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FISCAL IMPACT REPORT

ORIGINAL DATE 01/27/11
LAST UPDATED 03/03/11 **HB** 17/aHBIC/aHTRC

SPONSOR Gonzales

SHORT TITLE Telecom Relocation Costs to Customers **SB** _____

ANALYST Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
		Indeterminate but up to \$500.0 per occurrence	Indeterminate but up to \$500.0 per occurrence	Indeterminate but up to \$1,500.0 per occurrence	Recurring	General Fund and
		Indeterminate but possibly substantial	Indeterminate but possibly substantial	Indeterminate but possibly substantial	Recurring	Consumers/ rate payers

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

New Mexico Department of Transportation (NMDOT)
 New Mexico Department of Information Technology (DoIT)
 Public Regulation Commission (PRC)

SUMMARY

Synopsis of HTRC Amendment

House Taxation and Revenue Committee (HTRC) amends the bill to more fully implement the HBIC amendment throughout the original bill.

Synopsis of HBIC Amendment

House Business and Industry Committee (HBIC) amends the bill to clarify that a telecommunications company can only recover 50 percent of the actual cost incurred for the alteration of infrastructure or facilities.

Synopsis of Original Bill

House Bill 17 proposes to enact a new section of law defining terms and entitling telecommunications companies to recover from retail customers, without a request for a rate change, the actual costs incurred for the alteration, change, moving or relocation of infrastructure

or facilities requested by the State or a political subdivision. The bill allows the Public Regulation Commission (PRC) to investigate, verify, and modify or adjust the fee based upon the findings of the investigation.

The bill clarifies that “actual costs” include all capital and non-capital costs, not otherwise recoverable, incurred to relocate infrastructure or facilities, as well as all costs incurred to remove any infrastructure or facilities, up to one million dollars in any twelve-month period. As used in the bill does not include the cost of upgrading the facility being relocated.

The bill specifies that thirty days prior to assessing retail customers a fee to recover actual costs a telecommunications company shall notify the Public Regulation Commission (PRC) in writing of the imposition of the fee the company intends to impose on the company’s retail customers and shall show the fee as a separate line item on the customers’ bills.

The cost recovery mechanism shall be a fee. The provisions of the bill apply to costs incurred after July 1, 2011 to relocate infrastructure or facilities as well as all costs to remove any infrastructure or facilities.

Effective date of the Act is: July 1, 2011.

FISCAL IMPLICATIONS

The PRC reports that the bill shifts the costs of moving telecommunications and broadband facilities at the request of a governmental entity from the company’s shareholders to the company’s customers. Unlike electric utilities, which must petition for approval of undergrounding costs, and prove their reasonableness prior to recovery, this bill would shift the burden to Commission Staff to prove that the costs were unreasonable. There could be some issues of allocation between affected services and customers billed. There is no data available to determine the potential cost to retail consumers.

The provisions of the bill act as a rate rider, meaning it would not be a rate change instead it would be an additional charge for service that would be shared among customers based on the actual cost of the infrastructure alterations. The bill allows for a “fee” to be charged; however, the bill does not specify the methodology for applying the “fee”. The fee could be a percentage, a flat rate, a pro-rata share, etc. Some customers may pay more than others or conversely the whole customer base may share in actual cost recovery.

The fiscal implications for state government are indeterminate at this time, but could be substantial. The bill does not specify if cost recovery is related to customer size, location, and/or cause of infrastructure relocation. State agencies, like New Mexico Higher Education Department (NMHED) and New Mexico Department of Information Technology (DoIT) are large retail customers and may be subject to relocation costs. DoIT acknowledges the bill does not specify if cost recovery is related to customer size, location, and/or cause of infrastructure modification.

The New Mexico Department of Transportation (NMDOT) reports that although there is no immediate or direct negative fiscal implications, the bill may encourage the further placement of utility facilities within the State rights-of-way, NMDOT anticipates that as more facilities are

located within the rights-of-way it will see an increase in construction delay claims due to a historic pattern of untimely removal by utilities of their facilities within the rights-of-way.

