

AN ACT
RELATING TO TELECOMMUNICATIONS; MAKING CHANGES TO THE
OPERATION OF RURAL TELECOMMUNICATIONS CARRIERS IN NEW
MEXICO; ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. SHORT TITLE.--This act may be cited as the "Rural Telecommunications Act of New Mexico".

Section 2. PURPOSE.--The legislature declares that it remains the policy of the state of New Mexico to maintain for rural customers availability of access to telecommunications services at affordable rates. Furthermore, it is the policy of this state to have comparable long distance service rates, as established by the commission, for comparable markets or market areas. To the extent that it is consistent with maintaining availability of access to service at affordable rates for rural customers, it is further the policy of this state to encourage competition and reduce regulation in the telecommunications industry, thereby allowing access by the public to resulting rapid advances in telecommunications technology. It is the purpose of the Rural Telecommunications Act of New Mexico to permit a regulatory framework that will allow an orderly transition for rural telephone carriers from a regulated telecommunications industry to a competitive market environment consistent with the federal act. Further, the legislature finds that as part of such regulatory framework, it is necessary to provide disparate regulatory treatment between rural telephone carriers and non-rural telephone carriers in order

to assist with accomplishing the goals established by the above declared policies. Disparate regulatory treatment is particularly necessary for those citizens who reside in rural New Mexico, because those rural areas constitute the bulk of the surface area within the boundaries of the state. Disparate regulatory treatment for rural telephone carriers requires relaxed regulation for rural telephone carriers with the objective of reducing the cost of regulation as well as the regulatory burden, permitting pricing flexibility and expediting required rate approvals, all in a manner consistent with both the purpose of an orderly transition from regulation to a competitive market environment and the federal act.

Section 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. "eligible telecommunications carrier" means an eligible telecommunications carrier as defined in the federal act;

F. "federal act" means the federal Telecommunications Act of 1996;

G. "fund" means the state rural universal service fund;

H. "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. "incumbent rural telecommunications carrier" means a local exchange carrier that serves fewer than fifty thousand access lines within the state and was designated as an eligible telecommunications carrier by the state corporation commission on or before November 1, 1997, including any successor in interest thereto;

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

L. "long distance service" means telecommunications service between local exchange areas that originate and terminate within the state;

M. "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. "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 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

O. "telecommunications carrier" means a person that provides public telecommunications service.

Section 4. REGULATION BY COMMISSION.--

A. Except as otherwise provided in the Rural Telecommunications Act of New Mexico or the federal act, each public telecommunications service is declared to be affected with the public interest and, as such, subject to the provisions of those acts, including the regulation thereof as provided in those acts.

B. The commission has exclusive jurisdiction to regulate rural telecommunications carriers only in the manner and to the extent authorized by the Rural Telecommunications Act of New Mexico, and Section 63-7-1.1 NMSA 1978 does not apply; provided, however, the commission's jurisdiction includes the regulation of wholesale rates, including access charges and interconnection agreements consistent with federal law and its enforcement and a determination of participation in low-income telephone service assistance programs pursuant to the Low Income Telephone Service Assistance Act.

Section 5. CERTIFICATE REQUIRED.--

A. No rural public telecommunications service shall be offered in this state except in accordance with the provisions of the Rural Telecommunications Act of New Mexico.

B. No rural public telecommunications service shall be offered within this state without the telecommunications carrier first having obtained from the commission a certificate declaring that the operation is in the present or future public convenience and necessity, unless the operation is otherwise authorized by the Rural Telecommunications Act of New Mexico.

C. The commission has full power and authority to determine matters of public convenience and necessity relating to the issuance of a certificate of public convenience and necessity to a provider of rural public telecommunications service, but in keeping with the purposes of the Rural Telecommunications Act of New Mexico and the federal act, the commission shall not deny an applicant a certificate on the grounds of need if it is shown that the applicant possesses adequate financial resources and technical competency to provide the service.

D. For purposes of considering and acting upon applications for certificates pursuant to this section, the commission may adopt rules on a competitively neutral basis and consistent with the provisions of the Rural Telecommunications Act of New Mexico and the federal act, necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of rural public telecommunications services and safeguard the rights of the consumers.

