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FISCAL IMPACT REPORT

SPONSOR: Heaton DATE TYPED: 3/13/03 HB 715/aHCPAC

SHORT TITLE: Incumbent Rural Telecommunications Carriers SB _____

ANALYST: Padilla

APPROPRIATION

| Appropriation Contained | | Estimated Additional Impact | | Recurring or Non-Rec | Fund Affected |
|-------------------------|------|-----------------------------|------|-------------------------|------------------|
| FY03 | FY04 | FY03 | FY04 | | |
| | NFI | | | | |

(Parenthesis () Indicate Expenditure Decreases)

Duplicates some provisions of SB 629

Relates to and potentially conflicts with SB 530 and HB 636

SOURCES OF INFORMATION

LFC Files

Responses Received From
Public Regulation Commission
Attorney General's Office
General Services Department

SUMMARY

Synopsis of HCPAC Amendment

The House Consumer and Public Affairs Committee Amendment establishes that the provisions of HB 715 do not apply to Valor Telecommunications until the expiration of its AFOR (Alternative Form of Regulation). Valor shall continue to operate under terms of its AFOR until it expires, after which the changes made by this bill would apply.

Significant Issues

The HCPAC amendment appears to address a significant issue of the original bill, namely that it was in conflict with Valor's AFOR. See "Potential Conflict with AFOR" under "Significant Issues" of the original bill.

Synopsis of Original Bill

House Bill 715 changes the definition of “incumbent rural telecommunications carrier” in the Rural Telecommunications Act. The bill changes the definition from “an incumbent local exchange carrier that serves fewer than fifty thousand access lines within the state. . .” to one that meets any of three criteria, including a carrier that “provides local exchange service to any local exchange carrier study areas with fewer than one hundred thousand access lines.”

Significant Issues

Valor Becomes a Rural Incumbent Telecommunications Carrier: The new definition of “incumbent rural telecommunications carrier” would affect only one company, Valor Telecommunications. Valor, with more than fifty thousand access lines in New Mexico, is currently regulated as a “telecommunications company,” and is therefore subject to price cap regulation due to its Alternative Form of Regulation (AFOR) plan negotiated with the PRC.

As an incumbent rural telecommunications carrier, as this bill would allow, Valor, like other rural carriers, would be able to change residential rates after 60 days notice to all affected subscribers unless 2.5% of the subscribers or PRC staff file a protest with the PRC. It could change other rates upon ten days notice to the PRC and publication in a local newspaper. The AG’s office points out that Qwest and Valor advocated for price cap regulation, such as an AFOR, because once the rates and standards were set, the companies would be relatively free from oversight from the PRC and have more certainty in their business. According to this bill, Valor would no longer be subject to PRC rules regarding quality of service, consumer protection, investment and deployment of high-speed data services.

Given the potential impact of rate changes on residential and small business customers, the AG’s office proposes that it have the statutory authority to file a protest to any changes in residential local exchange service rates (see below under “Suggested Amendments”).

Potential Conflict with AFOR: The PRC believes by changing the regulatory framework for Valor midstream, the bill may violate Article II, Section 9 (prohibition against retroactive lawmaking or ex post facto lawmaking) and Article IV, Section 34 (prohibition against changing rights or procedures in pending cases) of the New Mexico Constitution.

ADMINISTRATIVE IMPLICATIONS

The PRC believes a major review of the existing Valor AFOR and a review of the impact of this bill upon consumer protection and quality of service rules currently applicable to Valor will be necessary if this bill is enacted.

RELATIONSHIP

This bill duplicates, in part, Senate Bill 629. SB 629 makes the same definitional change of “incumbent rural telecommunications carrier” as is made in Section 1 of this bill.

The bill potentially conflicts with SB 530 and HB 636, which make changes in regulatory procedures involving Valor.

OTHER SUBSTANTIVE ISSUES

Valor Telecommunications is a private held company based in Texas. It was formed through the acquisition of properties previously owned by GTE in 1999. Valor owns and operates over 550,000 local access lines, including approximately 80,000 lines in New Mexico. Its New Mexico service area includes Carlsbad, Espanola, Hobbs, Lovington, Ruidoso, Truth or Consequences and a number of smaller towns.

SUGGESTED AMENDMENTS

The Attorney General's office suggests the following amendment to address concerns about the change in Valor's regulatory status:

Section 8. "63-9H-7. REGULATION OF RETAIL RATES OF INCUMBENT RURAL TELECOMMUNICATIONS CARRIER.--

E. Residential local exchange service rates increased by a rural telecommunications carrier pursuant to Subsection D of this section shall be reviewed by the commission only upon written protest signed by two and one-half percent of all affected subscribers, the Attorney General, or upon the commission staff's own motion for good cause...

POSSIBLE QUESTIONS

1. What will be the impact on customers of considering Valor a rural carrier?
2. What benefits, if any, will accrue to Valor as a result of being considered a rural carrier?

LP/lr:yr