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SENATE BILL 4

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Carlos R. Cisneros

FOR THE SCIENCE, TECHNOLOGY AND TELECOMMUNICATIONS 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.

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

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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 Section 63-9A-9 NMSA 1978 and the purposes of the New Mexico
6 Telecommunications Act, [~~modify, reduce or~~] eliminate rules,
7 regulations and other requirements applicable to the provision
8 of such service, including the fixing and determining of
9 specific rates, tariffs or fares for the service. The
10 commission's action may include the detariffing of service or
11 the establishment of minimum rates [~~which will~~] that cover the
12 incremental costs for the service. Such modification shall be
13 consistent with the maintenance of the availability of access
14 to local exchange service at affordable rates and comparable
15 message [~~telecommunication~~] telecommunications service rates,
16 as established by the commission, for comparable markets or
17 market areas, except that volume discounts or other discounts
18 based on reasonable business purposes shall be permitted. Upon
19 petition or request of an affected telecommunications company,
20 the commission, upon a finding that the requirements of
21 [~~Subsection~~] Subsections B and C of this section are met, shall
22 [~~modify~~] eliminate the same or similar regulatory requirements
23 for those providers of comparable public telecommunications
24 services, including interexchange carriers and competitive
25 local exchange carriers, in the same relevant markets so that

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1 there shall be parity of regulatory standards and requirements
2 for all such providers. The commission shall issue its final
3 order on such petition or request within one hundred twenty
4 days from the petition or request date.

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

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

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

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

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

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

23 C. When considering whether conditions provided in
24 Subsection B of this section have been met in the relevant
25 market area, the commission shall rely on evidence concerning

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1 the following:

2 (1) the presence or absence of wireless
3 communications services;

4 (2) the presence or absence of cable telephony
5 services;

6 (3) the presence or absence of voice over
7 internet protocol services; and

8 (4) the extent to which the incumbent
9 telecommunications company has lost switched access lines to
10 other providers.

11 D. A carrier that is currently regulated under an
12 alternative form of regulation plan shall continue to be
13 subject to the terms and conditions of that plan. However,
14 upon a finding of effective competition by the commission, the
15 commission shall review any existing alternative form of
16 regulation plans to ensure that those plans are consistent with
17 the finding of effective competition. The commission's review
18 and determination shall be completed within sixty days of the
19 commission's finding of effective competition.

20 E. If, pursuant to Subsection A of this section,
21 effective competition is found to be present in relevant
22 markets that account for over fifty percent of the retail
23 switched access lines served by the affected telecommunications
24 company, the elimination of the regulatory requirements shall
25 apply to the company's entire service area. The affected

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1 telecommunications company shall be required to charge the same
2 basic local exchange rates and apply the same service quality
3 performance plans for intrastate retail services across the
4 company's entire service area.

5 ~~[G.]~~ F. No provider of public telecommunications
6 service may use current revenues earned or expenses incurred in
7 conjunction with any noncompetitive service to subsidize
8 competitive public telecommunications services. In order to
9 avoid cross-subsidization of competitive services by
10 noncompetitive telecommunications services, prices or rates
11 charged for a competitive telecommunications service shall
12 cover the cost for the provision of the service. In any
13 proceeding held pursuant to this section, the party [~~providing~~]
14 claiming that the service is priced below incremental costs
15 shall bear the burden of proving that the prices charged for
16 competitive telecommunications services do not cover [~~cost~~]
17 incremental costs and violate antitrust or predatory pricing
18 laws.

19 ~~[D.]~~ G. The commission may, upon its own motion or
20 on the petition of an interested party and after notice to all
21 interested parties and customers and a hearing, reclassify any
22 service previously determined to be a competitive
23 telecommunications service if after a hearing the commission
24 finds that a service is not subject to effective competition."
25