

AN ACT

RELATING TO TELECOMMUNICATIONS; ENACTING THE
TELECOMMUNICATIONS INVESTMENT AND ECONOMIC DEVELOPMENT ACT;
PROVIDING FOR DEREGULATION OF TELECOMMUNICATIONS CARRIERS
AND OTHER CHANGES IN TELECOMMUNICATIONS SERVICES; AMENDING,
REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. SHORT TITLE.--Sections 1 through 12 of this act may be cited as the "Telecommunications Investment and Economic Development Act".

Section 2. PURPOSE.--The purpose of the Telecommunications Investment and Economic Development Act is to:

- A. provide equal treatment for all telecommunications carriers;
- B. eliminate costly and burdensome regulation;
- C. provide incentives for investment in advanced telecommunications infrastructure throughout the state of New Mexico;
- D. provide price stability for residence and business telecommunications customers during the transition to a deregulated market; and
- E. enhance economic development.

Section 3. DEFINITIONS.--As used in the Telecommunications Investment and Economic Development Act:

- A. "commission" means the public regulation commission;
- B. "cost of a retail public telecommunications service" means total service long-run incremental cost,

including an appropriate allocation of shared and common costs, but does not include the imputation of the price of any component unless:

(1) the component to be imputed is essential to the provision of the retail service;

(2) the telecommunications carrier offering the retail service is the sole provider of the essential component;

(3) a competitor cannot practically or economically duplicate the essential component, or obtain an alternative or substitute to the essential component from another source;

(4) the amount imputed is the direct cost of the essential component; and

(5) the failure to impute will result in a price squeeze;

C. "data services" means a telecommunications or information service that:

(1) provides transmission functionality between customers using point-to-point facilities, point-to-multi-point facilities or digital subscriber loop facilities;

(2) uses asynchronous transfer mode, packet, frame, cell or equivalent technology-based transmission;

(3) permits routing of a packet, frame or cell using addressing information contained within the packet, frame or cell; and

(4) uses data conversion protocol;

D. "local exchange area" means a geographic area

encompassing one or more local communities where local exchange prices apply as described in maps or price lists filed with the commission;

E. "long distance service" means public telecommunications service between local exchange areas that both originates and terminates in the state of New Mexico;

F. "public telecommunications service" means offering or providing telecommunications for a fee directly to the public or to such classes of users as to be effectively available directly to the public, regardless of the facilities used, but "public telecommunications service" does not include:

- (1) the provision of terminal equipment used to originate or terminate the service;
- (2) private telecommunications networks;
- (3) broadcast transmissions by radio, television and satellite broadcast stations regulated by the federal communications commission;
- (4) radio common carrier services, as defined by federal law, including commercial mobile radio service, wireless services and paging services;
- (5) internet services; or
- (6) one-way cable television service as defined by federal law;

G. "residence or business dial tone access line service" means a public telecommunications service that provides a residence or business customer with a basic connection to the public switched network for transmission of two-way interactive circuit switched voice communications within a local exchange area;

H. "switched access charges" mean the charges paid by telecommunications carriers that provide long distance services to other telecommunications carriers to originate or terminate long distance calls using local telecommunications facilities; and

I. "telecommunications" means the transmission, between points specified by the user, of information of the user's choosing, without change in the form or the content of the information as sent and received.

Section 4. AUTHORITY OF COMMISSION.--

A. The commission has exclusive jurisdiction to regulate telecommunications carriers consistent with the provisions of the Telecommunications Investment and Economic Development Act. The commission shall regulate telecommunications carriers, and the prices, terms, conditions and provision of public telecommunications services offered by telecommunications carriers, only in the manner expressly prescribed and to the extent expressly authorized by that act.

B. The commission has authority to:

(1) promulgate rules as necessary to carry out its duties and responsibilities pursuant to the Telecommunications Investment and Economic Development Act;

(2) consider petitions for two-way extended area service between two or more local exchange areas, including the establishment of extended area service surcharges;

(3) enforce applicable laws, rules and orders through administrative sanctions, including those pursuant to Section 63-7-23 NMSA 1978, and in the courts;

(4) hear complaints alleging violations of the Telecommunications Investment and Economic Development Act or of any rule promulgated or order issued by the commission pursuant to that act; and

(5) carry out the duties and responsibilities it is authorized to perform pursuant to federal law.

