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SENATE BILL 629

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

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO RURAL TELECOMMUNICATIONS; EXPANDING THE DEFINITION OF "INCUMBENT RURAL TELECOMMUNICATIONS CARRIER"; PROVIDING FOR RURAL ACCESS REFORM; CREATING THE RURAL ACCESS REFORM FUND; AMENDING, REPEALING AND ENACTING CERTAIN SECTIONS OF THE RURAL TELECOMMUNICATIONS ACT OF NEW MEXICO; DECLARING AN EMERGENCY.

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

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

"63-9H-1. SHORT TITLE. -- [~~This act~~] Chapter 63, Article 9H NMSA 1978 may be cited as the "Rural Telecommunications Act of New Mexico". "

Section 2. Section 63-9H-2 NMSA 1978 (being Laws 1999, Chapter 295, Section 2) is amended to read:

"63-9H-2. PURPOSE. -- The legislature declares that it

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1 remains the policy of the state of New Mexico to maintain for
2 rural customers availability of access to telecommunications
3 services at affordable rates. Furthermore, it is the policy of
4 this state for rural customers to have [comparable] access to
5 long distance service at rates [as established by the
6 commission, for comparable markets or market areas] comparable
7 to those offered in urban areas and for intrastate long
8 distance service to be at rates comparable to interstate long
9 distance service rates. To the extent that it is consistent
10 with maintaining availability of access to service at
11 affordable rates for rural customers, it is further the policy
12 of this state to encourage competition through access charge
13 reform and reduce regulation in the telecommunications
14 industry, thereby allowing access by the public to resulting
15 rapid advances in telecommunications technology. It is the
16 purpose of the Rural Telecommunications Act of New Mexico to
17 permit a regulatory framework that will allow an orderly
18 transition for rural telephone carriers from a regulated
19 telecommunications industry to a competitive market environment
20 consistent with the federal act. Further, the legislature
21 finds that as part of such regulatory framework, it is
22 necessary to provide disparate regulatory treatment between
23 rural telephone carriers and non-rural telephone carriers in
24 order to assist with accomplishing the goals established by the
25 above declared policies. Disparate regulatory treatment is

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1 particularly necessary for those citizens who reside in rural
2 New Mexico, because those rural areas constitute the bulk of
3 the surface area within the boundaries of the state. Disparate
4 regulatory treatment for rural telephone carriers requires
5 relaxed regulation for rural telephone carriers with the
6 objective of reducing the cost of regulation as well as the
7 regulatory burden, permitting pricing flexibility and
8 expediting required rate approvals, all in a manner consistent
9 with both the purpose of an orderly transition from regulation
10 to a competitive market environment and the federal act."

11 Section 3. Section 63-9H-3 NMSA 1978 (being Laws 1999,
12 Chapter 295, Section 3) is amended to read:

13 "63-9H-3. DEFINITIONS.--As used in the Rural
14 Telecommunications Act of New Mexico:

15 A. "affordable rates" means rates for basic service
16 that promote universal service within a local exchange service
17 area, giving consideration to the economic conditions and costs
18 to provide service in the area in which service is provided;

19 B. "basic service" means service that is provided
20 to a rural end-user customer that is consistent with the
21 federal act;

22 C. "cable service" means the transmission to
23 subscribers of video programming or other programming service
24 and subscriber interaction, if any, that is required for the
25 selection or use of the video programming or other programming

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1 service;

2 D. "commission" means the public regulation
3 commission;

4 E. "eligible telecommunications carrier" means an
5 eligible telecommunications carrier as defined in the federal
6 act;

7 F. "federal act" means the federal
8 Telecommunications Act of 1996;

9 G. "fund" means the [~~state rural universal service~~]
10 rural access reform fund;

11 H. "incumbent local exchange carrier" means a
12 person that:

13 (1) was designated as an eligible
14 telecommunications carrier by the state corporation commission
15 in Docket #97-93-TC by order dated October 23, 1997, or that
16 provided local exchange service in this state on February 8,
17 1996; or

