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FISCAL IMPACT REPORT

ORIGINAL DATE 3/4/19

SPONSOR HSEIC **LAST UPDATED** _____ **HB** 385/HSEICS

SHORT TITLE Access to Telecomm Rural Service Fund **SB** _____

ANALYST Martinez/Edwards

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY19	FY20	FY21	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	See Fiscal Impact	See Fiscal Impact				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From (in response to HSEIC substitute)

New Mexico Attorney General (NMAG)

Responses Not Received From (in response to HSEIC substitute)

Public Regulation Commission (PRC)

Responses Received From (in response to Bill as introduced)

Public Regulation Commission (PRC)

SUMMARY

Synopsis of Bill

The House State Government, Elections and Indian Affairs Committee Substitute for House Bill 385 amends the Rural Telecommunications Act and makes changes to the eligibility requirements for receipt of state rural universal service fund (SRUSF). HB385 also adds a definition for “telecommunications infrastructure”.

The SRUSF is a non-public fund that is financed through surcharges on telecommunication customers’ bills and administered by a third party administrator under the supervision of the Public Regulation Commission (PRC). A telecommunications company, who has been designated an Eligible Telecommunications Carrier (ETC) can receive funds from the SRUSF under certain statutorily defined circumstances.

Because one of the ETCs in New Mexico is not eligible to receive SRUSF under the current

access reduction support payments provisions, amendments are proposed to the definition of “comparable carrier” and additional authorization to receive funds set out in amendments to Subsection L of NMSA 63-9H-6.

“Incumbent rural telecommunications carriers,” defined as those carriers serving fewer than fifty thousand access lines within the state and having been designated as eligible communications carriers by the state corporation commission or the public regulation commission.

The carriers referenced in Section 2(L)(1) are not eligible for funding based on revenue-neutral rate rebalancing that is available to “incumbent local exchange carriers,” defined as carriers that were designated as eligible by the state corporation commission in an October 23, 1997 order in Docket # 97-93-TC (the Rural Telecommunications Act), or their successors or assignees. See Sections 1(I), 2(K).

The substitute clarifies that need-based funding will be based on operating costs, if the Commission finds that “the applicant’s operation costs are comparable to, or higher than, comparable carriers receiving support pursuant to rate rebalancing” Section 2(L)(1).

It is unclear as to why a new definition of “telecommunications infrastructure,” has been added as it doesn’t seem to relate directly to the other provisions of the statute. In its current form, the statute doesn’t appear to restrict access to the NMRUSF based upon use of technology.

FISCAL IMPLICATIONS

The following was provided by the Public Regulation Commission in response to the original bill. Analysis of the HSEIC substitute was not received in time for this FIR:

The impact of this bill will result in a continued statutory demand on the SRUSF after the expiration of support based on need for Sacred Wind in 2020. The Commission recently changed the methodology for funding the SRUSF and increased the fixed rate amount on customer access lines. The third party administrator and the Commission has had little experience with these changes to predict whether the revenues generated will cover existing and future demand, including broadband, and other demands on the fund. However, in the short term, payments into the fund under the current funding methodology appear to be sufficient. The estimated demand on the fund for 2019 is \$29,211,663.36, just under the annual statutory cap of \$30 million. Also, there are also two pending cases where companies are asking for funds from the SRUSF for additional low income support.

SIGNIFICANT ISSUES

The following was provided by the Public Regulation Commission in response to the original bill:

Background

The Rural Telecommunications Act of New Mexico was initially enacted in 1999 and amended in 2005, 2013 and 2017 to clarify the use of the NMRUSF, to adjust the funding formula for access reduction, enacting a surcharge cap and then replacing it with a cap on

the fund, and establishing a broadband fund that would be financed out of the NMRUSF. The original demand obligation of the fund was a little more than \$24 M per year. However, subsequent statutory amendments and a remand from the NM Supreme Court to the Commission changed that. That funding obligation for access reduction payments to the ILECs remained steady over time, until further revisions to the access support funding mechanism in NMSA 63-9H-6.K as a result of the passage of SB 308 in the 2017 Regular Legislative Session. Currently, 2019 access reduction support payments to the eligible ILEC ETCs is \$18,843,564.00 annually, not including Qwest Corporation. That figure does not include Low Income payments, disbursements for demand based on need and the funding of the \$5 million annual broadband grants.

