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SENATE BILL 680

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Phil Griego

AN ACT

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

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

Section 1. Section 63-9A-2 NMSA 1978 (being Laws 1985,
Chapter 242, Section 2, as amended) is amended to read:

"63-9A-2. PURPOSE. -- The legislature declares that it
remains the policy of the state of New Mexico to maintain the
availability of access to telecommunications services at
affordable rates. Furthermore, it is the policy of this state
to have comparable message telecommunications service rates,
as established by the commission, for comparable markets or
market areas. To the extent that it is consistent with
maintaining availability of access to service at affordable

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1 rates [~~and comparable message telecommunications service~~
2 ~~rates~~], it is further the policy of this state to encourage
3 competition and reduce regulation in the telecommunications
4 industry, thereby allowing access by the public to resulting
5 rapid advances in telecommunications technology. It is the
6 purpose of the New Mexico Telecommunications Act to permit a
7 regulatory framework that will allow an orderly transition
8 from a regulated telecommunications industry to a competitive
9 market environment consistent with the federal
10 Telecommunications Act of 1996. Further, the legislature
11 finds that as part of such regulatory framework, it is
12 necessary to provide disparate regulatory treatment between
13 rural telephone companies and non-rural telephone companies in
14 order to assist with accomplishing the goals established by
15 the above declared policies. Such disparate regulatory
16 treatment is particularly necessary for those citizens who
17 reside in rural New Mexico, which rural areas constitute the
18 bulk of the surface area within the boundaries of New Mexico.
19 Disparate regulatory treatment for rural telephone companies
20 requires relaxed regulation for rural telephone companies with
21 the objective of reducing the cost of regulation as well as
22 the regulatory burden, permitting pricing flexibility and
23 expediting required rate approvals, all consistent with the
24 purpose of an orderly transition from regulation to a
25 competitive market environment and consistent with the federal

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1 Communications Act of 1996. "

2 Section 2. Section 63-9A-3 NMSA 1978 (being Laws 1985,
3 Chapter 242, Section 3, as amended) is amended to read:

4 "63-9A-3. DEFINITIONS. -- As used in the New Mexico
5 Telecommunications Act:

6 A. "affordable rates" means rates for basic local
7 exchange service [~~rates~~] that promote universal service within
8 [~~a local exchange service area~~] New Mexico, giving
9 consideration to the economic conditions and costs to provide
10 service in [~~such~~] the area in which service is provided;

11 B. "basic service" means service that is provided
12 to an end user customer that is consistent with the federal
13 Telecommunications Act of 1996;

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

19 [~~C.~~] D. "commission" means the public regulation
20 commi ssi on;

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

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

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1 ~~comparable alternatives to the service]~~

2 F. "eligible telecommunications carrier" means
3 "eligible telecommunications" carrier as defined in the
4 federal Telecommunications Act of 1996;

5 ~~[F.]~~ G. "fund" means the New Mexico universal
6 service fund;

7 H. "incumbent local exchange carrier" means a
8 person that:

9 (1) was designated as an eligible
10 telecommunications carrier by the state corporation commission
11 in Docket #97-93 TC by order dated October 23, 1997, or that
12 provided local exchange service in this state on February 8,
13 1996; or

14 (2) became a successor or assignee of an
15 incumbent local exchange carrier;

16 I. "incumbent rural telecommunications carrier"
17 means a local exchange carrier that serves fewer than fifty
18 thousand access lines within the state and was designated as
19 an eligible telecommunications carrier by the state
20 corporation commission on or before November 1, 1997,
21 including any successor in interest thereto;

22 ~~[G.]~~ J. "local exchange area" means a geographic
23 area encompassing one or more local communities, as described
24 in maps, tariffs or rate schedules filed with the commission,
25 where local exchange rates apply;

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

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

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

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

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

14 O. "rural telephone company" means a local exchange
15 carrier that serves less than five thousand access lines
16 within the state; and

17 ~~[M-]~~ P. "telecommunications company" means a person
18 that provides public telecommunications service. "