Regardless of whether the recovery is fifty percent or a hundred percent the Department of Information Technology (DoIT) is unable to determine fiscal implications. In the prior year sites that had infrastructure and facilities moved or relocated, each had very specific circumstances. The majority were new sites. Sites could also incur fiber optic costs which may be rare but are very expensive. If a site were a typical fiber build the size of the 505 Marquette to 104 Gold in Albuquerque; the fiber build would cost about \$285,000. Other considerations are that sites may have numerous state agencies with various employee counts and space allocations. The determination of the recovery allotment per agency would require more information.

SIGNIFICANT ISSUES

The HBIC amendment splits the cost of moving telecommunications and broadband facilities with half being paid by the companies and the remaining half paid by the company's customers when a governmental entity requests the move.

The bill does not provide for advance notification or public hearing process for proposed projects that may affect customers, or for a showing of the reasonableness of the costs as being strictly necessitated by the government request.

The bill does not establish requirements that companies negotiate with governments concerning alternatives prior to relocating infrastructure or prior to implementing a fee.

NMDOT notes:

Utilities are statutorily authorized to place their facilities within state, county and municipal rights-of way. See NMSA 1978, § 62-1-2; NMSA 1978, § 67-3-12(C); NMSA 1978, § 67-8-13. An existing statute, NMSA 1978, § 67-8-15, already provides for when and the manner in which utilities may be reimbursed at State expense. NMDOT has also promulgated rules, at 17.4.2 NMAC, which govern the reimbursement of utility relocation.

Summarized, if a utility has located its facilities outside of state right-of-way, meaning that the utility secured a private easement (a compensable property interest), a utility is entitled to be reimbursed for relocating its facilities. On federal-aid projects, such reimbursements are subject to federal participation. Thus, the Bill would shift the burden of reimbursement from the federal government to State ratepayers. With regard to when a utility locates its facilities within NMDOT right-of-way, a utility may do so with a permit at no charge. However, a utility, having not paid for the right-of-way, is not entitled to reimbursement for relocating its facilities in that circumstance. Reimbursement by the State for relocating utilities located within the right-of-way would violate the State Constitution anti-donation clause as it would reimburse utilities where no such duty exists particularly when a utility is permitted to locate its facilities within the right-of-way at no cost. Therefore, the Bill seeks to shift to the ratepayer that which the State is not required to pay.

Currently, utilities must, as a business decision, balance the costs of acquiring their own private easements but entitling them to reimbursement for utility relocations versus the zero cost for locating their facilities within State rights-of-way but bearing the cost of potential utility relocations. HB 17 would remove that balancing test and would likely result in utilities placing additional facilities within State rights-of-way. Because NMDOT faces frequent construction delay claims from its contractors due to a historic pattern of utilities' failure to timely relocate their facilities from State rights-of-way in advance of highway construction projects, NMDOT anticipates that as more facilities are located within the rights-of-way it will see an increase in construction delay claims.

ADMINISTRATIVE IMPLICATIONS

The PRC notes that provisions of the bill could result in additional proceedings before the commission after the fact to determine if the relocation, costs, and cost recovery surcharge were just and reasonable. Possible rulemaking to establish procedures for companies to recoup these costs through a line item on the bill.

NMDOT's administration of reimbursing of utility relocations pursuant to NMSA 1978, § 67-8-15 and 17.4.2 NMAC would be altered by passage of HB 17.

TECHNICAL ISSUES

The PRC reports the bill may be in conflict with Section 63-9A-8.1 1978, which requires prior notice to customers as well as the Commission, and which states that the burden of proof is on the telecommunications company to prove that a proposed rate or charge is just and reasonable.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The cost of relocating or removing telecommunication infrastructure requested by the State or a political sub-division after July 1, 2011, would not be reimbursable to the telecom company.

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