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SENATE BILL 374

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

INTRODUCED BY

Michael S. Sanchez

FOR THE UTILITIES AND TELECOMMUNICATIONS REVIEW COMMITTEE

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING AND ENACTING SECTIONS OF THE NEW MEXICO TELECOMMUNICATIONS ACT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA.

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

Section 1. Section 63-7-1.1 NMSA 1978 (being Laws 1998, Chapter 108, Section 52) is amended to read:

"63-7-1.1 COMMISSION POWERS AND DUTIES--TRANSPORTATION AND TRANSMISSION COMPANIES AND COMMON CARRIERS--TELEPHONE AND TELEGRAPH COMPANIES. --

A. With respect to transportation and transmission companies and common carriers, the commission shall:

(1) fix, determine, supervise, regulate and control all prices, charges and rates of railway, express, telegraph, telephone, sleeping car and other transportation

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1 and transmission companies and common carriers within the  
2 state;

3 (2) determine any matters of public  
4 convenience and necessity with respect to matters subject to  
5 its regulatory authority as provided by law;

6 (3) require railway companies and other  
7 common carriers to provide and maintain adequate equipment,  
8 depots, stockpens, station buildings, agents and facilities  
9 for the accommodation of shippers and passengers and for  
10 receiving and delivering freight and express and to provide  
11 and maintain necessary crossings, culverts, sidings and other  
12 facilities for convenience and safety whenever in the  
13 commission's judgment the public interest demands;

14 (4) require railway companies, transportation  
15 companies and common carriers to provide such reasonable  
16 safety appliances and use such reasonable safety practices as  
17 may be necessary and proper for the safety of employees and  
18 the public as required by federal or state laws and rules;

19 (5) change, amend and rescind rates;

20 (6) rule upon requests to commence or  
21 discontinue business operations or specific services, requests  
22 to order the provision of specific services or matters  
23 relating to the provision of specific services;

24 [~~(6)~~] (7) enforce its rules through  
25 administrative sanctions and in the courts; and

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1                    [~~(7)~~] (8) carry out all other duties and have  
2 all other powers provided by law.

3                    B. In fixing rates of telephone and telegraph  
4 companies, due consideration shall be given to the earnings,  
5 investments and expenditures as a whole within the state. The  
6 commission shall include in that consideration the earnings,  
7 investments and expenditures derived from or related to the  
8 sale of directory advertising and other directory listing  
9 services.

10                    C. The commission may subpoena witnesses and  
11 documents, enforce its subpoenas through any court and,  
12 through the court, punish for contempt.

13                    D. The commission has the power, after notice and  
14 hearing of record, to determine and decide any question and to  
15 issue orders relating to its powers and duties. By September  
16 30, 1999, the commission shall promulgate comprehensive rules  
17 of practice and procedure in order to ensure fairness of the  
18 commission's processes. The commission's rules shall include  
19 appropriate procedures as are necessary to designate and  
20 protect confidential information.

21                    E. An interested party may appeal from a final  
22 order of the commission by filing a notice of appeal with the  
23 supreme court asking for review of the order within thirty  
24 days of the final order. The appellant shall pay to the  
25 commission any costs of preparing and transmitting the record

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1 to the court.

2 F. The pendency of an appeal shall not  
3 automatically stay the order appealed from. The appellant may  
4 seek to obtain a stay from the commission or the supreme  
5 court.

6 G. The appeal shall be on the record of the  
7 hearing before the commission and shall be governed by the  
8 appellate rules applicable to administrative appeals. The  
9 supreme court shall affirm the commission's order unless it  
10 is:

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

16 H. In the case of a failure or refusal of any  
17 person to comply with an order of the commission within the  
18 time prescribed in the order or within thirty days after the  
19 order is entered, whichever is later, unless a stay has been  
20 granted, the commission shall seek enforcement of the order in  
21 the district court. The enforcement hearing shall be held on  
22 an expedited basis. At the hearing, the sole question shall  
23 be whether the person has failed to comply with or violated  
24 the order. "

25 Section 2. Section 63-7-23 NMSA 1978 (being Laws 1995,  
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1 Chapter 175, Section 1, as amended) is amended to read:

2 "63-7-23. TELECOMMUNICATIONS--ADMINISTRATIVE FINES.--

3 A. For purposes of this section:

4 (1) "commission" means the public regulation  
5 commission; and

6 (2) "telecommunications provider" means any  
7 telegraph company, telephone company, transmission company,  
8 telecommunications common carrier, telecommunications  
9 [company] carrier, cellular service company or pay telephone  
10 provider regulated in whole or in part by the commission under  
11 law, including the Telephone and Telegraph Company  
12 Certification Act, the New Mexico Telecommunications Act, the  
13 Cellular Telephone Services Act and Sections 63-9E-1 and  
14 63-9E-3 NMSA 1978.