C. The commission may subpoena witnesses and documents and enforce its subpoenas through the district court.

D. The commission has the power, after notice and hearing, to decide questions and issue orders relating to its powers and duties.

E. Nothing in the Telecommunications Investment and Economic Development Act impairs any authority granted to the commission by federal law with respect to wholesale services, including:

(1) determining prices for interconnection facilities, reciprocal compensation and network elements;

(2) establishing resale discounts; and

(3) mediating or arbitrating disputes on open issues after negotiations between competing telecommunications carriers.

Section 5. PRICES FOR SERVICES OFFERED BY TELECOMMUNICATIONS CARRIERS.--

A. No telecommunications carrier is subject to rate of return regulation or to any investigations of its earnings by the commission. In exercising any authority granted to it by the Telecommunications Investment and Economic Development Act, the commission shall not consider

the earnings of a telecommunications carrier with respect to the prices for telecommunications services provided by it. The commission has authority over the prices, terms or conditions of public telecommunications services only to the extent expressly provided in this section or in Sections 6 and 7 of that act. After July 1, 1999, there is no obligation by a telecommunications carrier to make or satisfy a commission or court ordered price reduction.

B. Except as provided in this subsection and in Subsections C, D and E of this section, a telecommunications carrier may establish or change the prices, terms or conditions for its public telecommunications services, or withdraw or terminate the offering of a public telecommunications service, by filing a price list with the commission. Price list filings become effective ten days after filing with the commission. The price list filing requirements of this subsection shall not apply to services that have been deregulated by the commission pursuant to Section 8 of the Telecommunications Investment and Economic Development Act. Prices for 911 service shall be established pursuant to applicable provisions of New Mexico law and shall not be subject to change by a telecommunications carrier pursuant to this subsection.

C. Except as provided in Subsection G of this section:

(1) the prices for residence dial tone access line services offered by a telecommunications carrier that serves more than two hundred fifty thousand access lines in New Mexico, approved and in effect on March 1, 1999, shall be reduced by two dollars forty-eight cents

(\$2.48) on July 1, 1999 and capped for ten years from that date;

(2) the prices for business dial tone access line services offered by a telecommunications carrier that serves more than two hundred fifty thousand access lines in New Mexico shall be capped for five years from July 1, 1999 at thirty-four dollars (\$34.00); and

(3) a telecommunications carrier may increase or decrease the prices of dial tone access line services that are capped pursuant to Paragraph (1) or (2) of this subsection by filing a price list pursuant to Subsection B of this section, but the proposed price shall not exceed the capped prices established for business and residence dial tone access line services pursuant to the Telecommunications Investment and Economic Development Act.

D. After July 1, 2009, price increases for residence dial tone access line service of:

(1) less than two percent in any calendar year become effective after sixty days notice to all affected customers; and

(2) more than two percent in any calendar year become effective upon approval by the commission after notice and a hearing.

E. Switched access charges of a telecommunications carrier that serves more than two hundred fifty thousand access lines in the state shall be capped at the approved prices for those services in effect on January 1, 1998. If switched access charges are reduced, either pursuant to the Telecommunications Investment and Economic Development Act or as an offset for a distribution from the

New Mexico universal service fund, those services shall be capped at the reduced prices. The commission may increase the price cap for switched access charges upon a showing of good cause after notice and an opportunity for a hearing.

F. The notice of hearing required pursuant to Subsection D of this section shall include the reasons for the proposed price increase. The commission shall issue its findings of fact and conclusions of law within one hundred twenty days after filing with the commission and notice to affected customers.

G. The following are not price increases for the purposes of this section:

- (1) a surcharge pursuant to the implementation of the New Mexico universal service fund;
- (2) a charge for mandatory extended-area service ordered by the commission;
- (3) a charge imposed or allowed by the federal communications commission or by federal law; and
- (4) a charge necessitated by a state or local tax, assessment or fee or by any action taken by the state, a state agency or by any county or municipal governmental body.

H. The total price of any intrastate retail public telecommunications services purchased by an internet service provider from a telecommunications carrier that serves more than two hundred fifty thousand access lines in New Mexico shall not increase by more than ten percent over the total price approved and in effect on March 1, 1999, for the three-year period starting on July 1, 1999. This subsection shall apply to any intrastate retail public

telecommunications services purchased by an internet service provider to connect such an internet service provider to the internet.

