

1 SENATE BILL 308

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Michael Padilla

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10 AN ACT

11 RELATING TO TELECOMMUNICATIONS; AMENDING A SECTION OF THE RURAL  
12 TELECOMMUNICATIONS ACT OF NEW MEXICO TO UPDATE STATE RURAL  
13 UNIVERSAL SERVICE FUND PROVISIONS AND ESTABLISH A BROADBAND  
14 PROGRAM ADMINISTERED BY THE PUBLIC REGULATION COMMISSION TO  
15 FACILITATE EXPANSION OF BROADBAND SERVICE IN RURAL AREAS.

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

18 SECTION 1. Section 63-9H-6 NMSA 1978 (being Laws 1999,  
19 Chapter 295, Section 6, as amended) is amended to read:

20 "63-9H-6. STATE RURAL UNIVERSAL SERVICE FUND--  
21 ESTABLISHMENT.--

22 A. [~~No later than January 1, 2000~~] The commission  
23 shall implement and maintain a "state rural universal service  
24 fund" to maintain and support [~~at affordable rates those public~~  
25 ~~telecommunications services and comparable retail alternative~~

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1 ~~services]~~ universal service that is provided by  
2 telecommunications carriers [~~that have been~~] designated as  
3 eligible telecommunications carriers, including commercial  
4 mobile radio services carriers, as are determined by the  
5 commission. [~~All of the balances in the existing New Mexico~~  
6 ~~universal service fund as of July 1, 1999 shall be transferred~~  
7 ~~into the state rural universal service fund]~~ As used in this  
8 section, "universal service" means basic local exchange  
9 service, comparable retail alternative services at affordable  
10 rates, service pursuant to a low-income telephone assistance  
11 plan and broadband internet access service.

12 B. The fund shall be financed by a surcharge on  
13 intrastate retail public telecommunications services to be  
14 determined by the commission, excluding services provided  
15 pursuant to a low-income telephone assistance plan billed to  
16 end-user customers by a telecommunications carrier, and  
17 excluding all amounts from surcharges, gross receipts taxes,  
18 excise taxes, franchise fees and similar charges. For the  
19 purpose of funding the fund, the commission has the authority  
20 to apply the surcharge on intrastate retail public  
21 telecommunications services provided by telecommunications  
22 carriers [~~and to comparable retail alternative services~~  
23 ~~provided by telecommunications carriers]~~, including commercial  
24 mobile radio services and voice over internet protocol  
25 services, at a competitively and technologically neutral rate

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1 or rates to be determined by the commission. The commission  
2 may establish the surcharge as a percentage of intrastate  
3 retail public telecommunications services revenue or as a fixed  
4 amount applicable to each communication connection. For  
5 purposes of this section, a "communication connection" means a  
6 telephone access line, wireless voice connection, unique voice  
7 over internet protocol service connection or other uniquely  
8 identifiable functional equivalent. In prescribing  
9 competitively and technologically neutral [~~surcharge rates~~]  
10 surcharges, the commission may make distinctions between  
11 services subject to a surcharge, but it shall require all  
12 carriers subject to the surcharge to apply uniform [~~surcharge~~  
13 ~~rates~~] surcharges for the same or comparable services. Money  
14 deposited in the fund is not public money, and the  
15 administration of the fund is not subject to the provisions of  
16 law regulating public funds. The commission shall not apply  
17 this surcharge to a private telecommunications network; to the  
18 state, a county, a municipality or other governmental entity;  
19 to a public school district; to a public institution of higher  
20 education; [~~or~~] to an Indian nation, tribe or pueblo; or to  
21 Native American customers who reside on tribal or pueblo land.

22 C. The fund shall be competitively and  
23 technologically neutral, equitable and nondiscriminatory in its  
24 collection and distribution of funds, portable between eligible  
25 telecommunications carriers and additionally shall provide a

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1 specific, predictable and sufficient support mechanism as  
2 determined by the commission that [~~reduces intrastate switched~~  
3 ~~access charges to interstate switched access charge levels in a~~  
4 ~~revenue neutral manner and~~] ensures universal service in the  
5 state.

6 D. The commission shall:

7 (1) establish eligibility criteria for  
8 participation in the fund consistent with federal law that  
9 ensure the availability of universal service at affordable  
10 rates. The eligibility criteria shall not restrict or limit an  
11 eligible telecommunications carrier from receiving federal  
12 universal service support;

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

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

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

21 (5) establish affordability benchmark rates  
22 for local residential and business services that shall be  
23 utilized in determining the level of support from the fund.

24 The process for determining subsequent adjustments to the  
25 benchmark shall be established through a rulemaking.

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1           E. All incumbent telecommunications carriers and  
2 competitive carriers already designated as eligible  
3 telecommunications carriers for the fund shall be eligible for  
4 participation in the fund. All other carriers that choose to  
5 become eligible to receive support from the fund may petition  
6 the commission to be designated as an eligible  
7 telecommunications carrier for the fund. The commission may  
8 grant eligible carrier status to a competitive carrier in a  
9 rural area upon a finding that granting the application is in  
10 the public interest. In making a public interest finding, the  
11 commission shall consider at least the following items:

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

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

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

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

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

24           F. The commission shall adopt rules, including a  
25 provision for variances, for the implementation and

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1 administration of the fund in accordance with the provisions of  
2 this section. The rules shall enumerate the appropriate uses  
3 of fund support and any restrictions on the use of fund support  
4 by eligible telecommunications carriers [~~and~~]. The rules shall  
5 require that an eligible telecommunications carrier receiving  
6 support from the fund pursuant to Subsection K, L or M of this  
7 section must expend no less than sixty percent of the support  
8 it receives to deploy and maintain broadband internet access  
9 services in rural areas of the state. The rules also shall  
10 provide for annual reporting by eligible telecommunications  
11 carriers verifying that the reporting carrier continues to meet  
12 the requirements for designation as an eligible  
13 telecommunications carrier for purposes of the fund and is in  
14 compliance with the commission's rules, including the  
15 provisions regarding use of support from the fund.