18 (2) became a successor or assignee of an
19 incumbent local exchange carrier;

20 I. "incumbent rural telecommunications carrier"
21 means [a] an incumbent local exchange carrier that [~~serves~~
22 ~~fewer than fifty thousand access lines within the state and~~]
23 was designated as an eligible telecommunications carrier by the
24 state corporation commission on or before November 1, 1997,
25 including any successor in interest thereto and that:

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1 (1) provides local exchange service to fewer
2 than fifty thousand access lines;

3 (2) provides local exchange service to any
4 local exchange carrier study area with fewer than one hundred
5 thousand access lines; or

6 (3) has less than fifteen percent of its
7 access lines in communities with a population of more than
8 fifty thousand;

9 J. "interstate long distance service" means
10 telecommunications service between local exchange areas that
11 originates in one state and terminates in another state;

12 K. "interstate switched access charges" means the
13 per-minute charges that incumbent rural telecommunications
14 carriers charge to providers of interstate long distance
15 service for originating and terminating telecommunications
16 traffic on the local exchange network;

17 L. "intrastate long distance service" means
18 telecommunications service between local exchange areas that
19 originates and terminates within the state;

20 M. "intrastate switched access charges" means the
21 per-minute charges that incumbent rural telecommunications
22 carriers charge to providers of intrastate long distance
23 service for originating and terminating traffic on the local
24 exchange network;

25 [~~J.~~] N. "local exchange area" means a geographic

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1 area encompassing one or more local communities, as described
2 in maps, tariffs or rate schedules filed with the commission,
3 where local exchange rates apply;

4 ~~[K.]~~ O. "local exchange service" means the
5 transmission of two-way interactive switched voice
6 communications furnished by a telecommunications carrier within
7 a local exchange area;

8 ~~[L.]~~ ~~"long distance service" means~~
9 ~~telecommunications service between local exchange areas that~~
10 ~~originate and terminate within the state;~~

11 ~~M.]~~ P. "private telecommunications service" means a
12 system, including its construction, maintenance or operation
13 for the provision of telecommunications service, or any portion
14 of that service, by a person for the sole and exclusive use of
15 that person and not for resale, directly or indirectly. For
16 purposes of this definition, the person that may use the
17 service includes any affiliates of the person if at least
18 eighty percent of the assets or voting stock of the affiliates
19 is owned by the person. If any other person uses the
20 telecommunications service, whether for hire or not, the
21 private telecommunications service is a public
22 telecommunications service;

23 ~~[N.]~~ Q. "public telecommunications service" means
24 the transmission of signs, signals, writings, images, sounds,
25 messages, data or other information of any nature by wire,

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1 radio, lightwaves or other electromagnetic means originating
2 and terminating in this state regardless of actual call
3 routing. "Public telecommunications service" does not include
4 the provision of terminal equipment used to originate or
5 terminate the service; private telecommunications service;
6 broadcast transmissions by radio, television and satellite
7 broadcast stations regulated by the federal communications
8 commission; radio common carrier services, including mobile
9 telephone service and radio paging; or cable service; [~~and~~

10 ~~θ-~~] R. "telecommunications carrier" means a person
11 that provides public telecommunications service; and

12 S. "study area" means a study area as defined in Part
13 36 of the rules of the federal communications commission and as
14 referenced in Section 214(e)(5) of the federal act. "

15 Section 4. Section 63-9H-4 NMSA 1978 (being Laws 1999,
16 Chapter 295, Section 4) is amended to read:

17 "63-9H-4. REGULATION BY COMMISSION. --

18 A. Except as otherwise provided in the Rural
19 Telecommunications Act of New Mexico or the federal act, each
20 public telecommunications service is declared to be affected
21 with the public interest and, as such, subject to the
22 provisions of those acts, including the regulation thereof as
23 provided in those acts.

