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HOUSE BILL 872

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Leo C. Watchman Jr.

AN ACT

RELATING TO TELECOMMUNICATIONS; MAKING CHANGES IN THE NEW  
MEXICO TELECOMMUNICATIONS ACT; AMENDING AND ENACTING SECTIONS  
OF THE NMSA 1978.

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

Section 1. Section 63-9A-2 NMSA 1978 (being Laws 1985,  
Chapter 242, Section 2, as amended) is amended to read:

"63-9A-2. PURPOSE. -- The legislature declares that it  
remains the policy of the state of New Mexico to maintain the  
availability of access to telecommunications services at  
affordable rates. Furthermore, it is the policy of this state  
to have comparable message telecommunications 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

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1 rates [~~and comparable message telecommunications service~~  
2 ~~rates~~], it is further the policy of this state to encourage  
3 competition and reduce regulation in the telecommunications  
4 industry, thereby allowing access by the public to resulting  
5 rapid advances in telecommunications technology. It is the  
6 purpose of the New Mexico Telecommunications Act to permit a  
7 regulatory framework that will allow an orderly transition  
8 from a regulated telecommunications industry to a competitive  
9 market environment consistent with the federal  
10 Telecommunications Act of 1996. Further, the legislature  
11 finds that as part of such regulatory framework, it is  
12 necessary to provide disparate regulatory treatment between  
13 rural telephone companies and non-rural telephone companies in  
14 order to assist with accomplishing the goals established by  
15 the above declared policies. Such disparate regulatory  
16 treatment is particularly necessary for those citizens who  
17 reside in rural New Mexico, which rural areas constitute the  
18 bulk of the surface area within the boundaries of New Mexico.  
19 Disparate regulatory treatment for rural telephone companies  
20 requires relaxed regulation for rural telephone companies with  
21 the objective of reducing the cost of regulation as well as  
22 the regulatory burden, permitting pricing flexibility and  
23 expediting required rate approvals, all consistent with the  
24 purpose of an orderly transition from regulation to a  
25 competitive market environment and consistent with the federal

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1 Communications Act of 1996. "

2 Section 2. Section 63-9A-3 NMSA 1978 (being Laws 1985,  
3 Chapter 242, Section 3, as amended) is amended to read:

4 "63-9A-3. DEFINITIONS. -- As used in the New Mexico  
5 Telecommunications Act:

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

11 B. "basic service" means service that is provided  
12 to an end user customer that is consistent with the federal  
13 Telecommunications Act of 1996;

14 [~~B.~~] C. "cable television service" means the one-  
15 way transmission to subscribers of video programming or other  
16 programming service and subscriber interaction, if any, that  
17 is required for the selection of such video programming or  
18 other programming service;

19 [~~C.~~] D. "commission" means the public regulation  
20 commi ssi on;

21 [D.] E. "competitive telecommunications service"  
22 means a service that has been determined to be subject to  
23 effective competition; [~~pursuant to Section 63-9A-8 NMSA 1978~~];

24 E. "~~effective competition~~" means that the  
25 ~~customers of the service have reasonably available and~~

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1 ~~comparable alternatives to the service]~~

2 F. "eligible telecommunications carrier" means  
3 "eligible telecommunications" carrier as defined in the  
4 federal Telecommunications Act of 1996;

5 ~~[F.]~~ G. "fund" means the New Mexico universal  
6 service fund;

7 H. "incumbent local exchange carrier" means a  
8 person that:

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

14 (2) became a successor or assignee of an  
15 incumbent local exchange carrier;

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

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

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1           ~~[H.]~~ K. "local exchange service" means the  
2 transmission of two-way interactive switched voice  
3 communications furnished by a telecommunications company  
4 within a local exchange area;

5           ~~[I.]~~ L. "message telecommunications service" means  
6 telecommunications service between local exchange areas that  
7 originate and terminate within the state for which charges are  
8 made on a per-unit basis, not including wide-area  
9 telecommunications service, or its equivalent, or individually  
10 negotiated contracts for telecommunications services;

11           ~~[J.] "noncompetitive telecommunications service"~~  
12 ~~means a service that has not been determined to be subject to~~  
13 ~~effective competition pursuant to Section 63-9A-8 NMSA 1978;~~

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

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1           ~~[L-]~~ N. "public telecommunications service" means  
2 the transmission of signs, signals, writings, images, sounds,  
3 messages, data or other information of any nature by wire,  
4 radio, lightwaves or other electromagnetic means originating  
5 and terminating in this state regardless of actual call  
6 routing. "Public telecommunications service" does not include  
7 the provision of terminal equipment used to originate or  
8 terminate such service; private telecommunications service;  
9 broadcast transmissions by radio, television and satellite  
10 broadcast stations regulated by the federal communications  
11 commission; radio common carrier services, including mobile  
12 telephone service and radio paging; or one-way cable  
13 television service; ~~[ and]~~

14           O. "rural telephone company" means a local exchange  
15 carrier that serves less than five thousand access lines  
16 within the state; and

17           ~~[M-]~~ P. "telecommunications company" means a person  
18 that provides public telecommunications service. "

19           Section 3. Section 63-9A-5 NMSA 1978 (being Laws 1985,  
20 Chapter 242, Section 5) is amended to read:

21           "63-9A-5. REGULATION BY COMMISSION. -- Except as otherwise  
22 provided in the New Mexico Telecommunications Act or the  
23 federal Telecommunications Act of 1996, each public  
24 telecommunications service is declared to be affected with the  
25 public interest and, as such, subject to the provisions of

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1 that act, including the regulation thereof as [ hereinafter]  
2 provided in that act. "

3 Section 4. Section 63-9A-6 NMSA 1978 (being Laws 1985,  
4 Chapter 242, Section 6, as amended) is amended to read:

5 "63-9A-6. CERTIFICATE REQUIRED. --

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

9 B. No public telecommunications service shall be  
10 offered within this state without the telecommunications  
11 company first having obtained from the commission a  
12 certificate declaring that the operation is in the present or  
13 future public convenience and necessity, unless the operation  
14 is otherwise authorized by the New Mexico Telecommunications  
15 Act.

16 C. The commission shall have full power and  
17 authority to determine matters of public convenience and  
18 necessity relating to the issuance of a certificate of public  
19 convenience and necessity to a provider of public  
20 telecommunications service; provided, however, that in keeping  
21 with the purposes of the New Mexico Telecommunications Act,  
22 the commission shall not deny an applicant a certificate on  
23 the grounds of need if it is shown that the applicant  
24 possesses adequate financial resources and technical  
25 competency to provide the service. [ It shall be within the

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1 ~~discretion of the commission to determine when and upon what~~  
2 ~~conditions plant, equipment or services may be provided under~~  
3 ~~certificates of public convenience and necessity, by more than~~  
4 ~~one person, and the commission may attach to the exercise of~~  
5 ~~rights granted by the certificate such terms and conditions~~  
6 ~~as, in its judgment, the public convenience and necessity may~~  
7 ~~require or as otherwise authorized.~~

8 ~~D. Notwithstanding the provisions of Subsection C of~~  
9 ~~this section, any telecommunications company with less than~~  
10 ~~one hundred thousand access lines holding a certificate of~~  
11 ~~public convenience and necessity to provide local exchange~~  
12 ~~service to the public shall have the exclusive right to~~  
13 ~~provide local exchange service within its certificated service~~  
14 ~~territory and shall not be subject to competition in the~~  
15 ~~provision of local exchange service in its certificated~~  
16 ~~service territory unless the commission determines that public~~  
17 ~~convenience and necessity require additional plant or~~  
18 ~~equipment for the provision of local exchange service within~~  
19 ~~the certificated service territory of the existing~~  
20 ~~telecommunications company and a certificate of public~~  
21 ~~convenience and necessity is granted pursuant to Subsection E~~  
22 ~~of this section]~~

23 D. For purposes of considering and acting upon  
24 applications for certificates pursuant to this section, the  
25 commission may adopt rules and regulations, on a competitively



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1 neutral basis and consistent with the provisions of the New  
2 Mexico Telecommunications Act and the federal act, necessary  
3 to preserve and advance universal service, protect the public  
4 safety and welfare, ensure the continued quality of public  
5 telecommunications services and safeguard the rights of the  
6 consumers.

