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F I S C A L I M P A C T R E P O R T

SPONSOR: HJC DATE TYPED: 3/20/03 HB CS/CS/636/aHFl#1

SHORT TITLE: Telecommunications Development Act SB

ANALYST: Padilla

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	FY04			
	($12,000.0)		Non-recurring	Rural Extension Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Duplicates SJC Substitute for SB 530
Relates to SB 775

SOURCES OF INFORMATION

LFC Files

Responses Received From
Public Regulation Commission
General Services Department
Attorney General
Information Technology Management Office

SUMMARY

Synopsis of HFl Amendment

The House Floor Amendment #1 requires the PRC to issue a final order regarding determinations of effective competition within 60 days of the end of the hearing. Currently, there is no statutory provision that provides timeframes for these hearings and orders.

Synopsis of Original Bill

The House Judiciary Committee Substitute for the House Business and Industry Committee Substitute for House Bill 636 does the following:

- Amends current statute to require PRC-imposed fines on a telecommunications company to take into account penalties assessed against the company pursuant to a "performance assurance plan."
- Establishes a 120-day timeframe after a filing within which the PRC must make decisions about whether a telecommunications service is subject to competition.
- Strikes language in current statute that allows the PRC to hold hearings concerning the reasonableness of new rates proposed by a telecommunications company. Also deletes the current provision that allows the PRC to suspend proposed rates for up to nine months, with a 3-month extension, in order to conduct a hearing on the new rates.
- Terminates rural extension funds. The bill would prevent the PRC from requiring a telecommunications company to establish or maintain a rural extension fund. The bill allows Qwest (the only company with a rural extension fund) to expend the balance of its fund in accordance with its original purpose OR to credit the $12,000.0 balance in its fund against its "telecommunications projects in rural areas." The bill prevents Qwest from counting these projects against its current investment commitments with the PRC as part of its Alternative Form of Regulation (AFOR). It also requires that the PRC agree to the projects.
- Establishes the effective date of the bill as of July 1, 2003.

<u>Significant Issues</u>

1. <u>Performance Assessment Plan Penalties</u>: The New Mexico telecommunications company currently subject to a performance assurance plan is Qwest. Qwest's performance assurance plan ("QPAP") springs from its pursuit of 271 approval from the Federal Communications Commission. That approval will allow Qwest to re-enter the interstate long-distance market. The QPAP is a method to ensure customers and regulatory authorities of Qwest's commitments to performance in key areas. If Qwest fails to provide adequate service to competitive local exchange carriers (CLECs), Qwest will make payments directly to those carriers. This bill will allow the PRC to offset these payments against any administrative fines it imposes on Qwest for violations of interconnection agreements and other rules.

2. <u>Abbreviated Time Frame for Hearings</u>: There is currently no statutory time limit for hearings on the existence of "effective competition." This bill would establish a 120-day limit. The PRC is concerned that 120 days might be insufficient time in which to make an informed determination.

3. <u>Eliminating Hearings on New Rates:</u> Because Qwest and Valor are currently regulated under AFORs (Alternative Forms of Regulation), the PRC points out that the companies currently have no need to propose new rates, as rate increases are built into the AFORs if certain conditions are met. The PRC is concerned that the companies may wish to re-open their AFORs and propose new rates. In that case, the PRC is concerned that this bill, by eliminating the PRC's ability to conduct a hearing on new rates, eliminates necessary due process.

4. <u>Rural Extension Fund</u>: Section 4 of the bill prevents the PRC from requiring a telecommunications company to establish or maintain a Rural Extension Fund. The only carrier with a Rural Extension Fund is Qwest. The fund was created by the State Corpora-

tion Commission (now the New Mexico PRC) as a result of the Tax Reform Act of 1986. The Tax Reform Act lowered the tax expenses of the incumbent carriers; however, the SCC did not refund the "savings" to consumers of Mountain Bell (which is now Qwest). Instead it ordered Mountain Bell to deposit $2 million annually into a Rural Extension Fund. The Fund is currently used to subsidize the cost of providing primary line service to consumers who live more than 1,000 feet from the nearest pedestal or terminal. The cost of installing the line is the responsibility of the person requesting service. A qualifying consumer may be eligible for up to $5,000 from the Fund.

The Rural Extension Fund has a balance of approximately $12 million. The bill provides that after June 30, 2003, no telecommunication carrier will be required by the PRC to reserve, set aside, or accrue additional money to an existing rural extension fund. The AG's office notes that if there had never been a Fund, consumers would have paid, or would pay, less on their monthly telephone bill. Instead of paying less, every month a portion of every consumer's telephone payment was, and is, deposited into the fund. Therefore, the AG's office points out, the fund is held by Qwest, in trust, for the benefit of New Mexico consumers. The money in the Qwest Rural Extension Fund is not from Qwest's retained earnings, it is proceeds that belong to consumers that are simply being held, in trust, by Qwest.

The bill provides that the money in the Fund will be spent by Qwest after consultation with the PRC. The AG's office suggests that it would be better public policy for the PRC to decide where, when and how the Fund should be spent after consultation by all interested parties, including staff, consumer advocates and citizens in the rural areas of New Mexico.

FISCAL IMPLICATIONS

The fiscal impact of this bill will be the potential transfer of funds from the Rural Extension Fund, which currently has a balance of approximately $12,000.0, to Qwest for telecommunications development projects

CONFLICT AND DUPLICATION

The Senate Judiciary Committee Substitute for SB 530 is a duplicate of this bill.

SB 775 proposes a new fund, to be used by the PRC, that would be financed by payments from telecommunications companies that are subject to a Performance Assurance Plan.

POSSIBLE QUESTIONS

1. What is the public policy reason for eliminating the PRC's ability to conduct hearings on the reasonableness of proposed new rates for telecommunications services?
2. If the Rural Extension Fund is not available to consumers for its original purpose, is there some other way to use the money?

LP/njw:yr