24 B. The commission has exclusive jurisdiction to
25 regulate incumbent rural telecommunications carriers only in

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1 the manner and to the extent authorized by the Rural
2 Telecommunications Act of New Mexico, and Section 63-7-1.1 NMSA
3 1978 does not apply; provided, however, the commission's
4 jurisdiction includes designation of eligible
5 telecommunications carriers consistent with Section 214(e) of
6 the federal act, the regulation of [~~wholesale rates, including~~
7 ~~access charges and~~] interconnection [~~agreements~~] consistent
8 with [~~federal law~~] Sections 251 and 252 of the federal act,
9 except as otherwise limited by the provisions of the Rural
10 Telecommunications Act of New Mexico, and its enforcement and a
11 determination of participation in low-income telephone service
12 assistance programs pursuant to the Low Income Telephone
13 Service Assistance Act. "

14 Section 5. Section 63-9H-5 NMSA 1978 (being Laws 1999,
15 Chapter 295, Section 5) is amended to read:

16 "63-9H-5. CERTIFICATE REQUIRED. --

17 A. No [~~rural~~] public telecommunications service shall
18 be offered in this state by an incumbent rural
19 telecommunications carrier except in accordance with the
20 provisions of the Rural Telecommunications Act of New Mexico.

21 B. No [~~rural~~] public telecommunications service shall
22 be offered within this state by an incumbent rural
23 telecommunications carrier without the [~~telecommunications~~]
24 carrier first having obtained from the commission a certificate
25 declaring that the operation is in the present or future public

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1 convenience and necessity, unless the operation is otherwise
2 authorized by the Rural Telecommunications Act of New Mexico.

3 C. The commission has full power and authority to
4 determine matters of public convenience and necessity relating
5 to the issuance of a certificate of public convenience and
6 necessity to ~~[a provider of rural public telecommunications~~
7 ~~service]~~ an incumbent rural telecommunications carrier, but in
8 keeping with the purposes of the Rural Telecommunications Act
9 of New Mexico and the federal act, the commission shall not
10 deny an applicant a certificate on the grounds of need if it is
11 shown that the applicant possesses adequate financial resources
12 and technical competency to provide the service.

13 D. For purposes of considering and acting upon
14 applications for certificates pursuant to this section, the
15 commission may adopt rules on a competitively neutral basis and
16 consistent with the provisions of the Rural Telecommunications
17 Act of New Mexico and the federal act, necessary to preserve
18 and advance universal service, protect the public safety and
19 welfare, ensure the continued quality of ~~[rural]~~ public
20 telecommunications services and safeguard the rights of the
21 consumers.

22 E. In determining whether to issue a certificate ~~[to~~
23 ~~provide rural public telecommunications service]~~ pursuant to
24 this section, the commission shall consider the following:

25 (1) whether the applicant has sufficient

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1 financial resources to provide the proposed telecommunications
2 service properly and continuously;

3 (2) whether the applicant has competent and
4 experienced management and personnel to provide the proposed
5 telecommunications service;

6 (3) whether the applicant is willing and able to
7 conform to all applicable laws and the rules of the commission
8 applicable generally to providers of telecommunications; and

9 (4) if any exemption, suspension or modification
10 is available to any provider of the subject service in the
11 subject area.

12 F. All certificates of public convenience and
13 necessity shall:

14 (1) continue in force, notwithstanding the
15 provisions of this section; and

16 (2) remain subject to all terms and conditions
17 imposed by statute or commission order at the time of issuance
18 or in connection with any subsequent amendment, notwithstanding
19 the provisions of this section."

20 Section 6. A new section of the Rural Telecommunications
21 Act of New Mexico, Section 63-9H-6.1 NMSA 1978, is enacted to
22 read:

23 "63-9H-6.1. [NEW MATERIAL] RURAL ACCESS REFORM FUND. --

24 A. The "rural access reform fund" is created. Money
25 deposited in the fund is not public money, and the

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1 administration of the fund is not subject to the provisions of
2 law regulating public funds.