I. Notwithstanding the provisions of Subsection C of this section, a telecommunications carrier that serves less than two hundred fifty thousand access lines in the state may file an application with the commission requesting the commission to prescribe fair, just and reasonable prices for the telecommunications carrier based on the telecommunications carrier's revenue, expenses and investment in accordance with traditional rate-making principles.

J. A telecommunications carrier may decrease the price of a retail public telecommunications service to a level equal to, but not below, the cost of the retail public telecommunications service.

K. On August 1, 1999, a telecommunications carrier that serves more than two hundred fifty thousand access lines in New Mexico shall reduce its average intrastate switched access charges by four million five hundred thousand dollars (\$4,500,000) for qualifying long distance telecommunications carriers. As used in this subsection, "qualifying long distance telecommunications carrier" means a long distance telecommunications carrier that, either in its own name or through an affiliated telecommunications carrier owned by the long distance telecommunications carrier, was certified to provide local telecommunications services in New Mexico and had constructed local telecommunications facilities in New Mexico as of January 1, 1999.

L. A telecommunications carrier may offer or discontinue offering packages of services five days after filing notice with the commission. A packaged offering may combine a retail public telecommunications service with another telecommunications service or offering. Packaged offerings shall be temporary or permanent at the discretion of the telecommunications carrier filing the packaged offering. A telecommunications carrier shall make any retail public telecommunications services included in a packaged offering individually available to customers in its price list.

M. A telecommunications carrier may offer or discontinue offering special incentives, discounts, temporary price waivers or other promotions one day after filing notice with the commission. A telecommunications carrier may combine a retail public telecommunications service with another telecommunications service or offering in order to create a special incentive, discount, temporary price waiver or other promotion. A telecommunications carrier shall make any retail public telecommunications services included in a special incentive, discount, temporary price waiver or other promotion individually available to customers in its price list.

N. A telecommunications carrier may offer a public telecommunications service on an individual contract basis to a specific customer upon the filing of a notice with the commission. The notice shall describe the public telecommunications services to be offered, the customer to be served, the price of the services to be offered and an affidavit from a representative of the telecommunications

carrier attesting that the prices of the public telecommunications services included in the contract cover their costs. The customer name and location shall, upon request of the applicant, be maintained as confidential information for review only by the commission. The commission shall maintain a public file containing the non-confidential information included in the notice.

O. No telecommunications carrier shall require an end-user residence or business customer that uses a residence or business dial tone access line to gain access to the internet to pay local measured usage charges or any other per minute of use charges to gain that access. This provision does not preclude the application of long distance charges by a telecommunications carrier if the end-user residence or business customer must use long distance service to gain access to the internet.

Section 6. COMPLAINTS.--

A. The commission has full and express authority to hear and decide complaints filed by any interested person, between end-user customers and their telecommunications carrier, or between two or more telecommunications carriers, alleging:

(1) that the price of a public telecommunications service is below cost;

(2) a violation of an interconnection agreement approved by the commission;

(3) the failure to properly flow through access charge reductions; or

(4) a violation of the Telecommunications Investment and Economic Development Act or of a rule

promulgated or an order issued pursuant to that act.

B. Upon adjudication of a complaint filed pursuant to the Telecommunications Investment and Economic Development Act, the commission may:

(1) order a telecommunications carrier to modify the price of a public telecommunications service if the commission determines that the public telecommunications service is priced below the cost of providing that service; or

(2) subject to the terms of an interconnection agreement, enforce the provisions of interconnection agreements between telecommunications carriers consistent with the requirements of federal law.

C. An action taken by the commission pursuant to this section shall be consistent with federal law, and decisions made by the federal communications commission pursuant to federal law.

D. Except with respect to issues relating to the cost of providing a public telecommunications service, the burden shall be on the party complaining to prove the allegations in its complaint. The burden of demonstrating the costs of providing a public telecommunications service shall be upon the telecommunications carrier offering that service.

E. A complaint shall be resolved by the commission within ninety days of the date the complaint is filed.

Section 7. FLOW THROUGH OF REDUCTIONS IN SWITCHED ACCESS CHARGES.--Upon the reduction of switched access charges by a telecommunications carrier, a

telecommunications carrier providing long distance service shall reduce the prices of its intrastate long distance services in order to ensure that the long distance prices paid by all classes of New Mexico intrastate long distance customers reflect the total benefit from any access charge reductions. A telecommunications carrier providing long distance services shall apply at least fifty percent of any reductions in switched access charges to lower the prices of its intrastate residence long distance services. The commission shall retain authority over the prices of long distance services to the extent necessary to ensure that telecommunications carriers providing long distance services flow through the total amount of any switched access charge reductions.