19 Section 3. Section 63-9A-5 NMSA 1978 (being Laws 1985,
20 Chapter 242, Section 5) is amended to read:

21 "63-9A-5. REGULATION BY COMMISSION. -- Except as otherwise
22 provided in the New Mexico Telecommunications Act or the
23 federal Telecommunications Act of 1996, each public
24 telecommunications service is declared to be affected with the
25 public interest and, as such, subject to the provisions of

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1 that act, including the regulation thereof as [hereinafter]
2 provided in that act. "

3 Section 4. Section 63-9A-6 NMSA 1978 (being Laws 1985,
4 Chapter 242, Section 6, as amended) is amended to read:

5 "63-9A-6. CERTIFICATE REQUIRED. --

6 A. No public telecommunications service shall be
7 offered in this state except in accordance with the provisions
8 of the New Mexico Telecommunications Act.

9 B. No public telecommunications service shall be
10 offered within this state without the telecommunications
11 company first having obtained from the commission a
12 certificate declaring that the operation is in the present or
13 future public convenience and necessity, unless the operation
14 is otherwise authorized by the New Mexico Telecommunications
15 Act.

16 C. The commission shall have full power and
17 authority to determine matters of public convenience and
18 necessity relating to the issuance of a certificate of public
19 convenience and necessity to a provider of public
20 telecommunications service; provided, however, that in keeping
21 with the purposes of the New Mexico Telecommunications Act,
22 the commission shall not deny an applicant a certificate on
23 the grounds of need if it is shown that the applicant
24 possesses adequate financial resources and technical
25 competency to provide the service. [It shall be within the

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1 ~~discretion of the commission to determine when and upon what~~
2 ~~conditions plant, equipment or services may be provided under~~
3 ~~certificates of public convenience and necessity, by more than~~
4 ~~one person, and the commission may attach to the exercise of~~
5 ~~rights granted by the certificate such terms and conditions~~
6 ~~as, in its judgment, the public convenience and necessity may~~
7 ~~require or as otherwise authorized.~~

8 ~~D. Notwithstanding the provisions of Subsection C of~~
9 ~~this section, any telecommunications company with less than~~
10 ~~one hundred thousand access lines holding a certificate of~~
11 ~~public convenience and necessity to provide local exchange~~
12 ~~service to the public shall have the exclusive right to~~
13 ~~provide local exchange service within its certificated service~~
14 ~~territory and shall not be subject to competition in the~~
15 ~~provision of local exchange service in its certificated~~
16 ~~service territory unless the commission determines that public~~
17 ~~convenience and necessity require additional plant or~~
18 ~~equipment for the provision of local exchange service within~~
19 ~~the certificated service territory of the existing~~
20 ~~telecommunications company and a certificate of public~~
21 ~~convenience and necessity is granted pursuant to Subsection E~~
22 ~~of this section]~~

23 D. For purposes of considering and acting upon
24 applications for certificates pursuant to this section, the
25 commission may adopt rules and regulations, on a competitively

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1 neutral basis and consistent with the provisions of the New
2 Mexico Telecommunications Act and the federal act, necessary
3 to preserve and advance universal service, protect the public
4 safety and welfare, ensure the continued quality of public
5 telecommunications services and safeguard the rights of the
6 consumers.

7 E. In determining whether [~~public convenience and~~
8 ~~necessity require an additional~~] to issue a certificate to
9 provide [local exchange] telecommunications service [in a
10 ~~certificated service territory]~~, the commission shall [~~in a~~
11 ~~proceeding in which the telecommunications company~~
12 ~~certificated in the affected area is a party]~~ consider [~~and~~
13 ~~determine upon substantial evidence that]~~ the following:
14 [~~conditions exist~~

15 (1) ~~the existing telecommunications company is~~
16 ~~inadequate to meet the reasonable needs and convenience of the~~
17 ~~public;~~

18 (2) ~~the proposed second plant or equipment~~
19 ~~would eliminate such inadequacy;~~

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

23 (4) (1) whether the applicant [~~for the second~~
24 ~~plant or equipment]~~ has sufficient financial resources to
25 provide the proposed local exchange service properly and

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1 continuously;

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

6 [~~(6)~~] (3) whether the applicant [~~for the second~~
7 ~~plant or equipment~~] is willing and able to conform to [~~the~~
8 ~~constitution of New Mexico and~~] all applicable laws [~~of New~~
9 ~~Mexico~~] and the rules [~~and regulations~~] of the commission.

