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

SPONSOR: Griego DATE TYPED: 03/03/03 HB

SHORT TITLE: Amend Rural Telecommunications Access Act SB 629/aSFC

ANALYST: Padilla

APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	**FY04**	**FY03**	**FY04**		
	Significant but indeterminate – see narrative			Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

REVENUE

Estimated Revenue		Subsequent Years Impact	Recurring or Non-Rec	Fund Affected
FY03	**FY04**			
	$34,000.0	$34,000.0	Recurring	New Fund –Rural Access Reform Fund

(Parenthesis ( ) Indicate Revenue Decreases)

Relates to HB 715 and HB 628
Conflicts with SB 530 and HB 636

SOURCES OF INFORMATION

LFC Files

Responses Received From
Attorney General
Public Regulation Commission

SUMMARY

Synopsis of SFC Amendment

The amendment does two main things: First, it changes language throughout the bill to clarify the level to which all rural carriers should reduce their access charges. The amendment makes clear that Qwest's current access charge rate is the target rate.

Second, the amendment adds Qwest to the list of companies who could receive support from the Rural Access Charge Reform Fund. In order to qualify, Qwest must reduce its access charges by 50 percent on November 1, 2003 and an additional 25 percent on November 1, 2004.

Significant Issues

1. By making Qwest eligible for the fund, it is likely that the maximum surcharge allowed by the bill of five percent would have to be imposed. The PRC notes that a five percent surcharge will add $2.00 (two dollars) to the bill of a customer whose monthly bill is $40. The surcharge will be applied to all intrastate retail telephone bills of New Mexico customers, including wireless users.

State and local government telephone bills will also be assessed the surcharge. State agency budgets will have to absorb an increase in telecommunications costs. GSD/ISD, which serves a number of state government agencies, currently pays Qwest between $8,000.0 and $10,000.0 per year. This does not include all state agencies, nor does it include institutions of higher education, public schools or local governments.

2. The amendment increases the likely subsidization level of the original bill. At a five percent surcharge, the size of the Rural Access Charge Reform Fund is likely to increase to $34,000.0.

3. The PRC believes that a reduction in Qwest's access charges, as required by the amended bill, is contrary to a provision in Qwest's Alternative Form of Regulation (AFOR).

4. By now requiring Qwest to reduce its access charges and allowing it to seek money from the Rural Access Charge Reform Fund, the amended bill may not achieve its stated purpose of reducing the disparity between the long-distance rates of rural customers and those of urban customers. Qwest currently serves the majority of rural customers in New Mexico. However, the bill now requires Qwest to *further* reduce its access charges while the other carriers in the state are required only to reduce their charges to the *current* Qwest rates. Disparities will likely remain.

Synopsis of Bill

Senate Bill 629 amends the Rural Telecommunications Act and does two main things:

First, it addresses the issue of high "access charges" that rural telephone carriers charge to other carriers through a newly-created subsidization mechanism. Rural carriers would be required to reduce their intrastate switched access charges to long-distance providers to rates comparable to those charged in urban areas. The rural carriers could then apply to a new fund (the "Rural Access Reform Fund") in order to make up for revenue lost due to the lower access charges. The cost of the reform would be borne by consumers, including wireless consumers, through a surcharge of between 3% and 5%. The bill states that this access charge reform would encourage competition.

Second, Senate Bill 629 redefines "incumbent rural telecommunications carrier" so that Valor Telecommunications is considered a rural carrier, thus significantly changing the way Valor is regulated by the PRC. Currently, Valor is subject to price cap regulation under an Alternative Form of Regulation plan it has 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.

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. 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.

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.

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").

Reduction of Access Charges of Rural Carriers

Access charges are charges imposed by local telephone companies on both long distance companies and on subscribers. They are designed to recover the costs of connecting to the local phone network. Both the PRC and the AG's office believe that the access charges of rural carriers are currently too high, leading to a difference between what a customer served by a rural carrier pays for in-state long distance and what an urban customer pays for the same service. The AG's office states that this bill provides a positive alternative to the problem, yet it notes that significant issues remain.

The bill requires rural carriers to reduce their access charges to the rates of incumbent local exchange carriers that were in effect as of January 1, 2003. The rates of two incumbent carriers—Qwest and Valor—would need to used to make this calculation, but the bill does not explain how this is to be done.