Section 8. DEREGULATION OF DATA SERVICES, LONG DISTANCE SERVICES AND NEW PUBLIC TELECOMMUNICATIONS SERVICES.--

A. Data services offered by a telecommunications carrier shall be deregulated and shall not be subject to any regulation by the commission. If prior to December 31, 2000, the legislative telecommunications investment and economic development committee certifies that the investment required pursuant to Section 9 of the Telecommunications Investment and Economic Development Act has been made by a telecommunications carrier serving more than two hundred fifty thousand access lines in the state, data services shall be deregulated on December 31, 2000. If no such certification is made by the legislative telecommunications investment and economic development committee prior to December 31, 2000, data service shall not be deregulated

until the full investment has been made.

B. Except as provided in Section 7 of the Telecommunications Investment and Economic Development Act, long distance services offered by a telecommunications carrier shall be deregulated and shall not be subject to any regulation by the commission; provided that, unless unlimited usage of long distance is sold for a fixed amount, the price for long distance service shall be calculated and charged on the incremental unit of one-tenth of a minute.

C. Any public telecommunications services first offered by a telecommunications carrier after the effective date of the Telecommunications Investment and Economic Development Act, including any new data or long distance services, shall be deregulated and shall not be subject to any regulation by the commission.

Section 9. INVESTMENT PLAN.--On July 1, 1999, a telecommunications carrier that serves more than two hundred fifty thousand access lines in the state shall sign an agreement with the state, to be executed on behalf of the state by the governor, identifying and guaranteeing specific investments in the amount of forty million dollars (\$40,000,000) in telecommunications infrastructure and other equipment that the telecommunications carrier will make, in addition to deploying fiber to Farmington, New Mexico, all to be completed by December 31, 2001. To monitor and review the progress of the deployment of the telecommunications infrastructure and equipment, the telecommunications carrier shall report quarterly to the legislative telecommunications investment and economic development committee hereby created. The committee shall have six members from which

the members shall elect a chair. The committee is composed of three members of the senate appointed by the president pro tempore of the senate and three members of the house of representatives appointed by the speaker of the house of representatives. No more than two members from either chamber shall be from the same political party. Disputes arising pursuant to the agreement described in this section shall be resolved through binding arbitration before a single arbitrator selected by the presiding judge of the first judicial district. Arbitration may be demanded by either party and, once invoked, shall commence within ten days.

Section 10. EARNINGS FOR CALENDAR YEAR 1998.--On or before July 15, 1999, the commission shall report to the telecommunications investment and economic development committee the 1998 calendar year earnings of a telecommunications carrier that serves more than two hundred fifty thousand access lines in New Mexico. In making its report on 1998 earnings, the commission shall remove the impact of any revenue reduction required as a result of 1997 earnings. To the extent that the 1998 earnings, adjusted to remove the impact of revenue reductions for 1997 earnings, exceeds its authorized level of earnings by forty million dollars (\$40,000,000), a telecommunications carrier that serves more than two hundred fifty thousand access lines in New Mexico shall amend its agreement with the state to increase the amount of its guaranteed investment by the difference between the amount of the adjusted 1998 earnings and forty million dollars (\$40,000,000).

Section 11. CERTIFICATION OF TELECOMMUNICATIONS

CARRIERS.--

A. No public telecommunications service shall be offered within this state except in accordance with the provisions of the Telecommunications Investment and Economic Development Act.

B. No public telecommunications service shall be offered in this state without the telecommunications carrier first having obtained certification from the commission.

C. The commission shall determine all issues of fact and law relating to the issuance of a certificate of authority. In determining whether to issue a certificate pursuant to this section, the commission shall consider whether the applicant:

(1) has sufficient financial resources to provide the proposed public telecommunications service properly and continuously;

(2) has competent and experienced management and personnel to provide the proposed public telecommunications service; and

(3) is willing and able to conform to the rules applicable generally to providers of public telecommunications services.

D. All certificates of public convenience and necessity or certificates of authority or registrations in force on July 1, 1999 shall continue in force and effect subject to the provisions of the Telecommunications Investment and Economic Development Act.

E. A certificate of authority to provide local exchange service issued by the commission pursuant to Subsection C of this section or in force pursuant to

Subsection D of this section shall require a telecommunications carrier to provide only residence and business dial tone access line service in any local exchange areas where it is authorized to provide public telecommunications service.

