offer. [~~A determination of~~  
12 ~~effective competition pursuant to Section 63-9A-8 NMSA 1978~~  
13 ~~shall not be necessary to file an application or to have an~~  
14 ~~application granted by the commission pursuant to this~~  
15 ~~section.~~]

16 C. An application is deemed approved when filed  
17 unless the commission denies it. The commission shall approve  
18 or deny any such application within ten days or such other  
19 period as shall be established by the commission, not to exceed  
20 sixty days, giving consideration to the requirements of any  
21 contract negotiations. If the commission has not acted on any  
22 application within the time period established, the application  
23 shall be deemed granted. The commission shall deny the  
24 application only upon a finding that the application fails to  
25 set forth prescribed information or that the subject or

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1 comparable services are not being offered to the customer by  
2 parties other than the applicant or that the contract fails to  
3 cover the costs of the service.

4 D. Within ten days after the conclusion of  
5 negotiations, the provider of public telecommunications  
6 services shall file with the commission the final contract or  
7 other evidence of the service to be provided, together with the  
8 charges and other conditions of the service, which shall be  
9 maintained by the commission on a confidential basis subject to  
10 an appropriate protective order."

11 SECTION 6. REPEAL.--Sections 63-9A-5.1, 63-9A-5.2,  
12 63-9A-8.1 and 63-9A-8.2 NMSA 1978 (being Laws 2004, Chapter 3,  
13 Sections 4 and 5, Laws 1998, Chapter 108, Section 61 and Laws  
14 2000, Chapter 100, Section 4 and Laws 2000, Chapter 102,  
15 Section 4, as amended) are repealed.