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SENATE BILL 37

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Carlos R. Cisneros

FOR THE SCIENCE, TECHNOLOGY AND TELECOMMUNICATIONS COMMITTEE
AND THE ECONOMIC AND RURAL DEVELOPMENT COMMITTEE

AN ACT

RELATING TO TELECOMMUNICATIONS; PROVIDING THAT CERTAIN RETAIL
TELECOMMUNICATIONS RATES MAY BE REMOVED FROM THE PUBLIC
REGULATION COMMISSION JURISDICTION DUE TO EFFECTIVE
COMPETITION; DECLARING AN EMERGENCY.

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
area, which may include a local exchange area or combination of

underscoring material = new
[bracketed material] = delete

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

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1 commission shall issue its final order on such petition or
2 request within one hundred twenty days from the petition or
3 request date.

4 B. ~~[In determining whether]~~ The commission shall
5 determine that a service is subject to effective competition
6 ~~[the commission shall consider the following:~~

7 ~~(1) the extent to which services are~~
8 ~~reasonably available from alternate providers in the relevant~~
9 ~~market area;~~

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

13 ~~(3) existing economic or regulatory barriers]~~
14 upon a determination that:

15 (1) a comparable service or facility is
16 available from a supplier other than an incumbent
17 telecommunications company in the relevant market area being
18 considered by the commission; and

19 (2) market forces in that market are
20 sufficient to assure just and reasonable rates without
21 regulation.

22 C. When considering market forces in the market
23 proposed to be deregulated, the commission shall rely on
24 evidence concerning the presence or absence of the following:

25 (1) wireless communications services;

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- 1 (2) cable telephony services;
2 (3) voice over internet protocol services; and
3 (4) the extent to which the incumbent
4 telecommunications company has lost switched access lines to
5 other providers.

6 D. If, pursuant to Subsection A of this section,
7 effective competition is found to be present in relevant
8 markets that account for over fifty percent of the retail
9 switched access lines served by the affected telecommunications
10 company, the elimination of such regulatory requirements shall
11 apply to the company's entire service area.

12 E. If the incumbent telecommunications company has
13 lost more than thirty-three percent of the retail switched
14 access lines served by the incumbent telecommunications company
15 on December 31, 2001, the commission shall declare that
16 effective competition exists for all retail services throughout
17 the incumbent telecommunications company's service area.

18 ~~[G.]~~ F. No provider of public telecommunications
19 service may use current revenues earned or expenses incurred in
20 conjunction with any noncompetitive service to subsidize
21 competitive public telecommunications services. In order to
22 avoid cross-subsidization of competitive services by
23 noncompetitive telecommunications services, prices or rates
24 charged for a competitive telecommunications service shall
25 cover the cost for the provision of the service. In any

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1 proceeding held pursuant to this section, the party [~~providing~~
2 claiming that the service is priced below incremental costs
3 shall bear the burden of proving that the prices charged for
4 competitive telecommunications services do not cover [cost]
5 incremental costs and violate antitrust or predatory pricing
6 laws.

7 [~~D.~~] G. The commission may, upon its own motion or
8 on the petition of an interested party and after notice to all
9 interested parties and customers and a hearing, reclassify any
10 service previously determined to be a competitive
11 telecommunications service if after a hearing the commission
12 finds that a service is not subject to effective competition."

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