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SENATE BILL

55TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2022

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING SECTIONS OF THE NEW MEXICO TELECOMMUNICATIONS ACT; REQUIRING RULEMAKING TO ESTABLISH PARITY OF REGULATION AMONG INCUMBENT LOCAL EXCHANGE CARRIERS REGULATED PURSUANT TO THE NEW MEXICO TELECOMMUNICATIONS ACT AND INCUMBENT LOCAL EXCHANGE CARRIERS REGULATED PURSUANT TO THE RURAL TELECOMMUNICATIONS ACT OF NEW MEXICO; ESTABLISHING THAT EFFECTIVE COMPETITION SHALL HAVE BEEN DEMONSTRATED UPON A SHOWING THAT TWO OR MORE CARRIERS PROVIDE SIMILAR VOICE SERVICES TO A WIRE CENTER SERVING AREA; REQUIRING THE PUBLIC REGULATION COMMISSION TO REPORT THE STEPS TAKEN TO ACHIEVE REGULATORY PARITY AMONG CARRIERS; REPEALING A SECTION OF THE NEW MEXICO TELECOMMUNICATIONS ACT.

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

SECTION 1. Section 63-9A-5 NMSA 1978 (being Laws 1985,

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1 Chapter 242, Section 5, as amended) is amended to read:

2 "63-9A-5. REGULATION BY COMMISSION.--

3 A. Except as otherwise provided in the New Mexico
4 Telecommunications Act, each public telecommunications service
5 is declared to be affected with the public interest and, as
6 such, subject to the provisions of that act, including the
7 regulation thereof as provided in that act.

8 B. The commission has exclusive jurisdiction to
9 regulate incumbent local exchange carriers that serve fifty
10 thousand or more access lines within the state only in the
11 manner and to the extent authorized by the New Mexico
12 Telecommunications Act, and Subsection B of Section 63-7-1.1
13 NMSA 1978 does not apply; provided, however, that the
14 commission's jurisdiction includes the regulation of wholesale
15 rates, including access charges and interconnection agreements
16 consistent with federal law and its enforcement and
17 determinations of participation in low-income telephone service
18 assistance programs pursuant to the Low Income Telephone
19 Service Assistance Act. [~~The New Mexico Telecommunications Act~~
20 ~~expressly preserves and does]~~

21 C. On or before December 31, 2022, the commission
22 shall adopt rules to regulate all incumbent local exchange
23 carriers in a manner consistent with and no more cumbersome
24 than the regulation of incumbent local exchange carriers
25 pursuant to the Rural Telecommunications Act of New Mexico;

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1 provided that the adopted rules preserve and do not diminish or
2 expand:

3 (1) the rights and obligations of any entity,
4 including the commission, established pursuant to federal law,
5 including 47 U.S.C. Sections 251 and 252, or established
6 pursuant to any state law, rule, procedure, regulation or order
7 related to interconnection, intercarrier compensation,
8 intercarrier complaints, wholesale rights and obligations or
9 any wholesale rate or schedule that is filed with and
10 maintained by the commission;

11 (2) the rights and obligations of any
12 competitive telecommunications service provider holding a
13 certificate of public convenience and necessity, or the rights
14 and obligations of any competitive local exchange carrier to
15 obtain such a certificate;

16 (3) the authority of the commission to resolve
17 consumer complaints regarding basic local exchange service;
18 provided, however, that the commission's authority to resolve
19 such complaints shall be limited to resolving issues of
20 consumer protection and shall not include the authority to
21 determine or fix rates, provider of last resort obligations or
22 service quality standards except as expressly set forth in the
23 New Mexico Telecommunications Act;

24 (4) the authority of the commission to
25 establish reasonable quality of service standards; provided,

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1 however, that the enforcement of such standards shall be
2 limited to the commission's fining authority set forth in
3 Section 63-7-23 NMSA 1978 and the authority to seek an
4 injunction set forth in Section 63-9-19 NMSA 1978;

5 (5) the rights and obligations of any entity,
6 including the commission, regarding the fund;

7 (6) the rights and obligations of any entity,
8 including the commission, regarding access to emergency service
9 to the extent consistent with the Enhanced 911 Act; or

10 (7) the rights and obligations of any entity,
11 including the commission, regarding the administration of
12 slamming and cramming rules, telecommunications relay service
13 and numbering resources to the extent permitted by and
14 consistent with federal law.

