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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 01/30/13  
**LAST UPDATED** 03/05/13    **HB** 198

**SPONSOR** Jeff

**SHORT TITLE** Telecomm. Utility and Carrier Inspection Fee    **SB** \_\_\_\_\_

**ANALYST** Clark

### REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY13	FY14	FY15		
	\$1,000.0	\$1,000.0	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

### SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

### SUMMARY

#### Synopsis of Bill

House Bill 198 amends Section 63-7-20 NMSA 1978, Utility and Carrier Inspection Fee, to provide a more detailed definition of “utility” for purposes of assessing and collecting an annual fee. The new definition includes telecommunication providers, including any telephone company, telecommunications transmission company, commercial mobile radio services company, other provider of comparable alternative services or pay telephone provider regulated in whole or in part by the Public Regulation Commission (PRC).

### FISCAL IMPLICATIONS

The PRC reports there is a difference of opinion among telecommunications providers regarding the applicability of the existing utility and carrier inspection fee statute to wireless providers and Voice-Over-Internet-Protocol (VoIP) providers. Accordingly, not all wireless and VoIP providers pay utility and carrier fees. For instance, Verizon and AT&T Wireless do pay utility and carrier fees, but Sprint and T-Mobile do not. Verizon and AT&T are the two largest wireless providers in the state, but Sprint and T-Mobile are the next two largest providers.

Because the bill changes the definition of the term “utility” under this statute to expressly include a wider variety of telecommunications providers, additional monies may be paid by other telecommunications providers that currently do not pay these fees. It is extremely difficult to

estimate how much additional general fund monies may be raised if currently non-paying wireless and VoIP providers paid utility and carrier fees, but the PRC estimates an additional \$1 million or more is possible.

Utility and carrier fee payments are collected by the PRC and go directly into the general fund. The PRC collected the following fee amounts for calendar year 2011 from telecommunications providers:

Incumbent Local Exchange Carriers (ILECs)	\$1,693,592
Wireless Carriers	\$1,649,893
Competitive Local Exchange Carriers (CLECs) and Long Distance Providers (IXCs)	\$ 854,994
Total	\$4,198,479

Opponents of this bill assert that perhaps the fiscal scoring should show a negative impact or revenue loss to cities or counties that receive franchise fees from the cable industry. However, this bill does not in any way prevent or prohibit the continuation of any fees cable companies pay counties or municipalities. The concern voiced is that this could lead at some point in the future to legislation allowing the PRC to regulate the cable industry, which then could affect franchise fee payments to municipalities and counties. This concern is hypothetical at the moment, but it is an important note for any potential future legislation that would enact such regulation.

### **SIGNIFICANT ISSUES**

Analysis from the PRC shows this new definition for “utility” could be read to include not just local exchange carriers such as CenturyLink, Windstream, and Frontier Communications, but also VoIP and wireless providers.

The bill provides minor clean-up language, but also strikes the phrase “by virtue of the provisions of Article 11 of the constitution of New Mexico with respect to its rates and service.” The PRC notes deletion of this language implies that utilities and carriers that are subject to the jurisdiction of the PRC -- whether or not the PRC regulates their rates and service -- must pay the utility and carrier fee.

Telecommunications providers that are regulated in whole or in part by the PRC include ILECs, CLECs, IXCs, payphone providers, and wireless providers under consumer protection rules. The PRC so far has not asserted jurisdiction over VoIP providers with the exception of the collection of New Mexico State Rural Universal Service Fund (NMRUSF) surcharge payments.

The PRC reports the FCC has defined broadband services to be “information services” but not telecommunications services. It has stated that VoIP providers are information services that have telecommunications characteristics.

### **TECHNICAL ISSUES**

The PRC reports the issue of whether wireless or VoIP providers are required to make utility and carrier payments under the proposed revised statutory scheme may still be a matter of legal contention after the passage of the bill. Wireless providers have raised this issue in various cases at the PRC.

**WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Telecommunications providers, including wireless and VoIP providers, will continue to pay the utility and carrier fees as they feel they are required under current statute. Currently, some wireless providers do pay the fee and some do not.

JC/bm:svb