

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 636

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

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING A CERTAIN SECTION OF
THE NMSA 1978 CONCERNING ADMINISTRATIVE FINES; AMENDING CERTAIN
SECTIONS OF THE NEW MEXICO TELECOMMUNICATIONS ACT CONCERNING
COMMISSION HEARINGS AND RATE FILINGS; ENACTING A NEW SECTION OF
THE NEW MEXICO TELECOMMUNICATIONS ACT CONCERNING RURAL
EXTENSION FUNDS.

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

Section 1. Section 63-7-23 NMSA 1978 (being Laws 1995,
Chapter 175, Section 1, as amended by Laws 2000, Chapter 100,
Section 2 and also by Laws 2000, Chapter 102, Section 2) is
amended to read:

"63-7-23. TELECOMMUNICATIONS-- ADMINISTRATIVE FINES. --

A. For purposes of this section:

(1) "commission" means the public regulation

. 146978. 2

underscored material = new
[bracketed material] = delete

1 commission; and

2 (2) "telecommunications provider" means any
3 telegraph company, telephone company, transmission company,
4 telecommunications common carrier, telecommunications company,
5 cellular service company or pay telephone provider regulated in
6 whole or in part by the commission under law, including the
7 Telephone and Telegraph Company Certification Act, the New
8 Mexico Telecommunications Act, the Cellular Telephone Services
9 Act and Sections 63-9E-1 and 63-9E-3 NMSA 1978.

10 B. The commission may impose an administrative fine
11 on a telecommunications provider for any act or omission that
12 the provider knew or should have known was a violation
13 of any applicable law or rule or order of the commission.

14 C. Except in the case of disputes between
15 telecommunications providers, an administrative fine of not
16 more than one thousand dollars (\$1,000) may be imposed for each
17 violation or each of multiple violations arising out of the
18 same facts up to a maximum of twenty-five thousand dollars
19 (\$25,000); or an administrative fine of not more than one
20 thousand dollars (\$1,000) may be imposed for each day of a
21 continuing violation arising out of the same facts up to a
22 maximum of twenty-five thousand dollars (\$25,000).

23 Notwithstanding any other provision of this subsection, the
24 commission may impose an administrative fine not to exceed
25 twenty-five thousand dollars (\$25,000) for a single violation:

. 146978. 2

1 (1) that results in substantial harm to the
2 customers of the telecommunications provider or substantial
3 harm to the public interest; or

4 (2) for failure to obtain a certificate of
5 public convenience and necessity required by law or for
6 operation outside the scope of that certificate.

7 D. In the case of disputes between
8 telecommunications providers, an administrative fine of not
9 more than one hundred thousand dollars (\$100,000) may be
10 imposed for the violation of a telecommunications provider
11 interconnection agreement, telecommunications provider
12 wholesale tariff or commission [~~regulation~~] rule or order
13 otherwise relating to the provision of services between
14 telecommunications providers. An administrative fine of not
15 more than one hundred thousand dollars (\$100,000) may be
16 imposed for each day of a continuing violation.

17 E. The amount of the fine should bear a reasonable
18 relationship to the nature and severity of the violation, and
19 should take into consideration any penalty resulting from the
20 self-executing provisions of a performance assurance plan.

21 F. The commission shall initiate a proceeding to
22 impose an administrative fine by giving written notice to the
23 telecommunications provider that the commission has facts as
24 set forth in the notice that, if not rebutted, may lead to the
25 imposition of an administrative fine under this section and

. 146978. 2

underscored material = new
[bracketed material] = delete

1 that the telecommunications provider has an opportunity for a
2 hearing. The commission may only impose an administrative fine
3 by written order that, in the case of contested proceedings,
4 [~~shall be~~] is supported by a preponderance of the evidence.

5 G. The commission may initiate a proceeding to
6 impose an administrative fine within two years from the date of
7 the commission's discovery of the violation, but in no event
8 shall a proceeding be initiated more than five years after the
9 date of the violation. This limitation shall not run against
10 any act or omission constituting a violation under this section
11 for any period during which the telecommunications provider has
12 fraudulently concealed the violation.

13 H. The commission shall consider mitigating and
14 aggravating circumstances in determining the amount of
15 administrative fine imposed.

16 I. For purposes of establishing a violation, the
17 act or omission of any officer, agent or employee of a
18 telecommunications provider, within the scope of such person's
19 authority, duties or employment, shall be deemed the act or
20 omission of the telecommunications provider.

21 J. Any telecommunications provider or other person
22 aggrieved by an order assessing an administrative fine may
23 appeal the order to the supreme court of New Mexico. A notice
24 of appeal shall be filed within thirty days after the entry of
25 the commission's order. Notice of appeal shall name the

1 commission as appellee and shall identify the order from which
2 the appeal is taken.

3 K. The commission shall promulgate procedural rules
4 for the implementation of this section."

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

7 "63-9A-8. REGULATION OF RATES AND CHARGES. --

8 A. In accordance with the policy established in the
9 New Mexico Telecommunications Act, the commission shall, by its
10 own motion or upon petition by any interested party, hold
11 hearings to determine if ~~[any]~~ a public telecommunications
12 service is subject to effective competition in the relevant
13 market area. When the commission has made a determination that
14 a service or part of a service is subject to effective
15 competition, the commission shall, consistent with the purposes
16 of the New Mexico Telecommunications Act, modify, reduce or
17 eliminate rules, regulations and other requirements applicable
18 to the provision of such service, including the fixing and
19 determining of specific rates, tariffs or fares for the
20 service. The commission's action may include the detariffing
21 of service or the establishment of minimum rates which will
22 cover the costs for the service. Such modification shall be
23 consistent with the maintenance of the availability of access
24 to local exchange service at affordable rates and comparable
25 message telecommunication service rates, as established by the

. 146978. 2

1 commission, for comparable markets or market areas, except that
2 volume discounts or other discounts based on reasonable
3 business purposes shall be permitted. Upon petition or request
4 of an affected telecommunications company, the commission, upon
5 a finding that the requirements of Subsection [E] B of this
6 section are met, shall eliminate or modify the same or similar
7 regulatory requirements for those providers of comparable
8 public telecommunications services in the same relevant markets
9 so that there shall be parity of regulatory standards and
10 requirements for all such providers.