15 B. The commission may impose an administrative  
16 fine on a telecommunications provider for any act or omission  
17 that the telecommunications provider knew or should have known  
18 was a violation of any applicable law or rule or order of the  
19 commission.

20 C. An administrative fine of not more than [one  
21 thousand dollars (\$1,000)] ten thousand dollars (\$10,000) may  
22 be imposed for each violation or each of multiple violations  
23 arising out of the same facts [up to a maximum of twenty-five  
24 thousand dollars (\$25,000) or an administrative fine of not  
25 more than one thousand dollars (\$1,000) may be imposed for

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1 ~~each day of a continuing violation arising out of the same~~  
2 ~~facts, up to a maximum of twenty-five thousand dollars~~  
3 ~~(\$25,000)].~~ Each day a violation continues is a separate and  
4 distinct violation. Notwithstanding any other provision of  
5 this subsection, the commission may impose an additional  
6 administrative fine not to exceed [ ~~twenty-five thousand~~  
7 ~~dollars (\$25,000)]~~ two hundred fifty thousand dollars  
8 (\$250,000) for a single violation:

9 (1) that results in substantial harm to the  
10 customers of the telecommunications provider or substantial  
11 harm to the public interest; or

12 (2) for failure to obtain a certificate of  
13 public convenience and necessity required by law or for  
14 operation outside the scope of that certificate.

15 D. The commission shall initiate a proceeding to  
16 impose an administrative fine by giving written notice to the  
17 provider that the commission has facts as set forth in the  
18 notice that, if not rebutted, may lead to the imposition of an  
19 administrative fine under this section and that the  
20 telecommunications provider has an opportunity for a hearing.  
21 The commission may only impose an administrative fine by  
22 written order that, in the case of contested proceedings,  
23 shall be supported by a preponderance of the evidence.

24 E. The commission may initiate a proceeding to  
25 impose an administrative fine within two years from the date

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1 of the commission's discovery of the violation, but in no  
2 event shall a proceeding be initiated more than five years  
3 after the date of the violation. This limitation shall not  
4 run against any act or omission constituting a violation under  
5 this section for any period during which the  
6 telecommunications provider has fraudulently concealed the  
7 violation.

8 F. The commission shall consider mitigating and  
9 aggravating circumstances in determining the amount of  
10 administrative fine imposed.

11 G. For purposes of establishing a violation, the  
12 act or omission of any officer, agent or employee of a  
13 telecommunications provider, within the scope of such person's  
14 authority, duties or employment, shall be deemed the act or  
15 omission of the telecommunications provider.

16 H. Any telecommunications provider or other person  
17 aggrieved by an order assessing an administrative fine may  
18 appeal the order to the supreme court of New Mexico. A notice  
19 of appeal shall be filed within thirty days after the entry of  
20 the commission's order. Notice of appeal shall name the  
21 commission as appellee and shall identify the order from which  
22 the appeal is taken.

23 I. The commission shall promulgate procedural  
24 rules for the implementation of this section. "

25 Section 3. Section 63-9A-2 NMSA 1978 (being Laws 1985,

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1 Chapter 242, Section 2, as amended) is amended to read:

2 "63-9A-2. PURPOSE. --The legislature declares that it  
3 remains the policy of the state of New Mexico to maintain the  
4 availability of access to telecommunications services at  
5 affordable rates. Furthermore, it is the policy of this state  
6 to have comparable [~~message~~] public telecommunications service  
7 rates, as established by the commission, for comparable  
8 markets or market areas. To the extent that it is consistent  
9 with maintaining availability of access to public  
10 telecommunications service at affordable [~~rates~~] and  
11 comparable [~~message telecommunications service~~] rates, it is  
12 further the policy of this state to encourage competition in  
13 the telecommunications industry, thereby allowing access by  
14 the public to resulting rapid advances in telecommunications  
15 technology. It is the purpose of the New Mexico  
16 Telecommunications Act to permit a regulatory framework that  
17 will allow an orderly transition from a regulated  
18 telecommunications industry to a competitive market  
19 environment. "

20 Section 4. 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 service  
25 rates that promote universal service within a local exchange



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1 service area, giving consideration to the economic conditions  
2 and costs to provide service in such area;

3 B. "cable television service" means the one-way  
4 transmission to subscribers of video programming or other  
5 programming service and subscriber interaction, if any, that  
6 is required for the selection of such video programming or  
7 other programming service;

8 C. "commission" means the public regulation  
9 commission;

10 D. "competitive local exchange carrier" means a  
11 telecommunications carrier that provides local exchange  
12 service and that is not an incumbent local exchange carrier;

