

HOUSE FLOOR SUBSTITUTE FOR  
HOUSE BILL 634

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

AN ACT

RELATING TO TELECOMMUNICATIONS; ENACTING NEW SECTIONS OF THE  
NEW MEXICO TELECOMMUNICATIONS ACT CONCERNING GRANTS OF ACCESS  
TO TELECOMMUNICATIONS COMPANIES AND TERMINATION OF RURAL  
EXTENSION FUNDS.

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

Section 1. A new section of the New Mexico  
Telecommunications Act is enacted to read:

"NEW MATERIAL GRANTS OF ACCESS. --

A. A telecommunications company shall  
obtain all rights of way, permits, easements, licenses and  
other grants necessary for the company to access land from  
local, state, federal and tribal agencies and all private  
easements required for the installation of facilities.

B. A telecommunications company is not required to

1 report as a held-order for telecommunications services a  
2 request that requires the obtaining of rights of way, permits,  
3 easements, licenses or other necessary grants, but the order  
4 shall still be recorded as a request for telecommunications  
5 services.

6 C. A telecommunications company shall maintain a  
7 list of all requests for telecommunications services that have  
8 not been filled because of the failure to obtain rights of way,  
9 permits, easements, licenses and other necessary grants. The  
10 list shall be filed with the commission as part of any annual  
11 reporting requirement pursuant to any alternative form of  
12 regulation plan or, if there is no plan, then the list shall be  
13 filed annually.

14 D. By July 31, 2005, the public regulation  
15 commission shall review the compliance of a telecommunications  
16 company required to perform pursuant to the final order of the  
17 public regulation commission in *Utility Case Number 3215, et*  
18 *al*, entered into on March 8, 2001 to determine if the  
19 telecommunications company is in substantial compliance with  
20 that agreement. If substantial compliance, as determined by  
21 the public regulation commission, can be shown, then  
22 Subsections B and C of this section shall continue in effect.  
23 If substantial compliance is not shown, then the public  
24 regulation commission shall determine a course of action that  
25 shall be followed beginning on March 8, 2006. A final order on

1 the review shall be issued by the public regulation commission  
2 no later than December 15, 2005.

3 E. A telecommunications company's obligation to  
4 furnish service is dependent upon its ability to secure and  
5 retain without unreasonable expense for access; provided that  
6 the telecommunications company can show that it has negotiated  
7 in good faith and offered compensation for rights of way,  
8 permits, easements, licenses and other grants necessary for the  
9 company to access land from local, state, federal and tribal  
10 agencies or allotments and all private easements required for  
11 the installation of facilities. A telecommunications company  
12 may refuse to furnish service having a limited demand or  
13 involving a large capital expenditure if the service is deemed  
14 to be not in the public interest or would place an undue burden  
15 on the general body of customers.

16 F. The commission shall not impose penalties on or  
17 take adverse action against a telecommunications company for a  
18 delay in installing telecommunications facilities or providing  
19 telecommunications service if the telecommunications company  
20 demonstrates to the commission that:

21 (1) the sole reason for the delay is the  
22 telecommunications company's inability to obtain rights of way,  
23 permits, easements, licenses or other grants from a government  
24 or tribal agency for access necessary to the installation of  
25 the facilities or the provision of the service;

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1 (2) the telecommunications company has made  
2 good faith efforts to obtain the necessary rights of way,  
3 permits, easements, licenses or other grants for access; and

4 (3) the telecommunications company has entered  
5 into good faith negotiations with any Indian nation, tribe or  
6 pueblo having jurisdiction over land or any owner of an Indian  
7 allotment on which rights of way, permits, easements, licenses  
8 or other grants are necessary for the telecommunications  
9 company to access the land and that the telecommunications  
10 company has paid consideration for the rights of way, permits,  
11 easements, licenses or other grants in conformance with federal  
12 law. "

13 Section 2. A new section of the New Mexico  
14 Telecommunications Act is enacted to read:

15 "[NEW MATERIAL] TERMINATION OF RURAL EXTENSION FUNDS. --

16 A. As used in this section, "rural extension fund"  
17 means a fund reserved, set aside or in any other manner accrued  
18 by a telecommunications company pursuant to an order, rule,  
19 tariff or other requirement of the commission for the purpose  
20 of supporting or subsidizing the extension of lines or  
21 facilities by the telecommunications company to serve customers  
22 in rural or other low-density service areas.

23 B. After June 30, 2003, the commission shall not  
24 require a telecommunications company to establish or maintain a  
25 rural extension fund. The obligation of a telecommunications

1 company to reserve, set aside or in any other manner accrue  
2 additional money to an existing rural extension fund shall  
3 terminate on July 1, 2003.

4 C. A telecommunications company with an accrued,  
5 unspent balance in a rural extension fund as of July 1, 2003  
6 shall apply the balance in accordance with the requirements of  
7 that fund until the balance is expended; provided, however,  
8 that the telecommunications company may offset and credit  
9 against the balance all contributions by the telecommunications  
10 company to telecommunications projects in rural areas; and  
11 provided further that the expenditures from a rural extension  
12 fund shall not be reported as a credit against investment  
13 required pursuant to any alternative form of regulation plan.  
14 The telecommunications company shall only invest in projects  
15 that the commission agrees will benefit rural areas of the  
16 state that are in need of telecommunications facilities or  
17 services. No residential or commercial real estate developer  
18 shall benefit directly from telecommunications projects funded  
19 pursuant to this section. "

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