3 B. The legislature finds that all residents of the
4 state benefit from the ability to communicate with customers
5 through the use of telecommunications networks provided by
6 incumbent rural telecommunications carriers. The purpose of the
7 rural access reform fund is to enable residents of rural New
8 Mexico to have equitable access to competitive long distance
9 markets and pricing through intrastate access reform. Toward
10 this goal, this section mandates incumbent rural
11 telecommunications carriers to reduce intrastate switched access
12 charges to providers of intrastate long distance service to
13 rates that are comparable to the intrastate switched access
14 rates charged in urban areas.

15 C. No later than August 1, 2003, the commission shall
16 select a third-party administrator who shall administer the
17 fund. The administrator shall collect, administer and disburse
18 money from the fund consistent with the provisions and purpose
19 of the Rural Telecommunications Act of New Mexico. The
20 commission shall select an administrator that demonstrates
21 competence and experience in fund management and
22 telecommunications costing and pricing policies and principles.
23 The administrator shall be reasonably compensated, and the
24 compensation shall be paid directly from the fund. The
25 administrator shall at all times be independent from the

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1 commission and, for the purposes of this section, neither the
2 commission nor any member of its staff may be considered a
3 third-party administrator. On or before September 30, 2004 and
4 September 30 of each subsequent year, the administrator shall
5 submit to the commission an accounting of all transactions
6 within the fund. The accounting shall be audited by an
7 independent accounting firm.

8 D. The fund shall be financed by a surcharge on all
9 intrastate retail public telecommunications services and
10 wireless services, paid by consumers and collected by the
11 providers of the services to which the surcharge applies, as a
12 percentage of the services charged to consumers.

13 E. The amount of the surcharge shall be sufficient to
14 meet the financial requirements of the fund, including the
15 expenses and compensation for the administrator and the expenses
16 and compensation for the independent accounting firm performing
17 the annual audit of the fund.

18 F. Beginning July 1, 2003, through the period ending
19 December 31, 2003, the surcharge shall be assessed at the rate
20 of three percent of monthly intrastate retail public
21 telecommunications services and wireless services billings. On
22 or before November 1, 2003, and on or before November 1 of each
23 subsequent year, the administrator shall make a determination of
24 the amount of the surcharge necessary to provide adequate
25 monetary support to the fund for the upcoming year; provided,

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1 however, that the maximum monthly surcharge rate under the
2 provisions of this section shall not exceed five percent. In
3 making such a determination, the administrator shall consider
4 any actual or projected surplus or shortfall in the fund for the
5 current year. When determining the amount of the surcharge, the
6 administrator shall exclude from revenue all amounts from
7 surcharges, gross receipts taxes, excise taxes, franchise fees
8 and similar charges. The administrator also shall exclude from
9 revenue all amounts of revenue from services provided pursuant
10 to a low-income telephone assistance plan billed to end-user
11 customers by a telecommunications carrier or a wireless carrier.
12 Commercial mobile radio services carriers and other wireless
13 carriers shall determine their intrastate revenue for the
14 subject reporting period by application of the "safe harbor"
15 presumption of apportionment of interstate and intrastate
16 revenues, as prescribed by the federal communications commission
17 for purposes of computing contributions to the federal universal
18 service fund.

19 G. The commission shall apply the surcharge on all
20 intrastate retail public telecommunications services and
21 wireless services provided by telecommunications carriers and
22 wireless carriers. The commission shall implement the surcharge
23 based solely on the administrator's determination of the funding
24 requirements by January 1, 2004, and each year thereafter,
25 effective January 1. All telecommunications carriers and

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1 wireless carriers shall collect the surcharge on a uniform basis
2 directly from their retail end-user customers through imposition
3 of an explicit, line item percentage charge on the customer's
4 billing statement, commencing with the first billing period
5 beginning after July 1, 2003. Customers who are enrolled in a
6 low-income telephone assistance plan shall be exempted from the
7 surcharge.