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

13 ~~(8) granting the additional certificate to the~~
14 ~~applicant shall not have a significant adverse impact on the~~
15 ~~existing telecommunications company.]~~

16 F. All certificates of public convenience and
17 necessity shall:

18 (1) continue in force, notwithstanding the
19 provisions of this section [~~63-9A-2 NMSA 1978~~]; and

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

24 Section 5. Section 63-9A-6.1 NMSA 1978 (being Laws 1987,
25 Chapter 21, Section 4, as amended) is amended to read:

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1 "63-9A-6.1. NEW MEXICO UNIVERSAL SERVICE FUND--
2 ESTABLISHMENT-- BOARD. --

3 A. No later than January 1, 2000, the commission
4 shall [establish a "New Mexico] implement a "state universal
5 service fund" to maintain [existing residential local exchange
6 service] and support at affordable rates those public
7 telecommunications services as are determined by the
8 commission. Upon the effective date of this section, balances
9 in the existing New Mexico universal service fund shall be
10 transferred into the state universal service fund and the New
11 Mexico universal service fund shall cease to exist.

12 B. The fund shall be [~~financed by a uniform~~
13 ~~surcharge on all local exchange service customers at a rate to~~
14 ~~be determined by the commission. Money deposited in the fund~~
15 ~~is not public money and the administration of the fund is not~~
16 ~~subject to the provisions of law regulating public funds]~~
17 competitively and technologically neutral, equitable and
18 nondiscriminatory in its collection and distribution of funds,
19 portable between eligible telecommunications companies,
20 targeted to high cost rural areas, and shall provide a
21 specific, predictable and sufficient support mechanism as
22 determined by the commission that reduces implicit subsidies,
23 including long distance switched access charges, and assures
24 universal service in the state. Reductions in charges for
25 intrastate switched access services resulting from compliance

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1 with this section shall be passed on for the benefit of
2 consumers in New Mexico.

3 C. The fund shall be financed by a surcharge on all
4 intrastate retail public telecommunications services revenue,
5 excluding revenue from services provided pursuant to a low-
6 income telephone assistance plan billed to end user customers
7 by a telecommunications carrier, and excluding from that
8 revenue all amounts from surcharges, gross receipts taxes,
9 excise taxes, franchise fees and similar charges. For the
10 purpose of funding the state universal service fund, the
11 commission has the authority to apply the surcharge on all end
12 user retail public telecommunications services provided in the
13 state by telecommunications companies and to comparable retail
14 alternative services provided by telecommunications companies
15 and non-telecommunications companies, including commercial
16 mobile radio services, operator services and aggregator
17 services offered by providers other than telecommunications
18 companies, at a competitively and technologically neutral rate
19 or rates to be determined by the commission. In prescribing
20 competitively and technologically neutral surcharge rates, the
21 commission may make distinctions between services subject to a
22 surcharge, but it shall require telecommunications carriers
23 and non-telecommunications carriers to apply uniform surcharge
24 rates for the same or comparable services. Money deposited in
25 the fund is not public money, and the administration of the

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1 fund is not subject to the provisions of law regulating public
2 funds. The commission shall not apply the surcharge to a
3 private telecommunications network.

4 ~~[C.]~~ D. The commission shall:

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

10 ~~(2) determine which companies meet the~~
11 ~~eligibility criteria; and~~

12 ~~(3) provide for the collection of the surcharge~~
13 ~~and the administration and disbursement of money from the~~
14 ~~fund] consistent with federal law, which ensure the~~

15 availability of service at affordable rates without
16 unreasonably increasing rates for basic service while still
17 granting eligible telecommunications carriers a reasonable
18 profit on supported services in geographic areas requiring
19 support from the fund, but the eligibility criteria shall not
20 require any investigations of the costs or rates of a
21 telecommunications carrier receiving support from the fund,
22 other than that provided for in Subsection E of this section.