7 E. In determining whether [~~public convenience and~~  
8 ~~necessity require an additional~~] to issue a certificate to  
9 provide [local exchange] telecommunications service [in a  
10 ~~certificated service territory]~~, the commission shall [~~in a~~  
11 ~~proceeding in which the telecommunications company~~  
12 ~~certificated in the affected area is a party]~~ consider [~~and~~  
13 ~~determine upon substantial evidence that]~~ the following:  
14 [~~conditions exist~~

15 ~~(1) the existing telecommunications company is~~  
16 ~~inadequate to meet the reasonable needs and convenience of the~~  
17 ~~public;~~

18 ~~(2) the proposed second plant or equipment~~  
19 ~~would eliminate such inadequacy;~~

20 ~~(3) it is economically feasible to operate the~~  
21 ~~proposed second plant or equipment successfully and~~  
22 ~~continuously for the furnishing of local exchange service;~~

23 ~~(4)]~~ (1) whether the applicant [~~for the second~~  
24 ~~plant or equipment]~~ has sufficient financial resources to  
25 provide the proposed local exchange service properly and

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1 continuously;

2 [~~(5)~~] (2) whether the applicant [~~for the second~~  
3 ~~plant or equipment~~] has competent and experienced management  
4 and personnel to provide the proposed [~~local exchange~~]  
5 service; and

6 [~~(6)~~] (3) whether the applicant [~~for the second~~  
7 ~~plant or equipment~~] is willing and able to conform to [~~the~~  
8 ~~constitution of New Mexico and~~] all applicable laws [~~of New~~  
9 ~~Mexico~~] and the rules [~~and regulations~~] of the commission.

10 [~~(7) the applicant for the second plant or~~  
11 ~~equipment is in every respect willing and able to provide the~~  
12 ~~proposed local exchange service properly; and~~

13 ~~(8) granting the additional certificate to the~~  
14 ~~applicant shall not have a significant adverse impact on the~~  
15 ~~existing telecommunications company.]~~

16 F. All certificates of public convenience and  
17 necessity shall:

18 (1) continue in force, notwithstanding the  
19 provisions of this section [~~63-9A-2 NMSA 1978~~]; and

20 (2) remain subject to all terms and conditions  
21 imposed by statute or commission order at the time of issuance  
22 or in connection with any subsequent amendment,  
23 notwithstanding the provisions of [~~that~~] this section."

24 Section 5. Section 63-9A-6.1 NMSA 1978 (being Laws 1987,  
25 Chapter 21, Section 4, as amended) is amended to read:

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1 "63-9A-6.1. NEW MEXICO UNIVERSAL SERVICE FUND--  
2 ESTABLISHMENT-- BOARD. --

3 A. No later than January 1, 2000, the commission  
4 shall [establish a "New Mexico] implement a "state universal  
5 service fund" to maintain [existing residential local exchange  
6 service] and support at affordable rates those public  
7 telecommunications services as are determined by the  
8 commission. Upon the effective date of this section, balances  
9 in the existing New Mexico universal service fund shall be  
10 transferred into the state universal service fund and the New  
11 Mexico universal service fund shall cease to exist.

12 B. The fund shall be [~~financed by a uniform~~  
13 ~~surcharge on all local exchange service customers at a rate to~~  
14 ~~be determined by the commission. Money deposited in the fund~~  
15 ~~is not public money and the administration of the fund is not~~  
16 ~~subject to the provisions of law regulating public funds]~~  
17 competitively and technologically neutral, equitable and  
18 nondiscriminatory in its collection and distribution of funds,  
19 portable between eligible telecommunications companies,  
20 targeted to high cost rural areas, and shall provide a  
21 specific, predictable and sufficient support mechanism as  
22 determined by the commission that reduces implicit subsidies,  
23 including long distance switched access charges, and assures  
24 universal service in the state. Reductions in charges for  
25 intrastate switched access services resulting from compliance

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1 with this section shall be passed on for the benefit of  
2 consumers in New Mexico.

3 C. The fund shall be financed by a surcharge on all  
4 intrastate retail public telecommunications services revenue,  
5 excluding revenue from services provided pursuant to a low-  
6 income telephone assistance plan billed to end user customers  
7 by a telecommunications carrier, and excluding from that  
8 revenue all amounts from surcharges, gross receipts taxes,  
9 excise taxes, franchise fees and similar charges. For the  
10 purpose of funding the state universal service fund, the  
11 commission has the authority to apply the surcharge on all end  
12 user retail public telecommunications services provided in the  
13 state by telecommunications companies and to comparable retail  
14 alternative services provided by telecommunications companies  
15 and non-telecommunications companies, including commercial  
16 mobile radio services, operator services and aggregator  
17 services offered by providers other than telecommunications  
18 companies, at a competitively and technologically neutral rate  
19 or rates to be determined by the commission. In prescribing  
20 competitively and technologically neutral surcharge rates, the  
21 commission may make distinctions between services subject to a  
22 surcharge, but it shall require telecommunications carriers  
23 and non-telecommunications carriers to apply uniform surcharge  
24 rates for the same or comparable services. Money deposited in  
25 the fund is not public money, and the administration of the

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1 fund is not subject to the provisions of law regulating public  
2 funds. The commission shall not apply the surcharge to a  
3 private telecommunications network.

4 ~~[C.]~~ D. The commission shall:

5 (1) establish eligibility criteria for  
6 participation in the fund [~~which assure the availability of~~  
7 ~~service at affordable rates without unreasonably increasing~~  
8 ~~rates to local exchange service and message telecommunications~~  
9 ~~service customers~~

10 ~~(2) determine which companies meet the~~  
11 ~~eligibility criteria; and~~

12 ~~(3) provide for the collection of the surcharge~~  
13 ~~and the administration and disbursement of money from the~~  
14 ~~fund] consistent with federal law, which ensure the~~

15 availability of service at affordable rates without  
16 unreasonably increasing rates for basic service while still  
17 granting eligible telecommunications carriers a reasonable  
18 profit on supported services in geographic areas requiring  
19 support from the fund, but the eligibility criteria shall not  
20 require any investigations of the costs or rates of a  
21 telecommunications carrier receiving support from the fund,  
22 other than that provided for in Subsection E of this section.  
23 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 surcharge  
2 on a competitively neutral basis;

3                   (3) determine those geographic areas and local  
4 exchange service areas requiring support from the fund; and

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

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

11                   ~~[D.]~~ F. The commission shall adopt rules [ and  
12 regulations] for the implementation and administration of the  
13 fund in accordance with the provisions of this section.

14                   ~~[E. The commission shall establish a board composed~~  
15 ~~of representatives from the providers of local exchange~~  
16 ~~service to collect, administer and disburse money from the~~  
17 ~~fund under the supervision and control of the commission~~  
18 ~~pursuant to the established criteria and the rules and~~  
19 ~~regulations promulgated by the commission.]~~

20                   G. The cost basis for establishing the fund and  
21 determining the rate of distribution of the new fund for areas  
22 served by an incumbent rural telecommunications carrier with  
23 fewer than fifty thousand access lines shall be the same cost  
24 of, and shall be consistent with the federal support  
25 mechanisms for, providing the supported service by geographic

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1 area, determined by the federal communications commission.  
2 The cost basis established by the commission for areas served  
3 by telecommunications carriers with fewer than fifty thousand  
4 access lines shall include the same return authorized by the  
5 federal communications commission for use in rates filed by  
6 the national exchange carriers association at the federal  
7 communications commission for those carriers. The revenue  
8 basis for rural telecommunications carriers with fewer than  
9 fifty thousand access lines shall only include revenues from  
10 public telecommunications services provided by the eligible  
11 telecommunications carrier. The cost basis for establishing  
12 the fund and determining the rate of distribution of the new  
13 fund for areas served by incumbent local exchange carriers  
14 with fifty thousand or more access lines shall be the forward  
15 looking economic cost of providing the supported service in  
16 the geographic area as determined by the commission.

