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

		ORIGINAL DATE	02/02/11		
SPONSOR	Ryan	**LAST UPDATED**	03/13/11	**HB**	
SHORT TITLE	Competitive Telecomm Provider Contracts			**SB**	122/aSCORC
				ANALYST	Lucero

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		Indeterminate but possibly Moderate to High	Indeterminate but possibly Moderate to High	Indeterminate but possibly Moderate to High	Recurring	General Fund and other revenue sources

(Parenthesis ( ) Indicate Expenditure Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Reglations Commission (PRC)
Attorney General's Office (AGO)

SUMMARY

Synopsis of SCORC Amendment

Senate Corporations and Transportation Committee (SCORC) amends Senate Bill 122 to change the title of the bill, putting the emphasis on "MODIFYING" rather than "PROVIDING AN EXCEPTION" for how tariffs and individual telecommunications contracts are filed.

As amended, the bill now allows a local exchange carrier or message telecommunications services to withdraw any tariff for any regulated business service (instead of all services) upon written notice to the PRC, provided they post the rates terms, and conditions of service on that provider's web site. The amendment moves the language on tariffs from the end of NMSA 1978 63-9A-8.(A) and places the modified language at the end of NMSA 1978 63-9A-8.(D).

The amendment also strikes and replaces proposed new language to limit the exemption to file "individual contracts or other evidence of the service to be provided" to business services that have had their tariffs withdrawn.

Synopsis of Original Bill

Senate Bill 122 proposes to amend Section 63-9A-8 1978, to allow for a competitive local exchange carrier (CLEC) or provider of intrastate long distance services to withdraw any tariff for any regulated service; provided, however, the rates, terms, and conditions of service are posted on the provider's publicly accessible web site.

The bill also proposes to amend Section 63-9A-9 1978 to exempt CLECs and long distance providers from a statutory requirement to file all contracts with the Public Regulation Commission (PRC) when services are to be provided on an individual contract basis.

FISCAL IMPLICATIONS

The Attorney General's Office (AGO) notes that in the absence of tariff regulation it is likely that government costs for phone services may increase. The State of New Mexico is the single largest customer of Qwest and as such, negotiates phone service rates via contracts. As the *de facto* monopoly provider for many types of services in rural New Mexico, state agencies would not be able to rely on the market to provide effective price discipline. In these types of marketplaces, absent tariff regulation, prices for consumers tend to rise.

SIGNIFICANT LEGAL ISSUES

According to the Attorney General's Office (AGO), Senate Bill 122 may be vulnerable to legal challenge on grounds it is ambiguous in two sections:

> The bill amends current law that allows the PRC to modify a company's tariff based on certain market conditions. The bill adds the proposition that a company may voluntarily withdraw its tariff as long as it posts its financial rates on its website. Does "withdraw" mean it can unilaterally rescind its tariff? (Tariffs have the force and effect of law). If so, having a tariff is an important tool for promoting a competitive environment, which is the overall goal of New Mexico telecommunications law, and this bill would eliminate that tool. Or does "withdraw" simply mean it can physically take its data from the PRC as long as it posts its data on its website?
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> The bill also amends current law that allows the PRC to regulate a company's contracts for public telecommunication services. The bill adds the proposition that companies are not required to file individual contracts. Does "not required to file" mean a company can unilaterally avoid PRC jurisdiction? If so, having a contract filed with the PRC is an important tool for promoting a competitive environment, which is the overall goal of New Mexico telecommunications law, and they would eliminate that tool. Or does "not required to file" mean a company physically does not have file hard copies of its contract with the PRC? Or does "not required to file" mean companies that do not deal with a contract(s) are exempt from the requirement.

SIGNIFICANT ISSUES

The SCORC amendment adds clarifying language to exclude non-business services (ie, residential services) from the bill and extends the exemption to any local exchange carrier, not just competitive local exchange carriers (CLEC).

Regarding the original bill, the PRC notes that:

> Competitive local exchange carriers (CLEC) and intrastate long distance providers are currently required to obtain certification from the NMPRC, comply with consumer protection rules, file tariffs, and submit individual contracts for review with the PRC should those contracts vary from the tariffed rates, terms, and conditions of service on file with the PRC.