E. In determining whether to issue a certificate to provide rural public telecommunications service, the commission shall consider the following:

(1) whether the applicant has sufficient financial resources to provide the proposed telecommunications service properly and continuously;

(2) whether the applicant has competent and experienced management and personnel to provide the proposed telecommunications service;

(3) whether the applicant is willing and able to conform to all applicable laws and the rules of the

commission applicable generally to providers of telecommunications; and

(4) if any exemption, suspension or modification is available to any provider of the subject service in the subject area .

F. All certificates of public convenience and necessity shall:

(1) continue in force, notwithstanding the provisions of this section; and

(2) remain subject to all terms and conditions imposed by statute or commission order at the time of issuance or in connection with any subsequent amendment, notwithstanding the provisions of this section.

Section 6. STATE RURAL UNIVERSAL SERVICE FUND--
ESTABLISHMENT--BOARD.--

A. No later than January 1, 2000, the commission shall implement a "state rural universal service fund" to maintain and support at affordable rates those public telecommunications services as are determined by the commission. All of the balances in the existing New Mexico universal service fund as of July 1, 1999 shall be transferred into the state rural universal service fund.

B. The fund shall be financed by a surcharge on all intrastate retail public telecommunications services revenue, excluding revenue from services provided pursuant to a low-income telephone assistance plan billed to end-user customers by a telecommunications carrier, and excluding from revenue 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 all intrastate retail public telecommunications services provided by telecommunications carriers and to comparable retail alternative services provided by telecommunications carriers and non-telecommunications carriers, including commercial mobile radio services, operator services and aggregator services, offered by providers other than telecommunications carriers, at a competitively and technologically neutral rate or rates to be determined by the commission. In prescribing competitively and technologically neutral surcharge rates, the commission may make distinctions between services subject to a surcharge, but it shall require telecommunications carriers and non-telecommunications carriers to apply uniform surcharge rates for the same or comparable services. 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 surcharges to a private telecommunications network.

C. The fund shall be competitively and technologically neutral, equitable and nondiscriminatory in its collection and distribution of funds, portable between eligible telecommunications carriers, targeted to high-cost rural areas, and additionally shall provide a specific, predictable and sufficient support mechanism as determined by the commission that reduces implicit subsidies, including access charges and 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 service at affordable rates without unreasonably increasing rates for basic service while still granting eligible telecommunications carriers a reasonable profit on supported services in geographic areas requiring support from the fund, but the eligibility criteria shall not require any investigations of the costs or rates of a telecommunications carrier receiving support from the fund other than that provided for in Subsection E of this section. 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 geographic areas and local exchange services requiring support from the fund; and

(4) provide for the separate administration and disbursement of federal universal service funds consistent with federal law.

E. The commission shall adopt rules for the implementation and administration of the fund in accordance with the provisions of this section. The cost basis for establishing the fund and determining the rate of distribution of the fund for areas served by an incumbent rural telecommunications carrier shall be the same cost of and shall be consistent with the federal support mechanisms for providing the supported service by geographic area, determined by the federal communications commission. The cost basis established by the commission for areas served by incumbent rural telecommunications carriers shall include

the same return authorized by the federal communications commission for use in rates filed by the national exchange carriers association, or its successor, at the federal communications commission for member carriers. The revenue basis for rural telecommunications carriers with fewer than fifty thousand access lines shall include only revenues from public telecommunications services provided by the eligible telecommunications carrier.

F. 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. The administrator shall consult with an advisory board established by the commission composed of representatives from all participating providers and the attorney general or one other customer representative, provided that the total number of individual representatives on the advisory board shall not exceed thirteen. For purposes of this subsection, the commission shall not be a neutral third party administrator.

G. The fund established by the commission shall ensure the availability of local exchange service as determined by the commission at affordable rates in rural high cost areas of the state.

H. To ensure that providers of intrastate long distance service contribute to the fund and to further

ensure that the surcharge to be paid by the end-user customer will be held to a minimum, no later than December 31, 1999, the commission shall adopt rules, or take other appropriate action, to require all such providers to participate in a plan to ensure accurate reporting of intrastate retail long distance revenues.

I. Upon commission action to replace implicit subsidies with explicit subsidies, the commission shall reduce in a revenue-neutral basis rates for intrastate telecommunications services, other than basic local exchange service, excluding rates affected by the low-income telephone assistance program, in an amount equal to payments received by a rural telecommunications carrier from the fund. Any reductions in charges for access services resulting from compliance with this section shall be passed on for the benefit of consumers in New Mexico.

