

1 SENATE BILL 361

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Michael Padilla

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10 AN ACT

11 RELATING TO TELECOMMUNICATIONS; AMENDING THE RURAL
12 TELECOMMUNICATIONS ACT OF NEW MEXICO; PROVIDING FOR THE USE OF
13 THE STATE RURAL UNIVERSAL SERVICE FUND FOR CONSUMER BROADBAND-
14 ONLY LOOPS; PROVIDING DEFINITIONS.

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

19 "63-9H-3. DEFINITIONS.--As used in the Rural
20 Telecommunications Act of New Mexico:

21 A. "access line" means a dial tone line, or its
22 functional equivalent regardless of technology, that provides
23 local exchange service from a carrier's switching equipment to
24 a point of termination at the customer's network interface. An
25 "access line" does not include official lines, unbundled

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1 network elements or platforms, retail resale lines, wholesale
2 resale lines, special access lines or private lines;

3 ~~[A.]~~ B. "affordable rates" means rates for basic
4 service that promote universal service within a local exchange
5 service area, giving consideration to the economic conditions
6 and costs to provide service in the area in which service is
7 provided;

8 ~~[B.]~~ C. "basic service" means service that is
9 provided to a rural end-user customer that is consistent with
10 the federal act;

11 D. "broadband internet access service" means a
12 mass-market retail service that provides the capability to
13 transmit data and receive data from all or substantially all
14 internet endpoints, including capabilities that are incidental
15 to and enable the operation of the communications service, or a
16 functionally equivalent service, but excluding dial-up internet
17 access service;

18 ~~[C.]~~ E. "cable service" means the transmission to
19 subscribers of video programming or other programming service
20 and subscriber interaction, if any, that is required for the
21 selection or use of the video programming or other programming
22 service;

23 ~~[D.]~~ F. "commission" means the public regulation
24 commission;

25 G. "consumer broadband-only loop" means a broadband

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1 internet access service offered by an incumbent local exchange
2 carrier that does not include local exchange service;

3 ~~[E.]~~ H. "eligible telecommunications carrier" means
4 an eligible telecommunications carrier as defined in the
5 federal act;

6 ~~[F.]~~ I. "federal act" means the federal
7 Telecommunications Act of 1996;

8 ~~[G.]~~ J. "fund" means the state rural universal
9 service fund;

10 ~~[H.]~~ K. "incumbent local exchange carrier" means a
11 person that:

12 (1) was designated as an eligible
13 telecommunications carrier by the state corporation commission
14 in Docket #97-93-TC by order dated October 23, 1997, or that
15 provided local exchange service in this state on February 8,
16 1996; or

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

19 ~~[I.]~~ L. "incumbent rural telecommunications
20 carrier" means an incumbent local exchange carrier that serves
21 fewer than fifty thousand access lines within the state and has
22 been designated as an eligible telecommunications carrier by
23 the state corporation commission or the public ~~[regulations]~~
24 regulation commission;

25 ~~[J.]~~ M. "local exchange area" means a geographic

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1 area encompassing one or more local communities, as described
2 in maps, tariffs or rate schedules filed with the commission,
3 where local exchange rates apply;

4 ~~[K-]~~ N. "local exchange service" means the
5 transmission of two-way interactive switched voice
6 communications furnished by a telecommunications carrier within
7 a local exchange area;

8 ~~[L-]~~ O. "long distance service" means
9 telecommunications service between local exchange areas that
10 originate and terminate within the state;

11 ~~[M-]~~ P. "private telecommunications service" means
12 a system, including its construction, maintenance or operation
13 for the provision of telecommunications service, or any portion
14 of that service, by a person for the sole and exclusive use of
15 that person and not for resale, directly or indirectly. For
16 purposes of this definition, the person that may use the
17 service includes any affiliates of the person if at least
18 eighty percent of the assets or voting stock of the affiliates
19 is owned by the person. If any other person uses the
20 telecommunications service, whether for hire or not, the
21 private telecommunications service is a public
22 telecommunications service;

