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SENATE BILL 373

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

INTRODUCED BY

Timothy Z. Jennings

AN ACT

RELATING TO TELECOMMUNICATIONS; ESTABLISHING STATEWIDE TOLL-FREE TELECOMMUNICATIONS SERVICE BY THE CREATION OF A STATEWIDE EXPANDED CALLING AREA; CREATING EXPANDED CALLING AREA SERVICE; IMPOSING A TELECOMMUNICATION SURCHARGE AND CREATING THE NEW MEXICO EXPANDED CALLING AREA SERVICE EQUALIZING FUND; 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,

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1 ~~as established by the commission, for comparable markets or~~
2 ~~market areas]~~ expanded calling area service for all customers
3 to more equitably and cost-effectively ensure statewide
4 telecommunications service. To the extent that it is
5 consistent with maintaining availability of access to service
6 at affordable rates and [~~comparable message telecommunications~~
7 ~~service rates]~~ expanded calling area service, it is further
8 the policy of this state to encourage competition in the
9 telecommunications industry, thereby allowing access by the
10 public to resulting rapid advances in telecommunications
11 technology. It is the purpose of the New Mexico
12 Telecommunications Act to permit a regulatory framework that
13 will allow an orderly transition from a regulated
14 telecommunications industry to a competitive market
15 environment. "

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

18 "63-9A-3. DEFINITIONS. --As used in the New Mexico
19 Telecommunications Act:

20 A. "affordable rates" means local exchange service
21 rates that promote universal service within a local exchange
22 service area, giving consideration to the economic conditions
23 and costs to provide service in such area;

24 B. "cable television service" means the one-way
25 transmission to subscribers of video programming or other

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

4 C. "commission" means the public regulation
5 commission;

6 D. "competitive telecommunications service" means
7 a service that has been determined to be subject to effective
8 competition pursuant to Section 63-9A-8 NMSA 1978;

9 E. "effective competition" means that the
10 customers of the service have reasonably available and
11 comparable alternatives to the service;

12 F. "expanded calling area" means the geographic
13 area of the state and includes the area within which the area
14 code "505" applies to access toll service by customers in the
15 state;

16 G. "expanded calling area service" means
17 telecommunications service between local exchange areas in and
18 throughout the expanded calling area;

19 [~~F.~~] H. "fund" means the New Mexico universal
20 service fund;

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

25 [~~H.~~] J. "local exchange service" means the

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1 transmission of two-way interactive switched voice
2 communications furnished by a telecommunications company
3 within a local exchange area;

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

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

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

25 [~~L.~~] M. "public telecommunications service" means

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1 the 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 and includes local exchange service and expanded
6 calling area service. "Public telecommunications service"
7 does not include the provision of terminal equipment used to
8 originate or terminate such service; private
9 telecommunications service; broadcast transmissions by radio,
10 television and satellite broadcast stations regulated by the
11 federal communications commission; radio common carrier
12 services, including mobile telephone service and radio paging;
13 or one-way cable television service; and

14 [M-] N. "telecommunications company" means a person
15 that provides public telecommunications service. "

16 Section 3. Section 63-9A-6.1 NMSA 1978 (being Laws 1987,
17 Chapter 21, Section 4, as amended) is amended to read:

18 "63-9A-6.1. NEW MEXICO UNIVERSAL SERVICE FUND--
19 ESTABLISHMENT-- BOARD. --

20 A. The commission shall establish a "New Mexico
21 universal service fund" to maintain existing residential local
22 exchange service at affordable rates.

23 B. The fund shall be financed by a uniform surcharge
24 on all local exchange service customers at a rate to be
25 determined by the commission. Money deposited in the fund is

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1 not public money and the administration of the fund is not
2 subject to the provisions of law regulating public funds.

3 C. The commission shall:

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

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

11 (3) provide for the collection of the surcharge
12 and the administration and disbursement of money from the
13 fund.

14 D. The commission shall adopt rules and regulations
15 for the implementation and administration of the fund in
16 accordance with the provisions of this section.