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

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

20 F. "fund" means the ~~[New Mexico]~~ state universal  
21 service fund;

22 G. "incumbent local exchange carrier" means a  
23 person that:

24 (1) was designated as an eligible  
25 telecommunications carrier by the state corporation commission

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1 in Docket #97-93 TC by order dated October 23, 1997, or that  
2 provided local exchange service in this state on February 8,  
3 1996; or

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

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

10 ~~[H.]~~ I. "local exchange service" means the  
11 transmission of two-way interactive ~~[switched]~~ voice or data  
12 communications furnished by a telecommunications [company]  
13 carrier within a local exchange area;

14 ~~[I. "message telecommunications service" means~~  
15 ~~telecommunications service between local exchange areas within~~  
16 ~~the state for which charges are made on a per-unit basis, not~~  
17 ~~including wide-area telecommunications service, or its~~  
18 ~~equivalent, or individually negotiated contracts for~~  
19 ~~telecommunications services;]~~

20 J. "noncompetitive telecommunications service"  
21 means a service that has not been determined to be subject to  
22 effective competition pursuant to Section 63-9A-8 NMSA 1978;

23 K. "private telecommunications service" means a  
24 system, including the construction, maintenance or operation  
25 thereof, for the provision of telecommunications service, or

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1 any portion of that service, by a person for the sole and  
2 exclusive use of that person and not for resale, directly or  
3 indirectly. For purposes of this definition, the person that  
4 may use such service includes any affiliates of the person if  
5 at least eighty percent of the assets or voting stock of the  
6 affiliates is owned by the person. If any other person uses  
7 the telecommunications service, whether for hire or not, the  
8 private telecommunications service is a public  
9 telecommunications service;

10 L. "public telecommunications service" means the  
11 offering or the providing of the transmission [~~of signs,~~  
12 ~~signals, writings, images, sounds, messages, data or other~~  
13 ~~information of any nature by wire, radio, lightwaves or other~~  
14 ~~electromagnetic means~~] between or among points specified by  
15 the user and originating and terminating in this state  
16 regardless of actual call routing of telecommunications  
17 information of the user's choosing, without change in the form  
18 or content of the information as sent and received, for a fee  
19 directly to the public, or to such classes of users as to be  
20 effectively available directly to the public, regardless of  
21 the facilities used. "Public telecommunications service" does  
22 not include the provision of terminal equipment used to  
23 originate or terminate such service; private  
24 telecommunications service; broadcast transmissions by radio,  
25 television and satellite broadcast stations regulated by the

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1 federal communications commission; [~~radio common carrier~~  
2 ~~services, including mobile telephone service and radio paging~~]  
3 or one-way cable television service; [~~and~~]

4 M. "telecommunications [~~company~~] carrier" means a  
5 person that provides public telecommunications service,  
6 regardless of the facilities used; and

7 N. "unbundled network elements" means facilities or  
8 equipment used in the provision of public telecommunications  
9 service, including features, functions and capabilities that  
10 are provided by means of such facility or equipment, including  
11 subscriber numbers, databases, signaling systems and  
12 information sufficient for billing and collection or used in  
13 the transmission, routing or other provision of a public  
14 telecommunications service, to the extent that the federal  
15 Telecommunications Act of 1996 requires incumbent local  
16 exchange carriers to unbundle these facilities and equipment  
17 and provide them at technically feasible points to requesting  
18 telecommunications carriers. "

19 Section 5. 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~~] DELEGATION OF  
22 AUTHORITY. -- Except as otherwise provided in the New Mexico  
23 Telecommunications Act, each public telecommunications service  
24 is declared to be affected with the public interest and, as  
25 such, subject to the provisions of that act, including the

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1 regulation thereof as [~~hereinafter~~] provided in that act. The  
2 commission shall have exclusive jurisdiction to regulate  
3 telecommunications carriers pursuant to the New Mexico  
4 Telecommunications Act and, consistent with federal and state  
5 law, shall make and enforce rules to implement the federal  
6 Telecommunications Act of 1996. "

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

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

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

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

21 C. The commission shall have full power and  
22 authority to determine matters [~~of public convenience and~~  
23 ~~necessity~~] relating to the issuance of a certificate of  
24 authority or public convenience and necessity to a provider of  
25 public telecommunications service; provided, however, that in

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

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

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1 ~~convenience and necessity is granted pursuant to Subsection E~~  
2 ~~of this section. ]~~

3 D. For purposes of considering and acting upon  
4 applications for certificates pursuant to this section, the  
5 commission may adopt rules, consistent with the provisions of  
6 law and the federal Telecommunications Act of 1996, necessary  
7 to preserve and advance universal service, protect the public  
8 safety and welfare, ensure the continued quality of public  
9 telecommunications service and safeguard the rights of the  
10 customers.