17 H. Upon implementation of the fund, the commission  
18 shall select a neutral third party administrator to collect,  
19 administer and disburse money from the fund under the  
20 supervision and control of the commission pursuant to the  
21 established criteria and the rules promulgated by the  
22 commission. The administrator may be reasonably compensated  
23 for the provided services from the surcharge proceeds to be  
24 received by the fund pursuant to Subsection C of this section.  
25 The neutral third party administrator shall consult with an

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1 advisory board established by the commission composed of  
2 representatives from all participating providers. For  
3 purposes of this subsection, the commission shall not be a  
4 neutral third party administrator.

5 I. To ensure that providers of intrastate long  
6 distance service contribute to the fund as required above, and  
7 to further ensure that the surcharge to be paid by the end  
8 user customer will be held to a minimum, no later than  
9 December 31, 1999, the commission shall adopt rules, or take  
10 other appropriate action, to require all intrastate long  
11 distance service providers to participate in a plan to ensure  
12 accurate reporting of intrastate retail long distance  
13 revenues.

14 J. Switched access charges and other intrastate  
15 telecommunication services, other than basic local exchange  
16 service, may be considered for reductions as an offset to  
17 payments received by a telecommunications carrier from the  
18 universal service fund."

19 Section 6. A new section of Chapter 63, Article 9A NMSA  
20 1978 is enacted to read:

21 "[NEW MATERIAL] REGULATION OF RETAIL RATES OF INCUMBENT  
22 RURAL TELECOMMUNICATIONS CARRIER. --

23 A. Rates for retail public telecommunications  
24 services provided by an incumbent rural telecommunications  
25 carrier shall be subject to regulation by the commission only



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1 in the manner and to the extent authorized by this section.

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

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

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

21 D. An incumbent rural telecommunications carrier may  
22 increase its rates for residential local exchange service in  
23 the manner otherwise provided in this section as necessary to  
24 recover a reasonable allocation of costs incurred due to  
25 requirements imposed by any federal or state law or rule or

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1 regulation. An incumbent rural telecommunications carrier  
2 that proposes to increase its rates for residential local  
3 exchange service shall hold at least one public informational  
4 meeting in each public regulation commissioner's district as  
5 established by the Public Regulation Commission Apportionment  
6 Act in which there is a local exchange area affected by the  
7 rate change.

8 E. Local exchange service rates increased by any  
9 rural telecommunications carrier pursuant to Subsection D of  
10 this section shall be reviewed by the commission only upon  
11 written protest signed by two and one-half percent of all  
12 affected subscribers or upon the commission staff's own motion  
13 for good cause. The protest shall specifically set forth the  
14 particular rate or charge as to which review is requested, the  
15 reasons for the requested review and the relief that the  
16 persons protesting desire. If a proper protest is presented  
17 to the commission within sixty days from the date notice of  
18 the rate change was sent to affected subscribers of an  
19 incumbent rural telephone carrier, the commission may accept  
20 and file the complaint and, upon proper notice, may suspend  
21 the rates at issue during the pendency of the proceedings and  
22 reinstate the rates previously in effect and shall hold and  
23 complete a hearing thereon within ninety days after filing to  
24 determine if the rates as proposed are fair, just and  
25 reasonable. The commission may, within sixty days after close

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1 of the hearing, enter an order adjusting the rates at issue,  
2 except that the commission shall not set any rate below the  
3 intrastate cost of providing the service, which shall include  
4 cost and rate of return. In the order, the commission may  
5 order a refund of amounts collected in excess of the rates and  
6 charges as approved at the hearing, which may be paid as a  
7 credit against billings for future services. If the complaint  
8 is denied, the commission shall enter an order denying the  
9 complaint within sixty days after the close of the hearing,  
10 and the rates shall be deemed approved. For purposes of this  
11 section, cost shall also include a reasonable amount of joint  
12 and common costs incurred by the telecommunications carrier in  
13 its operations and may include other accounting adjustments  
14 authorized by the commission.

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

22 G. Rates for local exchange, vertical and message  
23 telecommunications services to retail end-user customers may  
24 be reduced to a level equal to, but not below, the intrastate  
25 cost, which shall include cost and rate of return of providing

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1 the retail service. If a rural telecommunications carrier  
2 loses its exemption pursuant to Section 251 of the federal  
3 Telecommunications Act of 1996, the rate for a service,  
4 excluding basic service, must cover the cost of the service,  
5 including the imputed rate of wholesale service elements as  
6 may be required by the commission. The cost of message  
7 telecommunications service must also include any interexchange  
8 access rates charged to another telecommunications carrier for  
9 the service.

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

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3  
4  
5  
6 March 2, 1999

7  
8 Mr. Speaker:

9  
10 Your BUSINESS AND INDUSTRY COMMITTEE, to whom has  
11 been referred

12 HOUSE BILL 872

13  
14 has had it under consideration and reports same with  
15 recommendation that it DO NOT PASS, but that

16 HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE  
17 FOR HOUSE BILL 872

18  
19 DO PASS, and thence referred to the JUDICIARY  
20 COMMITTEE.

FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

HBIC/HB 872

Page 22

Respectfully submitted,

Debbie A. Rodella, Vice Chairwoman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Kissner, Lutz, J. Taylor

Absent: None

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1 HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
2 HOUSE BILL 872  
3 **44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**  
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9 AN ACT

10 RELATING TO TELECOMMUNICATIONS; REVISING THE NEW MEXICO  
11 TELECOMMUNICATIONS ACT; AMENDING AND ENACTING SECTIONS OF THE  
12 NMSA 1978.

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

14 Section 1. Section 63-9A-2 NMSA 1978 (being Laws 1985,  
15 Chapter 242, Section 2, as amended) is amended to read:

16 "63-9A-2. PURPOSE. --The legislature declares that it  
17 remains the policy of the state of New Mexico to maintain the  
18 availability of access to telecommunications services at  
19 affordable rates. Furthermore, it is the policy of this state  
20 to have comparable message telecommunications service rates,  
21 as established by the commission, for comparable markets or  
22 market areas. To the extent that it is consistent with  
23 maintaining availability of access to service at affordable  
24 rates [and comparable message telecommunications service  
25 rates], it is further the policy of this state to encourage  
competition and reduce regulation in the telecommunications

1 industry, thereby allowing access by the public to resulting  
2 rapid advances in telecommunications technology. It is the  
3 purpose of the New Mexico Telecommunications Act to permit a  
4 regulatory framework that will allow an orderly transition  
5 from a regulated telecommunications industry to a competitive  
6 market environment consistent with the federal act. Further,  
7 the legislature finds that as part of that regulatory  
8 framework, it is necessary to provide disparate regulatory  
9 treatment between rural telephone carriers and nonrural  
10 telephone carriers in order to enable accomplishment of the  
11 goals established by its declared policies. Disparate  
12 regulatory treatment is particularly necessary for those  
13 citizens who reside in rural New Mexico because those rural  
14 areas constitute the bulk of the surface area within the  
15 boundaries of the state. Disparate regulatory treatment for  
16 rural telephone carriers requires relaxed regulation for rural  
17 telephone carriers with the objectives of reducing the cost of  
18 regulation as well as the regulatory burden, permitting  
19 pricing flexibility and expediting required rate approvals,  
20 all in a manner consistent with both the purpose of an orderly  
21 transition from regulation to a competitive market environment  
22 and the federal act."

