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

SPONSOR Padilla **ORIGINAL DATE** 2/17/17 **LAST UPDATED** 3/13/17 **HB**

SHORT TITLE PRC to Facilitate Rural Broadband Service **SB** 308/aSFC/aSFl#1

ANALYST Martinez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications	See Fiscal Implications

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Regulation Commission (PRC)

SUMMARY

Synopsis of Senate Floor amendment

The Senate floor amendment expands the definition of the phrase, "universal service," to include, "to unserved and underserved areas as determined by the commission."

The Senate floor amendment expands the definition of the phrase, "communication connection," to include, "voice-enabled telephone access line," and "other uniquely voice over internet protocol service connection or other uniquely identifiable functional equivalent as determined by the commission. Such surcharges shall be competitively and technologically neutral."

Lastly, the Senate floor amendment removes that, "the commission may make distinctions between services subject to a surcharge, but it shall require all carriers subject to the surcharge to apply uniform surcharges for the same or comparable services."

Synopsis of Senate Finance Committee Amendment

The Senate Finance Committee amendment removes paragraph (1) and paragraph (5) on page 5. Thus, removing the commission's obligation to 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 the following circumstances:

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

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

Synopsis of Bill

Senate Bill 308 modifies NMSA § 63-9H-6 of the Rural Telecommunications Act, which established the New Mexico State Rural Universal Service Fund (NMRUSF) overseen by the NMPRC. The NMRUSF is a non-public fund administered by a third party administrator – currently Solix, Inc. After the statutory revision of the NMRUSF in 2005, the NMRUSF was repurposed primarily to reimburse incumbent local exchange carriers (ILECs) on a revenue neutral basis for the reduction in intrastate access revenues in exchange for the lowering of intrastate access rates statewide. The formula for access reduction payments to eligible ILECs includes an ILEC specific formula calculated currently on minutes of use for a specific year, and a reduction in per carrier payments to account for imputed benchmarks set on basic local residential and business rates (63-9H-6.K). This comprises the bulk of the payments from the NMRUSF. Other uses of the NMRUSF include payments for a $3.50 match to Eligible Telecommunications Carriers (ETCs) for monthly Lifeline payments, payments to an ETC (Sacred Wind Communications) based on need, and administrative costs. According to the New Mexico Public Regulation Commission (PRC), the current break down of costs from the program for estimated payments at the end of FY16 from Solix, Inc, are:

Access Reduction Payments to ETC ILECs:	$19,012,138
LITAP Payments:	$ 562, 907
Need Based Payments to Sacred Wind:	$ 1,267,778
Administrative Costs:	$ 128,789
Total	$20,971,612

In recent years, the NMRUSF has undergone a number of rulemakings and subsequent legal challenges by parties affected by those rulemaking changes. The legal challenges include challenges to changes in access reduction payments to ILECs due to changes in the year for which the minutes-of-use formula is calculated, the creation of a broadband fund, and changes to the access reduction payment formula from minutes-of-use to access lines. Challenges at the New Mexico Supreme Court have resulted in the rejection and remand of

The PRC's NMRUSF rulemaking decisions back to the NMPRC, and several rulemaking challenges still remain outstanding at the New Mexico Supreme Court.

This bill increases the flexibility of the NMPRC to make changes to the NMRUSF, and clarifies the PRC's ability to implement some of the changes to the NMRUSF previously attempted by the NMPRC, such as the creation of a broadband fund. The major changes include:

1) the expansion of the option for the PRC to impose a surcharge on other than a percent of intrastate revenues method to include a per-connection charge applicable to wireline, wireless and VoIP connections, or other uniquely identifiable equivalent;

2) requires ETCs receiving access reduction support payments or support based on need to

expend no less than 60 percent of support received on the deployment or maintenance of broadband internet access services;

3) changes the access reduction formula in 63-9H-6.K. from minutes of use to access lines, and adjusts access reduction payments to ILECs annually to account for reductions in carrier access lines and increases in residential and business benchmark rates;

4) caps the fund at $30 million ($30,000,000) per year for all prospective uses of the fund, with the PRC to conduct a proceeding by June 30, 2019 to determine if the cap should be modified, maintained, or eliminated;

5) creates a broadband program to funded at a minimum of $5 million ($5,000,000) per year for the awards of support for funding in rural areas of the state; and

6) requires the PRC to provide a report to the legislature by December 31, 2019 on the status of the fund with any recommendations with regard to the structure, size, and purposes of the fund, and any recommendations on the fund cap as a result of the PRC's investigation to be completed by June 30, 2019.