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

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

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

24 (3) ~~it is economically feasible to operate the~~  
25 ~~proposed second plant or equipment successfully and~~

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1 ~~continuously for the furnishing of local exchange service]~~  
2 whether:

3 [~~(4)~~] (1) the applicant [~~for the second plant~~  
4 ~~or equipment]~~ has sufficient financial resources to provide  
5 the proposed [~~local exchange]~~ public telecommunications  
6 service properly and continuously;

7 [~~(5)~~] (2) the applicant [~~for the second plant~~  
8 ~~or equipment]~~ has competent and experienced management and  
9 personnel to provide the proposed [~~local exchange]~~ public  
10 telecommunications service;

11 [~~(6)~~] (3) the applicant [~~for the second plant~~  
12 ~~or equipment]~~ is willing and able to conform to the  
13 constitution of New Mexico and laws of New Mexico and the  
14 rules [~~and regulations]~~ of the commission; and

15 [~~(7)~~] (4) the applicant [~~for the second plant~~  
16 ~~or equipment]~~ is in every respect willing and able to provide  
17 the proposed local exchange service properly [ and

18 ~~(8) granting the additional certificate to the~~  
19 ~~applicant shall not have a significant adverse impact on the~~  
20 ~~existing telecommunications company].~~

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

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

25 (2) remain subject to all terms and conditions



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1 imposed by statute or commission order at the time of issuance  
2 or in connection with any subsequent amendment,  
3 notwithstanding the provisions of [~~that~~] this section."

4 Section 7. Section 63-9A-6.1 NMSA 1978 (being Laws 1987,  
5 Chapter 21, Section 4, as amended) is amended to read:

6 "63-9A-6.1. [~~NEW MEXICO~~] STATE UNIVERSAL SERVICE FUND--  
7 ESTABLISHMENT-- BOARD. --

8 A. The commission shall [~~establish~~] implement no  
9 later than January 1, 2000 a "[~~New Mexico~~] state universal  
10 service fund" to maintain [~~existing residential~~] local  
11 exchange service as determined by the commission and in  
12 conformance with the federal Telecommunications Act of 1996,  
13 at affordable rates in high cost areas of the state and for  
14 low-income New Mexicans. Upon implementation of the state  
15 universal service fund, any money in the New Mexico universal  
16 service fund shall be transferred immediately into the state  
17 universal service fund and the New Mexico universal service  
18 fund shall cease to exist.

19 B. The fund shall be financed by a [~~uniform~~  
20 ~~surcharge~~] competitively neutral assessment on all [~~local~~  
21 ~~exchange service customers~~] retail public telecommunications  
22 service revenues at [~~a rate~~] rates to be determined by the  
23 commission. The commission may charge the assessment to all  
24 providers of intrastate retail public telecommunications  
25 services and comparable alternative services, including radio

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1 common carrier services, including cellular, paging and  
2 wireless services and personal communications services; and  
3 operator and aggregator services, including those offered by  
4 providers other than telecommunications carriers. Money  
5 deposited in the fund is not public money and the  
6 administration of the fund is not subject to the provisions of  
7 law regulating public funds.

8 C. The commission shall:

9 (1) establish eligibility criteria for  
10 participation in the fund [~~which~~] that assure the availability  
11 of local service at affordable rates [~~without unreasonably~~  
12 ~~increasing rates to local exchange service and message~~  
13 ~~telecommunications service customers~~];

14 (2) determine which [~~companies~~]  
15 telecommunications carriers meet the eligibility criteria and  
16 which areas of the state should receive support;

17 (3) determine which telecommunications carriers  
18 meet the eligibility criteria for participation in the low-  
19 income telephone service assistance program in the Low Income  
20 Telephone Service Assistance Act and provide for payment to  
21 those telecommunications carriers for reduced-rate assistance  
22 that is provided pursuant to Section 63-9C-4 NMSA 1978 and  
23 that is not otherwise supported by federal or state funding;  
24 and

25 [~~3~~] (4) provide for the collection of the

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1     ~~[surcharge]~~ assessment and the administration and disbursement  
2     of money from the fund.

3             D. The commission shall adopt rules [~~and~~  
4     ~~regulations~~] for the implementation and administration of the  
5     fund in accordance with the provisions of this section.

6             E. The commission [~~shall establish a board composed~~  
7     ~~of representatives from the providers of local exchange~~  
8     ~~service~~] may select an independent person to collect,  
9     administer and disburse money from the fund under the  
10    supervision and control of the commission pursuant to the  
11    established criteria and the rules [~~and regulations~~]  
12    promulgated by the commission. The commission, as  
13    appropriate, may cause the administrator to be compensated for  
14    its services and expenses from the proceeds of the fund. The  
15    administrator shall consult with an advisory board established  
16    by the commission composed of representatives of participating  
17    providers, customers and other interested stakeholders.

