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SENATE BILL 850

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

BEN D. ALTAMIRANO

AN ACT

RELATING TO TELECOMMUNICATIONS; AMENDING AND ENACTING SECTIONS
OF THE NMSA 1978 TO MODIFY THE NEW MEXICO TELECOMMUNICATIONS
ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 63-9A-1 NMSA 1978 (being Laws 1985,
Chapter 242, Section 1) is amended to read:

"63-9A-1. SHORT TITLE. -- [~~Sections 1 through 21 of this
act~~] Chapter 63, Article 9A NMSA 1978 may be cited as the "New
Mexico Telecommunications Act". "

Section 2. Section 63-9A-2 NMSA 1978 (being Laws 1985,
Chapter 242, Section 2, as amended) is amended to read:

"63-9A-2. PURPOSE AND FINDINGS. --

A. The legislature declares that it remains the
policy of the state [~~of New Mexico~~] to maintain the availability

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1 of access to telecommunications services at affordable rates.
2 Furthermore, it is the policy of [~~this~~] the state to have
3 comparable message telecommunications service rates, as
4 established by the commission, for comparable markets or market
5 areas. To the extent that it is consistent with maintaining
6 availability of access to service at affordable rates and
7 comparable message telecommunications service rates, it is
8 further the policy of [~~this~~] the state to encourage competition
9 in the telecommunications industry, thereby allowing access by
10 the public to [~~resulting~~] rapid advances in telecommunications
11 technology. It is the purpose of the New Mexico
12 Telecommunications Act to permit a regulatory framework that
13 will allow an orderly transition from a regulated
14 telecommunications industry to a competitive market environment.

15 B. The purposes of the New Mexico Telecommunications
16 Act are intended to be consistent with the federal
17 Telecommunications Act of 1996, and to provide for the
18 transition to a competitive telecommunications industry and to
19 provide the commission guidance during this transition. A
20 competitive market environment is intended, among other
21 benefits, to encourage continued investment in the state's
22 infrastructure and to allow cost recovery for this investment.

23 C. The legislature finds that consumers demand
24 choice and variety in telecommunications services. No single
25 telecommunications company, unless designated as a carrier of

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1 last resort, shall be singly responsible for providing
2 telecommunications services in an area. Wholesale regulation
3 pursuant to the federal Telecommunications Act of 1996 and end-
4 user choice of services from multiple companies will promote the
5 availability of affordable telecommunications services.

6 D. The legislature finds that access by all New
7 Mexico consumers, including low-income consumers and those in
8 rural, insular and high-cost areas, to an evolving level of
9 telecommunications services, including interexchange services
10 and advanced telecommunications and information services, that
11 are reasonably comparable to those services and rates available
12 in urban areas, is in the public interest and should be
13 encouraged to be available to all residents."

14 Section 3. Section 63-9A-3 NMSA 1978 (being Laws 1985,
15 Chapter 242, Section 3, as amended) is amended to read:

16 "63-9A-3. DEFINITIONS. --As used in the New Mexico
17 Telecommunications Act:

18 A. "actual costs" means total costs incurred, as
19 reflected on the books of account of a telecommunications
20 company, to provide a service, including a reasonable profit,
21 and a proportionate share of joint and common costs of the
22 telecommunications company, as well as depreciation lives used
23 for financial reporting purposes;

24 B. "affiliate" means a person that directly or
25 indirectly owns or controls, is owned or controlled by or is

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1 under common ownership or control with another person. For
2 purposes of this subsection, "own" means to own a ten-percent or
3 greater equity or equivalent interest;

4 [A-] C. "affordable rates" means local exchange
5 service rates that promote universal service within a local
6 exchange service area, giving consideration to the economic
7 conditions and actual costs of the telecommunications company to
8 provide service in [such] the area;

9 D. "affordability threshold" means the statewide
10 price established by the commission as the maximum amount that a
11 telecommunications company may charge an end-user for universal
12 service that qualifies for New Mexico universal service fund
13 reimbursement to the telecommunications company;

14 [B-] E. "cable television service" means the one-way
15 transmission to subscribers of video programming or other
16 programming service and subscriber interaction, if any, [which]
17 that is required for the selection of such video programming or
18 other programming service;

19 [C-] F. "commission" means the state corporation
20 commission;