23 The eligibility criteria shall not restrict or limit an
24 eligible telecommunications carrier from receiving federal
25 universal service support;

underscored material = new
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1 (2) provide for the collection of the surcharge
2 on a competitively neutral basis;

3 (3) determine those geographic areas and local
4 exchange service areas requiring support from the fund; and

5 (4) provide for the separate administration and
6 disbursement of federal universal service funds consistent
7 with federal law.

8 E. The fund shall ensure the availability of local
9 exchange service as determined by the commission at affordable
10 rates in rural high cost areas of the state.

11 ~~[D.]~~ F. The commission shall adopt rules [and
12 regulations] for the implementation and administration of the
13 fund in accordance with the provisions of this section.

14 ~~[E. The commission shall establish a board composed~~
15 ~~of representatives from the providers of local exchange~~
16 ~~service to collect, administer and disburse money from the~~
17 ~~fund under the supervision and control of the commission~~
18 ~~pursuant to the established criteria and the rules and~~
19 ~~regulations promulgated by the commission.]~~

20 G. The cost basis for establishing the fund and
21 determining the rate of distribution of the new fund for areas
22 served by an incumbent rural telecommunications carrier with
23 fewer than fifty thousand access lines shall be the same cost
24 of, and shall be consistent with the federal support
25 mechanisms for, providing the supported service by geographic

underscored material = new
[bracketed material] = delete

1 area, determined by the federal communications commission.
2 The cost basis established by the commission for areas served
3 by telecommunications carriers with fewer than fifty thousand
4 access lines shall include the same return authorized by the
5 federal communications commission for use in rates filed by
6 the national exchange carriers association at the federal
7 communications commission for those carriers. The revenue
8 basis for rural telecommunications carriers with fewer than
9 fifty thousand access lines shall only include revenues from
10 public telecommunications services provided by the eligible
11 telecommunications carrier. The cost basis for establishing
12 the fund and determining the rate of distribution of the new
13 fund for areas served by incumbent local exchange carriers
14 with fifty thousand or more access lines shall be the forward
15 looking economic cost of providing the supported service in
16 the geographic area as determined by the commission.

17 H. Upon implementation of the fund, the commission
18 shall select a neutral third party administrator to collect,
19 administer and disburse money from the fund under the
20 supervision and control of the commission pursuant to the
21 established criteria and the rules promulgated by the
22 commission. The administrator may be reasonably compensated
23 for the provided services from the surcharge proceeds to be
24 received by the fund pursuant to Subsection C of this section.
25 The neutral third party administrator shall consult with an

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1 advisory board established by the commission composed of
2 representatives from all participating providers. For
3 purposes of this subsection, the commission shall not be a
4 neutral third party administrator.

5 I. To ensure that providers of intrastate long
6 distance service contribute to the fund as required above, and
7 to further ensure that the surcharge to be paid by the end
8 user customer will be held to a minimum, no later than
9 December 31, 1999, the commission shall adopt rules, or take
10 other appropriate action, to require all intrastate long
11 distance service providers to participate in a plan to ensure
12 accurate reporting of intrastate retail long distance
13 revenues.

14 J. Switched access charges and other intrastate
15 telecommunication services, other than basic local exchange
16 service, may be considered for reductions as an offset to
17 payments received by a telecommunications carrier from the
18 universal service fund."

19 Section 6. A new section of Chapter 63, Article 9A NMSA
20 1978 is enacted to read:

21 "[NEW MATERIAL] REGULATION OF RETAIL RATES OF INCUMBENT
22 RURAL TELECOMMUNICATIONS CARRIER. --

23 A. Rates for retail public telecommunications
24 services provided by an incumbent rural telecommunications
25 carrier shall be subject to regulation by the commission only

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1 in the manner and to the extent authorized by this section.