18            F. A telecommunications carrier providing local  
19    exchange services eligible for support from the state  
20    universal service fund shall be eligible to receive funds only  
21    up to the amount that, together with funds from all other  
22    sources, including local exchange service revenues and funds  
23    from federal supports, equals the cost, as the commission  
24    determines, including a reasonable profit of providing local  
25    exchange service to customers of that telecommunications

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1 carrier. "

2 Section 8. Section 63-9A-7 NMSA 1978 (being Laws 1985,  
3 Chapter 242, Section 7) is amended to read:

4 "63-9A-7. MANNER OF REGULATION. --

5 A. The granting of any certificate of authority or  
6 public convenience and necessity to provide a public  
7 telecommunications service shall not be deemed to require the  
8 holder [~~thereof~~] to provide other telecommunications services  
9 under regulation which are otherwise subject to competition.

10 B. In addition to any other penalties or provisions  
11 of law, the commission may suspend or revoke a  
12 telecommunications carrier's certificate of authority or  
13 public convenience and necessity or plan granted pursuant to  
14 an alternative form of regulation allowed by the commission.  
15 If a telecommunications carrier's plan approved pursuant to an  
16 alternative form of regulation is revoked, the  
17 telecommunications carrier shall be regulated as it was prior  
18 to the commission's approval of the revoked plan. "

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

21 "63-9A-8. REGULATION OF RATES AND CHARGES. --

22 A. In accordance with [~~the policy~~] policies  
23 established in [~~the New Mexico Telecommunications Act~~] law and  
24 the federal Telecommunications Act of 1996, the commission  
25 shall, by its own motion or upon petition [~~by any~~] of an

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

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1 telecommunications services in the same relevant markets so  
2 that ~~[there shall be parity of]~~ the regulatory standards and  
3 requirements ~~[for]~~ are fairly applied to all such providers.

4 B. In determining whether a service is subject to  
5 effective competition in a relevant market area, the  
6 commission shall consider ~~[the following]~~ the extent to which:

7 (1) ~~[the extent to which services are]~~ service  
8 is reasonably available at competitive rates, terms and  
9 conditions from alternate providers ~~[in the relevant market~~  
10 ~~area]~~ such that customers have a realistic choice of providers  
11 for the service;

12 (2) ~~[the ability of alternate providers to~~  
13 ~~make]~~ functionally equivalent or substitute services ~~[ readily]~~  
14 are reasonably available at competitive rates, terms and  
15 conditions from alternate providers, such that customers have  
16 a realistic choice of alternative providers for such services ;  
17 and

18 (3) ~~[existing]~~ economic ~~[or]~~ regulatory or  
19 other barriers to competition exist.

20 In making its determination, the commission may require  
21 parties to produce and may consider, among other evidence,  
22 existing relevant market share data from any  
23 telecommunications carrier on a confidential basis.

24 Notwithstanding any contrary provisions of this section, the  
25 commission may adopt rules recognizing the differences between

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1 telecommunications carriers and between different public  
2 telecommunications services.

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 telecommunications  
8 services by noncompetitive telecommunications services, prices  
9 or rates charged for a competitive telecommunications service  
10 shall cover the cost [~~for the provision~~] of providing the  
11 service as the commission determines, and prevent anti-  
12 competitive pricing. In any proceeding held pursuant to this  
13 section, the party providing the service shall bear the burden  
14 of proving that the prices charged for competitive  
15 telecommunications services cover cost.

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

23 Section 10. Section 63-9A-8.1 NMSA 1978 (being Laws  
24 1998, Chapter 108, Section 61) is amended to read:

25 "63-9A-8.1. CHANGE IN RATES. --

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1           A. At a hearing involving an increase in rates or  
2 charges sought by a telecommunications [~~company~~] carrier, the  
3 burden of proof to show that the increased rate or charge is  
4 just and reasonable shall be upon the [~~company~~]  
5 telecommunications carrier.

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

20           C. Whenever a telecommunications [~~company~~] carrier  
21 files a complete application proposing new rates, the  
22 commission may, upon complaint or upon its own initiative,  
23 except as otherwise provided by law, upon reasonable notice,  
24 enter upon a hearing concerning the reasonableness of the  
25 proposed rates. If the commission determines a hearing is



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1 necessary, it shall suspend the operation of the proposed  
2 rates before they become effective but not for a longer  
3 initial period than nine months beyond the time when the rates  
4 would otherwise go into effect, unless the commission finds  
5 that a longer time will be required, in which case the  
6 commission may extend the period for an additional three  
7 months. The commission shall hear and decide cases with  
8 reasonable promptness. The commission shall adopt rules  
9 identifying criteria for various rate and tariff filings to be  
10 eligible for suspension periods shorter than what is allowed  
11 by this subsection and to be eligible for summary approval  
12 without hearing.