<u>Creation and Financing of “Rural Access Reform Fund”</u>

This bill would add a new surcharge of between 3% and 5% to the intrastate retail telephone bills of landline, long distance and wireless customers. Existing federal and state taxes and surcharges make up about 40 percent of an average total bill for basic service. The surcharge would finance the Rural Access Reform Fund. The AG’s office notes that this surcharge, like the one in Senate Bill 628 is, in effect, a tax.

The PRC is charged with selecting a third-party administrator for the Fund. Compensation for the administrator would come from the Fund. The rate of the surcharge would be established solely by the Fund administrator at a level sufficient to adequately support the fund, but cannot exceed 5 percent.

Rural carriers that have reduced their access charges as described above can apply to the Fund for money to offset the reduction in access charge revenues. The bill also allows the Fund to be used to offset a rural carrier’s “significant increase in costs of providing intrastate switched access services.”

The bill states that distributions from the Fund are to be applied in a revenue-neutral manner. The AG’s office recommends amending the bill to require carriers receiving distributions to certify that the distributions were in fact applied in a revenue-neutral manner.

<u>Long Distance Carriers to Reduce Their Rates</u>:

The bill requires that each provider of in-state long distance in New Mexico (such as Qwest, Sprint, MCI Worldcom) pass on to end users the savings the long distance provider realizes as a result of the reduction in rural carriers’ access charges. The PRC considers this goal “speculative”, however, because long distance carriers have both tariffed (usually higher) rates as well as special calling plans. The PRC believes it would be difficult to review and enforce the pass-through of savings the bill requires.

FISCAL IMPLICATIONS

Through means of the surcharge described above, a fund of approximately $21,000.0 would be raised from consumers of telecommunications services. This estimate is based on the PRC’s Utility Case No. 3223, in which members of the New Mexico Exchange Carriers Group estimated that over $12,000.0 would be needed to reduce their access charges to the level of Qwest. This estimate did not include all rural carriers and did not include Valor, hence the estimate here of a fund size of $21,000.0.

The fund is in effect a subsidization mechanism whereby consumers throughout the state will pay for rural carriers to lower their access charges.

ADMINISTRATIVE IMPLICATIONS

The bill requires the PRC to hire an administrator for the Fund, to apply the surcharge to all bills, and to determine fund size. The PRC did not comment on whether it has sufficient resources to carry out these tasks.

The bill does not set a limit on what the Fund administrator can be compensated.

RELATIONSHIP

Several other telecommunications bills this session create various funds financed by telecommunications customers:

SB 628 adds a surcharge of 1.5% to most customer telephone bills, including wireless, in order to create the "Universal Service Fund" from which telecommunications carriers can seek funding for upgrades and additions to their networks.

SB 530 and HB 636 allow Qwest, in effect, to use a fund currently intended to help customers in hard-to-reach areas for telecommunications development projects in rural areas of the state.

HB 715 would amend the definition of "incumbent rural exchange carrier" to what is proposed in this bill.

This bill potentially conflicts with SB 530 and HB 636, which, in addition to creating two telecommunications development funds, propose significant regulatory changes that would affect Valor.

OTHER SUBSTANTIVE ISSUES

Although the bill states that the policy of the state "is to encourage competition through access charge reform," in practice competition may not be fostered through the mechanisms laid out in the bill. The AG's office points out that to the extent that rural carriers institutionalize the Rural Access Reform Fund, competition may not ensue because the cost to the rural carriers will be less than to any potential competitor.

There are several efforts at the federal level to reduce access charges, including those of rural carriers. For example, the Federal Communications Commission's "Rural Access Charge Plan" creates a new mechanism to help reimburse small, local rural companies for the cost of serving rural customers. According to the FCC, the new support mechanism helps to ensure that consumers in high-cost rural areas have access to telephone service at affordable and reasonably comparative rates.

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~~] an incumbent 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…

To ensure that carriers receiving distributions from the Rural Access Reform Fund apply the distributions in a revenue-neutral manner, the AG's office proposes the following changes to Section 7 (possibly a new "I"):

> Any telecommunications carrier and wireless carriers receiving support from the fund shall self-certify annually to the administrator and commission by filing a sworn affidavit of an authorized officer stating that it is qualified to participate in the fund and that all support received from the fund was used for the intended purpose of the fund.

POSSIBLE QUESTIONS

1. Why are the access charges of rural telecommunications carrier higher than those of the other carriers?

2. There are also federal efforts to reduce rural access charges. Why aren't the federal efforts sufficient?

3. Should customers throughout the state, including cellular phone customers, be required to further subsidize the costs of service in rural areas?

4. What will be the impact on customers of considering Valor a rural carrier?

LP/prr