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SENATE BILL 445

**49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009**

INTRODUCED BY

Carlos R. Cisneros

AN ACT

RELATING TO TELECOMMUNICATIONS; PROVIDING THAT CERTAIN RETAIL TELECOMMUNICATIONS RATES MAY BE REMOVED FROM THE PUBLIC REGULATION COMMISSION JURISDICTION DUE TO EFFECTIVE COMPETITION; CONTINUING REGULATION OF SINGLE LINE FLAT-RATED LOCAL EXCHANGE SERVICES UNTIL 2012.

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

Section 1. Section 63-9A-8 NMSA 1978 (being Laws 1985, Chapter 242, Section 8, as amended) is amended to read:

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

A. In accordance with the policy established in the New Mexico Telecommunications Act, the commission shall, by its own motion or upon petition by any interested party, hold hearings to determine if any public telecommunications service is subject to effective competition in the relevant market

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1 area. When the commission has made a determination that a  
2 service or part of a service is subject to effective  
3 competition, the commission shall, consistent with the purposes  
4 of the New Mexico Telecommunications Act, modify, reduce or  
5 eliminate rules, regulations and other requirements applicable  
6 to the provision of such service, including the fixing and  
7 determining of specific rates, tariffs or fares for the  
8 service. The commission's action may include the detariffing  
9 of service or the establishment of minimum rates [~~which will~~]  
10 that cover the costs for the service. Such modification shall  
11 be consistent with the maintenance of the availability of  
12 access to local exchange service at affordable rates and  
13 comparable message [~~telecommunication~~] telecommunications  
14 service rates, as established by the commission, for comparable  
15 markets or market areas, except that volume discounts or other  
16 discounts based on reasonable business purposes shall be  
17 permitted. Upon petition or request of an affected  
18 telecommunications company, the commission, upon a finding that  
19 the requirements of [~~Subsection~~] Subsections B and C of this  
20 section are met, shall modify the same or similar regulatory  
21 requirements for those providers of comparable public  
22 telecommunications services in the same relevant markets so  
23 that there shall be parity of regulatory standards and  
24 requirements for all such providers.

25 B. In determining whether a service is subject to

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1 effective competition, the commission shall consider [the  
2 following:

3 ~~(1) the extent to which services are~~  
4 ~~reasonably available from alternate providers in the relevant~~  
5 ~~market area;~~

6 ~~(2) the ability of alternate providers to make~~  
7 ~~functionally equivalent or substitute services readily~~  
8 ~~available at competitive rates, terms and conditions; and~~

9 ~~(3) existing economic or regulatory barriers]~~  
10 whether:

11 (1) a comparable service or facility is  
12 available from a supplier other than an incumbent  
13 telecommunications company in the relevant market area being  
14 considered by the commission; and

15 (2) market forces in that market are  
16 sufficient to assure just and reasonable rates without  
17 regulation.

18 C. When considering market forces in the market  
19 proposed to be deregulated, the commission shall consider  
20 factors, including the presence or absence of all of the  
21 following:

22 (1) wireless communications services;

23 (2) cable telephony services; and

24 (3) voice over internet protocol services.

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

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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 F. Effective July 1, 2009, upon the election by a  
18 telecommunications company subject to rate regulation, the  
19 jurisdiction of the commission shall not include the regulation  
20 of retail rates for business and residential local exchange  
21 services, interexchange services, private line services,  
22 designed services or discretionary services provided throughout  
23 the state, except for single line flat-rated residential and  
24 business local exchange services. The commission shall retain  
25 all other forms of regulatory jurisdiction within the current

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1 authority of the commission.

2 G. An election pursuant to this subsection shall be  
3 filed with the commission and shall contain:

4 (1) the name and address of the  
5 telecommunications company;

6 (2) a narrative describing:

7 (a) the telecommunications services  
8 provided by the telecommunications company;

9 (b) the geographic area and market  
10 served by the telecommunications company; and

11 (c) the telecommunications services for  
12 which the election is made; and

13 (3) the effective date of the election, which  
14 shall be no earlier than the later of July 1, 2009 or thirty  
15 days after the date the notice is filed with the commission.