11 B. In determining whether a service is subject to
12 effective competition, the commission shall consider the
13 following:

14 (1) the extent to which services are
15 reasonably available from alternate providers in the relevant
16 market area;

17 (2) the ability of alternate providers to make
18 functionally equivalent or substitute services readily
19 available at competitive rates, terms and conditions; and

20 (3) existing economic or regulatory barriers.

21 C. A hearing before the commission pursuant to
22 Subsection A of this section shall be completed within one
23 hundred twenty days after the petition or motion initiating the
24 hearing process is filed.

25 [~~E.~~] D. No provider of public telecommunications

1 service may use current revenues earned or expenses incurred in
 2 conjunction with any noncompetitive service to subsidize
 3 competitive public telecommunications services. In order to
 4 avoid cross-subsidization of competitive services by
 5 noncompetitive telecommunications services, prices or rates
 6 charged for a competitive telecommunications service shall
 7 cover the cost for the provision of the service. In any
 8 proceeding held pursuant to this section, the party providing
 9 the service shall bear the burden of proving that the prices
 10 charged for competitive telecommunications services cover cost.

11 ~~[D.]~~ E. The commission may, upon its own motion or
 12 on the petition of an interested party and after notice to all
 13 interested parties and customers and a hearing, reclassify any
 14 service previously determined to be a competitive
 15 telecommunications service if after a hearing the commission
 16 finds that a service is not subject to effective competition."

17 Section 3. Section 63-9A-8.1 NMSA 1978 (being Laws 1998,
 18 Chapter 108, Section 61) is amended to read:

19 "63-9A-8.1. CHANGE IN RATES. --

20 A. At a hearing involving an increase in rates or
 21 charges sought by a telecommunications company, the burden of
 22 proof to show that the increased rate or charge is just and
 23 reasonable shall be upon the company.

24 B. Unless the commission otherwise orders, no
 25 telecommunications company shall make a change in an

. 146978. 2

1 established rate except after thirty days' notice to the
2 commission, which notice shall plainly state the changes
3 proposed to be made in the rates then in force, the time when
4 the changed rates will go into effect and other information as
5 the commission by rule requires. The telecommunications
6 company shall also give notice of the proposed changes to other
7 interested persons as the commission may direct. All proposed
8 changes shall be shown by filing new schedules that shall be
9 kept open to public inspection. The commission for good cause
10 shown may allow changes in rates without requiring the thirty
11 days' notice, under conditions that it may prescribe.

12 ~~[C. Whenever a telecommunications company files a~~
13 ~~complete application proposing new rates, the commission may,~~
14 ~~upon complaint or upon its own initiative, except as otherwise~~
15 ~~provided by law, upon reasonable notice, enter upon a hearing~~
16 ~~concerning the reasonableness of the proposed rates. If the~~
17 ~~commission determines a hearing is necessary, it shall suspend~~
18 ~~the operation of the proposed rates before they become~~
19 ~~effective but not for a longer initial period than nine months~~
20 ~~beyond the time when the rates would otherwise go into effect,~~
21 ~~unless the commission finds that a longer time will be~~
22 ~~required, in which case the commission may extend the period~~
23 ~~for an additional three months. The commission shall hear and~~
24 ~~decide cases with reasonable promptness. The commission shall~~
25 ~~adopt rules identifying criteria for various rate and tariff~~

~~filings to be eligible for suspension periods shorter than what is allowed by this subsection and to be eligible for summary approval without hearing.~~

~~D-] C.~~ If after a hearing the commission finds the proposed rates to be unjust, unreasonable or in any way in violation of law, the commission shall determine the just and reasonable rates to be charged or applied by the telecommunications company for the service in question and shall fix the rates by order to be served upon the telecommunications company; or the commission by its order shall direct the telecommunications company to file new rates respecting such service that are just and reasonable. Those rates shall thereafter be observed until changed as provided by the New Mexico Telecommunications Act. "

Section 4. A new section of the New Mexico Telecommunications Act, Section 63-9A-8.4 NMSA 1978, is enacted to read:

"63-9A-8.4. [NEW MATERIAL] TERMINATION OF RURAL EXTENSION FUNDS. --

A. As used in this section, "rural extension fund" means a fund reserved, set aside or in any other manner accrued by a telecommunications company pursuant to an order, rule, tariff or other requirement of the commission for the purpose of supporting or subsidizing the extension of lines or facilities by the telecommunications company to serve customers

underscored material = new
[bracketed material] = delete

1 in rural or other low-density service areas.

2 B. After June 30, 2003, the commission shall not
3 require a telecommunications company to establish or maintain a
4 rural extension fund. The obligation of a telecommunications
5 company to reserve, set aside or in any other manner accrue
6 additional money to an existing rural extension fund shall
7 terminate on July 1, 2003.

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

24 Section 5. EFFECTIVE DATE. --The effective date of the
25 provisions of this act is July 1, 2003.