17 E. The commission shall establish a board composed
18 of representatives from the providers of local exchange
19 service to collect, administer and disburse money from the
20 fund under the supervision and control of the commission
21 pursuant to the established criteria and the rules and
22 regulations promulgated by the commission. "

23 Section 4. Section 63-9A-6.2 NMSA 1978 (being Laws 1987,
24 Chapter 21, Section 5) is amended to read:

25 "63-9A-6.2. CARRIER OF LAST RESORT. -- Any

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1 telecommunications company which has a certificate of public
2 convenience and necessity permitting it to provide [message]
3 public telecommunications service between or among local
4 exchange areas shall not be allowed to terminate or withdraw
5 from providing [message] public telecommunications service
6 between or among local exchange areas without an order of the
7 commission upon a finding that there is another
8 telecommunications company in place capable of providing
9 service without interruption. "

10 Section 5. Section 63-9A-8 NMSA 1978 (being Laws 1985,
11 Chapter 242, Section 8, as amended) is amended to read:

12 "63-9A-8. REGULATION OF RATES AND CHARGES. --

13 A. In accordance with the policy established in the
14 New Mexico Telecommunications Act, the commission shall, by
15 its own motion or upon petition by any interested party, hold
16 hearings to determine if any public telecommunications service
17 is subject to effective competition in the relevant market
18 area. When the commission has made a determination that a
19 service or part of a service is subject to effective
20 competition, the commission shall, consistent with the
21 purposes of the New Mexico Telecommunications Act, modify,
22 reduce or eliminate rules, regulations and other requirements
23 applicable to the provision of such service, including the
24 fixing and determining of specific rates, tariffs or fares for
25 the service. The commission's action may include the

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1 detariffing of service or the establishment of minimum rates
2 which will cover the costs for the service. Such modification
3 shall be consistent with the maintenance of the availability
4 of access to local exchange service at affordable rates and
5 ~~[comparable message telecommunication service rates]~~ of
6 expanded calling area service at a single rate each for
7 residential and business customers, as established by the
8 commission ~~[for comparable markets or market areas, except~~
9 ~~that volume discounts or other discounts based on reasonable~~
10 ~~business purposes shall be permitted]~~. Upon petition or
11 request of an affected telecommunications company, the
12 commission, upon a finding that the requirements of Subsection
13 C of this section are met, shall modify the same or similar
14 regulatory requirements for those providers of comparable
15 public telecommunications services in the same relevant
16 markets so that there shall be parity of regulatory standards
17 and requirements for all such providers.

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

21 (1) the extent to which services are reasonably
22 available from alternate providers in the relevant market
23 area;

24 (2) the ability of alternate providers to make
25 functionally equivalent or substitute services readily

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1 available at competitive rates, terms and conditions; and
2 (3) existing economic or regulatory barriers.

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

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

21 Section 6. A new section of the New Mexico
22 Telecommunications Act is enacted to read:

23 "[NEW MATERIAL] EXPANDED CALLING AREA SERVICE--STATEWIDE
24 TOLL-FREE LOCAL CALLING REQUIRED.--On December 1, 1999,
25 expanded calling area service shall be established in the

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1 state for all customers. "

2 Section 7. A new section of the New Mexico
3 Telecommunications Act is enacted to read:

4 "[NEW MATERIAL] EXPANDED CALLING AREA SERVICE--STATEWIDE
5 RATES FOR RESIDENTIAL AND BUSINESS CUSTOMERS. --The commission
6 shall establish a single rate for expanded calling area
7 service for residential customers and a separate rate for
8 expanded calling area service for business customers. The
9 rate for business customers shall be calculated to include and
10 continue the current percentage contribution of business
11 customers toward the reduction in rates of residential
12 customers in local exchange service rates. For expanded
13 calling area service, the rate for residential customers shall
14 be a single rate, applicable statewide and the rate for
15 business customers shall be a single rate, applicable
16 statewide, regardless of the telecommunications company
17 providing service. "

18 Section 8. A new section of the New Mexico
19 Telecommunications Act is enacted to read:

20 "[NEW MATERIAL] EXPANDED CALLING AREA SERVICE--EQUALIZING
21 FUND ESTABLISHMENT. --

22 A. The "New Mexico expanded calling area service
23 equalizing fund" is created to make expanded calling area
24 service available statewide for residential customers at a
25 single reasonable rate.