16 H. For a telecommunications company that filed an  
17 election pursuant to this section:

18 (1) the initial single line flat-rated  
19 residential and business local exchange service rates shall be  
20 the corresponding rates charged by the company as of January 1,  
21 2009;

22 (2) monthly rates for single line flat-rated  
23 residential basic local exchange service, except for service  
24 rates for New Mexico low income telephone assistance program  
25 customers, may be increased by an amount not to exceed one

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1 dollar (\$1.00) per twelve-month period beginning July 1, 2009  
2 and ending June 30, 2012;

3 (3) monthly rates for single line flat-rated  
4 business basic local exchange service rates may be increased by  
5 an amount not to exceed two dollars (\$2.00) per twelve-month  
6 period beginning July 1, 2009 and ending June 30, 2012; and

7 (4) residential basic local exchange rates for  
8 New Mexico low income telephone assistance program customers  
9 shall not be increased during that period.

10 I. If a telecommunications company fails to impose  
11 the rate increase during any twelve-month period, the company  
12 shall not impose the unused increase in any subsequent year.

13 J. For a company filing an election pursuant to  
14 this section that offers single line flat-rated local exchange  
15 service for both residential and business customers on a stand-  
16 alone basis, the rate regulation jurisdiction of the commission  
17 shall not extend to the rate regulation of packages or bundles  
18 of services that include single line flat-rated local exchange  
19 services.

20 K. For a telecommunications company that has made  
21 an election pursuant to this section, beginning on July 1,  
22 2012, the retail rate jurisdiction of the commission shall not  
23 be applicable to single line flat-rated residential and  
24 business basic local exchange service rates unless the  
25 commission, during the first six calendar months of 2012,

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1 extends its retail rate jurisdiction over single line  
2 flat-rated residential and business service rates provided by a  
3 previously rate-regulated telecommunications company. The  
4 commission shall retain all other forms of regulatory  
5 jurisdiction within the current authority of the commission.  
6 The commission may extend its retail rate regulation  
7 jurisdiction pursuant to this subsection for not more than two  
8 years and may do so only upon a finding supported by a  
9 preponderance of the evidence that such action is necessary to  
10 protect the public interest. If the commission extends its  
11 retail rate jurisdiction, the commission shall permit a  
12 telecommunications company subject to the extension to increase  
13 single line flat-rated residential and business monthly service  
14 rates, except for service rates for New Mexico low income  
15 telephone assistance program customers, by an amount of up to  
16 one dollar (\$1.00) during each twelve-month period of the  
17 extension. If a telecommunications company fails to impose the  
18 rate increase permitted during a twelve-month period, the  
19 company shall not impose the unused increase in a subsequent  
20 year.

21 L. A telecommunications company that is regulated  
22 pursuant to an alternative form of regulation plan on July 1,  
23 2009 shall no longer be subject to the rate regulation terms of  
24 that plan upon making an election to be governed by this  
25 section, but shall remain subject to all other requirements of

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1 an alternative form of regulation plan, including any service  
2 quality or investment obligations associated with that plan.  
3 No election filed pursuant to this section shall affect any  
4 obligations related to settlement agreements approved by the  
5 commission to address noncompliance with a previous alternative  
6 form of regulation plan.

7 M. A telecommunications company that filed an  
8 election pursuant to this section shall remain obligated to  
9 meet applicable service quality rules of the commission then in  
10 effect or adopted by the commission in accordance with this  
11 section, but such rules shall not provide for the payment of  
12 customer credits associated with failure to meet any service  
13 quality rule.

14 N. The commission shall require a  
15 telecommunications company that fails to meet a service quality  
16 metric imposed by the commission consistent with this section  
17 to submit a plan to remedy any service quality failures  
18 promptly and may also assess an administrative fine pursuant to  
19 Section 63-7-23 NMSA 1978.

20 O. As used in this section:

21 (1) "designed services" means the provisioning  
22 of regulated circuits requiring treatment, equipment or  
23 engineering design purchased from an ILEC's tariff or on an  
24 individual contract basis, including analog private line  
25 services; DDS; DS-1, including channelized service; DS-3; ISDN-

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1 PRI; ISDN-BRI; and special assemblies where all facilities and  
2 equipment provided are physically located in the state of New  
3 Mexico; and

4 (2) "discretionary services" means voice mail,  
5 caller ID, caller name ID, call waiting, three-way calling,  
6 call forwarding, call return, call blocker and auto redial and  
7 any similar service sold as an add-on to a customer's basic  
8 local exchange service."

9 Section 2. EFFECTIVE DATE.--The effective date of the  
10 provisions of this act is July 1, 2009.

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