20 Section 2. Section 63-9A-3 NMSA 1978 (being Laws 1985,  
21 Chapter 242, Section 3, as amended) is amended to read:

22 "63-9A-3. DEFINITIONS.--As used in the New Mexico  
23 Telecommunications Act:

24 A. "affordable rates" means [~~local exchange~~] basic  
25 service rates that promote universal service within a local



1 exchange service area, giving consideration to the economic  
 2 conditions and costs to provide service in [~~such~~] the area in  
 3 which service is provided;

4 B. "basic service" means service that is provided to  
 5 an end-user customer that is consistent with the federal act;

6 [~~B.-~~] C. "cable television service" means the one-way  
 7 transmission to subscribers of video programming or other  
 8 programming service and subscriber interaction, if any, that  
 9 is required for the selection of [~~such~~] the video programming  
 10 or other programming service;

11 [~~C.-~~] D. "commission" means the public regulation  
 12 commi ssi on;

13 [~~D.-~~] E. "competitive telecommunications service"  
 14 means a service that has been determined to be subject to  
 15 effective competition [~~pursuant to Section 63-9A-8 NMSA 1978~~;

16 E. "~~effective competition" means that the customers~~  
 17 ~~of the service have reasonably available and comparable~~  
 18 ~~alternatives to the service]~~;

19 F. "eligible telecommunications carrier" means an  
 20 eligible telecommunications carrier as defined in the federal  
 21 act;

22 G. "federal act" means the federal  
 23 Telecommunications Act of 1996;

24 [~~F.-~~] H. "fund" means the [~~New Mexico~~] state  
 25 universal service fund;

I. "incumbent local exchange carrier" means a person  
that:

1                   (1) was designated as an eligible  
2 telecommunications carrier by the state corporation commission  
3 in Docket #97-93 TC by order dated October 23, 1997, or that  
4 provided local exchange service in this state on February 8,  
5 1996; or

6                   (2) became a successor or assignee of an  
7 incumbent local exchange carrier;

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

14                   ~~[G.]~~ K. "local exchange area" means a geographic  
15 area encompassing one or more local communities, as described  
16 in maps, tariffs or rate schedules filed with the commission,  
17 where local exchange rates apply;

18                   ~~[H.]~~ L. "local exchange service" means the  
19 transmission of two-way interactive switched voice  
20 communications furnished by a telecommunications ~~[ company]~~  
21 carrier within a local exchange area;

22                   ~~[I.]~~ M. "message telecommunications service" means  
23 telecommunications service between local exchange areas that  
24 originate and terminate within the state for which charges are  
25 made on a per-unit basis, not including wide-area  
telecommunications service, or its equivalent, or individually  
negotiated contracts for telecommunications services;

~~[J.] "noncompetitive telecommunications service"~~

1 ~~means a service that has not been determined to be subject to~~  
 2 ~~effective competition pursuant to Section 63-9A-8 NMSA 1978;~~

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

15 ~~L.]~~ O. "public telecommunications service" means  
 16 the transmission of signs, signals, writings, images, sounds,  
 17 messages, data or other information of any nature by wire,  
 18 radio, lightwaves or other electromagnetic means originating  
 19 and terminating in this state regardless of actual call  
 20 routing. "Public telecommunications service" does not include  
 21 the provision of terminal equipment used to originate or  
 22 terminate ~~such~~ the service; private telecommunications  
 23 service; broadcast transmissions by radio, television and  
 24 satellite broadcast stations regulated by the federal  
 25 communications commission; radio common carrier services,  
 including mobile telephone service and radio paging; or one-  
 way cable television service; and

~~M.]~~ P. "telecommunications ~~company~~ carrier" means

1 a person that provides public telecommunications service. "

2 Section 3. Section 63-9A-5 NMSA 1978 (being Laws 1985,  
3 Chapter 242, Section 5) is amended to read:

4 "63-9A-5. REGULATION BY COMMISSION. -- Except as otherwise  
5 provided in the New Mexico Telecommunications Act or the  
6 federal act, each public telecommunications service is  
7 declared to be affected with the public interest and, as such,  
8 subject to the provisions of [~~that act~~] those acts, including  
9 the regulation thereof as [~~hereinafter~~] provided in those  
10 acts. "

11 Section 4. Section 63-9A-6 NMSA 1978 (being Laws 1985,  
12 Chapter 242, Section 6, as amended) is amended to read:

13 "63-9A-6. CERTIFICATE REQUIRED. --

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

17 B. No public telecommunications service shall be  
18 offered within this state without the telecommunications  
19 [~~company~~] carrier first having obtained from the commission a  
20 certificate declaring that the operation is in the present or  
21 future public convenience and necessity, unless the operation  
22 is otherwise authorized by the New Mexico Telecommunications  
23 Act.

24 C. The commission [~~shall have~~] has full power and  
25 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 public  
telecommunications service [~~provided, however, that~~] but in

1 keeping with the purposes of the New Mexico Telecommunications  
 2 Act and the federal act, the commission shall not deny an  
 3 applicant a certificate on the grounds of need if it is shown  
 4 that the applicant possesses adequate financial resources and  
 5 technical competency to provide the service. [~~It shall be~~  
 6 ~~within the discretion of the commission to determine when and~~  
 7 ~~upon what conditions plant, equipment or services may be~~  
 8 ~~provided under certificates of public convenience and~~  
 9 ~~necessity, by more than one person, and the commission may~~  
 10 ~~attach to the exercise of rights granted by the certificate~~  
 11 ~~such terms and conditions as, in its judgment, the public~~  
 12 ~~convenience and necessity may require or as otherwise~~  
 13 ~~authorized.~~

14 D. ~~Notwithstanding the provisions of Subsection C of~~  
 15 ~~this section, any telecommunications company with less than~~  
 16 ~~one hundred thousand access lines holding a certificate of~~  
 17 ~~public convenience and necessity to provide local exchange~~  
 18 ~~service to the public shall have the exclusive right to~~  
 19 ~~provide local exchange service within its certificated service~~  
 20 ~~territory and shall not be subject to competition in the~~  
 21 ~~provision of local exchange service in its certificated~~  
 22 ~~service territory unless the commission determines that public~~  
 23 ~~convenience and necessity require additional plant or~~  
 24 ~~equipment for the provision of local exchange service within~~  
 25 ~~the certificated service territory of the existing~~  
 26 ~~telecommunications company and a certificate of public~~  
 27 ~~convenience and necessity is granted pursuant to Subsection E~~  
 28 ~~of this section.]~~

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

10           E. In determining whether [~~public convenience and~~  
11 ~~necessity require an additional~~] to issue a certificate to  
12 provide [~~local exchange~~] telecommunications service [~~in a~~  
13 certificated service territory], the commission shall [~~in a~~  
14 proceeding in which the telecommunications company  
15 certificated in the affected area is a party] consider [~~and~~  
16 determine upon substantial evidence that] the following:  
17 [~~conditions exist:~~

18                   (1) ~~the existing telecommunications company is~~  
19 ~~inadequate to meet the reasonable needs and convenience of the~~  
20 ~~public;~~

21                   (2) ~~the proposed second plant or equipment~~  
22 ~~would eliminate such inadequacy;~~

23                   (3) ~~it is economically feasible to operate the~~  
24 ~~proposed second plant or equipment successfully and~~  
25 ~~continuously for the furnishing of local exchange service;~~

                  (4) (1) whether the applicant [~~for the second~~  
plant or equipment] has sufficient financial resources to  
provide the proposed local exchange service properly and

1 continuously;

2 ~~[(5)]~~ (2) whether the applicant ~~[for the second~~  
 3 ~~plant or equipment]~~ has competent and experienced management  
 4 and personnel to provide the proposed local exchange service;

5 ~~[(6)]~~ (3) whether the applicant ~~[for the second~~  
 6 ~~plant or equipment]~~ is willing and able to conform to ~~[the~~  
 7 ~~constitution of New Mexico and]~~ all applicable laws ~~[of New~~  
 8 ~~Mexico]~~ and the rules ~~[and regulations]~~ of the commission

9 ~~[(7) the applicant for the second plant or~~  
 10 ~~equipment is in every respect willing and able to provide the~~  
 11 ~~proposed local exchange service properly; and~~

12 ~~(8) granting the additional certificate to the~~  
 13 ~~applicant shall not have a significant adverse impact on the~~  
 14 ~~existing telecommunications company]~~ applicable generally to  
 15 providers of telecommunications; and

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

19 F. All certificates of public convenience and  
 20 necessity shall:

21 (1) continue in force, notwithstanding the  
 22 provisions of this section ~~[63-9A-2 NMSA 1978]~~; and

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

Section 5. Section 63-9A-6.1 NMSA 1978 (being Laws 1987,  
 Chapter 21, Section 4, as amended) is amended to read:

underscored material = new  
 [bracketed material] = delete

1 "63-9A-6.1. [~~NEW MEXICO~~] STATE UNIVERSAL SERVICE FUND--  
2 ESTABLISHMENT-- BOARD. --

3 A. The commission shall [~~establish~~] implement no  
4 later than January 1, 2000 a "[New Mexico] state universal  
5 service fund" to maintain [~~existing residential local exchange~~  
6 service] and support at affordable rates those public  
7 telecommunications services as are determined by the  
8 commission. On July 1, 1999, balances in the existing New  
9 Mexico universal service fund shall be transferred into the  
10 state universal service fund, and the New Mexico universal  
11 service fund shall cease to exist.