FISCAL IMPLICATIONS

The NMRUSF is a non-public fund, created through carrier surcharges on customer wireless, wireline, and VoIP voice and other intrastate telecommunications services. Future rulemakings are likely to be handled by current PRC resources, though the PRC is currently experiencing a shortage of personnel. The bill does not change the exemptions to the surcharge listed in 63-9H-6.B., so state agencies will not be affected by the payment of a NMRUSF surcharge.

SIGNIFICANT ISSUES

The Public Regulation Commission provided the following significant issues:

NMRUSF Contribution Mechanism

1. The proposed legislation expands and clarifies the methods by which the PRC may levy a surcharge on customers for the purpose of funding the NMRUSF in 63-9H-6.A for a collection mechanism other than a percent surcharge on intrastate revenues such as a per-connection charge or even telephone number. This should help protect the PRC against future appeals though it is not a certainty given the complexity of telecommunications law developed through the Federal Communications Commission (FCC), and federal court decisions. The PRC's incentive to move to alternative funding mechanisms is exacerbated by the continued drop in total statewide intrastate retail revenues on which to assess a NMRUSF surcharge. The trend has seen a steady increase in the NMRUSF surcharge over time (3.0% in 2007) to the current 2017 NMRUSF surcharge of 5.03%. The benefit of a per-connection charge is that it is likely to guarantee a more stable revenue stream for the NMRUSF, as intrastate revenues continue to decline steadily (12% from EOY 2015 to EOY 2016).

2. The adoption of a different contribution mechanism from a percent-of-intrastate revenue surcharge will likely result in a shift in the burden of payments by retail telecommunications

customers. For example, given a rough ballpark figure of 2,100,000 wireline, wireless, and VoIP connections, a flat per-connection surcharge of $1.19 per month per connection provides a sum of $30,000,000 annually. This per connection surcharge will apply equally to all customers of intrastate services, regardless of the amount of services used. In this regard, the per-connection charge may be considered regressive. Currently, many wireline, VoIP, and wireless provider assess the surcharge on intrastate revenues according to a federally established "safe harbor" allocation between inter and intrastate revenues. Below is a rough estimate of the average bill for a wireless, wireline, and VoIP customer that would result in a NMRUSF charge of $1.19 based on the current NMRUSF surcharge of 5.03%:

Estimates for phone bills net of taxes	Total	Portion of Bill intra-state Retail	Portion of Bill inter-state Retail	Amount of Bill	Portion of Bill intra-state Retail	Per Connection $1.19 to Retail Revenue 5.03%
Wireline Local Exchange Service – FCC jurisdictional separations default of 75% intrastate calling.	100%	75.00%	25.00%	$31.50	$23.63	$1.19
Wireless Voice (net of data and texting charges) - default Safe Harbor of 62.9% intrastate calling	100%	62.90%	37.10%	$37.50	$23.59	$1.19
VoIP - default Safe Harbor of 35.1% intrastate calling	100%	35.10%	64.90%	$67.50	$23.69	$1.19
				Surcharge		5.03%

Source: Public Regulation Commission

Change in Access Reduction Payment Mechanism

1. The bill proposes to change the mechanism for access reduction payments to recipient ILEC ETCs (63-9H-6.K). Due to the threat of appeal, the PRC continues to rely on payments to ETCs based on historical 2004 access minutes of use minus imputed benchmark revenues for current residential and business rate increases. The proposed changes to 63-9H-6.K would convert ILEC ETC obligations from payments made in 2014 based on 2004 minutes of use to 2014 access lines, and reduce payments to individual ILECs receiving access reduction payments by the percent decrease in access lines losses from that date forward. This is then reduced by any increases in the imputed benchmark revenues to account for increases in residential and business basic local exchange rates. It is estimated if the fund is implemented in 2018, with a fund cap of $30,000,000, that there would be approximately $7,000,000 available for a broadband fund and an additional $2,000,000 available annually thereafter. This is due to the fact that access line losses for recipient ILECs have been averaging approximately 5% per year, with larger recipient

carriers, Frontier Communications, and Windstream Communications averaging closer to 10% line losses per year.

