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SENATE BILL

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO RURAL TELECOMMUNICATIONS; AMENDING A SECTION OF THE RURAL TELECOMMUNICATIONS ACT OF NEW MEXICO TO PROVIDE THAT THE STATE RURAL UNIVERSAL SERVICE FUND SHALL SUPPORT UNIVERSAL SERVICE, INCLUDING BROADBAND INTERNET ACCESS CONSISTENT WITH THE FEDERAL UNIVERSAL SERVICE SUPPORT PROGRAMS.

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

SECTION 1. Section 63-9H-6 NMSA 1978 (being Laws 1999, Chapter 295, Section 6, as amended) is amended to read:

"63-9H-6. STATE RURAL UNIVERSAL SERVICE FUND-- ESTABLISHMENT.--

A. [~~No later than January 1, 2000~~] The commission shall implement and maintain a "state rural universal service fund" to maintain and support at affordable rates [~~those public telecommunications services~~] basic local exchange service and

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1 comparable retail alternative services provided by
2 telecommunications carriers that have been designated as
3 eligible telecommunications carriers, including commercial
4 mobile radio services carriers, as are determined by the
5 commission. ~~[All of the balances in the existing New Mexico~~
6 ~~universal service fund as of July 1, 1999 shall be transferred~~
7 ~~into the state rural universal service fund.]~~ The fund shall
8 support universal service, which, for purposes of this section,
9 is defined as networks that are capable of providing not only
10 basic local exchange service or comparable retail alternative
11 services, but also broadband internet access service at speeds
12 and qualities consistent with the speeds and qualities
13 established by the federal communications commission applicable
14 to federal universal service support programs.

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

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1 by telecommunications carriers, including commercial mobile
2 radio services and voice over internet protocol services, at a
3 competitively and technologically neutral rate or rates to be
4 determined by the commission. The commission may establish the
5 surcharge as a percentage of intrastate retail public
6 telecommunications services revenue or as a fixed amount
7 applicable to each connection to the public switched telephone
8 network. In prescribing competitively and technologically
9 neutral [~~surcharge rates~~] surcharges, the commission may make
10 distinctions between services subject to a surcharge, but it
11 shall require all carriers subject to the surcharge to apply
12 uniform [~~surcharge rates~~] surcharges for the same or comparable
13 services. Money deposited in the fund is not public money, and
14 the administration of the fund is not subject to the provisions
15 of law regulating public funds. The commission shall not apply
16 this surcharge to a private telecommunications network; to the
17 state, a county, a municipality or other governmental entity;
18 to a public school district; to a public institution of higher
19 education; or to an Indian nation, tribe or pueblo.

20 C. The fund shall be competitively and
21 technologically neutral, equitable and nondiscriminatory in its
22 collection and distribution of funds and portable between
23 eligible telecommunications carriers and additionally shall
24 provide a specific, predictable and sufficient support
25 mechanism as determined by the commission that [~~reduces~~

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1 ~~intrastate switched access charges to interstate switched~~
2 ~~access charge levels in a revenue-neutral manner and]~~ ensures
3 universal service in the state.

4 D. The commission shall:

5 (1) establish eligibility criteria for
6 participation in the fund consistent with federal law that
7 ensure the availability of universal service at affordable
8 rates. The eligibility criteria shall not restrict or limit an
9 eligible telecommunications carrier from receiving federal
10 universal service support;

11 (2) 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 services requiring support
15 from the fund;

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

19 (5) establish affordability benchmark rates
20 for local residential and business services that shall be
21 utilized in determining the level of support from the fund.
22 The process for determining subsequent adjustments to the
23 benchmark shall be established through a rulemaking.

24 E. All incumbent telecommunications carriers and
25 competitive carriers already designated as eligible

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1 telecommunications carriers for the fund shall be eligible for
2 participation in the fund. All other carriers that choose to
3 become eligible to receive support from the fund may petition
4 the commission to be designated as an eligible
5 telecommunications carrier for the fund. The commission may
6 grant eligible carrier status to a competitive carrier in a
7 rural area upon a finding that granting the application is in
8 the public interest. In making a public interest finding, the
9 commission shall consider at least the following items:

10 (1) whether granting eligible carrier status
11 to multiple carriers in a designated area is likely to result
12 in more customer choice;

13 (2) the impact of designation of an additional
14 eligible carrier on the size of the fund;

15 (3) the unique advantages and disadvantages of
16 the competitor's service offering;

17 (4) any commitments made regarding the quality
18 of telephone service; and

19 (5) the competitive carrier's willingness and
20 ability to offer service throughout the designated service
21 areas within a reasonable time frame.

