

1 HOUSE BILL 206

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Joseph L. Sanchez

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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  
14 BROADBAND-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 by Laws 2021, Chapter 118,  
19 Section 1 and by Laws 2021, Chapter 120, Section 8) is amended  
20 to read:

21 "63-9H-3. DEFINITIONS.--As used in the Rural  
22 Telecommunications Act of New Mexico:

23 A. "access line" means a dial tone line, or its  
24 functional equivalent, regardless of technology, that provides  
25 local exchange service from a carrier's switching equipment to

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1 a point of termination at the customer's network interface. An  
2 "access line" does not include official lines, unbundled  
3 network elements or platforms, retail resale, wholesale resale,  
4 special access lines or private lines;

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

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

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

17 E. "broadband internet access service" means a  
18 mass-market retail service that provides the capability to  
19 transmit data and receive data from all or substantially all  
20 internet endpoints, including any capabilities that are  
21 incidental to and enable the operation of the communications  
22 service, or a functionally equivalent service, but excluding  
23 dial-up internet access service;

24 ~~[D.]~~ F. "cable service" means the transmission to  
25 subscribers of video programming or other programming service

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1 and subscriber interaction, if any, that is required for the  
2 selection or use of the video programming or other programming  
3 service;

4 ~~[E.]~~ G. "commission" means the public regulation  
5 commission;

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

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

15 ~~[G.]~~ J. "digital equity" means information  
16 technology needed for civic and cultural participation,  
17 employment, education, business and economic development,  
18 lifelong learning and access to essential services generally  
19 available to residents regardless of their racial grouping,  
20 socioeconomic status or cultural identity;

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

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

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

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

5           ~~[L.]~~ O. "incumbent local exchange carrier" means a  
6 person that:

7                         (1) was designated as an eligible  
8 telecommunications carrier by the state corporation commission  
9 in Docket #97-93-TC by order dated October 23, 1997, or that  
10 provided local exchange service in this state on February 8,  
11 1996; or

12                        (2) became a successor or assignee of an  
13 incumbent local exchange carrier;

14           ~~[M.]~~ P. "incumbent rural telecommunications  
15 carrier" means an incumbent local exchange carrier that serves  
16 fewer than fifty thousand access lines within the state and has  
17 been designated as an eligible telecommunications carrier by  
18 the state corporation commission or the public regulation  
19 commission;

20           ~~[N.]~~ Q. "local exchange area" means a geographic  
21 area encompassing one or more local communities, as described  
22 in maps, tariffs or rate schedules filed with the commission,  
23 where local exchange rates apply;

24           ~~[O.]~~ R. "local exchange service" means the  
25 transmission of two-way interactive switched voice

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1 communications furnished by a telecommunications carrier within  
2 a local exchange area;

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

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

18 [R-] U. "public telecommunications service" means  
19 the transmission of signs, signals, writings, images, sounds,  
20 messages, data or other information of any nature by wire,  
21 radio, ~~[lightwaves]~~ light waves or other electromagnetic means  
22 originating and terminating in this state regardless of actual  
23 call routing. "Public telecommunications service" does not  
24 include the provision of terminal equipment used to originate  
25 or terminate the service; private telecommunications service;

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1 broadcast transmissions by radio, television and satellite  
2 broadcast stations regulated by the federal communications  
3 commission; radio common carrier services, including mobile  
4 telephone service and radio paging; or cable service;

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

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

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

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

19 "63-9H-6. STATE RURAL UNIVERSAL SERVICE FUND--  
20 ESTABLISHMENT.--

21 A. The commission shall implement and maintain a  
22 "state rural universal service fund" to maintain and support  
23 universal service that is provided by eligible  
24 telecommunications carriers, including commercial mobile radio  
25 services carriers, as are determined by the commission. As

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1 used in this section, "universal service" means basic local  
2 exchange service, comparable retail alternative services at  
3 affordable rates, service pursuant to a low-income telephone  
4 assistance plan and broadband internet access service to  
5 unserved and underserved areas as determined by the commission.