21 [D-] ~~"competitive telecommunications service" means a~~
22 ~~service which has been determined to be subject to effective~~
23 ~~competition pursuant to Section 63-9A-8 NMSA 1978;~~

24 ~~E. "effective competition" means that the customers~~
25 ~~of the service have reasonably available and comparable~~

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1 ~~alternatives to the service;]~~

2 G. "eligible telecommunications company" means a
3 telecommunications company determined to be eligible for
4 reimbursement from the New Mexico universal service fund;

5 H. "end-user" means a subscriber-customer who
6 purchases telecommunications services from a telecommunications
7 company for personal use and not for resale, directly or
8 indirectly, to others;

9 I. "enhanced services" means services offered over
10 common carrier transmission facilities that employ computer
11 processing applications that act on format, content, code,
12 protocol or similar aspects of the end-user's transmitted
13 information; provide the end-user additional different or
14 restructured information; or involve end-user interaction with
15 stored information. "Enhanced services" are not regulated;

16 ~~[F-]~~ J. "fund" means the New Mexico universal
17 service fund;

18 K. "incumbent telecommunications company" means a
19 telecommunications company that on February 8, 1996 provided
20 local exchange service in New Mexico and was deemed to be a
21 member of the exchange carrier association pursuant to 47 C. F. R.
22 69.601 (b) or is a person or entity that, on or after February
23 8, 1996, became a successor or assign of such a member;

24 ~~[G-]~~ L. "local exchange area" means a geographic
25 area encompassing one or more local communities, as described in

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1 maps, tariffs or rate schedules filed with the commission, where
2 local exchange rates apply;

3 [~~H.~~] M. "local exchange service" means the
4 transmission of two-way interactive switched voice
5 communications furnished by a telecommunications company within
6 a local exchange area;

7 [~~I.~~] N. "message telecommunications service" means
8 telecommunications service between local exchange areas within
9 the state for which charges are made on a per-unit basis, not
10 including wide area telecommunications service, or its
11 equivalent, or individually negotiated contracts for
12 telecommunications services;

13 [~~J.~~] ~~"noncompetitive telecommunications service"~~
14 ~~means a service which has not been determined to be subject to~~
15 ~~effective competition pursuant to Section 63-9A-8 NMSA 1978;~~

16 [~~K.~~] O. "private telecommunications service" means a
17 system, including the construction, maintenance or operation
18 thereof, for the provision of telecommunications service, or any
19 portion of such service, by a person or entity for the sole and
20 exclusive use of that person or entity and not for resale,
21 directly or indirectly. For purposes of this definition, the
22 person or entity [~~which~~] that may use such service includes any
23 affiliates of the person or entity, provided that at least
24 eighty percent of the assets or voting stock of the affiliates
25 is owned by the person or entity. If any other person or entity

. 114334.3

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1 uses the telecommunications service, whether for hire or not,
2 the private telecommunications service is a public
3 telecommunications service;

4 ~~[E.]~~ P. "public telecommunications service" means
5 the transmission of signs, signals, writings, images, sounds,
6 messages, data or other information of any nature by wire,
7 radio, lightwaves or other electromagnetic means originating and
8 terminating in ~~[this]~~ the state regardless of actual call
9 routing. "Public telecommunications service" does not include
10 the provision of terminal equipment used to originate or
11 terminate such service; private telecommunications service;
12 broadcast transmissions by radio, television and satellite
13 broadcast stations regulated by the federal communications
14 commission; radio common carrier services, including but not
15 limited to commercial mobile ~~[telephone]~~ radio service and radio
16 paging; or one-way cable television service; ~~[and]~~

17 Q. "retail telecommunications service" means
18 telecommunications services offered for sale to an end-user;

19 R. "rural area" means any study area as referenced
20 in the federal Telecommunications Act of 1996 that does not
21 include any incorporated place of ten thousand inhabitants or
22 more;

23 S. "rural telephone company" means "rural telephone
24 company", as defined in the federal Telecommunications Act of
25 1996;

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1 T. "small telephone company" means a
2 telecommunications company providing local exchange service
3 having fewer than fifty thousand access lines in service in New
4 Mexico and that has fewer than two percent of the nation's
5 subscriber lines installed in the aggregate nationwide;