2 B. An incumbent rural telecommunications carrier
3 shall file tariffs for all retail public telecommunications
4 services, other than residential local exchange service, which
5 shall be effective after ten days' notice to the commission
6 and publication in a local newspaper in the incumbent service
7 area.

8 C. Rates for residential local exchange service may
9 be increased by an incumbent rural telecommunications carrier
10 only after sixty days notice to all affected subscribers. The
11 notice of increase shall include:

- 12 (1) the reasons for the rate increase;
- 13 (2) a description of the affected service;
- 14 (3) an explanation of the right of the
15 subscriber to petition the commission for a public hearing on
16 the rate increase;
- 17 (4) a list of local exchange areas that are
18 affected by the proposed rate increase; and
- 19 (5) the dates, times and places for the public
20 informational meetings required by this section.

21 D. An incumbent rural telecommunications carrier may
22 increase its rates for residential local exchange service in
23 the manner otherwise provided in this section as necessary to
24 recover a reasonable allocation of costs incurred due to
25 requirements imposed by any federal or state law or rule or

underscored material = new
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1 regulation. An incumbent rural telecommunications carrier
2 that proposes to increase its rates for residential local
3 exchange service shall hold at least one public informational
4 meeting in each public regulation commissioner's district as
5 established by the Public Regulation Commission Apportionment
6 Act in which there is a local exchange area affected by the
7 rate change.

8 E. Local exchange service rates increased by any
9 rural telecommunications carrier pursuant to Subsection D of
10 this section shall be reviewed by the commission only upon
11 written protest signed by two and one-half percent of all
12 affected subscribers or upon the commission staff's own motion
13 for good cause. The protest shall specifically set forth the
14 particular rate or charge as to which review is requested, the
15 reasons for the requested review and the relief that the
16 persons protesting desire. If a proper protest is presented
17 to the commission within sixty days from the date notice of
18 the rate change was sent to affected subscribers of an
19 incumbent rural telephone carrier, the commission may accept
20 and file the complaint and, upon proper notice, may suspend
21 the rates at issue during the pendency of the proceedings and
22 reinstate the rates previously in effect and shall hold and
23 complete a hearing thereon within ninety days after filing to
24 determine if the rates as proposed are fair, just and
25 reasonable. The commission may, within sixty days after close

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1 of the hearing, enter an order adjusting the rates at issue,
2 except that the commission shall not set any rate below the
3 intrastate cost of providing the service, which shall include
4 cost and rate of return. In the order, the commission may
5 order a refund of amounts collected in excess of the rates and
6 charges as approved at the hearing, which may be paid as a
7 credit against billings for future services. If the complaint
8 is denied, the commission shall enter an order denying the
9 complaint within sixty days after the close of the hearing,
10 and the rates shall be deemed approved. For purposes of this
11 section, cost shall also include a reasonable amount of joint
12 and common costs incurred by the telecommunications carrier in
13 its operations and may include other accounting adjustments
14 authorized by the commission.

15 F. A rural telecommunications carrier that serves
16 less than five percent of the state's aggregate, statewide
17 subscriber lines may at any time elect to file an application
18 with the commission requesting the commission to prescribe
19 fair, just and reasonable rates for the carrier based on the
20 carrier's revenue, expenses and investment in accordance with
21 traditional rate-making principles.

22 G. Rates for local exchange, vertical and message
23 telecommunications services to retail end-user customers may
24 be reduced to a level equal to, but not below, the intrastate
25 cost, which shall include cost and rate of return of providing

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1 the retail service. If a rural telecommunications carrier
2 loses its exemption pursuant to Section 251 of the federal
3 Telecommunications Act of 1996, the rate for a service,
4 excluding basic service, must cover the cost of the service,
5 including the imputed rate of wholesale service elements as
6 may be required by the commission. The cost of message
7 telecommunications service must also include any interexchange
8 access rates charged to another telecommunications carrier for
9 the service.