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

25 Section 11. Section 63-9A-9 NMSA 1978 (being Laws 1985,

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1 Chapter 242, Section 9, as amended) is amended to read:

2 "63-9A-9. REGULATION OF INDIVIDUAL CONTRACTS TO  
3 FACILITATE COMPETITION. --

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

14 B. At any time, [the provider of public  
15 telecommunications services] a telecommunications carrier may  
16 file a verified application with the commission for  
17 authorization to provide a tariffed public telecommunications  
18 service on an individual contract basis to customers with  
19 specific volume, capacity, size, location or other unique  
20 characteristics or circumstances. The application shall  
21 describe:

22 (1) the public telecommunications services to  
23 be offered;

24 (2) the [party] customer to be served [and the  
25 parties offering the service, together with such other

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1 ~~information and in such form as the commission may prescribe.~~  
2 ~~Such additional information shall be reasonably related to the~~  
3 ~~determination of the existence of a competitive offer]; the~~  
4 ~~price of the services to be offered; and sufficient~~  
5 ~~information, as the commission determines, to establish that~~  
6 ~~the prices cover the costs of providing the services and~~  
7 ~~prevent anti-competitive pricing.~~ A determination of  
8 effective competition pursuant to Section 63-9A-8 NMSA 1978  
9 shall not be necessary to file an application or to have an  
10 application granted by the commission pursuant to this  
11 section.

12 C. The commission shall approve or deny any such  
13 application within ten days or such other period as shall be  
14 established by the commission, not to exceed sixty days,  
15 giving consideration to the requirements of any contract  
16 negotiations. If the commission has not acted on any  
17 application within the time period established, the  
18 application shall be deemed granted. The commission shall  
19 deny the application only upon a finding that:

20 (1) the application fails to set forth  
21 prescribed information [~~or that the subject or comparable~~  
22 ~~services are not being offered to the customer by parties~~  
23 ~~other than the applicant];~~

24 (2) with respect to a noncompetitive service,  
25 approval of the application would result in harm to other

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1 customers of that service;

2 (3) the contract fails to cover the costs of  
3 providing the service as the commission determines; or

4 (4) it is necessary to prevent anti-competitive  
5 pricing.

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

14 Section 12. Section 63-9A-10 NMSA 1978 (being Laws 1985,  
15 Chapter 242, Section 10) is amended to read:

16 "63-9A-10. EXAMINATION OF BOOKS AND RECORDS. -- [ ~~Nothing~~  
17 ~~in the New Mexico Telecommunications Act shall preclude the~~  
18 ~~commission from exercising its authority to require such~~  
19 ~~accounting or reporting systems as are necessary to allow a~~  
20 ~~proper allocation of investments, costs or expenses that are~~  
21 ~~joint or common to both public telecommunications services and~~  
22 ~~other services.] The commission may examine any  
23 telecommunications carrier's book and records concerning its  
24 business in this state for the purpose of determining  
25 compliance with any provision of federal or state law or~~

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1 commission rule or order. The telecommunications carrier  
2 shall make its books and records concerning its business in  
3 this state available to the commission in this state in  
4 accordance with commission rules. The commission shall not  
5 disclose confidential information provided to it by a  
6 telecommunications carrier to third parties, except in  
7 accordance with commission rule. "

8 Section 13. Section 63-9C-4 NMSA 1978 (being Laws 1987,  
9 Chapter 197, Section 4) is amended to read:

10 "63-9C-4. LOW-INCOME ASSISTANCE RATES-- COMMISSION  
11 AUTHORITY. --

12 A. A local exchange company [~~may~~] shall provide  
13 assistance in the form of reduced rates to [~~those persons~~]  
14 residential customers who meet the eligibility criteria of one  
15 or more need-based assistance programs administered by the  
16 department or by the federal government.

17 B. The commission shall promulgate rules [~~and~~  
18 ~~regulations~~] for the implementation of the Low Income  
19 Telephone Service Assistance Act for [~~those~~] local exchange  
20 companies who provide such assistance. The commission shall  
21 adopt a delivery structure for its program that is cost  
22 effective and coordinated with the department.

