

SENATE TAX, BUSINESS AND TRANSPORTATION
COMMITTEE SUBSTITUTE FOR
SENATE BILL 155

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

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.

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

SECTION 1. 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:

"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

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

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

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

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

20 D. The commission shall:

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

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1 universal service support;

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

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

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

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

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

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

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

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

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

24 G. The commission shall, upon implementation of the
25 fund, select a neutral third-party administrator to collect,

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

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

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

23 J. To ensure that providers of intrastate retail
24 communications service contribute to the fund and to further
25 ensure that the surcharge determined pursuant to Subsection B

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1 of this section to be paid by the end-user customer will be
2 held to a minimum, the commission shall adopt rules, or take
3 other appropriate action, to require all such providers to
4 participate in a plan to ensure accurate reporting.

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

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

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

17 L. Notwithstanding the provisions of Subsection K
18 of this section, the annual amount of access reduction support
19 payments for an eligible incumbent local exchange carrier in
20 2024, 2025 and 2026 shall be equal to the annual access
21 reduction support payments for that eligible incumbent local
22 exchange carrier for the year 2023. Access reduction support
23 payments shall be terminated after December 31, 2026.

24 [~~L.~~] M. The commission shall determine the
25 methodology to be used to authorize payments to all other

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1 carriers that apply for and receive eligible carrier status;
2 provided that:

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

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

18 (3) the commission shall act upon a request
19 for ongoing fund support within one hundred twenty days of the
20 filing of the request; and

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

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1 [M-] N. The commission may also authorize payments
2 from the fund to incumbent rural telecommunications carriers or
3 to telecommunications carriers providing comparable retail
4 alternative services that have been designated as eligible
5 telecommunications carriers serving in rural areas of the state
6 upon a finding, based on factors that may include a carrier's
7 regulated revenues, expenses or investment, by the commission
8 that such payments are needed to ensure the widespread
9 availability and affordability of universal service. The
10 commission shall decide cases filed pursuant to this subsection
11 with reasonable promptness, with or without a hearing, but no
12 later than six months following the filing of an application
13 seeking payments from the fund, unless the commission finds
14 that a longer time will be required, in which case the
15 commission may extend the period for an additional three
16 months.

17 [N-] O. The commission shall adopt rules that
18 establish and implement a broadband program to provide funding
19 to eligible telecommunications carriers for the construction
20 and maintenance of broadband infrastructure. Each year, [~~a~~
21 ~~minimum of eight million dollars (\$8,000,000) of the fund]~~ an
22 amount equal to thirty million dollars (\$30,000,000) less the
23 amounts expended pursuant to Subsections K, L, M and N of this
24 section shall be dedicated to the broadband program.

25 [Ø-] P. Rules adopted pursuant to Subsection [N] Q

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1 of this section shall require that the commission:

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

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

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

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

18 [~~Q~~] R. By October 1 of each year, the commission
19 shall make a report to the legislature regarding the status of
20 the fund, including:

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

24 (2) recommendations for changes to the
25 structure, size and purposes of the fund and whether the cap on

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1 the fund provided for in Subsection [P] Q of this section
 2 should be modified, maintained or eliminated; and

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

6 S. The 2025 annual report made pursuant to
 7 Subsection R of this section shall include an assessment of the
 8 state rural universal service fund that addresses:

9 (1) whether to repurpose the access reduction
 10 support funds into the commission's broadband support program;

11 (2) a methodology for determining broadband
 12 support levels that is consistent with the requirements of
 13 Subsection C of this section and accounts, at a minimum, for
 14 broadband costs, potential revenues from deployed
 15 infrastructure and existing federal support mechanisms;

16 (3) the appropriate size of the fund;

17 (4) criteria for awarding funding;

18 (5) the impact of proposed changes on per-
 19 connection assessments; and

20 (6) whether all sellers of prepaid
 21 telecommunications services should be required to collect state
 22 rural universal service fund assessments at the point of sale,
 23 similar to the methodology for collecting 911 emergency
 24 surcharges pursuant to Section 63-9D-5 NMSA 1978."

25 SECTION 2. EFFECTIVE DATE.--The effective date of the

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1 provisions of this act is July 1, 2023.

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