6 B. The fund shall be financed by a surcharge on  
7 intrastate retail public telecommunications services to be  
8 determined by the commission, excluding services provided  
9 pursuant to a low-income telephone assistance plan billed to  
10 end-user customers by a telecommunications carrier, and  
11 excluding all amounts from surcharges, gross receipts taxes,  
12 excise taxes, franchise fees and similar charges. For the  
13 purpose of funding the fund, the commission has the authority  
14 to apply the surcharge on intrastate retail public  
15 telecommunications services provided by telecommunications  
16 carriers, including commercial mobile radio services and voice  
17 over internet protocol services, at a competitively and  
18 technologically neutral rate or rates to be determined by the  
19 commission. The commission may establish the surcharge as a  
20 percentage of intrastate retail public telecommunications  
21 services revenue or as a fixed amount applicable to each  
22 communication connection. For purposes of this section, a  
23 "communication connection" means a voice-enabled telephone  
24 access line, wireless voice connection, unique voice over  
25 internet protocol service connection or other uniquely

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1 identifiable functional equivalent as determined by the  
2 commission. Such surcharges shall be competitively and  
3 technologically neutral. Money deposited in the fund is not  
4 public money, and the administration of the fund is not subject  
5 to the provisions of law regulating public funds. The  
6 commission shall not apply this surcharge to a private  
7 telecommunications network; to the state, a county, a  
8 municipality or other governmental entity; to a public school  
9 district; to a public institution of higher education; to an  
10 Indian nation, tribe or pueblo; or to Native American customers  
11 who reside on tribal or pueblo land.

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

19 D. The commission shall:

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

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

4 (3) determine those services and areas  
5 requiring support from the fund;

6 (4) provide for the separate administration  
7 and disbursement of federal universal service funds consistent  
8 with federal law; and

9 (5) establish affordability benchmark rates  
10 for local residential and business services that shall be  
11 utilized in determining the level of support from the fund.  
12 The process for determining subsequent adjustments to the  
13 benchmark shall be established through a rulemaking.

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

25 (1) the impact of designation of an additional

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1 eligible carrier on the size of the fund;

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

4 (3) any commitments made regarding the quality  
5 of telephone service.

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

23 G. The commission shall, upon implementation of the  
24 fund, select a neutral third-party administrator to collect,  
25 administer and disburse money from the fund under the

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1 supervision and control of the commission pursuant to  
2 established criteria and rules promulgated by the commission.  
3 The administrator may be reasonably compensated for the  
4 specified services from the surcharge proceeds to be received  
5 by the fund pursuant to Subsection B of this section. For  
6 purposes of this subsection, the commission shall not be a  
7 neutral third-party administrator.

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

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

22 J. To ensure that providers of intrastate retail  
23 communications service contribute to the fund and to further  
24 ensure that the surcharge determined pursuant to Subsection B  
25 of this section to be paid by the end-user customer will be

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1 held to a minimum, the commission shall adopt rules, or take  
2 other appropriate action, to require all such providers to  
3 participate in a plan to ensure accurate reporting.

4 K. The commission shall authorize payments from the  
5 fund to incumbent local exchange carriers, in combination with  
6 revenue-neutral rate rebalancing up to the affordability  
7 benchmark rates. For purposes of this subsection, an "access  
8 line" includes a consumer broadband-only loop when a regulated  
9 traditional voice service is not used. Beginning in ~~[2018]~~  
10 2023, the commission shall make access reduction support  
11 payments in the amount made from the fund in base year 2014,  
12 adjusted each year thereafter by:

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

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

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

22 (1) an eligible incumbent telecommunications  
23 carrier that is not eligible for funding pursuant to rate  
24 rebalancing in Subsection K of this section and that has been  
25 previously authorized pursuant to Subsection M of this section

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1 for need-based support may apply for ongoing fund support;

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

11 (3) the commission shall act upon a request  
12 for ongoing fund support within one hundred twenty days of the  
13 filing of the request; and

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

19 M. The commission [~~may~~] shall also authorize  
20 payments from the fund to incumbent rural telecommunications  
21 carriers or to telecommunications carriers providing comparable  
22 retail alternative services that have been designated as  
23 eligible telecommunications carriers serving in rural areas of  
24 the state upon a finding by the commission, based on factors  
25 that may include [~~a~~] an incumbent rural telecommunications

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

14 N. The commission shall adopt rules that establish  
15 and implement a broadband program to provide funding to  
16 eligible telecommunications carriers for the construction and  
17 maintenance of broadband infrastructure. Each year, a minimum  
18 of eight million dollars (\$8,000,000) of the fund shall be  
19 dedicated to the broadband program.

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

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

24 (2) submit applications for funding to the  
25 connect New Mexico council for prioritization and alignment

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1 with the statewide broadband plan to ensure digital equity and  
2 digital inclusion; and

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

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

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

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

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

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

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

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