23 C. The commission shall structure the implementation  
24 of the Low Income Telephone Service Assistance Act in a manner  
25 that will result in funding of low-income programs in an

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1 amount at least equal to what is necessary to secure the  
2 maximum amount of federal matching funds for low-income  
3 telephone assistance programs. A local exchange company may  
4 obtain support from the state universal service fund pursuant  
5 to Section 63-9A-6.1 NMSA 1978 for reduced-rate assistance  
6 that is provided pursuant to this section and that is not  
7 otherwise supported by federal or state funding. "

8 Section 14. Section 63-9C-5 NMSA 1978 (being Laws 1987,  
9 Chapter 197, Section 5) is amended to read:

10 "63-9C-5. [~~FEDERAL-WAIVER~~] WAIVERS. --

11 A. In addition to any reduced rates provided by  
12 local exchange companies [~~on behalf of~~] that provide  
13 residential local exchange service to low-income New Mexicans,  
14 the commission shall apply to the [~~federal communications~~  
15 commission] appropriate governmental agency for a waiver of  
16 the federal end user common line charges and any other  
17 assessments or surcharges that, pursuant to federal or state  
18 law and rules, are at any time, subject to waiver with respect  
19 to recipients of low-income telephone service assistance.  
20 Upon receipt of [~~the~~] a waiver, the commission shall notify  
21 the local exchange companies providing low-income telephone  
22 service assistance and the monthly telephone bill shall  
23 reflect the waiver of the federal end user common line charges  
24 or other assessments or surcharges.

25 B. Recipients of low-income telephone service

1 assistance shall not be surcharged or otherwise pay assessments  
2 that contribute to the state universal service fund pursuant  
3 to Section 63-9A-6.1 NMSA 1978. "

4 Section 15. A new section of the New Mexico  
5 Telecommunications Act is enacted to read:

6 "[NEW MATERIAL] QUALITY OF SERVICE STANDARDS. --

7 A. The commission shall establish minimum retail and  
8 wholesale service quality standards applicable to  
9 telecommunications carriers and, on or before December 31,  
10 1999, promulgate rules necessary to implement the provisions  
11 of this section. The standards shall address performance in a  
12 range of service quality and reliability areas for both retail  
13 residential and business customers. In addition, the  
14 commission shall establish specific standards to measure the  
15 quality of incumbent local exchange carriers' service to other  
16 telecommunications carriers seeking interconnection, resale  
17 and purchase of unbundled network elements from the incumbent  
18 local exchange carriers. In determining the applicability of  
19 and in developing retail service quality standards for  
20 competitive local exchange carriers, the commission may  
21 consider the reliance of competitive local exchange carriers  
22 on incumbent local exchange carriers to provide wholesale  
23 services underlying the competitive local exchange carriers'  
24 retail service.

25 B. The commission shall provide for appropriate

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1 remedies, including penalties, if the commission finds that a  
2 telecommunications carrier has violated service quality  
3 standards. When determining an appropriate penalty for a  
4 telecommunications carrier, the commission may consider the  
5 recent history of the telecommunications carrier in achieving  
6 reasonable service quality and reliability and the  
7 telecommunications carrier's revenues, expenses, finances and  
8 investments. In any year in which penalties are imposed, the  
9 commission may require the telecommunications carrier to  
10 inform its intrastate customers of its failure to achieve the  
11 required level of service quality, in a manner approved by the  
12 commission. "

13 Section 16. A new section of the New Mexico  
14 Telecommunications Act is enacted to read:

15 "[NEW MATERIAL] CONSUMER PROTECTION REQUIREMENTS FOR  
16 TELECOMMUNICATIONS COMPETITION. --The commission shall adopt  
17 rules on or before December 31, 1999 that establish minimum  
18 consumer protections applicable to all telecommunications  
19 carriers certificated in this state, consistent with  
20 applicable federal and state laws. These rules should address  
21 all appropriate issues, including:

22 A. minimum billing disclosures designed to enhance  
23 customers' knowledge and understanding;

24 B. disclosure and customer notice of an initiation  
25 of or change in service, price or other service conditions, as



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1 appropriate;

2 C. fair and reasonable credit, collection and  
3 service disconnection procedures and practices;

4 D. fair and reasonable trade and marketing  
5 practices; and

6 E. privacy protection of individual customer  
7 information. "

8 Section 17. A new section of the New Mexico  
9 Telecommunications Act is enacted to read:

10 "[NEW MATERIAL] ALTERNATIVE FORMS OF REGULATION. --

11 A. The commission may authorize a telecommunications  
12 carrier to implement alternative forms of regulation, which  
13 are alternatives to the form of regulation of rates and  
14 charges for public telecommunications services authorized  
15 pursuant to Section 63-9A-8.1 NMSA 1978. Alternative forms of  
16 regulation may include price caps or an equitable sharing of  
17 earnings or revenues between a telecommunications carrier and  
18 its customers.