12 B. The fund shall be financed by a [~~uniform~~]  
13 surcharge on all [~~local exchange service customers at a rate~~  
14 ~~to be determined by the commission~~] intrastate retail public  
15 telecommunications services revenue, excluding revenue from  
16 services provided pursuant to a low-income telephone  
17 assistance plan billed to end-user customers by a  
18 telecommunications carrier, and excluding from revenue all  
19 amounts from surcharges, gross receipts taxes, excise taxes,  
20 franchise fees and similar charges. For the purpose of  
21 funding the fund, the commission has the authority to apply  
22 the surcharge on all end-user retail public telecommunications  
23 services provided in the state by telecommunications carriers  
24 and to comparable retail alternative services provided by  
25 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

underscored material = new  
[bracketed material] = delete



1 technologically neutral rate or rates to be determined by the  
 2 commission. In prescribing competitively and technologically  
 3 neutral surcharge rates, the commission may make distinctions  
 4 between services subject to a surcharge, but it shall require  
 5 telecommunications carriers and non-telecommunications  
 6 carriers to apply uniform surcharge rates for the same or  
 7 comparable services. Money deposited in the fund is not  
 8 public money, and the administration of the fund is not  
 9 subject to the provisions of law regulating public funds. The  
 10 commission shall not apply surcharges to a private  
 11 telecommunications network.

12 C. The fund shall be competitively and  
 13 technologically neutral, equitable and nondiscriminatory in  
 14 its collection and distribution of funds, portable between  
 15 eligible telecommunications carriers, targeted to high-cost  
 16 rural areas, and additionally shall provide a specific,  
 17 predictable and sufficient support mechanism as determined by  
 18 the commission that reduces implicit subsidies, including  
 19 access charges and ensures universal service in the state.

20 ~~[C:]~~ D. The commission shall:

21 (1) establish eligibility criteria for  
 22 participation in the fund [~~which assure the availability of~~  
 23 ~~service at affordable rates without unreasonably increasing~~  
 24 ~~rates to local exchange service and message telecommunications~~  
 25 ~~service customers] 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~~

1 profit on supported services in geographic areas requiring  
2 support from the fund, but the eligibility criteria shall not  
3 require any investigations of the costs or rates of a  
4 telecommunications carrier receiving support from the fund  
5 other than that provided for in Subsection E of this section.  
6 The eligibility criteria shall not restrict or limit an  
7 eligible telecommunications carrier from receiving federal  
8 universal service support;

9 (2) [~~determine which companies meet the~~  
10 ~~eligibility criteria; and~~

11 (3)] provide for the collection of the  
12 surcharge on a competitively neutral basis and for the  
13 administration and disbursement of money from the fund;

14 (3) determine those geographic areas and local  
15 exchange services requiring support from the fund; and

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

19 [D.] E. The commission shall adopt rules [~~and~~  
20 ~~regulations~~] for the implementation and administration of the  
21 fund in accordance with the provisions of this section. The  
22 cost basis for establishing the fund and determining the rate  
23 of distribution of the new fund for areas served by an  
24 incumbent rural telecommunications carrier with fewer than  
25 fifty thousand access lines 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

1 established by the commission for areas served by  
 2 telecommunications carriers with fewer than fifty thousand  
 3 access lines shall include the same return authorized by the  
 4 federal communications commission for use in rates filed by  
 5 the national exchange carriers association at the federal  
 6 communications commission for member carriers. The revenue  
 7 basis for rural telecommunications carriers with fewer than  
 8 fifty thousand access lines shall include only revenues from  
 9 public telecommunications services provided by the eligible  
 10 telecommunications carrier. The cost basis for establishing  
 11 the fund and determining the rate of distribution of the fund  
 12 for areas served by incumbent local exchange carriers with  
 13 fifty thousand or more access lines shall be the forward  
 14 looking economic cost of providing the supported service in  
 15 the geographic area as determined by the commission.

14 ~~[E.]~~ F. The commission shall ~~[establish a board~~  
 15 ~~composed of representatives from the providers of local~~  
 16 ~~exchange service]~~, upon implementation of the fund, select a  
 17 neutral third party administrator to collect, administer and  
 18 disburse money from the fund under the supervision and control  
 19 of the commission pursuant to the established criteria and the  
 20 rules [and regulations] promulgated by the commission. The  
 21 administrator may be reasonably compensated for the specified  
 22 services from the surcharge proceeds to be received by the  
 23 fund pursuant to Subsection C of this section. The  
 24 administrator shall consult with an advisory board established  
 25 by the commission composed of representatives from all  
participating providers. For purposes of this subsection, the

1 commission shall not be a neutral third party administrator.

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

6 H. To ensure that providers of intrastate message  
7 telecommunications service contribute to the fund and to  
8 further ensure that the surcharge to be paid by the end-user  
9 customer will be held to a minimum, no later than December 31,  
10 1999, the commission shall adopt rules, or take other  
11 appropriate action, to require all such providers to  
12 participate in a plan to ensure accurate reporting of  
13 intrastate retail long distance revenues.

14 I. Access charges and other intrastate  
15 telecommunications services, other than basic local exchange  
16 service, may be considered for reductions as an offset to  
17 payments received by a telecommunications carrier from the  
18 fund. Any reductions in charges for access services resulting  
19 from compliance with this section shall be passed on for the  
20 benefit of consumers in New Mexico. "

21 Section 6. Section 63-9A-8 NMSA 1978 (being Laws 1985,  
22 Chapter 242, Section 8, as amended) is amended to read:

23 "63-9A-8. REGULATION OF RATES AND CHARGES. - -

24 A. In accordance with the policy established in the  
25 New Mexico Telecommunications Act, the commission shall, by  
its own motion or upon petition by any interested party, hold  
hearings to determine if any public telecommunications service  
is subject to effective competition in the relevant market

1 area. When the commission has made a determination that a  
 2 service or part of a service is subject to effective  
 3 competition, the commission shall, consistent with the  
 4 purposes of the New Mexico Telecommunications Act, modify,  
 5 reduce or eliminate rules [~~regulations~~] and other requirements  
 6 applicable to the provision of [~~such~~] the service, including  
 7 the fixing and determining of specific rates, tariffs or fares  
 8 for the service. The commission's action may include the  
 9 detariffing of service or the establishment of minimum rates  
 10 which will cover the costs for the service. [~~Such~~] The  
 11 modification shall be consistent with the maintenance of the  
 12 availability of access to [~~local exchange~~] basic service at  
 13 affordable rates [~~and comparable message telecommunication~~  
 14 ~~service rates~~] as established by the commission for comparable  
 15 markets or market areas, except that volume discounts or other  
 16 discounts based on reasonable business purposes shall be  
 17 permitted. Upon petition or request of an affected  
 18 telecommunications [~~company~~] carrier, the commission, upon a  
 19 finding that the requirements of Subsection C of this section  
 20 are met, shall modify the same or similar regulatory  
 21 requirements for those providers of comparable public  
 22 telecommunications services in the same relevant markets so  
 23 that there shall be parity of regulatory standards and  
 24 requirements for all such providers.