23 ~~[N-]~~ Q. "public telecommunications service" means
24 the transmission of signs, signals, writings, images, sounds,
25 messages, data or other information of any nature by wire,

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1 radio, [~~lightwaves~~] light waves or other electromagnetic means
2 originating and terminating in this state regardless of actual
3 call routing. "Public telecommunications service" does not
4 include the provision of terminal equipment used to originate
5 or terminate the service; private telecommunications service;
6 broadcast transmissions by radio, television and satellite
7 broadcast stations regulated by the federal communications
8 commission; radio common carrier services, including mobile
9 telephone service and radio paging; or cable service; and

10 [0-] R. "telecommunications carrier" means a person
11 that provides public telecommunications service."

12 SECTION 2. Section 63-9H-6 NMSA 1978 (being Laws 1999,
13 Chapter 295, Section 6, as amended) is amended to read:

14 "63-9H-6. STATE RURAL UNIVERSAL SERVICE FUND--
15 ESTABLISHMENT.--

16 A. The commission shall implement and maintain a
17 "state rural universal service fund" to maintain and support
18 universal service that is provided by eligible
19 telecommunications carriers, including commercial mobile radio
20 services carriers, as are determined by the commission. As
21 used in this section, "universal service" means basic local
22 exchange service, comparable retail alternative services at
23 affordable rates, service pursuant to a low-income telephone
24 assistance plan and broadband internet access service to
25 unserved and underserved areas as determined by the commission.

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1 B. The fund shall be financed by a surcharge on
2 intrastate retail public telecommunications services to be
3 determined by the commission, excluding services provided
4 pursuant to a low-income telephone assistance plan billed to
5 end-user customers by a telecommunications carrier, and
6 excluding all amounts from surcharges, gross receipts taxes,
7 excise taxes, franchise fees and similar charges. For the
8 purpose of funding the fund, the commission has the authority
9 to apply the surcharge on intrastate retail public
10 telecommunications services provided by telecommunications
11 carriers, including commercial mobile radio services and voice
12 over internet protocol services, at a competitively and
13 technologically neutral rate or rates to be determined by the
14 commission. The commission may establish the surcharge as a
15 percentage of intrastate retail public telecommunications
16 services revenue or as a fixed amount applicable to each
17 communication connection. For purposes of this section, a
18 "communication connection" means a voice-enabled telephone
19 access line, wireless voice connection, unique voice over
20 internet protocol service connection or other uniquely
21 identifiable functional equivalent as determined by the
22 commission. Such surcharges shall be competitively and
23 technologically neutral. Money deposited in the fund is not
24 public money, and the administration of the fund is not subject
25 to the provisions of law regulating public funds. The

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1 commission shall not apply this surcharge to a private
2 telecommunications network; to the state, a county, a
3 municipality or other governmental entity; to a public school
4 district; to a public institution of higher education; to an
5 Indian nation, tribe or pueblo; or to Native American customers
6 who reside on tribal or pueblo land.

7 C. The fund shall be competitively and
8 technologically neutral, equitable and nondiscriminatory in its
9 collection and distribution of funds, portable between eligible
10 telecommunications carriers and additionally shall provide a
11 specific, predictable and sufficient support mechanism as
12 determined by the commission that ensures universal service in
13 the state.