8 H. Beginning with September 15, 2003, each
9 telecommunications carrier and each wireless carrier shall make
10 payment to the administrator for the rural access reform fund
11 representing the total monthly surcharges collected in
12 accordance with this section. The payment shall be remitted
13 within forty-five days after the end of each month. "

14 Section 7. A new section of the Rural Telecommunications
15 Act of New Mexico, Section 63-9H-6.2 NMSA 1978, is enacted to
16 read:

17 "63-9H-6.2. [NEW MATERIAL] RURAL ACCESS REFORM --

18 A. On November 1, 2003, all incumbent rural
19 telecommunications carriers in New Mexico shall reduce
20 intrastate switched access charges by adopting the New Mexico
21 intrastate switched access charges that were in effect as of
22 January 1, 2003 for incumbent local exchange carriers that are
23 not incumbent rural telecommunications carriers.

24 B. Each incumbent rural telecommunications carrier
25 undertaking intrastate switched access charge reductions

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1 pursuant to this section shall file revised access tariffs with
2 the commission that shall become effective upon ten days' notice
3 to the commission. In addition to the tariff filing, each
4 incumbent rural telecommunications carrier shall submit an
5 affidavit to the commission stating that the filing is in
6 compliance with the Rural Telecommunications Act of New Mexico.
7 The commission shall not require or hold a hearing of any kind
8 for intrastate access tariffs filed under the provisions of this
9 section.

10 C. Concurrent with the reduction in New Mexico
11 intrastate switched access charges required by this section,
12 each provider of intrastate long distance service in New Mexico
13 shall pass on to end users in New Mexico the savings the long
14 distance provider will realize as a result of the reduction in
15 intrastate switched access charges.

16 D. Incumbent rural telecommunications carriers that
17 reduce their intrastate switched access charges pursuant to this
18 section shall receive distributions from the fund to offset the
19 reduction in revenues that will result from the reduction in
20 intrastate switched access charges in a revenue-neutral manner.
21 The amount of the distribution from the fund to each incumbent
22 rural telecommunications carrier shall be the difference between
23 a calculation of the individual carrier's intrastate access
24 revenues using access minutes from the current calendar year
25 multiplied by the intrastate switched access charges as of

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1 January 1, 2003 and a recalculation of intrastate access
2 revenues using the revised intrastate switched access charges
3 multiplied by intrastate access minutes from the current
4 calendar year.

5 E. In addition to the distributions received pursuant
6 to Subsection D of this section, an incumbent rural
7 telecommunications carrier that is subject to rate of return
8 regulation by the federal communications commission may seek
9 additional distributions from the fund if the carrier
10 experiences a significant increase in the costs of providing
11 intrastate switched access services. In order to qualify for
12 additional distributions pursuant to this subsection, an
13 incumbent rural telecommunications carrier shall apply to the
14 commission for the additional distributions. Applications filed
15 pursuant to this subsection shall be made no later than July 31
16 in any year and shall provide an explanation of the increase in
17 costs and shall demonstrate that the revenues from the reduced
18 intrastate switched access charges and intrastate long distance
19 service revenues in combination with current distributions
20 received from the fund are not sufficient to recover the
21 carrier's intrastate revenue requirement for access and long
22 distance service, including a reasonable rate of return. In
23 considering applications filed pursuant to this section, the
24 commission shall use the federal communications commission Part
25 32, 36 and 69 Rules in effect as of the date of the application

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1 to calculate the intrastate revenue requirement and shall use
2 the same rate of return that is authorized by the federal
3 communications commission for the purposes of setting interstate
4 access rates for the national exchange carrier association as of
5 the date of the application. The rate base and expenses used in
6 the revenue requirement calculation shall be the same rate base
7 and expenses used in the carrier's interstate cost study filed
8 with the national exchange carrier association. The cost study
9 submission shall be used by the commission as documentation of
10 the increase in cost and verification of the costs to be
11 recovered from the fund. The commission shall act on
12 applications filed pursuant to this subsection within ninety
13 days. Applications not approved or denied within ninety days of
14 the date of the applications shall be deemed approved, and the
15 administrator shall make the additional distributions from the
16 fund. Any additional distributions from the fund shall not
17 become effective before January 1 of the year following the
18 application.