SB 122 would allow CLECs and long distance providers to withdraw tariffs; however, the provider shall post the rates, terms, and conditions on their website. It is unclear from the legislation if tariffs will still be filed for review by the PRC under NMAC 1978 17.11.19, Expedited Procedures for Competitive Local Exchange Carriers, and NMAC 1978 17.11.21, Expedited Procedures for Intrastate Long Distance Providers and afterwards upon request withdraw them, given they are posted to the carrier's website. Also, if a tariff is withdrawn from the PRC, it may be implied that the PRC no longer has jurisdiction over that tariffed service. The concept of a tariffed offering is that it is a universal service offering for which the rates, terms, and conditions of service are reviewed and on file with the PRC, that must be made available to all of that provider's prospective and current customers.

SB 122 would eliminate the requirement that individual contracts be filed by CLECs and interstate long distance providers.

The provisions of this bill will not apply to incumbent local exchange carriers, who will still be required to submit tariffs and individual contracts with the NMPRC.

PERFORMANCE IMPLICATIONS

The Consumer Relations Division of the PRC currently relies on filed tariffs to assist in resolving consumer complaints; this ability could be compromised, if tariffs for some reason were unavailable on company websites as required.

ADMINISTRATIVE IMPLICATIONS

The bill may require new procedures for the recording of, and access to, tariffs that were filed but subsequently withdrawn. However, this legislation could potentially reduce the workload of the PRC in the area of telecommunications. At this time, it is unclear if the PRC would monitor the business' websites for compliance.

The bill may also remove an important source of information that the PRC uses to fulfill its duty to resolve consumer conflicts.

RELATIONSHIP

The PRC submitted the following observation:

There is a relationship to Senate Bill 4 which allows for the elimination of regulation for a telecommunications provider through a showing with the PRC of a revised standard for effective competition. The first part of this bill adds language to NMSA 1978 63-9A-8, although it appears to not conflict with the modified language in SB 4. SB 122 adds language to NMSA 1978 63-9A-9 for the filing of individual contracts. SB 4 adds language to NMSA 1978 63-9A-8 stating that the language in that section is to be consistent with NMSA 1978 63-9A-9. There appears to be no conflict in the proposed language involving NMSA 1978 63-9A-9 in either of those bills.

TECHNICAL ISSUES

The PRC notes:

The term "message telecommunications services" is broad and could conceivably include any form of telecommunications services by any type of provider. This bill as amended will allow any provider of telecommunications services to withdraw its filed business tariffs, and upon doing so, not be required to file individual contracts under 63-9A-9. One inference is that any telecommunications carrier could choose to "deregulate" itself simply by filing a notice to the Commission that it is withdrawing its tariffs for business services.

The bill as amended would allow LECs [including incumbents Qwest and Windstream] and other telecommunications providers to withdraw tariffs and simply post them on their website. It is unclear from the legislation if business tariffs will still be filed for review by the PRC under the rules for those stated providers, prior to withdrawing them, given that they are to be posted to the carrier's website. Also, if a business tariff is withdrawn from the PRC, it may be implied that the PRC no longer has jurisdiction over that tariffed service. The concept of a tariffed offering is that it is a universal service offering for which the rates, terms, and conditions of service are reviewed and on file with the PRC, that must be made available to all of the provider's prospective and current customers.

OTHER SUBSTANTIVE ISSUES

It is unclear what problem this bill attempts to solve. For many years, it has been the policy of the State of New Mexico to promote an effectively competitive marketplace for telecommunications services. The extent to which this policy has been successful has never been formally examined, despite current law providing ample opportunity to make this showing. Representatives of Qwest and Windstream have claimed that competition is increasing and thus there is a need for statutory change. Yet if competition is truly increasing, that would seem to be evidence that the law is working as intended and doesn't need to be changed. The Attorney General, on the other hand, commissioned a study that found that New Mexico is dead last in terms of competitive penetration by telecommunications firms.

ALTERNATIVES

Telecommunications providers could be required to file tariffs electronically with the NMPRC without a paper submission. Those files could be kept on file electronically with the NMPRC without a paper copy, and those tariffs could also be posted to the provider's website.

AMENDMENTS

The bill/amendment should define the terms "message telecommunications services" and "withdraw"

The bill should clarify whether business tariffs would need to be filed before it can later be withdrawn.

DL/mew