

HOUSE BILL 385

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

D. Wonda Johnson and Anthony Allison and Michael Padilla

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING THE RURAL TELECOMMUNICATIONS ACT OF NEW MEXICO TO MAKE ACCESS TO THE STATE RURAL UNIVERSAL SERVICE FUND FOR TELECOMMUNICATIONS CARRIERS ESTABLISHED AFTER ENACTMENT OF THAT ACT COMPARABLE TO THE ACCESS FOR TELECOMMUNICATIONS CARRIERS ESTABLISHED PRIOR TO ENACTMENT OF THAT ACT; PROVIDING DEFINITIONS.

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

SECTION 1. Section 63-9H-3 NMSA 1978 (being Laws 1999, Chapter 295, Section 3, as amended) is amended to read:

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"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. "comparable carrier" means an eligible telecommunications carrier established prior to enactment of the Rural Telecommunications Act of New Mexico that operates in a similar geographic area and has a comparable amount of telecommunications infrastructure and a similar number of access lines as an eligible telecommunications carrier established after enactment of that act;

~~[E.]~~ F. "eligible telecommunications carrier" means an eligible telecommunications carrier as defined in the

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federal act;

[F-] G. "federal act" means the federal Telecommunications Act of 1996;

[G-] H. "fund" means the state rural universal service fund;

[H-] I. "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-] J. "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~~] regulation commission;

[J-] K. "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-] L. "local exchange service" means the

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transmission of two-way interactive switched voice communications furnished by a telecommunications carrier within a local exchange area;

[H.] M. "long distance service" means telecommunications service between local exchange areas that originate and terminate within the state;

[M.] N. "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.] O. "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

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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~~

θ.] P. "telecommunications carrier" means a person that provides public telecommunications service; and

Q. "telecommunications infrastructure" means wireline and wireless facilities and equipment, including towers, structures, cable, microwave antennae and central office equipment, used for the provision of public telecommunications services."

SECTION 2. 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. The commission shall implement and maintain a "state rural universal service fund" to maintain and support universal service that is provided by eligible telecommunications carriers, including commercial mobile radio services carriers, as are determined by the commission. As used in this section, "universal service" means basic local exchange service, comparable retail alternative services at affordable rates, service pursuant to a low-income telephone assistance plan and broadband internet access service to

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unserved and underserved areas as determined by the commission.

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, including commercial mobile radio services and voice over internet protocol services, at a competitively and technologically neutral rate or rates to be determined by the commission. The commission may establish the surcharge as a percentage of intrastate retail public telecommunications services revenue or as a fixed amount applicable to each communication connection. For purposes of this section, a "communication connection" means a voice-enabled telephone access line, wireless voice connection, unique 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. Money deposited in the fund is not public money, and the administration of the fund is not subject

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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; to an Indian nation, tribe or pueblo; or to Native American customers who reside on tribal or pueblo land.

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 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 universal 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 and areas requiring

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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 may consider at least the following items:

- (1) the impact of designation of an additional eligible carrier on the size of the fund;
- (2) the unique advantages and disadvantages of the competitor's service offering; and
- (3) any commitments made regarding the quality

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of telephone service.

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. The rules shall require that an eligible telecommunications carrier receiving support from the fund pursuant to Subsection K, L or M of this section must expend no less than sixty percent of the support it receives to deploy and maintain broadband internet access services in rural areas of the state. The rules also 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

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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 universal service as determined by the commission at affordable rates in rural areas of the state; provided, however, that nothing in this section shall be construed as granting any authority to the commission to impose the surcharge on or otherwise regulate broadband internet access services.

I. 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.

J. To ensure that providers of intrastate retail communications service contribute to the fund and to further ensure that the surcharge determined pursuant to Subsection B of this section to be paid by the end-user customer will be held to a minimum, the commission shall adopt rules, or take other appropriate action, to require all such providers to participate in a plan to ensure accurate reporting.

K. The commission shall authorize payments from the
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fund to incumbent local exchange carriers, in combination with revenue-neutral rate rebalancing up to the affordability benchmark rates. Beginning in 2018, the commission shall make access reduction support payments in the amount made from the fund in base year 2014, adjusted each year thereafter by:

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

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

L. The commission shall determine the methodology to be used to authorize payments to all other carriers that apply for and receive eligible carrier status; provided [however] that:

(1) funding for an eligible telecommunications carrier that HCEDC→is an incumbent rural telecommunications carrier←HCEDC not eligible for funding pursuant to rate rebalancing in Subsection K of this section, but that HCEDC→is has been←HCEDC authorized for funding based on a determination of financial need HCEDC→may apply for ongoing fund support based on its operating costs. If the commission finds that the applicant's operation costs are comparable to, or higher than, comparable carriers receiving support pursuant to rate rebalancing in Subsection K of this section, the commission

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shall award the applicant ongoing support←HCEDC, HCEDC→~~shall~~
~~not be at no~~←HCEDC less than the average amount of funding
support provided to comparable carriers on a per-access line
basis;

(2) funding for an eligible telecommunications
carrier currently receiving funding based on a determination of
need shall not be recalculated until the term of its current
funding approval has expired; and

(3) nothing in this section shall limit the
commission's authority to adopt rules pursuant to Subsection F
of this section regarding appropriate uses of fund support and
any restrictions on the use of the fund support by eligible
telecommunications carriers.

M. 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 rural areas of the state
upon a finding, based on factors that may include a carrier's
regulated revenues, expenses or investment, by the commission
that such payments are needed to ensure the widespread
availability and affordability of universal 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

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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.

N. The commission shall adopt rules that establish and implement a broadband program to provide funding to eligible telecommunications carriers for the construction and maintenance of facilities capable of providing broadband internet access service. Such rules shall require that the commission consider applications for funding on a technology-neutral basis and shall require that the awards of support be consistent with federal universal service support programs and be based on the best use of the fund for rural areas of the state. Each year, a minimum of five million dollars (\$5,000,000) of the fund shall be dedicated to the broadband program.

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

P. By December 31, 2019, the commission shall make a

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report to the legislature regarding the status of the fund, including relevant data relating to implementation of the broadband program and expansion of broadband internet access services in rural areas of the state. The report shall also make recommendations for any changes to the structure, size and purposes of the fund and whether the cap on the fund provided for in Subsection 0 of this section should be modified, maintained or eliminated."

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