19 F. The distributions to each incumbent rural
20 telecommunications carrier shall be calculated by the
21 administrator on an annual basis and shall be paid to the
22 incumbent rural telecommunications carrier in equal monthly
23 payments by the end of each month, commencing the same month
24 that intrastate switched access charges are reduced pursuant to
25 this section.

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1 G. No incumbent rural telecommunications carrier shall
2 have any obligation to initiate, maintain or continue any
3 reductions in intrastate switched access charges as required by
4 this section unless the rural access reform fund is adequately
5 funded and distributions from the fund are made in the manner
6 described in this section.

7 H. Commencing August 1, 2003, all telecommunications
8 carriers and wireless carriers shall report to the administrator
9 on a monthly basis the total amount of revenue generated from
10 the billing of intrastate retail service to end users in the
11 prior month and any information that the administrator deems
12 necessary to quantify or to reconcile contributions to the fund
13 or distributions from the fund. The information shall be
14 provided to the administrator on a confidential basis.

15 I. No later than December 1, 2006, all
16 telecommunications carriers and wireless carriers, the
17 commission staff and the attorney general shall make a report to
18 the legislature. The report may be made separately or jointly.
19 The report shall include a status report of the fund,
20 recommendations for any changes to the structure, size or
21 purposes of the fund and recommendations for any further reform
22 in intrastate switched access charges. "

23 Section 8. Section 63-9H-7 NMSA 1978 (being Laws 1999,
24 Chapter 295, Section 7) is amended to read:

25 "63-9H-7. REGULATION OF RETAIL RATES OF INCUMBENT RURAL

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1 TELECOMMUNICATIONS CARRIER. --

2 A. Rates for retail rural public telecommunications
3 services provided by an incumbent rural telecommunications
4 carrier shall be subject to regulation by the commission only in
5 the manner and to the extent authorized by this section.

6 B. An incumbent rural telecommunications carrier shall
7 file tariffs for all retail public telecommunications services,
8 other than residential local exchange service, which shall be
9 effective after ten days' notice to the commission and
10 publication in a local newspaper in the incumbent service area.

11 An incumbent rural telecommunications carrier shall remain
12 subject to complaint by an interested party subject to Section
13 [~~10 of the Rural Telecommunications Act of New Mexico~~] 63-9H-10
14 NMSA 1978.

15 C. Rates for residential local exchange service may be
16 increased by an incumbent rural telecommunications carrier only
17 after sixty days' notice to all affected subscribers. The
18 notice of increase shall include:

19 (1) the reasons for the rate increase;
20 (2) a description of the affected service;
21 (3) an explanation of the right of the subscriber
22 to petition the commission for a public hearing on the rate
23 increase;

24 (4) a list of local exchange areas that are
25 affected by the proposed rate increase; and

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1 (5) the dates, times and places for the public
2 informational meetings required by this section.

3 D. An incumbent rural telecommunications carrier may
4 increase its rates for residential local exchange service in the
5 manner otherwise provided in this section as necessary to
6 recover a reasonable allocation of costs incurred due to
7 requirements imposed by any federal or state law or rule. An
8 incumbent rural telecommunications carrier that proposes to
9 increase its rates for residential local exchange service shall
10 hold at least one public informational meeting in each public
11 regulation commissioner's district as established by the Public
12 Regulation Commission Apportionment Act in which there is a
13 local exchange area affected by the rate change.

14 E. Residential local exchange service rates increased
15 by [a] an incumbent rural telecommunications carrier pursuant to
16 Subsection D of this section shall be reviewed by the commission
17 only upon written protest signed by two and one-half percent of
18 all affected subscribers or upon the commission staff's own
19 motion for good cause. The protest shall specifically set forth
20 the particular rate or charge as to which review is requested,
21 the reasons for the requested review and the relief that the
22 persons protesting desire. If a proper protest is presented to
23 the commission within sixty days from the date notice of the
24 rate change was sent to affected subscribers of an incumbent
25 rural telecommunications carrier, the commission may accept and