Prior to the receipt of access reduction support, ILECs were required to make up for some of the lost access revenue from increases in customer rates. Due to its size, Qwest Corporation only received reimbursement from this “rate rebalancing”, and did not receive access reduction support. This “rate rebalancing” allowed a special surcharge to be placed on customers’ bills to account for the increase in rates.

The only ILEC ETC which was not in place at the time of the implementation of the rate-balancing efforts and access reduction provision of the RTA was Sacred Wind Communications. Sacred Wind was formed to purchase Qwest Corporation’s (now CenturyLink QC) network facilities on Navajo Nation lands; Sacred Wind used the then existing Qwest network, built two central offices to connect those facilities, and augmented that centralized wireline network with a fixed wireless network to expand both voice and broadband service to unserved and underserved areas of the Navajo Nation. Sacred Wind received designation to be an ILEC by the Commission in Case No. 05-00272-UT, and has grown to become one of the largest rural ILECs in the state. However, they currently do not receive access reduction support like the other rural ILECs who benefitted from the prior access reduction and rate rebalancing actions of the Commission.

However, Sacred Wind was awarded support based on need in the amount of \$1.4 million per year over five years by the Commission in Case No. 15-00058-UT. This award allowed Sacred Wind to further expand voice and broadband service to new areas of their service territory. That funding will expire in the year 2020. At that point, Sacred Wind will not receive ongoing support from the SRUSF unless they once again petition the Commission for support based on need.

Responsibility for management of the revenues and demands on the SRUSF is currently (by statute) vested in the third party administrator under the supervision of the Commission and as specifically defined by Commission rules. The proposed statutory change will change that responsibility.

ADMINISTRATIVE IMPLICATIONS

The following was provided by the Public Regulation Commission:

The Commission will likely need to initiate a proceeding to determine how much support to provide an eligible carrier subject to these proposed statutory changes, upon

application by the affected carrier. In addition to determining what a “comparable carrier” is in reference to the applicant per the definition of a “comparable carrier”, the Commission must also determine if an applicant qualifies based on financial need. As the bill was originally drafted, The Commission would only need to determine per-line support based on a comparison to “comparable” carriers that 1) operate in a similar geographic area; 2) have a comparable amount of telecommunications infrastructure, and 3) a similar amount of access lines.

However, the amendment requires the Commission to also look at the operating costs of other ETCs it deems to be “comparable” to the applicant carrier since the applicant carrier’s operating costs must be comparable to, or higher than, the comparable carriers selected by the Commission in its analysis in order for that ETC to receive support. This will likely add to the complexity of the proceeding and additional burden on the applicant for determination for eligibility at the Commission, but not an additional FTE.

TECHNICAL ISSUES

The following was provided by the Public Regulation Commission:

See Administrative Implications. The Commission will need to interpret the statute to determine how to fund the eligible ETC based on the definition of a “comparable carrier” in the bill. Some of the terms defining a comparable carrier, such as “similar geographic area”, “comparable amount of telecommunications infrastructure”, and “similar amount of access lines” is vague and lend themselves to a great deal of interpretation. On the other hand, it will allow the Commission a fair amount of latitude based upon its own judgment and knowledge of the SURSF to set a fair amount of yearly support for the ETC eligible for support affected by this legislation.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The following was provided by the Public Regulation Commission:

If Sacred Wind wants additional support after its current support based on need expires in 2020, Sacred Wind will be required to come before the Commission in another docketed proceeding to convince the Commission it qualifies for support based on need per NMAC 17.11.10.25.

TE-JM/sb