25 B. In determining whether a service is subject to  
 effective competition, the commission shall consider the  
 following:

- (1) the extent to which services are reasonably

1 available from alternate providers in the relevant market  
2 area;

3 (2) the ability of alternate providers to make  
4 functionally equivalent or substitute services readily  
5 available at competitive rates, terms and conditions; and

6 (3) existing economic or regulatory barriers.

7 C. No provider of public telecommunications service  
8 may use current revenues earned or expenses incurred in  
9 conjunction with any noncompetitive service to subsidize  
10 competitive public telecommunications services. In order to  
11 avoid cross-subsidization of competitive services by  
12 noncompetitive telecommunications services, prices or rates  
13 charged for a competitive telecommunications service shall  
14 cover the cost for the provision of the service. In any  
15 proceeding held pursuant to this section, the party providing  
16 the service shall bear the burden of proving that the prices  
17 charged for competitive telecommunications services cover  
18 cost.

19 D. The commission may, upon its own motion or on the  
20 petition of an interested party and after notice to all  
21 interested parties and customers and a hearing, reclassify any  
22 service previously determined to be a competitive  
23 telecommunications service if after a hearing the commission  
24 finds that a service is not subject to effective competition."

25 Section 7. Section 63-9A-8.1 NMSA 1978 (being Laws 1998,  
Chapter 108, Section 61) is amended to read:

"63-9A-8.1. CHANGE IN RATES. --

A. At a hearing involving an increase in rates or

1 charges sought by a telecommunications [~~company~~] carrier, the  
2 burden of proof to show that the increased rate or charge is  
3 just and reasonable shall be upon the [~~company~~] carrier.

4 B. Unless the commission otherwise orders, no  
5 telecommunications [~~company~~] carrier shall make a change in an  
6 established rate except after thirty days' notice to the  
7 commission, which notice shall plainly state the changes  
8 proposed to be made in the rates then in force, the time when  
9 the changed rates will go into effect and other information as  
10 the commission by rule requires. The telecommunications  
11 [~~company~~] carrier shall also give notice of the proposed  
12 changes to other interested persons as the commission may  
13 direct. All proposed changes shall be shown by filing new  
14 schedules that shall be kept open to public inspection. The  
15 commission for good cause shown may allow changes in rates  
16 without requiring the thirty days' notice, under conditions  
17 that it may prescribe.

18 C. Whenever a telecommunications [~~company~~] carrier  
19 files a complete application proposing new rates, the  
20 commission may, upon complaint or upon its own initiative,  
21 except as otherwise provided by law, upon reasonable notice,  
22 enter upon a hearing concerning the reasonableness of the  
23 proposed rates. If the commission determines a hearing is  
24 necessary, it shall suspend the operation of the proposed  
25 rates before they become effective but not for a longer  
initial period than nine months beyond the time when the rates  
would otherwise go into effect, unless the commission finds  
that a longer time will be required, in which case the

1 commission may extend the period for an additional three  
2 months. The commission shall hear and decide cases with  
3 reasonable promptness. The commission shall adopt rules  
4 identifying criteria for various rate and tariff filings to be  
5 eligible for suspension periods shorter than ~~[ what is ]~~ the  
6 times allowed by this subsection and to be eligible for  
summary approval without hearing.

7 D. If after a hearing the commission finds the  
8 proposed rates to be unjust, unreasonable or in any way in  
9 violation of law, the commission shall determine the just and  
10 reasonable rates to be charged or applied by the  
11 telecommunications ~~[ company ]~~ carrier for the service in  
12 question and shall fix the rates by order to be served upon  
13 the telecommunications ~~[ company ]~~ carrier; or the commission by  
14 its order shall direct the telecommunications ~~[ company ]~~  
15 carrier to file new rates respecting such service that are  
16 just and reasonable. Those rates shall thereafter be observed  
17 until changed as provided by the New Mexico Telecommunications  
Act. "

18 Section 8. A new Section 63-9A-8.2 NMSA 1978 is enacted  
19 to read:

20 "63-9A-8.2. [ NEW MATERIAL ] REGULATION OF RETAIL RATES OF  
21 INCUMBENT RURAL TELECOMMUNICATIONS CARRIER. - -

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

25 B. An incumbent rural telecommunications carrier



1 shall file tariffs for all retail public telecommunications  
 2 services, other than residential local exchange service, that  
 3 shall be effective after ten days' notice to the commission  
 4 and publication in a local newspaper in the incumbent serving  
 area.

5 C. Rates for residential local exchange service may  
 6 be increased by an incumbent rural telecommunications carrier  
 7 only after sixty days' notice to all affected subscribers.

8 The notice of increase shall include:

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

17 D. An incumbent rural telecommunications carrier may  
 18 increase its rates for residential local exchange service in  
 19 the manner otherwise provided in this section as necessary to  
 20 recover a reasonable allocation of costs incurred due to  
 21 requirements imposed by any federal or state law or rule or  
 22 regulation. An incumbent rural telecommunications carrier  
 23 that proposes to increase its rates for residential local  
 24 exchange service shall hold at least one public informational  
 25 meeting in each public regulation commissioner's district as  
 established by the Public Regulation Commission Apportionment

1 Act in which there is a local exchange area affected by the  
2 rate change.

3 E. Residential local exchange service rates  
4 increased by a rural telecommunications carrier pursuant to  
5 Subsection C of this section shall be reviewed by the  
6 commission only upon written protest signed by two and one-  
7 half percent of all affected subscribers or upon the  
8 commission staff's own motion for good cause. The protest  
9 shall specifically set forth the particular rate or charge as  
10 to which review is requested, the reasons for the requested  
11 review and the relief that the persons protesting desire. If  
12 a proper protest is presented to the commission within sixty  
13 days after the date the notice of the rate change was sent to  
14 affected subscribers of an incumbent rural telephone carrier,  
15 the commission may accept and file the complaint and, upon  
16 proper notice, may suspend the rates at issue during the  
17 pendency of the proceedings and reinstate the rates previously  
18 in effect and shall hold and complete a hearing thereon within  
19 ninety days after filing to determine if the rates as proposed  
20 are fair, just and reasonable. The commission may, within  
21 sixty days after close of the hearing, enter an order  
22 adjusting the rates at issue, except that the commission shall  
23 not set any rate below the intrastate cost of providing the  
24 service that will include cost and rate of return in  
25 accordance with Subsection E of Section 63-9A-6.1 NMSA 1978.  
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

1 for future services. If the complaint is denied, the  
 2 commission shall enter an order denying the complaint within  
 3 sixty days after the close of the hearing, and the rates shall  
 4 be deemed approved. For purposes of this section, cost shall  
 5 also include a reasonable amount of joint and common costs  
 6 incurred by the telecommunications carrier in its operations  
 7 and may include other accounting adjustments authorized by the  
 8 commission.

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

16 G. Rates for local exchange, vertical and message  
 17 telecommunications services to retail end-user customers may  
 18 be reduced to a level equal to, but not below, the intrastate  
 19 cost, which will include cost and rate of return, pursuant to  
 20 Subsection E of Section 63-9A-6.1 NMSA 1978, of providing the  
 21 retail service. If a rural telecommunications carrier loses  
 22 its exemption under Section 251 of the federal act, the rate  
 23 for a service, excluding basic service, must cover the cost of  
 24 the service, including the imputed rate of wholesale service  
 25 elements as may be required by the commission. The cost of  
 message telecommunications service must also include any  
 interexchange access rates charged to another  
 telecommunications carrier for the service.

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

6           Section 9. Section 63-9A-9 NMSA 1978 (being Laws 1985,  
7 Chapter 242, Section 9, as amended) is amended to read:

8           "63-9A-9. REGULATION OF INDIVIDUAL CONTRACTS TO  
9 FACILITATE COMPETITION. --

10           A. In accordance with the provisions of this  
11 section, the commission shall regulate the rates, charges and  
12 service conditions for individual contracts for public  
13 telecommunications services in a manner [ ~~which~~ ] that  
14 facilitates effective competition and shall authorize the  
15 provision of all or any portion of a public telecommunications  
16 service under stated or negotiated terms to any person or  
17 entity that has acquired or is preparing to acquire, through  
18 construction, lease or any other form of acquisition, similar  
19 public telecommunications services from an alternate source.