6 [M-] U. "telecommunications company" means an
7 individual, corporation, partnership, joint venture, company,
8 firm, association, proprietorship or other entity [which] that
9 provides public telecommunications service;

10 V. "telecommunications service" is that service
11 offered for a fee directly to the public, or to such classes of
12 users as to be effectively available directly to the public,
13 regardless of the facilities used, and does not include
14 telecommunications services that are deregulated as of July 1,
15 1997 or enhanced services;

16 W. "universal service" means one-party; voice-grade;
17 touch-tone; access to telephone relay systems; access to
18 directory assistance; access to interchange carriers; access to
19 emergency services, including 911 and E911; listings; and those
20 telecommunications services that the commission may determine
21 from time to time are essential for education, public health or
22 public safety, including access to emergency services, services
23 for the deaf and disabled, services to schools, health care
24 services and library services;

25 X. "wholesale regulation" means regulation that

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1 applies only to the sale of wholesale telecommunications
2 services;

3 Y. "wholesale telecommunications service" means a
4 telecommunications service offered for resale or unbundled
5 network elements offered by a telecommunications company
6 pursuant to the federal Telecommunications Act of 1996;

7 Z. "wire center" means the location where the
8 telephone company terminates outside plant cables and connects
9 lines to switching equipment, also called a switch. A wire center
10 may have more than one switch serving the same area; and

11 AA. "wire center serving area" means the area of an
12 exchange served by a single wire center."

13 Section 4. Section 63-9A-5 NMSA 1978 (being Laws 1985,
14 Chapter 242, Section 5) is amended to read:

15 "63-9A-5. REGULATION BY COMMISSION. -- Except as otherwise
16 provided in the New Mexico Telecommunications Act or the federal
17 Telecommunications Act of 1996, each public telecommunications
18 service is declared to be affected with the public interest and,
19 as such, is subject to the provisions and regulation of [~~that act~~]
20 those acts [~~including the regulation thereof as hereinafter~~
21 ~~provided~~]. "

22 Section 5. Section 63-9A-6 NMSA 1978 (being Laws 1985,
23 Chapter 242, Section 6, as amended) is amended to read:

24 "63-9A-6. CERTIFICATE REQUIRED. --

25 A. No public telecommunications service shall be

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1 offered in this state except in accordance with the provisions of
2 the New Mexico Telecommunications Act.

3 B. No public telecommunications service shall be
4 offered within this state without the telecommunications company
5 first having obtained from the commission a certificate declaring
6 that the operation is in the present or future public convenience
7 and necessity, unless the operation is otherwise authorized by the
8 New Mexico Telecommunications Act.

9 C. The commission shall have full power and authority
10 to determine matters of public convenience and necessity relating
11 to the issuance of a certificate of public convenience and
12 necessity to a [~~provider of public telecommunications service~~]
13 telecommunications company; provided, however, that in keeping
14 with the purposes of the New Mexico Telecommunications Act, the
15 commission shall not deny an applicant a certificate on the
16 grounds of need if it is shown that the applicant possesses
17 adequate financial resources and technical competency to provide
18 the service. It shall be within the discretion of the commission
19 to determine when and upon what conditions plant, equipment or
20 services may be provided under certificates of public convenience
21 and necessity, by more than one [person] telecommunications
22 company, and the commission may attach to the exercise of rights
23 granted by the certificate such terms and conditions as, in its
24 judgment, the public convenience and necessity may require or as
25 otherwise authorized.

. 114334. 3

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1 ~~[D. Notwithstanding the provisions of Subsection C of~~
2 ~~this section, any telecommunications company with less than one~~
3 ~~hundred thousand access lines holding a certificate of public~~
4 ~~convenience and necessity to provide local exchange service to the~~
5 ~~public shall have the exclusive right to provide local exchange~~
6 ~~service within its certificated service territory and shall not be~~
7 ~~subject to competition in the provision of local exchange service~~
8 ~~in its certificated service territory unless the commission~~
9 ~~determines that public convenience and necessity require~~
10 ~~additional plant or equipment for the provision of local exchange~~
11 ~~service within the certificated service territory of the existing~~
12 ~~telecommunications company and a certificate of public convenience~~
13 ~~and necessity is granted pursuant to Subsection E of this section.~~