Section 7. REGULATION OF RETAIL RATES OF INCUMBENT RURAL TELECOMMUNICATIONS CARRIER.--

A. Rates for retail rural public telecommunications services provided by an incumbent rural telecommunications carrier shall be subject to regulation by the commission only in the manner and to the extent authorized by this section.

B. An incumbent rural telecommunications carrier shall file tariffs for all retail public telecommunications services, other than residential local exchange service, which shall be effective after ten days' notice to the commission and publication in a local newspaper in the incumbent service area. An incumbent rural telecommunications carrier shall remain subject to complaint

by an interested party subject to Section 10 of the Rural Telecommunications Act of New Mexico.

C. Rates for residential local exchange service may be increased by an incumbent rural telecommunications carrier only after sixty days notice to all affected subscribers. The notice of increase shall include:

- (1) the reasons for the rate increase;
- (2) a description of the affected service;
- (3) an explanation of the right of the subscriber to petition the commission for a public hearing on the rate increase;
- (4) a list of local exchange areas that are affected by the proposed rate increase; and
- (5) the dates, times and places for the public informational meetings required by this section.

D. An incumbent rural telecommunications carrier may increase its rates for residential local exchange service in the manner otherwise provided in this section as necessary to recover a reasonable allocation of costs incurred due to requirements imposed by any federal or state law or rule. An incumbent rural telecommunications carrier that proposes to increase its rates for residential local exchange service shall hold at least one public informational meeting in each public regulation commissioner's district as established by the Public Regulation Commission Apportionment Act in which there is a local exchange area affected by the rate change.

E. Residential local exchange service rates increased by a rural telecommunications carrier pursuant to Subsection D of this section shall be reviewed by the

commission only upon written protest signed by two and one-half percent of all affected subscribers or upon the commission staff's own motion for good cause. The protest shall specifically set forth the particular rate or charge as to which review is requested, the reasons for the requested review and the relief that the persons protesting desire. If a proper protest is presented to the commission within sixty days from the date notice of the rate change was sent to affected subscribers of an incumbent rural telecommunications carrier, the commission may accept and file the complaint and, upon proper notice, may suspend the rates at issue during the pendency of the proceedings and reinstate the rates previously in effect and shall hold and complete a hearing thereon within ninety days after filing to determine if the rates as proposed are fair, just and reasonable. The commission may, within sixty days after close of the hearing, enter an order adjusting the rates at issue, except that the commission shall not set any rate below the intrastate cost of providing the service, that will include cost and rate of return in accordance with Subsection E of Section 6 of the Rural Telecommunications Act of New Mexico. In the order, the commission may order a refund of amounts collected in excess of the rates and charges as approved at the hearing, which may be paid as a credit against billings for future services. If the complaint is denied, the commission shall enter an order denying the complaint within sixty days after the close of the hearing, and the rates shall be deemed approved. For purposes of this section, cost shall also include a reasonable amount of joint and common costs incurred by the

telecommunications carrier in its operations and may include other accounting adjustments authorized by the commission.

F. A rural telecommunications carrier that serves less than five percent of the state's aggregate, statewide subscriber lines may at any time elect to file an application with the commission requesting the commission to prescribe fair, just and reasonable rates for the carrier based on the carrier's revenue, expenses and investment in accordance with traditional rate-making principles.

G. Rates for local exchange, vertical and long distance service to retail end-user customers may be reduced to a level equal to, but not below, the intrastate cost, which shall include cost and rate of return pursuant to Subsection E of Section 6 of the Rural Telecommunications Act of New Mexico. If an incumbent rural telecommunications carrier loses its exemption pursuant to Section 251 of the federal act, the rate for a service, excluding basic service, must cover the cost of the service, including the imputed rate of wholesale service elements as may be required by the commission. The cost of long distance service must also include any interexchange access rates charged to another telecommunications carrier for the service.

H. An incumbent rural telecommunications carrier operating pursuant to this section shall have the ability to offer or discontinue offering special incentives, discounts, packaged offerings, temporary rate waivers or other promotions, or to offer individual contracts.

Section 8. EXEMPTION FOR PRIVATE SERVICE.--
Construction, maintenance or operation of a private

telecommunications service does not constitute the provision of rural public telecommunications service, and a private telecommunications service shall not be subject to regulation by the commission pursuant to the Rural Telecommunications Act of New Mexico.