14 D. The commission shall:

15 (1) establish eligibility criteria for
16 participation in the fund consistent with federal law that
17 ensure the availability of universal service at affordable
18 rates. The eligibility criteria shall not restrict or limit an
19 eligible telecommunications carrier from receiving federal
20 universal service support;

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

24 (3) determine those services and areas requiring
25 support from the fund;

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

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

9 E. All incumbent telecommunications carriers and
10 competitive carriers already designated as eligible
11 telecommunications carriers for the fund shall be eligible for
12 participation in the fund. All other carriers that choose to
13 become eligible to receive support from the fund may petition
14 the commission to be designated as an eligible
15 telecommunications carrier for the fund. The commission may
16 grant eligible carrier status to a competitive carrier in a
17 rural area upon a finding that granting the application is in
18 the public interest. In making a public interest finding, the
19 commission may consider at least the following items:

20 (1) the impact of designation of an additional
21 eligible carrier on the size of the fund;

22 (2) the unique advantages and disadvantages of
23 the competitor's service offering; and

24 (3) any commitments made regarding the quality
25 of telephone service.

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

18 G. The commission shall, upon implementation of the
19 fund, select a neutral third-party administrator to collect,
20 administer and disburse money from the fund under the
21 supervision and control of the commission pursuant to
22 established criteria and rules promulgated by the commission.
23 The administrator may be reasonably compensated for the
24 specified services from the surcharge proceeds to be received
25 by the fund pursuant to Subsection B of this section. For

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1 purposes of this subsection, the commission shall not be a
2 neutral third-party administrator.

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

10 I. The commission shall ensure that intrastate
11 switched access charges are equal to interstate switched access
12 charges established by the federal communications commission as
13 of January 1, 2006. Nothing in this section shall preclude the
14 commission from considering further adjustments to intrastate
15 switched access charges based on changes to interstate switched
16 access charges.

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

24 K. The commission shall authorize payments from the
25 fund to incumbent local exchange carriers, in combination with

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1 revenue-neutral rate rebalancing up to the affordability
2 benchmark rates. For purposes of this subsection, an "access
3 line" includes a consumer broadband-only loop when a regulated
4 traditional voice service is not used. Beginning in [2018]
5 2022, the commission shall make access reduction support
6 payments in the amount made from the fund in base year 2014,
7 adjusted each year thereafter by:

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

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

14 L. The commission shall determine the methodology to
15 be used to authorize payments to all other carriers that apply
16 for and receive eligible carrier status; provided, however,
17 that nothing in this section shall limit the commission's
18 authority to adopt rules pursuant to Subsection F of this
19 section regarding appropriate uses of fund support and any
20 restrictions on the use of the fund support by eligible
21 telecommunications carriers.

22 M. The commission [~~may~~] shall also authorize payments
23 from the fund to incumbent rural telecommunications carriers or
24 to telecommunications carriers providing comparable retail
25 alternative services that have been designated as eligible

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1 telecommunications carriers serving in rural areas of the state
2 upon a finding by the commission, based on factors that may
3 include ~~[a]~~ an incumbent rural telecommunications carrier's
4 regulated revenues, expenses or investment, ~~[by the commission]~~
5 that such payments are needed to ensure the widespread
6 availability and affordability of universal service. A
7 petition for need-based support from the fund pursuant to this
8 subsection may be filed either on the basis of the petitioner's
9 lack of financial stability or for a proposed specific network
10 development project. The commission shall decide cases filed
11 pursuant to this subsection with reasonable promptness, with or
12 without a hearing, but no later than six months following the
13 filing of an application seeking payments from the fund, unless
14 the commission finds that a longer time will be required, in
15 which case the commission may extend the period for an
16 additional three months.

17 N. The commission shall adopt rules that establish
18 and implement a broadband program to provide funding to
19 eligible telecommunications carriers for the construction and
20 maintenance of facilities capable of providing broadband
21 internet access service. Such rules shall require that the
22 commission consider applications for funding on a technology-
23 neutral basis and shall require that the awards of support be
24 consistent with federal universal service support programs and
25 be based on the best use of the fund for rural areas of the

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1 state. Each year, a minimum of five million dollars
2 (\$5,000,000) of the fund shall be dedicated to the broadband
3 program.

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

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

21 SECTION 3. EFFECTIVE DATE.--The effective date of the
22 provisions of this act is July 1, 2021.