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1 file the complaint and, upon proper notice, may suspend the
2 rates at issue during the pendency of the proceedings and
3 reinstate the rates previously in effect and shall hold and
4 complete a hearing thereon within ninety days after filing to
5 determine if the rates as proposed are fair, just and
6 reasonable. The commission may, within sixty days after close
7 of the hearing, enter an order adjusting the rates at issue,
8 except that the commission shall not set any rate below the
9 intrastate cost of providing the service, that will include cost
10 and rate of return in accordance with Subsection E of Section [6
11 of the Rural Telecommunications Act of New Mexico] 63-9H-6.2
12 NMSA 1978. In the order, the commission may order a refund of
13 amounts collected in excess of the rates and charges as approved
14 at the hearing, which may be paid as a credit against billings
15 for future services. If the complaint is denied, the commission
16 shall enter an order denying the complaint within sixty days
17 after the close of the hearing, and the rates shall be deemed
18 approved. For purposes of this section, cost shall also include
19 a reasonable amount of joint and common costs incurred by the
20 incumbent rural telecommunications carrier in its operations and
21 may include other accounting adjustments authorized by the
22 commission.

23 F. [A] An incumbent rural telecommunications carrier
24 that serves less than five percent of the state's aggregate,
25 statewide subscriber lines may at any time elect to file an

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1 application with the commission requesting the commission to
2 prescribe fair, just and reasonable rates for the carrier based
3 on the carrier's revenue, expenses and investment in accordance
4 with traditional rate-making principles.

5 G. Rates for local exchange, vertical and long
6 distance service to retail end-user customers may be reduced to
7 a level equal to, but not below, the intrastate cost, which
8 shall include cost and rate of return pursuant to Subsection E
9 of Section ~~[6 of the Rural Telecommunications Act of New Mexico]~~
10 63-9H-6.2 NMSA 1978. If an incumbent rural telecommunications
11 carrier loses its exemption pursuant to Section 251 of the
12 federal act, the rate for a service, excluding basic service,
13 must cover the cost of the service, including the imputed rate
14 of wholesale service elements as may be required by the
15 commission. The cost of long distance service must also include
16 any interexchange access rates charged to another
17 telecommunications carrier for the service.

18 H. An incumbent rural telecommunications carrier
19 operating pursuant to this section shall have the ability to
20 offer or discontinue offering special incentives, discounts,
21 packaged offerings, temporary rate waivers or other promotions,
22 or to offer individual contracts."

23 Section 9. Section 63-9H-9 NMSA 1978 (being Laws 1999,
24 Chapter 295, Section 9) is amended to read:

25 "63-9H-9. REGULATION OF INDIVIDUAL CONTRACTS TO FACILITATE

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1 **COMPETITION. --**

2 A. In accordance with the provisions of this section,
3 the ~~commission~~ shall regulate the rates, charges and service
4 conditions for individual contracts of incumbent rural
5 telecommunications carriers for rural public ~~telecommunications~~
6 services in a manner that authorizes the provision of all or any
7 portion of a public ~~telecommunications~~ service under stated or
8 negotiated terms to any person or entity that has acquired or is
9 preparing to acquire, through construction, lease or any other
10 form of acquisition, similar public ~~telecommunications~~ services
11 from an alternate source.

12 B. At any time, the [~~provider of rural public~~
13 ~~telecommunications services~~] incumbent rural telecommunications
14 carriers may file a verified application with the ~~commission~~ for
15 authorization to provide a public ~~telecommunications~~ service on
16 an individual contract basis. The application shall describe
17 the ~~telecommunications~~ services to be offered, the party to be
18 served and the parties offering the service, together with other
19 information and in a form that the ~~commission~~ may prescribe.
20 Such additional information shall be reasonably related to the
21 determination of the existence of a competitive offer.

22 C. An application is deemed approved when filed unless
23 the ~~commission~~ denies it. The ~~commission~~ shall approve or deny
24 any such application within ten days after filing or a different
25 period established by the ~~commission~~, not to exceed sixty days,

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1 giving consideration to the requirements of any contract
2 negotiations. If the commission has not acted on any
3 application within the time period established, the application
4 is deemed granted. The commission shall deny the application
5 only upon a finding that the application fails to set forth
6 prescribed information or that the subject or comparable
7 services are not being offered to the customer by parties other
8 than the applicant or that the contract fails to cover the costs
9 of the service.