14 ~~E.] D.~~ In determining whether [~~public convenience and~~
15 ~~necessity require an additional~~] to issue a certificate to provide
16 [~~local exchange~~] a public telecommunications service [~~in a~~
17 ~~certificated service territory~~], the commission shall [~~in a~~
18 ~~proceeding in which the telecommunications company certificated in~~
19 ~~the affected area is a party~~] consider [~~and determine upon~~
20 ~~substantial evidence that~~] the following: [~~conditions exist~~

21 ~~(1) the existing telecommunications company is~~
22 ~~inadequate to meet the reasonable needs and convenience of the~~
23 ~~public;~~

24 ~~(2) the proposed second plant or equipment would~~
25 ~~eliminate such inadequacy;~~

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1 ~~(3) it is economically feasible to operate the~~
2 ~~proposed second plant or equipment successfully and continuously~~
3 ~~for the furnishing of local exchange service;~~

4 ~~(4)~~ (1) whether the applicant ~~[for the second~~
5 ~~plant or equipment]~~ has sufficient financial resources to provide
6 the proposed ~~[local exchange]~~ service properly and continuously;

7 ~~[(5)]~~ (2) whether the applicant ~~[for the second~~
8 ~~plant or equipment]~~ has competent and experienced management and
9 personnel to provide the proposed ~~[local exchange]~~ service;

10 ~~[(6)]~~ (3) whether the applicant ~~[for the second~~
11 ~~plant or equipment]~~ is willing and able to conform to ~~[the~~
12 ~~constitution of New Mexico and]~~ all applicable laws of New Mexico
13 and the rules and regulations of the commission; and

14 ~~[(7) the applicant for the second plant or~~
15 ~~equipment is in every respect willing and able to provide the~~
16 ~~proposed local exchange service properly; and~~

17 ~~(8) granting the additional certificate to the~~
18 ~~applicant shall not have a significant adverse impact on the~~
19 ~~existing telecommunications company]~~

20 (4) if any exemption, suspension or modification
21 is available to any telecommunications company providing the
22 service in the area.

23 ~~[F.]~~ E. All certificates of public convenience and
24 necessity shall:

25 (1) continue in force, notwithstanding the

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1 provisions of this section [~~63-9A-2 NMSA 1978~~]; and

2 (2) remain subject to all terms and conditions
3 imposed by statute or commission order at the time of issuance or
4 in connection with any subsequent amendment, notwithstanding the
5 provisions of [~~that~~] this section. "

6 Section 6. Section 63-9A-6.1 NMSA 1978 (being Laws 1987,
7 Chapter 21, Section 4, as amended) is amended to read:

8 "63-9A-6.1. NEW MEXICO UNIVERSAL SERVICE FUND--
9 ESTABLISHMENT [~~BOARD~~] AND USE. --

10 A. The commission shall establish [~~a~~] and use the
11 "New Mexico universal service fund" to maintain [~~existing~~
12 ~~residential~~] local exchange service at affordable rates, to
13 protect universal service and to preserve the ubiquity of the
14 local exchange network for all consumers and competitors.
15 according to the following standards:

16 (1) the fund shall be used to provide
17 reimbursement to:

18 (a) all authorized telecommunications
19 companies for the difference between the regular price and the
20 discounted price for single-line, voice-grade local exchange
21 residential service offered at a discount to low-income end-users;

22 (b) all authorized telecommunications
23 companies for approved discounts to schools, libraries and rural
24 health care providers to the extent reimbursement is not provided
25 by the federal government or another separately established state

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1 fund:

2 (c) all authorized telecommunications
3 companies for telecommunications services to the deaf and hearing
4 impaired, including telephone relay service, if such services are
5 not funded through a separately established state fund;

6 (d) eligible telecommunications companies
7 for the actual costs of providing eligible services that exceed an
8 affordability threshold, to the extent reimbursement is not
9 provided by the federal government; and

10 (e) authorized telecommunications
11 companies for the reimbursement of the difference between actual
12 costs and price for wholesale services provided by the incumbent
13 telecommunications company, in the event that wholesale prices do
14 not cover costs for unbundled network elements or
15 telecommunications services for resale, to the extent this funding
16 is not provided by direct federal reimbursement or a separately
17 established state fund; and

18 (2) the prices paid for services
19 described in this section and the sums received from federal
20 reimbursement, other separately established state funds and from
21 the universal service fund shall reimburse the telecommunications
22 company providing the service for its actual costs, determined
23 without a rate case.