15 ~~[G. For incumbent local exchange carriers that~~
16 ~~serve fifty thousand or more access lines within the state, the~~
17 ~~commission shall adopt relaxed regulations that provide for:~~

18 ~~(1) reduced filing requirements for applicants~~
19 ~~in rate increase proceedings under the New Mexico~~
20 ~~Telecommunications Act; and~~

21 ~~(2) expedited consideration in all proceedings~~
22 ~~initiated pursuant to the New Mexico Telecommunications Act in~~
23 ~~order to reduce the cost and burden for incumbent local~~
24 ~~exchange carriers and other applicants.~~

25 ~~D. The regulatory requirements and the commission's~~

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1 ~~regulation of competitive local exchange carriers, competitive~~
2 ~~access providers and interexchange carriers shall be no greater~~
3 ~~than, and no more extensive than, that of incumbent local~~
4 ~~exchange carriers that serve fifty thousand or more access~~
5 ~~lines.~~

6 E.] D. The provisions of the New Mexico
7 Telecommunications Act do not apply to incumbent rural
8 telecommunications carriers."

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

11 "63-9A-8. REGULATION OF RATES AND CHARGES--EFFECTIVE
12 COMPETITION.--

13 A. In accordance with the policy established in the
14 New Mexico Telecommunications Act, the commission shall, by its
15 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 purposes
21 of the New Mexico Telecommunications Act, [modify] reduce or
22 eliminate rules, regulations and other requirements applicable
23 to the provision of such service, including the fixing and
24 determining of specific rates, tariffs or fares for the
25 service. The commission's action may include the detariffing

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1 of service or the establishment of minimum rates that will
2 cover the costs for the service. Such ~~[modification]~~ action
3 shall be consistent with the maintenance of the availability of
4 access to local exchange service and message telecommunications
5 service at affordable rates ~~[and comparable message~~
6 ~~telecommunications service rates]~~ comparable in both urban and
7 rural markets, as established by the commission, ~~[for~~
8 ~~comparable markets or market areas]~~ except that volume
9 discounts or other discounts based on reasonable business
10 purposes shall be permitted. ~~[Upon petition or request of an~~
11 ~~affected telecommunications company]~~ The commission ~~[upon a~~
12 ~~finding that the requirements of Subsection B of this section~~
13 ~~are met]~~ shall also modify the same or similar retail
14 regulatory requirements for those providers of comparable
15 public telecommunications services in the same relevant markets
16 so that there shall be parity of retail regulatory standards
17 and requirements for all such providers; provided, however,
18 that this subsection shall not be construed to permit the
19 adoption of any new regulatory requirements or standards for
20 providers of comparable telecommunications services.

21 B. In determining whether a service is subject to
22 effective competition, ~~[the commission shall consider the~~
23 ~~following on a wire center serving area basis]~~ for each wire
24 center serving area and service for which such a determination
25 ~~[of effective competition]~~ is requested, ~~[and separate~~

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1 ~~determinations shall be made for residential and business~~
2 ~~services in each wire center serving area: (1) the extent to~~
3 ~~which] effective competition shall exist when voice services~~
4 ~~are reasonably available from two or more alternate providers~~

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

8 ~~(3) existing economic, technological,~~
9 ~~regulatory or other barriers to market entry and exit;~~

10 ~~(4) the number of other providers offering the~~
11 ~~same or reasonably comparable services;~~

12 ~~(5) the presence of at least two facilities-~~
13 ~~based competitors, including without limitation facilities-~~
14 ~~based providers of wireless or voice over internet protocol~~
15 ~~services, operating in all or part of the wire center for which~~
16 ~~a determination of effective competition is requested that are~~
17 ~~unaffiliated with the petitioning carrier and provide the same~~
18 ~~or reasonably comparable service of the type for which the~~
19 ~~finding of effective competition is sought;~~

20 ~~(6) the ability of the petitioning provider to~~
21 ~~affect prices or deter competition; and~~

22 ~~(7) such other factors as the commission deems~~
23 ~~appropriate] at competitive rates, terms and conditions,~~
24 ~~regardless of:~~

25 ~~(1) the technology used to provide the voice~~

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1 services;

2 (2) whether the voice services are regulated
3 or unregulated; or

4 (3) whether the voice services are provided by
5 alternate providers that receive state or federal funding
6 assistance.