22 F. The commission shall adopt rules, including a
23 provision for variances, for the implementation and
24 administration of the fund in accordance with the provisions of
25 this section. The rules shall enumerate the appropriate uses

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1 of fund support and any restrictions on the use of fund support
2 by eligible telecommunications carriers and shall provide for
3 annual reporting by eligible telecommunications carriers
4 verifying that the reporting carrier continues to meet the
5 requirements for designation as an eligible telecommunications
6 carrier for purposes of the fund and is in compliance with the
7 commission's rules, including the provisions regarding use of
8 support from the fund.

9 G. The commission shall, upon implementation of the
10 fund, select a neutral third-party administrator to collect,
11 administer and disburse money from the fund under the
12 supervision and control of the commission pursuant to
13 established criteria and rules promulgated by the commission.
14 The administrator may be reasonably compensated for the
15 specified services from the surcharge proceeds to be received
16 by the fund pursuant to Subsection B of this section. For
17 purposes of this subsection, the commission shall not be a
18 neutral third-party administrator.

19 H. The fund established by the commission shall
20 ensure the availability of [~~local telecommunications~~] universal
21 service as determined by the commission at affordable rates in
22 [~~rural high-cost~~] all areas of the state; provided, however,
23 that nothing in this section shall be construed as granting any
24 authority to the commission to regulate broadband internet
25 access service.

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1 ~~[I. Beginning April 1, 2006, the commission shall~~
2 ~~commence the phase-in of reductions in intrastate switched~~
3 ~~access charges. By May 1, 2008, the commission shall ensure~~
4 ~~that intrastate switched access charges are equal to interstate~~
5 ~~switched access charges established by the federal~~
6 ~~communications commission as of January 1, 2006. Nothing in~~
7 ~~this section shall preclude the commission from considering~~
8 ~~further adjustments to intrastate switched access charges based~~
9 ~~on changes to interstate switched access charges after May 1,~~
10 ~~2008.~~

11 ~~J.]~~ I. To ensure that providers of intrastate
12 retail communications service contribute to the fund and to
13 further ensure that the surcharge to be paid by the end-user
14 customer will be held to a minimum, ~~[no later than November 1,~~
15 ~~2005]~~ the commission shall adopt rules, or take other
16 appropriate action, to require all such providers to
17 participate in a plan to ensure accurate reporting and shall
18 establish a cap on the surcharge.

19 ~~[K. The commission shall authorize payments from~~
20 ~~the fund to incumbent local exchange carriers, in combination~~
21 ~~with revenue-neutral rate rebalancing up to the affordability~~
22 ~~benchmark rates, in an amount equal to the reduction in~~
23 ~~revenues that occurs as a result of reduced intrastate switched~~
24 ~~access charges. The commission shall determine the methodology~~
25 ~~to be used to authorize payments to all other carriers that~~

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1 ~~apply for and receive eligible carrier status. Any reductions~~
2 ~~in charges for access services resulting from compliance with~~
3 ~~this section shall be passed on for the benefit of consumers in~~
4 ~~New Mexico.]~~ Such rules shall be consistent with and not
5 burden federal universal service support programs. In
6 establishing a cap on the surcharge, the commission shall
7 balance the needs of consumers in the state for access to
8 universal service with the burden on consumers that results
9 from a large surcharge.

10 ~~[H.]~~ J. The commission may ~~[also]~~ authorize
11 payments from the fund to incumbent rural telecommunications
12 carriers or to telecommunications carriers providing comparable
13 retail alternative services that have been designated as
14 eligible telecommunications carriers serving in high-cost areas
15 of the state upon a finding, based on factors that may include
16 a carrier's revenues, expenses or investment, by the commission
17 that such payments are needed to ensure the widespread
18 availability and affordability of ~~[residential local exchange]~~
19 universal service.

20 K. The commission shall prioritize payments from
21 the fund to areas containing households and businesses that
22 lack access to network capable of providing broadband internet
23 access service at download speeds of at least four megabits per
24 second and upload speeds of at least one megabit per second,
25 and shall not authorize payments from the fund to areas where

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1 federal universal service support programs or other grants from
2 state or federal government programs are provided to support
3 such networks. In making its determinations regarding payments
4 and priority under this subsection, the commission's decisions
5 shall not discriminate among providers.

6 L. The commission shall decide cases filed pursuant
7 to [~~this~~] Subsection J of this section with reasonable
8 promptness, with or without a hearing, but no later than six
9 months following the filing of an application seeking payments
10 from the fund, unless the commission finds that a longer time
11 will be required, in which case the commission may extend the
12 period for an additional three months.

13 M. By December 1, [~~2008~~] 2020, the [~~fund~~
14 ~~administrator~~] commission shall make a report to the
15 [~~commission and the~~] legislature. The report shall include the
16 [~~effects of access reductions~~] number of New Mexico households
17 and businesses that obtained access to universal service as a
18 result of payments made from the fund, a description of the
19 projects and investments supported by the fund and a
20 description of the funds provided to each recipient. The
21 report shall also make recommendations for any changes to the
22 structure, size or purposes of the fund."