24 ~~[B. The fund shall be financed by a uniform surcharge~~
25 ~~on all local exchange service customers at a rate to be determined~~

. 114334.3

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1 ~~by the commission. Money deposited in the fund is not public~~
2 ~~money and the administration of the fund is not subject to the~~
3 ~~provisions of law regulating public funds.~~

4 ~~C. The commission shall:~~

5 ~~(1) establish eligibility criteria for~~
6 ~~participation in the fund which assure the availability of service~~
7 ~~at affordable rates without unreasonably increasing rates to local~~
8 ~~exchange service and message telecommunications service~~
9 ~~customers;]~~

10 B. The fund shall be financed by a statewide uniform
11 percentage surcharge on telecommunications services provided in
12 the state, except on service provided pursuant to a low-income
13 telephone assistance plan, and shall be reflected as a separate
14 line item on each end-user bill and trued-up annually. Money
15 currently or subsequently deposited in the fund is not public
16 money. The fund is not subject to the provisions of law
17 applicable to public funds.

18 C. The commission shall:

19 (1) establish eligibility criteria for payment
20 to and disbursement from the fund that assures the availability of
21 service at affordable prices without unreasonably increasing
22 prices to local exchange service and message telecommunications
23 service end-users and does not disadvantage any telecommunications
24 company by requiring the company to directly reduce revenues by an
25 amount more than the amount withdrawn from the fund;

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1 (2) determine which telecommunications companies
2 and services meet the eligibility criteria established in
3 Paragraph (1) of this subsection; and

4 (3) [~~provide for the collection of the surcharge~~
5 ~~and the administration and disbursement of money from~~] oversee the
6 universal service fund.

7 D. The commission shall adopt rules and regulations
8 for the implementation and administration of the fund in
9 accordance with the provisions of this section, including:

10 (1) determination of the costs of service in
11 designated geographic areas within the state that shall be smaller
12 than a wire center serving area as determined by the commission,
13 except rural and small telephone companies may designate their own
14 geographic area as equal to or larger than a wire center serving
15 area. High-cost areas are those designated geographic areas in
16 the state in which the average cost per end-user of providing
17 universal service exceeds the commission-approved statewide
18 affordability threshold; and

19 (2) procedures for the collection of the
20 surcharge from all telecommunications companies and disbursement
21 from the fund to eligible telecommunications companies providing
22 local exchange service.

23 E. To collect, administer and disburse the fund, the
24 commission shall [~~establish a board composed of representatives~~
25 ~~from the providers of local exchange service~~] designate an

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1 independent third-party fund administrator to collect surcharge
2 remittances and to administer and disburse money from the fund to
3 eligible telecommunications companies monthly under the
4 supervision and control of the commission pursuant to [the]
5 established criteria and the rules and regulations promulgated by
6 the commission. Reasonable expenses incurred by the fund
7 administrator in administering the fund shall be recovered from
8 the fund.

9 F. The universal service surcharge shall be applied
10 to any sale of telecommunications service that originates or
11 terminates in the state and is billed to an end-user in the state,
12 or that both originates and terminates in the state regardless of
13 billing address, but not to sales of wholesale telecommunications
14 services.

15 G. Collection of the surcharge to fund the New Mexico
16 universal service fund shall be the responsibility of all
17 telecommunications companies offering telecommunications services
18 to end-users.

19 H. The surcharge shall be calculated by the fund
20 administrator as follows:

21 (1) by June 1 of each year, retail revenues
22 subject to the surcharge and received by each telecommunications
23 company during the preceding calendar year shall be totaled;

24 (2) the amount needed for anticipated
25 distributions from the fund during the next year shall be

1 determined:

2 (3) the percentage of the amount totaled
3 pursuant to Paragraph (1) of this subsection that will produce the
4 amount determined pursuant to Paragraph (2) of this subsection
5 shall be computed:

6 (4) the percentage computed in Paragraph (3) of
7 this subsection shall be adjusted to recover and reimburse any
8 fund shortfalls or excesses from the previous year; and

9 (5) the uniform percentage multiplier and the
10 remittance process shall be distributed to each telecommunications
11 company by September 1 of each year.