7 C. ~~[If, in the wire center serving area for which a~~
8 ~~determination of effective competition is requested, the~~
9 ~~incumbent local exchange carrier provides basic local exchange~~
10 ~~service either separately or bundled to less than one-half of~~
11 ~~the customer locations where such service is available at the~~
12 ~~time the petition is filed, the public interest requires that~~
13 ~~effective competition be presumed for all regulated~~
14 ~~telecommunications services provided by the incumbent provider~~
15 ~~in that wire center serving area; provided, however, that~~
16 ~~findings and presumptions applied pursuant to this section~~
17 ~~shall be made separately for residential and business services~~
18 ~~and customer locations]~~ In addition to a determination of
19 effective competition pursuant to Subsection B of this section
20 and upon notice to the commission, when a separate provider
21 other than the incumbent local exchange carrier has been
22 awarded funding to provide broadband service in a wire center
23 serving area pursuant to a state or federal broadband
24 assistance program, effective competition for all regulated
25 telecommunications services in that wire center serving area

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1 shall be established.

2 D. No provider of public telecommunications service
3 may use current revenues earned or expenses incurred in
4 conjunction with any noncompetitive service to subsidize
5 competitive public telecommunications services. In order to
6 avoid cross-subsidization of competitive services by
7 noncompetitive telecommunications services, prices or rates
8 charged for a competitive telecommunications service shall
9 cover the cost for the provision of the service consistent with
10 the provisions of Subsection G of Section 63-9A-8.1 NMSA 1978.
11 In any proceeding held pursuant to this section, the party
12 claiming that the price for a competitive telecommunications
13 service does not cover the cost shall bear the burden of
14 proving that the prices charged for competitive
15 telecommunications services do not cover cost; provided,
16 however, that the commission may require the telecommunications
17 company against whom the complaint is filed to submit a cost
18 study for the service that is the subject of the complaint as
19 part of its examination and determination of the complaint.

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

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1 F. If a wire center [~~service~~] servicing area is
2 deregulated pursuant to a determination of effective
3 competition, for those wire center [~~service~~] servicing areas
4 where that service is deregulated, the petitioning
5 telecommunications company shall no longer be eligible to claim
6 an exemption from the application of the Unfair Practices Act
7 or the Antitrust Act."

8 SECTION 3. Section 63-9A-21 NMSA 1978 (being Laws 2017,
9 Chapter 71, Section 7) is amended to read:

10 "63-9A-21. COMMISSION REVIEW OF IMPACTS.--

11 A. The commission shall review the impact of
12 provisions of the New Mexico Telecommunications Act on
13 residential and business consumers in urban and rural areas of
14 the state every three years, the first review to be completed
15 by July 31, 2019, and shall report its findings to the
16 legislature. The review shall:

17 (1) investigate the impact on rates, service
18 quality, incumbent local exchange carrier employment,
19 investment in telecommunications infrastructure and the
20 availability and deployment of high speed data services [~~The~~
21 ~~review shall also include a report on those~~];

22 (2) report on the wire center serving areas
23 that have been deemed to have effective competition and any
24 wire centers no longer subject to carrier of last resort
25 obligations; and

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1 (3) specify the steps the commission has taken
2 to implement parity of regulation among all incumbent local
3 exchange carriers consistent with the purposes of the New
4 Mexico Telecommunications Act.

5 B. For any wire center serving an area deregulated
6 pursuant to the provisions of Section 63-9A-8 NMSA 1978, if the
7 commission finds that reregulation of basic local exchange
8 service is necessary to protect the public interest following a
9 hearing and findings of fact and conclusions of law, after July
10 31, 2021, the commission shall regulate basic local exchange
11 service pursuant to the New Mexico Telecommunications Act."

12 **SECTION 4. REPEAL.**--Section 63-9A-2 NMSA 1978 (being Laws
13 1985, Chapter 242, Section 2, as amended by Laws 2000, Chapter
14 100, Section 3 and by Laws 2000, Chapter 102, Section 3) is
15 repealed.

16 **SECTION 5. EFFECTIVE DATE.**--The effective date of the
17 provisions of this act is July 1, 2022.