

HOUSE BILL 206

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING THE RURAL TELECOMMUNICATIONS ACT OF NEW MEXICO; PROVIDING FOR THE USE OF THE STATE RURAL UNIVERSAL SERVICE FUND FOR CONSUMER BROADBAND-ONLY LOOPS; 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 by Laws 2021, Chapter 118,

.224201.1AIC February 9, 2023 (12:10pm)

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Section 1 and by Laws 2021, Chapter 120, Section 8) is amended to read:

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

A. "access line" means a dial tone line, or its functional equivalent, regardless of technology, that provides local exchange service from a carrier's switching equipment to a point of termination at the customer's network interface. An "access line" does not include official lines, unbundled network elements or platforms, retail resale, wholesale resale, special access lines or private lines;

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

~~[C.]~~ D. "broadband infrastructure" means any cable or device used for high-capacity transmission over a wide range of frequencies that enables a large number of electronic messages to be transmitted or received simultaneously;

E. "broadband internet access service" means a mass-market retail service that provides the capability to

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transmit data and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, or a functionally equivalent service, but excluding dial-up internet access service;

[D-] F. "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;

[E-] G. "commission" means the public regulation commission;

[F-] H. "comparable carrier" means an eligible telecommunications carrier established prior to enactment of the Rural Telecommunications Act of New Mexico that has a similar number of access lines as an eligible telecommunications carrier established after enactment of that act;

I. "consumer broadband-only loop" means a broadband internet access service offered by a local exchange carrier that does not include local exchange service;

[G-] J. "digital equity" means information technology needed for civic and cultural participation, employment, education, business and economic development, lifelong learning and access to essential services generally

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available to residents regardless of their racial grouping,
socioeconomic status or cultural identity;

[H.] K. "digital inclusion" means access to and the
ability to use information technologies;

[I.] L. "eligible telecommunications carrier" means
an eligible telecommunications carrier as defined in the
federal act;

[J.] M. "federal act" means the federal
Telecommunications Act of 1996;

[K.] N. "fund" means the state rural universal
service fund;

[L.] O. "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;

[M.] P. "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 regulation

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commission;

[N-] Q. "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;

[O-] R. "local exchange service" means the transmission of two-way interactive switched voice communications furnished by a telecommunications carrier within a local exchange area;

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

[Q-] T. "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;

[R-] U. "public telecommunications service" means

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the transmission of signs, signals, writings, images, sounds, messages, data or other information of any nature by wire, radio, ~~[lightwaves]~~ light waves 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 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;

~~[S. "statewide broadband plan" means the State of New Mexico Broadband Strategic Plan and Rural Broadband Assessment published by the department of information technology in June 2020; provided that, upon Senate Bill 93 of the first session of the fifty-fifth legislature becoming law]~~

V. "statewide broadband plan" means the statewide broadband plan developed pursuant to ~~[that law]~~ the Broadband Access and Expansion Act; and

~~[F.]~~ W. "telecommunications carrier" means a person that provides public telecommunications service."

SECTION 2. Section 63-9H-6 NMSA 1978 (being Laws 1999, Chapter 295, Section 6, as amended by Laws 2021, Chapter 118, Section 2 and by Laws 2021, Chapter 120, Section 9) is amended to read:

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"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 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

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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 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 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

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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 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

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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 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

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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 fund to incumbent local exchange carriers, in combination with revenue-neutral rate rebalancing up to the affordability benchmark rates. For purposes of this subsection, an "access line" includes a consumer broadband-only loop when a regulated traditional voice service is not used. Beginning in [2018] 2023, 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; HRDLC→and←HRDLC

(2) changes in the affordability benchmark rates that have occurred since 2014 HRDLC→.←HRDLC HRDLC→;

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and←HRDLC

HRDLC→(3) providing that the number of access lines used for the annual calculation of access reduction support payments for any eligible incumbent local exchange carrier shall not exceed the number of access lines existing for that carrier on December 31, 2021.←HRDLC

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 that:

(1) an eligible incumbent telecommunications carrier that is not eligible for funding pursuant to rate rebalancing in Subsection K of this section and that has been previously authorized pursuant to Subsection M of this section for need-based support may apply for ongoing fund support;

(2) the commission shall award an applicant ongoing fund support at no less than the average access line amount of funding support for comparable carriers; provided that an eligible telecommunications carrier receiving fund support pursuant to this subsection shall not offer basic local exchange residential and business services at rate levels lower than the rates for such services charged by any of the comparable carriers used for the determination of the level of support;

(3) the commission shall act upon a request for ongoing fund support within one hundred twenty days of the

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filing of the request; and

(4) 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~~] shall 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 by the commission, based on factors that may include [~~a~~] an incumbent rural telecommunications 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.

A petition for need-based support from the fund pursuant to this subsection may be filed either on the basis of the petitioner's lack of financial stability or for a proposed specific network development project. 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 seeking payments from the fund, unless the commission finds that a longer time will be required, in which case the commission may extend the

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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 broadband infrastructure. Each year, a minimum of eight million dollars (\$8,000,000) of the fund shall be dedicated to the broadband program.

O. Rules adopted pursuant to Subsection N of this section shall require that the commission:

(1) consider applications for funding on a technology-neutral basis;

(2) submit applications for funding to the connect New Mexico council for prioritization and alignment with the statewide broadband plan to ensure digital equity and digital inclusion; and

(3) require that the awards of support be consistent with federal universal service support programs.

P. 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.

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Q. By October 1 of each year, the commission shall make a report to the legislature regarding the status of the fund, including:

(1) relevant data relating to implementation of the broadband program and the progress toward digital equity and digital inclusion in rural areas of the state;

(2) recommendations for changes to the structure, size and purposes of the fund and whether the cap on the fund provided for in Subsection P of this section should be modified, maintained or eliminated; and

(3) the service areas that received funding awards from the broadband program and the amounts of those awards."

SECTION 3. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.