20           B. At any time, the provider of public  
21 telecommunications services may file a verified application  
22 with the commission for authorization to provide a public  
23 telecommunications service on an individual contract basis.  
24 The application shall describe the telecommunications services  
25 to be offered, the party to be served and the parties offering  
the service, together with [ ~~such~~ ] other information and in  
[ ~~such~~ ] a form [ ~~as~~ ] that the commission may prescribe. Such  
additional information shall be reasonably related to the

1 determination of the existence of a competitive offer. A  
 2 determination of effective competition pursuant to Section  
 3 63-9A-8 NMSA 1978 shall not be necessary to file an  
 4 application or to have an application granted by the  
 5 commission pursuant to this section.

6 C. An application is deemed approved when filed  
 7 unless the commission denies it. The commission shall approve  
 8 or deny any such application within ten days after filing or  
 9 [~~such other~~] a different period [~~as shall be~~] established by  
 10 the commission, not to exceed sixty days, giving consideration  
 11 to the requirements of any contract negotiations. If the  
 12 commission has not acted on any application within the time  
 13 period established, the application [~~shall be~~] is deemed  
 14 granted. The commission shall deny the application only upon  
 15 a finding that the application fails to set forth prescribed  
 16 information or that the subject or comparable services are not  
 17 being offered to the customer by parties other than the  
 18 applicant or that the contract fails to cover the costs of the  
 19 service.

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

Section 10. EFFECTIVE DATE. --The effective date of the  
 provisions of this act is July 1, 1999.

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1 FORTY- FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
3

4 March 10, 1999  
5

6  
7 Mr. Speaker:  
8

9 Your JUDICIARY COMMITTEE, to whom has been referred  
10

11 HOUSE BUSINESS AND INDUSTRY COMMITTEE  
12 SUBSTITUTE FOR HOUSE BILL 872  
13

14 has had it under consideration and reports same with  
15 recommendation that it DO NOT PASS, but that  
16

17 HOUSE JUDICIARY COMMITTEE SUBSTITUTE  
18 FOR HOUSE BUSINESS AND INDUSTRY COMMITTEE  
19 SUBSTITUTE FOR HOUSE BILL 872  
20

21 DO PASS.  
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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

HBIC/HB 872

HJC/CS/HB 872

Page 48

Respectfully submitted,

R. David Pederson, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Luna, Martinez, Sanchez

Absent: None

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1 HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR HOUSE BUSINESS  
2 AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
3 HOUSE BILL 872  
4 **44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**

5  
6  
7  
8 AN ACT  
9  
10 RELATING TO TELECOMMUNICATIONS; MAKING CHANGES TO THE  
11 OPERATION OF RURAL TELECOMMUNICATIONS CARRIERS IN NEW MEXICO;  
12 ENACTING SECTIONS OF THE NMSA 1978.

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

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

16 Section 2. PURPOSE. -- The legislature declares that it  
17 remains the policy of the state of New Mexico to maintain for  
18 rural customers availability of access to telecommunications  
19 services at affordable rates. Furthermore, it is the policy  
20 of this state to have comparable long distance service rates,  
21 as established by the commission, for comparable markets or  
22 market areas. To the extent that it is consistent with  
23 maintaining availability of access to service at affordable  
24 rates for rural customers, it is further the policy of this  
25 state to encourage competition and reduce regulation in the  
telecommunications industry, thereby allowing access by the

1 public to resulting rapid advances in telecommuications  
2 technology. It is the purpose of the Rural Telecommuications  
3 Act of New Mexico to permit a regulatory framework that will  
4 allow an orderly transition for rural telephone carriers from  
5 a regulated telecommuications industry to a competitive  
6 market environment consistent with the federal act. Further,  
7 the legislature finds that as part of such regulatory  
8 framework, it is necessary to provide disparate regulatory  
9 treatment between rural telephone carriers and non-rural  
10 telephone carriers in order to assist with accomplishing the  
11 goals established by the above declared policies. Disparate  
12 regulatory treatment is particularly necessary for those  
13 citizens who reside in rural New Mexico, because those rural  
14 areas constitute the bulk of the surface area within the  
15 boundaries of the state. Disparate regulatory treatment for  
16 rural telephone carriers requires relaxed regulation for rural  
17 telephone carriers with the objective of reducing the cost of  
18 regulation as well as the regulatory burden, permitting  
19 pricing flexibility and expediting required rate approvals,  
20 all in a manner consistent with both the purpose of an orderly  
21 transition from regulation to a competitive market environment  
22 and the federal act.

23 Section 3. DEFINITIONS. --As used in the Rural  
24 Telecommuications Act of New Mexico:

25 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

1 provided;

2 B. "basic service" means service that is provided to  
3 a rural end-user customer that is consistent with the federal  
4 act;

5 C. "cable service" means the transmission to  
6 subscribers of video programming or other programming service  
7 and subscriber interaction, if any, that is required for the  
8 selection or use of the video programming or other programming  
9 service;

10 D. "commission" means the public regulation  
11 commission;

12 E. "eligible telecommunications carrier" means an  
13 eligible telecommunications carrier as defined in the federal  
14 act;

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

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

19 H. "incumbent local exchange carrier" means a person  
20 that:

21 (1) was designated as an eligible  
22 telecommunications carrier by the state corporation commission  
23 in Docket #97-93-TC by order dated October 23, 1997, or that  
24 provided local exchange service in this state on February 8,  
25 1996; or

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

I. "incumbent rural telecommunications carrier"

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

6 J. "local exchange area" means a geographic area  
7 encompassing one or more local communities, as described in  
8 maps, tariffs or rate schedules filed with the commission,  
9 where local exchange rates apply;

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

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

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

N. "public telecommunications service" means the

1 transmission of signs, signals, writings, images, sounds,  
 2 messages, data or other information of any nature by wire,  
 3 radio, lightwaves or other electromagnetic means originating  
 4 and terminating in this state regardless of actual call  
 5 routing. "Public telecommunications service" does not include  
 6 the provision of terminal equipment used to originate or  
 7 terminate the service; private telecommunications service;  
 8 broadcast transmissions by radio, television and satellite  
 9 broadcast stations regulated by the federal communications  
 10 commission; radio common carrier services, including mobile  
 11 telephone service and radio paging; or cable service; and

12 0. "telecommunications carrier" means a person that  
 13 provides public telecommunications service.

14 Section 4. REGULATION BY COMMISSION. --

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

21 B. The commission has exclusive jurisdiction to  
 22 regulate rural telecommunications carriers only in the manner  
 23 and to the extent authorized by the Rural Telecommunications  
 24 Act of New Mexico, and Section 63-7-1.1 NMSA 1978 does not  
 25 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

1 in low-income telephone service assistance programs pursuant  
2 to the Low Income Telephone Service Assistance Act.

3 Section 5. CERTIFICATE REQUIRED. --

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

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

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

24 D. For purposes of considering and acting upon  
25 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,

1 necessary to preserve and advance universal service, protect  
2 the public safety and welfare, ensure the continued quality of  
3 rural public telecommunications services and safeguard the  
4 rights of the consumers.

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

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

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

14 (3) whether the applicant is willing and able  
15 to conform to all applicable laws and the rules of the  
16 commission applicable generally to providers of  
17 telecommunications; and

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

21 F. All certificates of public convenience and  
22 necessity shall:

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

25 (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.