12 I. Telecommunications companies shall remit to the
13 fund administrator on a monthly basis the difference between the
14 fund surcharge collected and the amount of disbursement from the
15 fund the company is qualified to receive based on the annual
16 amount due the company, as calculated by the fund administrator.
17 The fund administrator shall disburse monthly from the fund the
18 excess due to an eligible company over the amount of the surcharge
19 collected by that company.

20 J. The fund administrator may audit, at the expense
21 of the fund, any telecommunications company to ensure compliance
22 with the New Mexico Telecommunications Act. Findings of any audit
23 shall be reported to the commission."

24 Section 7. Section 63-9A-6.2 NMSA 1978 (being Laws 1987,
25 Chapter 21, Section 5) is amended to read:

1 "63-9A-6.2. CARRIER OF LAST RESORT. --

2 A. The commission shall establish rules for
3 designating carriers of last resort and for removing such
4 designation. Before designating an additional carrier of last
5 resort for an area served by a rural telephone company, the
6 commission shall find that the designation is in the public
7 interest. Any telecommunications company [~~which~~] that has a
8 certificate of public convenience and necessity permitting it to
9 provide message telecommunications service between or among local
10 exchange areas and has been designated a carrier of last resort in
11 a particular area shall not be allowed to terminate or withdraw
12 from providing message telecommunications service between or among
13 local exchange areas in the subject area without an order of the
14 commission upon a finding that there is another telecommunications
15 company in place capable of providing service without
16 interruption.

17 B. When two or more telecommunications companies are
18 certificated in an area to provide local exchange service, the
19 commission shall designate two companies in each designated
20 geographic area to serve as carriers of last resort for local
21 exchange service. Carriers of last resort shall be responsible
22 for providing universal service. This service obligation may be
23 met through a combination of the company's facilities and resale
24 of the other company's facilities when such facilities are
25 available. When such other facilities are not available, the

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1 servicing carrier of last resort shall provide necessary facilities
2 within the time frames established and in the manner directed by
3 the commission. "

4 Section 8. Section 63-9A-7 NMSA 1978 (being Laws 1985,
5 Chapter 242, Section 7) is amended to read:

6 "63-9A-7. MANNER OF REGULATION. -- Except as otherwise
7 provided in the New Mexico Telecommunications Act, the granting of
8 any certificate of public convenience and necessity to provide a
9 public telecommunications service shall not be deemed to require
10 the holder [~~thereof~~] to provide other telecommunications services
11 under regulation [~~which~~] that are otherwise subject to
12 competition. "

13 Section 9. Section 63-9A-8 NMSA 1978 (being Laws 1985,
14 Chapter 242, Section 8, as amended) is amended to read:

15 "63-9A-8. REGULATION OF RATES AND CHARGES. --

16 A. In accordance with the [~~policy~~] policies
17 established in the New Mexico Telecommunications Act and the
18 federal Telecommunications Act of 1996, the commission shall, by
19 its own motion or upon petition by any interested party, hold
20 hearings to determine if any public telecommunications service is
21 [~~subject to effective competition~~] being provided by more than one
22 company in the relevant market area whether through the company's
23 own facilities, resale or through a mix of both. When the
24 commission has made a determination that a service or part of a
25 service is [~~subject to effective competition~~] provided by more

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

24 B. In determining whether a service is ~~[subject to~~
25 ~~effective competition]~~ provided by more than one company, the

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1 commission shall consider the following:

2 (1) the extent to which services are reasonably
3 available from an alternate [providers] provider in the relevant
4 market area regardless of whether the alternate provider is
5 reselling the service or providing the service through its own
6 facilities, in whole or in part;

7 (2) the ability of alternate providers to make
8 functionally equivalent or substitute services readily available
9 at competitive rates, terms and conditions; [and]

10 (3) existing economic or regulatory barriers;

11 (4) whether there is more than one provider in the
12 relevant market area as defined by the petitioner; and

13 (5) whether there is an alternate provider of
14 similar or substitute services in the relevant market area as
15 defined by the petitioner.