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1 B. The commission shall promulgate rules to
2 implement and administer the New Mexico expanded calling area
3 service equalizing fund in accordance with the provisions of
4 law.

5 C. The fund shall be financed by a uniform surcharge
6 on all expanded calling area service customers at a rate to be
7 determined by the commission. Money deposited in the fund is
8 not public money and the administration of the fund is not
9 subject to the provisions of law regulating public funds.

10 D. The commission shall:

11 (1) establish eligibility criteria for
12 participation in the fund that ensures the availability of
13 expanded calling area service to residential customers at a
14 single reasonable rate without unreasonably increasing the
15 rates to either residential or business expanded calling area
16 service customers;

17 (2) determine which telecommunications
18 companies meet the eligibility criteria; and

19 (3) provide for the collection of the surcharge
20 and the administration and disbursement of money from the
21 fund.

22 E. The commission shall establish a board composed
23 of representatives of telecommunications companies providing
24 expanded calling area service to collect, administer and
25 disburse money from the fund under the supervision and control

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1 of the commission pursuant to the established criteria and
2 rules promulgated by the commission. "

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1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 February 13, 1999
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8 Mr. President:

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10 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
11 whom has been referred
12

13 SENATE BILL 373
14

15 has had it under consideration and reports same with
16 recommendation that it DO PASS.
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19 Respectfully submitted,
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24 _____
25 Roman M. Maes, Chairman

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1 Adopted _____ Not

2 Adopted _____

3 (Chief Clerk)

(Chief Clerk)

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7 Date _____

8

9

10 The roll call vote was 6 For 0 Against

11 Yes: 6

12 No: 0

13 Excused: Aragon, Kidd, Rawson, Robinson

14 Absent: None

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17 S0373CT1

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FORTY- FOURTH LEGISLATURE
FIRST SESSION

February 15, 1999

SENATE FLOOR AMENDMENT number _____ to SENATE BILL 373

Amendment sponsored by Senator Timothy Z. Jennings

1. On page 1, line 25, remove the beginning bracket and the line-through.

2. On page 1, line 25, strike "message" and insert in lieu thereof "public".

3. On page 2, lines 1 and 2, remove the line-through and the end bracket.

4. On page 2, line 2, after "areas" insert "and to have".

5. On page 2, line 5, after "to" insert "public telecommunications".

6. On page 2, line 6, strike "rates".

7. On page 2, lines 6 and 7, strike the brackets and the

FORTY-FOURTH LEGISLATURE
FIRST SESSION

SF1/SB 373

Page 16

line-through.

8. On page 2, lines 6 and 7, strike "message telecommunications service".

9. On page 2, line 7, after "rates" insert "and to".

10. On page 3, line 13, strike "and includes the area within which the area", strike line 14 and on line 15, strike "state".

Timothy Z. Jennings

Adopted _____ Not Adopted

(Chief Clerk)

(Chief Clerk)

Date _____

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1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 March 16, 1999
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8 Mr. Speaker:
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10 Your BUSINESS AND INDUSTRY COMMITTEE, to whom has
11 been referred
12

13 SENATE BILL 373, as amended
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15 has had it under consideration and reports same with
16 recommendation that it DO PASS.

17 Respectfully submitted,
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21 _____
22 Fred Luna, Chairman
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HBIC/SB 272

Page 18

4 Adopted _____ Not Adopted _____
5 (Chief Clerk) (Chief Clerk)

7 Date _____

9 The roll call vote was 6 For 5 Against

10 Yes: 6

11 No: Hobbs, Kissner, Mohorovic, T. Taylor, Luna

12 Excused: None

13 Absent: Lutz

15 J: \99BillSWP\s0373

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