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

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

10           B. The fund shall be financed by a surcharge on all  
11 intrastate retail public telecommunications services revenue,  
12 excluding revenue from services provided pursuant to a low-  
13 income telephone assistance plan billed to end-user customers  
14 by a telecommunications carrier, and excluding from revenue  
15 all amounts from surcharges, gross receipts taxes, excise  
16 taxes, franchise fees and similar charges. For the purpose of  
17 funding the fund, the commission has the authority to apply  
18 the surcharge on all intrastate retail public  
19 telecommunications services provided by telecommunications  
20 carriers and to comparable retail alternative services  
21 provided by telecommunications carriers and non-  
22 telecommunications carriers, including commercial mobile radio  
23 services, operator services and aggregator services, offered  
24 by providers other than telecommunications carriers, at a  
25 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,

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1 but it shall require telecommunications carriers and non-  
 2 telecommunications carriers to apply uniform surcharge rates  
 3 for the same or comparable services. Money deposited in the  
 4 fund is not public money, and the administration of the fund  
 5 is not subject to the provisions of law regulating public  
 6 funds. The commission shall not apply surcharges to a private  
 telecommunications network.

7 C. The fund shall be competitively and  
 8 technologically neutral, equitable and nondiscriminatory in  
 9 its collection and distribution of funds, portable between  
 10 eligible telecommunications carriers, targeted to high-cost  
 11 rural areas, and additionally shall provide a specific,  
 12 predictable and sufficient support mechanism as determined by  
 13 the commission that reduces implicit subsidies, including  
 access charges and ensures universal service in 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 service at affordable rates without  
 18 unreasonably increasing rates for basic service while still  
 19 granting eligible telecommunications carriers a reasonable  
 20 profit on supported services in geographic areas requiring  
 21 support from the fund, but the eligibility criteria shall not  
 22 require any investigations of the costs or rates of a  
 23 telecommunications carrier receiving support from the fund  
 24 other than that provided for in Subsection E of this section.  
 The eligibility criteria shall not restrict or limit an  
 25 eligible telecommunications carrier from receiving federal

1 universal service support;

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

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

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

10 E. The commission shall adopt rules for the  
11 implementation and administration of the fund in accordance  
12 with the provisions of this section. The cost basis for  
13 establishing the fund and determining the rate of distribution  
14 of the fund for areas served by an incumbent rural  
15 telecommunications carrier shall be the same cost of and shall  
16 be consistent with the federal support mechanisms for  
17 providing the supported service by geographic area, determined  
18 by the federal communications commission. The cost basis  
19 established by the commission for areas served by incumbent  
20 rural telecommunications carriers shall include the same  
21 return authorized by the federal communications commission for  
22 use in rates filed by the national exchange carriers  
23 association, or its successor, at the federal communications  
24 commission for member carriers. The revenue basis for rural  
25 telecommunications carriers with fewer than fifty thousand  
access lines shall include only revenues from public  
telecommunications services provided by the eligible  
telecommunications carrier.

1           F. The commission shall, upon implementation of the  
 2 fund, select a neutral third party administrator to collect,  
 3 administer and disburse money from the fund under the  
 4 supervision and control of the commission pursuant to  
 5 established criteria and rules promulgated by the commission.  
 6 The administrator may be reasonably compensated for the  
 7 specified services from the surcharge proceeds to be received  
 8 by the fund pursuant to Subsection B of this section. The  
 9 administrator shall consult with an advisory board established  
 10 by the commission composed of representatives from all  
 11 participating providers and the attorney general or one other  
 12 customer representative, provided that total number of  
 13 individual representatives on the advisory board shall not  
 14 exceed thirteen. For purposes of this subsection, the  
 15 commission shall not be a neutral third party administrator.

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

18           H. To ensure that providers of intrastate long  
 19 distance service contribute to the fund and to further ensure  
 20 that the surcharge to be paid by the end-user customer will be  
 21 held to a minimum, no later than December 31, 1999, the  
 22 commission shall adopt rules, or take other appropriate  
 23 action, to require all such providers to participate in a plan  
 24 to ensure accurate reporting of intrastate retail long  
 25 distance revenues.

I. Upon commission action to replace implicit

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

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

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

14 B. An incumbent rural telecommunications carrier  
15 shall file tariffs for all retail public telecommunications  
16 services, other than residential local exchange service, which  
17 shall be effective after ten days' notice to the commission  
18 and publication in a local newspaper in the incumbent service  
19 area. An incumbent rural telecommunications carrier shall  
20 remain subject to complaint by an interested party subject to  
Section 10 of the Rural Telecommunications Act of New Mexico.

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

- 25 (1) the reasons for the rate increase;

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

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

20                   E. Residential local exchange service rates  
21 increased by a rural telecommunications carrier pursuant to  
22 Subsection D of this section shall be reviewed by the  
23 commission only upon written protest signed by two and one-  
24 half percent of all affected subscribers or upon the  
25 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

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1 a proper protest is presented to the commission within sixty  
2 days from the date notice of the rate change was sent to  
3 affected subscribers of an incumbent rural telecommunications  
4 carrier, the commission may accept and file the complaint and,  
5 upon proper notice, may suspend the rates at issue during the  
6 pendency of the proceedings and reinstate the rates previously  
7 in effect and shall hold and complete a hearing thereon within  
8 ninety days after filing to determine if the rates as proposed  
9 are fair, just and reasonable. The commission may, within  
10 sixty days after close of the hearing, enter an order  
11 adjusting the rates at issue, except that the commission shall  
12 not set any rate below the intrastate cost of providing the  
13 service, that will include cost and rate of return in  
14 accordance with Subsection E of Section 6 of the Rural  
15 Telecommunications Act of New Mexico. In the order, the  
16 commission may order a refund of amounts collected in excess  
17 of the rates and charges as approved at the hearing, which may  
18 be paid as a credit against billings for future services. If  
19 the complaint is denied, the commission shall enter an order  
20 denying the complaint within sixty days after the close of the  
21 hearing, and the rates shall be deemed approved. For purposes  
22 of this section, cost shall also include a reasonable amount  
23 of joint and common costs incurred by the telecommunications  
24 carrier in its operations and may include other accounting  
25 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

1 with the commission requesting the commission to prescribe  
 2 fair, just and reasonable rates for the carrier based on the  
 3 carrier's revenue, expenses and investment in accordance with  
 4 traditional rate-making principles.

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

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

23 Section 8. EXEMPTION FOR PRIVATE SERVICE. -- Construction,  
 24 maintenance or operation of a private telecommunications  
 25 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.

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

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

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

22           C. An application is deemed approved when filed  
23 unless the commission denies it. The commission shall approve  
24 or deny any such application within ten days after filing or a  
25 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

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1 application is deemed granted. The commission shall deny the  
2 application only upon a finding that the application fails to  
3 set forth prescribed information or that the subject or  
4 comparable services are not being offered to the customer by  
5 parties other than the applicant or that the contract fails to  
6 cover the costs of the service.

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

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

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

22 B. Upon filing of the complaint, the commission  
23 shall set the time and place of hearing and at least ten days'  
24 notice of the hearing shall be given to the party complained  
25 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

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1 for misjoinder or nonjoinder of parties or causes, either  
2 before the commission or on review by the courts. The persons  
3 the commission allows to intervene shall be joined and heard,  
4 along with the complainant and the party complained of.

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

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

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

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

23 Section 12. APPEAL OF ORDERS OF THE COMMISSION.--Any  
24 provider of rural public telecommunications services and any  
25 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

1 commission's final orders. A notice of appeal shall be filed  
2 within thirty days after the entry of the commission's final  
3 order. Every notice of appeal shall name the commission as  
4 appellee and shall identify the order from which the appeal is  
5 taken. Any person whose rights may be directly affected by  
6 the appeal may appear and become a party, or the supreme court  
7 may upon proper notice order any person to be joined as a  
8 party.

8 Section 13. APPEAL ON THE RECORD. --

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

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

- 14 (1) arbitrary, capricious or an abuse of  
15 discretion;
- 16 (2) not supported by substantial evidence in  
17 the record; or
- 18 (3) otherwise not in accordance with law.

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

26 Section 15. DELAYED REPEAL. --Section 63-9A-6.1 NMSA 1978  
(being Laws 1987, Chapter 21, Section 4, as amended) is

underscored material = new  
[bracketed material] = delete

1 repealed effective July 1, 2000.

2 Section 16. EFFECTIVE DATE. --The effective date of the  
3 provisions of this act is July 1, 1999.

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underscored material = new  
[bracketed material] = delete