16 C. ~~[No provider of public telecommunications service~~
17 ~~may use current revenues earned or expenses incurred in~~
18 ~~conjunction with any noncompetitive service to subsidize~~
19 ~~competitive public telecommunications services. In order to avoid~~
20 ~~cross-subsidization of competitive services by noncompetitive~~
21 ~~telecommunications services] Prices [or rates] charged for a~~
22 ~~[competitive telecommunications] service provided by more than one~~
23 ~~telecommunications company shall cover the cost for the provision~~
24 of the service. In any proceeding held pursuant to this section,
25 the party providing the service shall bear the burden of proving

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1 that the prices charged for [~~competitive telecommunications~~] the
2 services cover cost.

3 [~~D. The commission may, upon its own motion or on the~~
4 ~~petition of an interested party and after notice to all interested~~
5 ~~parties and customers and a hearing, reclassify any service~~
6 ~~previously determined to be a competitive telecommunications~~
7 ~~service if after a hearing the commission finds that a service is~~
8 ~~not subject to effective competition.]"~~

9 Section 10. A new section of the New Mexico Telecommunications
10 Act is enacted to read:

11 "[NEW MATERIAL] WHOLESALE REGULATION--STANDARDS. --

12 A. In setting prices for wholesale telecommunications
13 services, the commission shall consider the following standards:

14 (1) unbundled network elements offered by incumbent
15 local exchange telecommunications companies shall be subject to
16 price regulation. For purposes of this section, "network element"
17 means a facility or equipment used in the provision of a
18 telecommunications service, including features, functions and
19 capabilities provided by means of the facility or equipment,
20 including subscriber numbers, databases, signaling systems or
21 information sufficient for billing and collection or used in the
22 transmission, routing or other provision of a telecommunications
23 service. The price for unbundled network elements shall be at a
24 level sufficient to recover the total costs of providing the
25 unbundled network elements. "Total costs of an unbundled network

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1 element" means all of the actual costs incurred to provide the
2 unbundled network element, as reflected in the books of account of
3 the telecommunications company providing the network element.

4 Prices shall be established using state-specific cost data,
5 including depreciation lives as used for financial reporting
6 purposes, and the reserve deficiency resulting from previously
7 under-depreciated plant. If the books of accounts do not contain
8 depreciation lives used for financial reporting purposes, then for
9 purposes of pricing, the costs in the books of accounts shall be
10 modified so the price for unbundled network elements includes
11 recovery of depreciation lives used for financial reporting
12 purposes. In establishing prices, the commission shall include
13 recovery of a proportionate share of joint and common costs of the
14 telecommunications company and a fair return on investment; and

15 (2) consistent with the federal Telecommunications
16 Act of 1996, wholesale prices for telecommunications services for
17 resale shall be computed based on retail prices charged to end-
18 users of the telecommunications service requested, excluding costs
19 avoided by the telecommunications company. Actual retail avoided
20 costs for the purpose of establishing wholesale rates for
21 telecommunications services for resale are limited to retail
22 advertising and promotions, retail billing, retail order taking
23 and retail marketing expense. Prices for each wholesale
24 telecommunications service shall be established to permit recovery
25 of the actual costs associated with providing the wholesale

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1 service.

2 B. The actual capital and other nonrecurring costs of
3 expansion, extension, enhanced functionality or modification of a
4 telecommunications company's network requested by another
5 telecommunications company, to the extent the requested work
6 exceeds the currently available facilities, shall be paid for in
7 full in advance by the requesting telecommunications company
8 before such work is undertaken.

9 C. The commission shall not use external or internal
10 subsidies and adjustments or the imputation of revenues in
11 calculating any wholesale price.

12 D. The commission shall not de-average wholesale rates
13 to reflect costs until retail rates are similarly de-averaged. "

14 Section 11. A new section of the New Mexico Telecommunications
15 Act is enacted to read:

16 "[NEW MATERIAL] **ADDITIONAL ASSURANCE OF SERVICE**
17 **AVAILABILITY.** -- In order to assure availability of investment
18 capital for telecommunications companies, the following costs and
19 investments must be recovered by the telecommunications company
20 providing the service and may take the form of a surcharge on the
21 provision by the company of retail services and on the provision
22 of wholesale services if the wholesale rate for the service is
23 determined by a discount from the retail rate:

24 A. unrecovered historical costs of operation of the
25 network of a telecommunications company regulated by the

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1 commission; and

2 B. investments made by a telecommunications company
3 while under regulation that become stranded subsequent to the
4 federal Telecommunications Act of 1996. In conjunction with its
5 determinations required by Section 13 of this 1997 act, the
6 commission shall allocate the amount of investment stranded for
7 each telecommunications company annually and amortize its recovery
8 over twelve months."