Section 12. CONSUMER PROTECTIONS.--

A. Within nine months from July 1, 1999, the commission shall adopt rules that establish minimum consumer protections applicable to all telecommunications carriers certified to provide public telecommunications services in this state. These rules shall provide for at least:

(1) minimum billing disclosures designed to promote customers' comprehension;

(2) disclosures and customer notices upon initiation of or change in service or change in price or other service conditions, as appropriate;

(3) fair and reasonable credit and collection procedures and practices, including procedures and practices relating to disconnection of service;

(4) marketing practices consistent with applicable state and federal law, including prohibition of slamming and cramming;

(5) protection of customer proprietary network information consistent with applicable federal and state law; and

(6) minimum retail service quality standards for residence and business dial tone access line services applicable to all telecommunications carriers.

B. No provider of retail public telecommunications service may use current revenues earned

or expenses incurred in conjunction with the provision of its non-deregulated public telecommunications services to subsidize the provision of its deregulated public telecommunications services.

Section 13. APPEALS.--A person may appeal from an action of the commission in accordance with the provisions of Subsections E, F, G and H of Section 63-7-1.1 NMSA 1978.

Section 14. Section 63-7-1.1 NMSA 1978 (being Laws 1998, Chapter 108, Section 52) is amended to read:

"63-7-1.1. COMMISSION POWERS AND DUTIES--
TRANSPORTATION AND TRANSMISSION COMPANIES AND COMMON
CARRIERS--TELEPHONE AND TELEGRAPH COMPANIES.--

A. With respect to transportation and transmission companies and common carriers, other than telecommunications carriers, the commission shall:

(1) fix, determine, supervise, regulate and control all charges and rates of railway, express, telegraph, sleeping car and other transportation and transmission companies and common carriers within the state;

(2) determine any matters of public convenience and necessity with respect to matters subject to its regulatory authority as provided by law;

(3) require railway companies and other common carriers to provide and maintain adequate equipment, depots, stockpens, station buildings, agents and facilities for the accommodation of shippers and passengers and for receiving and delivering freight and express and to provide and maintain necessary crossings, culverts, sidings and other facilities for convenience and safety whenever in the commission's judgment the public interest demands;

(4) require railway companies, transportation companies and common carriers to provide and use reasonable safety practices necessary and proper for the safety of employees and the public as required by federal or state laws and rules;

(5) change, amend and rescind rates;

(6) enforce its rules through administrative sanctions and in the courts; and

(7) carry out all other duties and have all other powers provided by law.

B. The commission has exclusive jurisdiction to regulate telecommunications carriers only in the manner and to the extent authorized by the Telecommunications Investment and Economic Development Act.

C. The commission may subpoena witnesses and documents, enforce its subpoenas through any court and, through the court, punish for contempt.

D. The commission has the power, after notice and hearing of record, to determine and decide any question and to issue orders relating to its powers and duties.

E. An interested party may appeal from a final order of the commission by filing a notice of appeal with the supreme court asking for review of the order within thirty days of the final order. The appellant shall pay to the commission any costs of preparing and transmitting the record to the court.

F. The pendency of an appeal shall not automatically stay the order appealed from. The appellant may seek to obtain a stay from the commission or the supreme court.

G. The appeal shall be on the record of the hearing before the commission and shall be governed by the appellate rules applicable to administrative appeals. The supreme court shall affirm the commission's order unless it is:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record; or

(3) otherwise not in accordance with law.

H. In the case of a failure or refusal of any person to comply with an order of the commission within the time prescribed in the order or within thirty days after the order is entered, whichever is later, unless a stay has been granted, the commission shall seek enforcement of the order in the district court. The enforcement hearing shall be held on an expedited basis. At the hearing, the sole question shall be whether the person has failed to comply with or violated the order."

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Section 15. REPEAL.--Sections 63-9A-1 through 63-9A-6, 63-9A-6.2 through 63-9A-12, 63-9A-14, 63-9A-16 and 63-9A-20 NMSA 1978 (being Laws 1985, Chapter 242, Sections 1 through 6, Laws 1987, Chapter 21, Section 5, Laws 1985, Chapter 242, Sections 7 and 8, Laws 1998, Chapter 108, Section 61 and Laws 1985, Chapter 242, Sections 9 through 12, 14, 16 and 20, as amended) are repealed.

Section 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999. _____

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