



# SACRED WIND COMMUNICATIONS

Interim Legislative Science, Technology & Telecomm  
Committee  
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# Case Raises Questions about PRC Procedural Rules for Rural Local Exchange Carriers

Merits of the case aside, no small company should face the extent of a regulatory proceeding that RLECs face today.

- 20 months
- 5 days of hearings
- 17 rounds of discovery
- 42 boxes of data
- \$750,000 expenses



# Rural Telcos Need Relaxed PRC Procedures

Three New Mexico statute citations in Section 63 for disparate or relaxed rules for rural telcos:

**NM Statute 63-9H-2** “Further, the legislature finds that as part of such regulatory framework, it is necessary to provide disparate regulatory treatment between rural telephone carriers and non-rural telephone carriers in order to assist with accomplishing the goals established by the above declared policies.”



# New Mexico Statute Encourages Streamlining the Regulatory Process Where Warranted

**NMSA 8-8-4.C.3** “The commission shall adopt rules to streamline the cases before it ...to avoid ‘trial-type’ hearings:”

- Use of hearing examiners
- Taking of evidence with least delay practicable
- Limiting repetitious testimony
- Use of conferences, settlements, mediation
- Use of staff decisions





# An Ambiguity in State Law Raised in Sacred Wind's Case

**PRC Final Order:** Sacred Wind Communications is not really an incumbent rural telecommunications carrier or a rural local exchange carrier under the NMSA Rural Act

- **PRC's SWC certification**

SWC is a "rural telecommunications carrier serving less than five percent of the state's aggregate statewide subscriber lines under the Rural Telecommunications Act of New Mexico, NMSA 1978, Section 63-9H-1 to 14 (1999)."

- **NMSA 63-9H-7**

"incumbent rural telecommunications carrier" means a local exchange carrier that serves fewer than fifty thousand access lines within the state and was designated as an eligible telecommunications carrier by the state corporation commission on or before November 1, 1997, including any successor in interest thereto."



# Current State Ex Parte Laws Impede Information Flow

**NMSA 8-8-17.A** “A commissioner shall not initiate, permit or consider a communication directly or indirectly with a party or his representative outside the presence of the other parties concerning a pending rulemaking after the record has been closed or a pending adjudication.”

- Could New Mexico consider “permit but disclose” rules that are similar to the FCC’s?



# FCC Ex Parte “permit but disclose” Rules Encourage Information Flow

## **Example: PUBLIC NOTICE**

*Ex Parte Presentations and Post-Reply Comment Period Filing*

Received: Tuesday, July 10, 2012

**Presented by:** AmeriMex Communications Corporation

**Docket/Rule:** WC 09-197  
WC 11-42

**Presentation to:** Wireline Competition Bureau                      **Type:** Oral

**Presented by:** Association for Competitive Technology

**Docket/Rule:** WT 12-175  
WT 12-4

**Presentation to:** Chairman Genachowski                      **Type:** Written

**Presented by:** CTIA - The Wireless Association

**Docket/Rule:** CC 02-6

**Presentation to:** Wireline Competition Bureau                      **Type:** Oral

**Presented by:** Frontier Communications Corporation, et al.

**Docket/Rule:** WT 12-4

**Presentation to:** Office of the Secretary                      **Type:** Written



# PRC's Assumptions Indicate Information Blockage

## Example:

### PRC's Stated Assumptions

#### Sacred Wind Communications:

- Doesn't make enough money and is "an investment risk" for [USF] ratepayers
- Makes too much money to warrant USF support
- Technology is old
- Doesn't provide broadband
- Isn't adding enough new customers



# Conclusions

Amend New Mexico Statutes to clarify definitions of rural incumbent carriers

Amend state law dictating disparate or relaxed procedures for rural incumbent carriers

Amend state statute to allow parties' communications with commissioners under specific conditions & requiring written & electronic disclosure

