

**63-9H-6. State rural universal service fund; establishment.**

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

B. The fund shall be financed by a surcharge on intrastate retail public telecommunications services to be determined by the commission, excluding services provided pursuant to a low-income telephone assistance plan billed to end-user customers by a telecommunications carrier, and excluding all amounts from surcharges, gross receipts taxes, excise taxes, franchise fees and similar charges. For the purpose of funding the fund, the commission has the authority to apply the surcharge on intrastate retail public telecommunications services provided by telecommunications carriers and to comparable retail alternative services provided by telecommunications carriers, including commercial mobile radio services, at a competitively and technologically neutral rate or rates to be determined by the commission. In prescribing competitively and technologically neutral surcharge rates, the commission may make distinctions between services subject to a surcharge, but it shall require all carriers subject to the surcharge to apply uniform surcharge rates for the same or comparable services. Money deposited in the fund is not public money, and the administration of the fund is not subject to the provisions of law regulating public funds. The commission shall not apply this surcharge to a private telecommunications network; to the state, a county, a municipality or other governmental entity; to a public school district; to a public institution of higher education; or to an Indian nation, tribe or pueblo.

C. The fund shall be competitively and technologically neutral, equitable and nondiscriminatory in its collection and distribution of funds, portable between eligible telecommunications carriers and additionally shall provide a specific, predictable and sufficient support mechanism as determined by the commission that reduces intrastate switched access charges to interstate switched access charge levels in a revenue-neutral manner and ensures universal service in the state.

D. The commission shall:

- (1) establish eligibility criteria for participation in the fund consistent with federal law that ensure the availability of service at affordable rates. The eligibility criteria shall not restrict or limit an eligible telecommunications carrier from receiving federal universal service support;
- (2) provide for the collection of the surcharge on a competitively neutral basis and for the administration and disbursement of money from the fund;
- (3) determine those services requiring support from the fund;
- (4) provide for the separate administration and disbursement of federal universal service funds consistent with federal law; and
- (5) establish affordability benchmark rates for local residential and business services that shall be utilized in determining the level of support from the fund. The process for determining subsequent adjustments to the benchmark shall be established through a rulemaking.

E. All incumbent telecommunications carriers and competitive carriers already designated as eligible telecommunications carriers for the fund shall be eligible for participation in the fund. All other carriers that choose to become eligible to receive support from the fund may petition the commission to be designated as an eligible telecommunications carrier for the fund. The commission may grant eligible carrier status to a competitive carrier in a rural area upon a

finding that granting the application is in the public interest. In making a public interest finding, the commission shall consider at least the following items:

- (1) whether granting eligible carrier status to multiple carriers in a designated area is likely to result in more customer choice;
- (2) the impact of designation of an additional eligible carrier on the size of the fund;
- (3) the unique advantages and disadvantages of the competitor's service offering;
- (4) any commitments made regarding the quality of telephone service; and
- (5) the competitive carrier's willingness and ability to offer service throughout the designated service areas within a reasonable time frame.

F. The commission shall adopt rules, including a provision for variances, for the implementation and administration of the fund in accordance with the provisions of this section no later than November 1, 2005.

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

H. The fund established by the commission shall ensure the availability of local telecommunications service as determined by the commission at affordable rates in rural high cost areas of the state.

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

J. To ensure that providers of intrastate retail communications service contribute to the fund and to further ensure that the surcharge to be paid by the end-user customer will be held to a minimum, no later than November 1, 2005, the commission shall adopt rules, or take other appropriate action, to require all such providers to participate in a plan to ensure accurate reporting.

K. The commission shall authorize payments from the fund to incumbent local exchange carriers in combination with revenue-neutral rate rebalancing up to the affordability benchmark rates, in an amount equal to the reduction in revenues that occurs as a result of reduced intrastate switched access charges. The commission shall determine the methodology to be used to authorize payments to all other carriers that apply for and receive eligible carrier status. Any reductions in charges for access services resulting from compliance with this section shall be passed on for the benefit of consumers in New Mexico.

L. ~~In a rate proceeding filed pursuant to Subsection F of Section 63-9H-7 NMSA-1978, t~~The commission may also authorize payments from the fund to incumbent rural telecommunications carriers serving in high-cost areas of the state ~~that have reduced access charges~~ upon a finding by the commission that such payments are needed to ensure the widespread availability and affordability of residential local exchange service. The commission shall decide cases filed pursuant to this subsection with reasonable promptness, with or without a hearing, but no later than six months following the filing of an application seeking payments from the fund.

M. By December 1, 2008, the fund administrator shall make a report to the commission and the legislature. The report shall include the effects of access reductions. The report shall also make recommendations for any changes to the structure, size or purposes of the fund.

Puts a time clock on the commission

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