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

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1           H. The fund established by the commission shall  
2 ensure the availability of [~~local telecommunications~~] universal  
3 service as determined by the commission at affordable rates in  
4 rural [~~high-cost~~] areas of the state; provided, however, that  
5 nothing in this section shall be construed as granting any  
6 authority to the commission to impose the surcharge on or  
7 otherwise regulate broadband internet access services.

8           I. [~~Beginning April 1, 2006, the commission shall~~  
9 ~~commence the phase-in of reductions in intrastate switched~~  
10 ~~access charges. By May 1, 2008]~~ The commission shall ensure  
11 that intrastate switched access charges are equal to interstate  
12 switched access charges established by the federal  
13 communications commission as of January 1, 2006. Nothing in  
14 this section shall preclude the commission from considering  
15 further adjustments to intrastate switched access charges based  
16 on changes to interstate switched access charges [~~after May 1,~~  
17 ~~2008~~].

18           J. To ensure that providers of intrastate retail  
19 communications service contribute to the fund and to further  
20 ensure that the surcharge determined pursuant to Subsection B  
21 of this section to be paid by the end-user customer will be  
22 held to a minimum, [~~no later than November 1, 2005~~] the  
23 commission shall adopt rules, or take other appropriate action,  
24 to require all such providers to participate in a plan to  
25 ensure accurate reporting [~~and shall establish a cap on the~~

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1 ~~surcharge~~].

2 K. The commission shall authorize payments from the  
3 fund to incumbent local exchange carriers, in combination with  
4 revenue-neutral rate rebalancing up to the affordability  
5 benchmark rates [~~in an amount equal to the reduction in~~  
6 ~~revenues that occurs as a result of reduced intrastate switched~~  
7 ~~access charges~~]. Beginning in 2018, the commission shall make  
8 access reduction support payments in the amount made from the  
9 fund in base year 2014, adjusted each year thereafter by:

10 (1) the annual percentage change in the number  
11 of access lines served by the incumbent local exchange carriers  
12 receiving such support for the prior calendar year, as compared  
13 to base year 2014; and

14 (2) changes in the affordability benchmark  
15 rates that have occurred since 2014.

16 L. The commission shall determine the methodology  
17 to be used to authorize payments to all other carriers that  
18 apply for and receive eligible carrier status; [~~Any reductions~~  
19 ~~in charges for access services resulting from compliance with~~  
20 ~~this section shall be passed on for the benefit of consumers in~~  
21 ~~New Mexico~~] provided, however, that nothing in this section  
22 shall limit the commission's authority to adopt rules pursuant  
23 to Subsection F of this section regarding appropriate uses of  
24 fund support and any restrictions on the use of the fund  
25 support by eligible telecommunications carriers.

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1           ~~[E.]~~ M. The commission may also authorize payments  
2 from the fund to incumbent rural telecommunications carriers or  
3 to telecommunications carriers providing comparable retail  
4 alternative services that have been designated as eligible  
5 telecommunications carriers serving in ~~[high-cost]~~ rural areas  
6 of the state upon a finding, based on factors that may include  
7 a carrier's regulated revenues, expenses or investment, by the  
8 commission that such payments are needed to ensure the  
9 widespread availability and affordability of ~~[residential local~~  
10 ~~exchange]~~ universal service. The commission shall decide cases  
11 filed pursuant to this subsection with reasonable promptness,  
12 with or without a hearing, but no later than six months  
13 following the filing of an application seeking payments from  
14 the fund, unless the commission finds that a longer time will  
15 be required, in which case the commission may extend the period  
16 for an additional three months.

17           ~~[M. By December 1, 2008, the fund administrator~~  
18 ~~shall make a report to the commission and the legislature. The~~  
19 ~~report shall include the effects of access reductions. The~~  
20 ~~report shall also make recommendations for any changes to the~~  
21 ~~structure, size or purposes of the fund.]~~

22           N. The commission shall adopt rules that establish  
23 and implement a broadband program to provide funding to  
24 eligible telecommunications carriers for the construction and  
25 maintenance of facilities capable of providing broadband

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1 internet access service. Such rules shall require that the  
2 commission consider applications for funding on a  
3 technology-neutral basis and shall require that the awards of  
4 support be consistent with federal universal service support  
5 programs and be based on the best use of the fund for rural  
6 areas of the state. Each year, a minimum of five million  
7 dollars (\$5,000,000) of the fund shall be dedicated to the  
8 broadband program.

9 O. The total obligations of the fund determined by  
10 the commission pursuant to this section, plus administrative  
11 expenses and a prudent fund balance, shall not exceed a cap of  
12 thirty million dollars (\$30,000,000) per year. The commission  
13 shall evaluate the amount of the cap in an appropriate  
14 proceeding to be completed by June 30, 2019 and consider  
15 whether, based on the then-current status of the fund, the cap  
16 should be modified, maintained or eliminated.

17 P. By December 31, 2019, the commission shall make  
18 a report to the legislature regarding the status of the fund,  
19 including relevant data relating to implementation of the  
20 broadband program and expansion of broadband internet access  
21 services in rural areas of the state. The report shall also  
22 make recommendations for any changes to the structure, size and  
23 purposes of the fund and whether the cap on the fund provided  
24 for in Subsection O of this section should be modified,  
25 maintained or eliminated."

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