Use of the NMRUSF for Broadband

1. The PRC, in prior NMRUSF rulemakings, has established a broadband program in the NMRUSF rule through Commission order. That decision was appealed on grounds the PRC does not have the authority to establish a broadband program. The proposed addition of specific language to a new section 63-9H-6.N in the bill requiring the establishment of a broadband program for the NMRUSF should help prevent appeals on that basis. Although the PRC did "establish" a broadband program in several iterations of the NMRUSF rule, including the current one in Case No. 16-00225-UT, no funds have ever been disbursed for those purposes from the NMRUSF. The structure of the broadband program adopted in the NMRUSF rulemakings was modeled after a broadband program successfully implemented by the Nebraska Public Utility Commission.

2. The legislation also adds a requirement that ETCs who receive NMRUSF funds for access reduction payments and payments based on need (63-9H-6.F) appropriate sixty percent or more of those funds on broadband internet access, and provides incentives for recipient ETCs to continue to expand and maintain broadband networks in their serving areas. This is consistent with the FCC's repurposing of Federal Universal Service Fund (FUSF) support to broadband to ETCs. All ETCs in New Mexico that receive NMRUSF access reduction and need based support also receive FUSF funds.

Cap on the NMRUSF

1. The bill establishes annual cap on the NMRUSF of $30,000,000. Included in this is a mandatory minimum broadband fund of $5,000,000 per year. The implication is the PRC will set a surcharge based on the total obligations of the fund, not to exceed $30,000,000 per year. Prior to determining the amount of money to allocate to the broadband fund, the PRC will likely account for "all other needs" the PRC is obligated to provide such as access reduction payments, administrative expenses, and other obligations it has committed to, such as support based on need (payments to Sacred Wind) and LITAP payments to ETCs. Given projections from the administrator of the NMRUSF, the PRC would then decide how much money to allocate to a broadband fund given the constraints of the annual NMRUSF cap of $30,000,000, and the projected surcharge necessary to collect the sum necessary to fund the NMRUSF.

Report to the Legislature

1. New section 63-9H-6.P in the bill requires the PRC to report to the legislature by December 31, 2019 regarding the status of the fund, including data on implementation of the broadband provisions of the legislation, and any recommendations regarding the structure, size, and purposes of the fund, and whether the cap should be modified, maintained, or eliminated according to the requirements in new section 63-9H-6.O. This requirement will incent the PRC

to provide additional scrutiny to the implementation of the NMRUSF, and provide timely information to the legislature on the changes adopted in the legislation should it be adopted.

TECHNICAL ISSUES

Although the proposed bill provides a number of clarifications and safeguards allowing for a more flexible approach by the PRC for the implementation of the NMRUSF and expenditures on broadband services, the constantly changing technical, regulatory and legal environment for telecommunications and broadband leaves the possibility for appeal of a new NMRUSF rule under the rubric of this proposed legislation open. Therefore, it appears to be an improvement over the current statute NMSA 1978 63-9H-6, in particular for allowing the NMRUSF to be used for broadband purposes.

There are several terms in the proposed legislation such as "rural area" "communication connection" and "competitive carrier" that may need to be clarified by the PRC in a future rulemaking process in order to effectuate the proposed provisions of this bill.

SB308 removes the requirement that the reduction of intrastate access rates to interstate levels be done in a revenue neutral manner (63-9H-6.C). This language may have been stricken so the new methodology for access reduction payments in proposed 63-9H-6.K may not come into conflict. The stricken language in this section has been used in legal arguments in defense of historical NMRUSF access reduction payments to ETCs at the Supreme Court.

SB308 restricts evaluation of carrier's revenues, expenses, and investment to regulated revenues, expenses, and investment when an ETC petitions the PRC for access to NMRUSF funds based on need (63-9H-6.M). ETC's revenues, expenses, and investments span both regulated (intrastate) and unregulated (interstate, wireless, broadband) services, which much of the time share network facilities. This would provide less information to the PRC in making a decision. However, there are other methods of evaluating need, such as evaluation of network buildout, which the PRC may use aside from an examination of total revenues, expenses, and investment.

ALTERNATIVES

There may be a number of ways to rewrite NMSA 63-9H-6, depending on the desired goals, but the proposed legislation was the result of negotiations between wireline and wireless telecommunications providers, and the PRC, and may be viewed as the best compromise solution to improving this statute and the NMRUSF going forward, in particular for the establishment of a NMRUSF broadband program.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo, with increasing NMRUSF surcharge rates on customer bills due to static demands on the fund and ever diminishing intrastate revenues on which to levy the surcharge. There will likely be a continued reluctance by the PRC to establish a broadband program to avoid further surcharge increases on customer bills, and to avoid further litigation on whether the PRC has the authority to establish a broadband program under the current statutory construction for NMSA 63-9H-6 and federal law.

JM/sb/jle