10 D. Within ten days after the conclusion of
11 negotiations, the [~~provider of rural public telecommunications~~
12 ~~services~~] incumbent rural telecommunications carrier shall file
13 with the commission the final contract or other evidence of the
14 service to be provided, together with the charges and other
15 conditions of the service, which shall be maintained by the
16 commission on a confidential basis subject to an appropriate
17 protective order. "

18 Section 10. Section 63-9H-10 NMSA 1978 (being Laws 1999,
19 Chapter 295, Section 10) is amended to read:

20 "63-9H-10. COMPLAINT ALLEGING VIOLATION BY [~~PROVIDER OF~~
21 ~~RURAL PUBLIC TELECOMMUNICATIONS SERVICES~~] AN INCUMBENT RURAL
22 TELECOMMUNICATIONS CARRIER. - -

23 A. Complaint may be made by any interested party
24 setting forth any act or omission by [~~a provider of rural public~~
25 ~~telecommunications services~~] an incumbent rural

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1 telecommunications carrier alleged to be in violation of any
2 provision of the Rural Telecommunications Act of New Mexico or
3 any order or rule of the commission issued pursuant to that act.

4 B. Upon filing of the complaint, the commission shall
5 set the time and place of hearing, and at least ten days' notice
6 of the hearing shall be given to the party complained of.
7 Service of notice of the hearing shall be made in any manner
8 giving actual notice.

9 C. All matters upon which complaint may be founded may
10 be joined in one hearing and a complaint is not defective for
11 misjoinder or nonjoinder of parties or causes, either before the
12 commission or on review by the courts. The persons the
13 commission allows to intervene shall be joined and heard, along
14 with the complainant and the party complained of.

15 D. The burden shall be on the party complaining to
16 show a violation of a provision of the Rural Telecommunications
17 Act of New Mexico or an order or rule of the commission issued
18 pursuant to that act.

19 E. After conclusion of the hearing, the commission
20 shall make and file an order containing its findings of fact and
21 decision. A copy of the order shall be served upon the party
22 complained of or his attorney.

23 F. Conduct of the hearings and rendering of decisions
24 shall be governed by the rules of practice and procedure
25 promulgated by the commission. "

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1 Section 11. Section 63-9H-12 NMSA 1978 (being Laws 1999,
2 Chapter 295, Section 12) is amended to read:

3 "63-9H-12. APPEAL OF ORDERS OF THE COMMISSION. -- Any
4 [~~provider of rural public telecommunications services~~] incumbent
5 rural telecommunications carrier and any other person in
6 interest being aggrieved by a final order or determination of
7 the commission under the Rural Telecommunications Act of New
8 Mexico may file a notice of appeal in the supreme court asking
9 for a review of the commission's final orders. A notice of
10 appeal shall be filed within thirty days after the entry of the
11 commission's final order. Every notice of appeal shall name the
12 commission as appellee and shall identify the order from which
13 the appeal is taken. Any person whose rights may be directly
14 affected by the appeal may appear and become a party, or the
15 supreme court may upon proper notice order any person to be
16 joined as a party. "

17 Section 12. TEMPORARY PROVISION. -- If not transferred
18 pursuant to another act of the first session of the forty-sixth
19 legislature, the unexpended or unencumbered balance remaining in
20 the state rural universal service fund shall be maintained by
21 the public regulation commission as a special account. The
22 commission shall recommend to the second session of the forty-
23 sixth legislature a proper use of the balance that will further
24 the purpose of the Rural Telecommunications Act of New Mexico.

25 Section 13. REPEAL. -- Section 63-9H-6 NMSA 1978 (being Laws
. 144686. 2

1 1999, Chapter 295, Section 6) is repealed.

2 Section 14. EMERGENCY.--It is necessary for the public
3 peace, health and safety that this act take effect immediately.

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