Section 9. REGULATION OF INDIVIDUAL CONTRACTS TO FACILITATE COMPETITION.--

A. In accordance with the provisions of this section, the commission shall regulate the rates, charges and service conditions for individual contracts for rural public telecommunications services in a manner that authorizes the provision of all or any portion of a public telecommunications service under stated or negotiated terms to any person or entity that has acquired or is preparing to acquire, through construction, lease or any other form of acquisition, similar public telecommunications services from an alternate source.

B. At any time, the provider of rural public telecommunications services may file a verified application with the commission for authorization to provide a public telecommunications service on an individual contract basis. The application shall describe the telecommunications services to be offered, the party to be served and the parties offering the service, together with other information and in a form that the commission may prescribe. Such additional information shall be reasonably related to the determination of the existence of a competitive offer.

C. An application is deemed approved when filed unless the commission denies it. The commission shall approve or deny any such application within ten days after

filing or a different period established by the commission, not to exceed sixty days, giving consideration to the requirements of any contract negotiations. If the commission has not acted on any application within the time period established, the application is deemed granted. The commission shall deny the application only upon a finding that the application fails to set forth prescribed information or that the subject or comparable services are not being offered to the customer by parties other than the applicant or that the contract fails to cover the costs of the service.

D. Within ten days after the conclusion of negotiations, the provider of rural public telecommunications services shall file with the commission the final contract or other evidence of the service to be provided, together with the charges and other conditions of the service, which shall be maintained by the commission on a confidential basis subject to an appropriate protective order.

Section 10. COMPLAINT ALLEGING VIOLATION BY PROVIDER OF RURAL PUBLIC TELECOMMUNICATIONS SERVICES.--

A. Complaint may be made by any interested party setting forth any act or omission by a provider of rural public telecommunications services alleged to be in violation of any provision of the Rural Telecommunications Act of New Mexico or any order or rule of the commission issued pursuant to that act.

B. Upon filing of the complaint, the commission shall set the time and place of hearing and at least ten days' notice of the hearing shall be given to the party

complained of. Service of notice of the hearing shall be made in any manner giving actual notice.

C. All matters upon which complaint may be founded may be joined in one hearing and a complaint is not defective for misjoinder or nonjoinder of parties or causes, either before the commission or on review by the courts. The persons the commission allows to intervene shall be joined and heard, along with the complainant and the party complained of.

D. The burden shall be on the party complaining to show a violation of a provision of the Rural Telecommunications Act of New Mexico or an order or rule of the commission issued pursuant to that act.

E. After conclusion of the hearing, the commission shall make and file an order containing its findings of fact and decision. A copy of the order shall be served upon the party complained of or his attorney.

F. Conduct of the hearings and rendering of decisions shall be governed by the rules of practice and procedure promulgated by the commission.

Section 11. VALIDITY OF ORDERS--SUBSTANTIAL COMPLIANCE WITH ACT SUFFICIENT.--A substantial compliance by the commission with the requirements of the Rural Telecommunications Act of New Mexico shall be sufficient to give effect to all rules, orders and acts of the commission, and they shall not be declared inoperative, illegal or void for any omission of a technical nature, in respect thereto.

Section 12. APPEAL OF ORDERS OF THE COMMISSION.--Any provider of rural public telecommunications services and any other person in interest being aggrieved by a final order or

determination of the commission under the Rural Telecommunications Act of New Mexico may file a notice of appeal in the supreme court asking for a review of the commission's final orders. A notice of appeal shall be filed within thirty days after the entry of the commission's final order. Every notice of appeal shall name the commission as appellee and shall identify the order from which the appeal is taken. Any person whose rights may be directly affected by the appeal may appear and become a party, or the supreme court may upon proper notice order any person to be joined as a party.

Section 13. APPEAL ON THE RECORD.--

A. An appeal shall be on the record made before the commission and shall be governed by the appellate rules applicable to administrative appeals.

B. The supreme court shall affirm the commission's order unless it is:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record; or

(3) otherwise not in accordance with law.

Section 14. INJUNCTIONS--CONTEMPT.--The commission may apply to the district court for injunctions to prevent violations of any provision of the Rural Telecommunications Act of New Mexico or of any rule or order of the commission issued pursuant to that act, and the court has the power to grant such injunctions and to enforce such injunctions by contempt procedure.

Section 15. DELAYED REPEAL.--Section 63-9A-6.1 NMSA