19 B. A telecommunications carrier may petition the  
20 commission for alternative regulation by submitting with its  
21 petition a detailed plan of the alternative form of regulation  
22 sought. The commission shall issue an order on the petition  
23 no later than nine months after its filing, accompanied by the  
24 requisite detailed plan. The commission shall grant the  
25 petition and authorize implementation of the plan, after

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1 notice and hearing, if the telecommunications carrier  
2 demonstrates that the plan as filed or as modified by the  
3 commission:

4 (1) does not degrade the quality or  
5 availability of public telecommunications services at  
6 affordable rates;

7 (2) produces fair, just and reasonable rates  
8 for public telecommunications services;

9 (3) does not unduly or unreasonably prejudice  
10 or disadvantage a customer or telecommunications carrier  
11 class;

12 (4) reduces regulatory delay and costs;

13 (5) promotes the public interest;

14 (6) enhances economic development in the state;

15 (7) results in the improvement of the public  
16 telecommunications services infrastructure in the state; and

17 (8) encourages competition in the  
18 telecommunications industry and permits a regulatory framework  
19 that will allow an orderly transition from a regulated  
20 telecommunications industry to a competitive market  
21 environment.

22 C. Within sixty days after the commission issues any  
23 order modifying the plan, the telecommunications carrier may  
24 withdraw its petition for alternative regulation. If the  
25 petition for alternative regulation is withdrawn, the

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1 telecommunications carrier:

2 (1) remains subject to the applicable  
3 regulation authorized by law and rule; and

4 (2) may again petition the commission to be  
5 regulated pursuant to a revised alternative regulation plan.

6 D. Upon petition or upon its own motion, the  
7 commission may rescind its approval or suspend a plan for an  
8 alternative form of regulation if, after notice and hearing,  
9 it finds that the requisite conditions for approval described  
10 in Subsection B of this section are no longer satisfied.

11 E. Nothing contained in this section shall be  
12 construed as limiting or otherwise affecting the commission's  
13 authority to:

14 (1) conduct investigations or hear complaints  
15 as authorized or permitted by law; or

16 (2) modify, after notice and hearing, the form  
17 of regulation of rates and charges for public  
18 telecommunications services pursuant to Section 63-9A-8 NMSA  
19 1978. "

20 Section 18. REPEAL. -- Section 63-9A-6.2 NMSA 1978 (being  
21 Laws 1987, Chapter 21, Section 5) is repealed.

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24  
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1 FORTY-FOURTH LEGISLATURE

SB 374/a

2 FIRST SESSION, 1999

3  
4 February 16, 1999

5  
6 Mr. President:

7  
8 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to  
9  
10 whom has been referred

11  
12 SENATE BILL 374

13  
14 has had it under consideration and reports same with  
15 recommendation that it DO PASS, amended as follows:

- 16  
17 1. On page 20, line 17, after "was" insert "immediately".  
18  
19 2. On page 20, line 23, before "law" insert "state".  
20  
21 3. On page 31, line 1, strike "note" and insert in lieu  
22 thereof "not be".  
23  
24 4. On page 33, line 23, after "its" insert "complete".,  
25

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FIRST SESSION, 1999

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and thence referred to the JUDICIARY COMMITTEE.

Respectfully submitted,

\_\_\_\_\_  
Roman M. Maes, Chairman

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

Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Macias, Robinson, Maes

Absent: None

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Page 38

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12 February 26, 1999

13  
14 Mr. Presi dent:

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16 Your JUDI CIARY COMMI TTEE, to whom has been referred

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18 SENATE BILL 374, as amended

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21 has had it under consideration and reports same WITHOUT  
22 RECOMMENDATI ON.  
23

24 Respectfully submit ted,  
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\_\_\_\_\_  
Michael S. Sanchez, Chai rman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chi ef Clerk) (Chi ef Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 1 Against

Yes: 6

No: Sanchez

Excused: Aragon

Absent: None

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FORTY- FOURTH LEGISLATURE  
FIRST SESSION, 1999

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1 FORTY-FOURTH LEGISLATURE  
2 FIRST SESSION, 1999  
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6 March 10, 1999  
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8 Mr. Speaker:  
9

10 Your JUDICIARY COMMITTEE, to whom has been referred  
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12 SENATE BILL 374, as amended  
13

14 has had it under consideration and reports same WITHOUT  
15 RECOMMENDATION, and thence referred to the APPROPRIATIONS  
16 AND FINANCE COMMITTEE.

17 Respectfully submitted,  
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22 R. David Pederson, Chairman  
23  
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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

HJC/SB 374 aa

Page 43

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 8 For 1 Against

Yes: 8

No: Godbey

Excused: Luna, Sanchez, T. Taylor

Absent: None

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