9 Section 12. A new section of the New Mexico Telecommunications
10 Act is enacted to read:

11 "[NEW MATERIAL] TIME LIMITS.--The commission shall complete
12 any action required or permitted pursuant to its authority
13 granted or directed pursuant to the New Mexico Telecommunications
14 Act within six months of the initiation of the matter to which
15 the required or permitted action is responsive."

16 Section 13. A new section of the New Mexico Telecommunications
17 Act is enacted to read:

18 "[NEW MATERIAL] COST REVIEW.--By January 1, 1999, the
19 commission shall conclude a proceeding other than a rate case that
20 establishes the cost of providing a regulated wholesale
21 telecommunications service hereunder and identify for appropriate
22 recovery under Section 11 of this 1997 act, the unrecovered
23 historical cost of regulated service and all stranded investment
24 associated with such service for each telecommunications company."

25 Section 14. A new section of the New Mexico Telecommunications

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1 Act is enacted to read:

2 "[NEW MATERIAL] COMPETITION.--In order to advance the
3 legislative purposes of this 1997 act, maintain stability in the
4 provision of services, avoid abrupt and potentially disruptive
5 changes and allow small and rural telephone companies a sufficient
6 period to transition into the competitive market, the commission
7 shall make no finding that subjects small or rural telephone
8 companies to competition prior to July 1, 2000, unless the small
9 or rural telephone company has been granted a certificate of
10 registration by the commission to provide competitive services and
11 is engaged in providing competitive services outside its local
12 exchange area. "

13 Section 15. TEMPORARY PROVISION.--The state corporation
14 commission and universal service fund administrator shall
15 establish time frames for 1997 to implement the collection of the
16 universal service fund surcharge beginning January 1, 1998.
17 Calculations of the surcharge for 1997 shall include the existing
18 universal service fund balance.

19 Section 16. SEVERABILITY.--If any part or application of the
20 New Mexico Telecommunications Act is held invalid, the remainder
21 or its application to other situations or persons shall not be
22 affected.

23 Section 17. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 1997.

25 - 27 -

1 FORTY-THIRD LEGISLATURE
2 FIRST SESSION, 1997
3
4

5 March 7, 1997
6

7 Mr. President:
8

9 Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred
10

11 SENATE BILL 850
12

13 has had it under consideration and reports same WITHOUT
14 RECOMMENDATION, and thence referred to the CORPORATIONS &
15 TRANSPORTATION COMMITTEE.
16

17 Respectfully submitted,
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22 Shannon Robinson, Chairman
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25 Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

FORTY- SECOND LEGI SLATURE
SECOND SESSI ON

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KEYBOARD(TYPE SLUGS)

Page 29

Date _____

The roll call vote was 4 For 3 Against

Yes: 4

No: Adair, Ingle, Robinson

Excused: Boitano, Feldman

Absent: None

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1 FORTY- SECOND LEGI SLATURE
2 SECOND SESSI ON

3 ~~KEYBOARD(TYPE SLUGS)~~

Page 30

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6 FORTY- THIR D LEGI SLATURE
7 FIRST SESSI ON, 1997

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10 March 12, 1997

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12 Mr. Presi dent:

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14 Your CORPORATIONS & TRANSPORTATI ON COMMITTEE, to whom
15 has been referred

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17 SENATE BILL 850

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19 has had it under consideration and reports same WITHOUT
20 RECOMMENDATI ON.

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22 Respectfully submi tted,
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FORTY- SECOND LEGI SLATURE
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Page 31

Roman M. Maes, III, Chair man

Adopted _____ Not Adopted _____
(Chi ef Clerk) (Chi ef Clerk)

Date _____

The roll call vote was 6 For 1 Against

Yes: 6

No: Maloof

Excused: Fi del, Gri ego, Robi nson

Absent: None

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