10 H. An incumbent rural telecommunications carrier
11 operating pursuant to this section shall have the ability to
12 offer or discontinue offering special incentives, discounts,
13 packaged offerings, temporary rate waivers or other
14 promotions, or to offer individual contracts. "

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3
4
5 February 27, 1999

6
7 Mr. President:

8
9 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to
10 whom has been referred

11
12 SENATE BILL 680

13
14 has had it under consideration and reports same with
15 recommendation that it DO NOT PASS, but that

16
17
18 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE

19 SUBSTITUTE FOR SENATE BILL 680

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21
22 is reported WITHOUT RECOMMENDATION, and thence referred to
23 the JUDICIARY COMMITTEE.
24

Respectfully submitted,

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Roman M. Maes, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 5 For 1 Against

Yes: 5

No: Rawson

Excused: Aragon, Kysar, McKibben, Robinson

Absent: None

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SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 680

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

AN ACT

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

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

Section 1. Section 63-9A-2 NMSA 1978 (being Laws 1985,
Chapter 242, Section 2, as amended) is amended to read:

"63-9A-2. PURPOSE. -- The legislature declares that it
remains the policy of the state of New Mexico to maintain the
availability of access to telecommunications services at
affordable rates. Furthermore, it is the policy of this state
to have comparable message telecommunications service rates, as
established by the commission, for comparable markets or market
areas. To the extent that it is consistent with maintaining
availability of access to service at affordable rates [and

1 ~~comparable message telecommunications service rates~~], it is
2 further the policy of this state to encourage competition and
3 reduce regulation in the telecommunications industry, thereby
4 allowing access by the public to resulting rapid advances in
5 telecommunications technology. It is the purpose of the New
6 Mexico Telecommunications Act to permit a regulatory framework
7 that will allow an orderly transition from a regulated
8 telecommunications industry to a competitive market
9 environment consistent with the federal act. Further, the
10 legislature finds that as part of that regulatory framework,
11 it is necessary to provide disparate regulatory treatment
12 between rural telephone carriers and nonrural telephone
13 carriers in order to enable accomplishment of the goals
14 established by its declared policies. Disparate regulatory
15 treatment is particularly necessary for those citizens who
16 reside in rural New Mexico because those rural areas
17 constitute the bulk of the surface area within the boundaries
18 of the state. Disparate regulatory treatment for rural
19 telephone carriers requires relaxed regulation for rural
20 telephone carriers with the objectives of reducing the cost of
21 regulation as well as the regulatory burden, permitting
22 pricing flexibility and expediting required rate approvals,
23 all in a manner consistent with both the purpose of an orderly
24 transition from regulation to a competitive market environment
25 and the federal act."

1 Section 2. Section 63-9A-3 NMSA 1978 (being Laws 1985,
2 Chapter 242, Section 3, as amended) is amended to read:

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

5 A. "affordable rates" means ~~[local-exchange]~~ basic
6 service rates that promote universal service within a local
7 exchange service area, giving consideration to the economic
8 conditions and costs to provide service in ~~[such]~~ the area in
9 which service is provided;

10 B. "basic service" means service that is provided to
11 an end-user customer that is consistent with the federal act ;

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

17 ~~[C.]~~ D. "commission" means the public regulation
18 commi ssi on;

19 ~~[D.]~~ E. "competitive telecommunications service"
20 means a service that has been determined to be subject to
21 effective competition ~~[pursuant to Section 63-9A-8 NMSA 1978;~~

22 ~~E. "effective competition" means that the customers~~
23 ~~of the service have reasonably available and comparable~~
24 ~~alternatives to the service];~~

1 F. "eligible telecommunications carrier" means an
2 eligible telecommunications carrier as defined in the federal
3 act;

4 G. "federal act" means the federal
5 Telecommunications Act of 1996;

6 [~~F.~~] H. "fund" means the [New Mexico] state
7 universal service fund;

8 I. "incumbent local exchange carrier" means a person
9 that:

10 (1) was designated as an eligible
11 telecommunications carrier by the state corporation commission
12 in Docket #97-93 TC by order dated October 23, 1997, or that
13 provided local exchange service in this state on February 8,
14 1996; or

15 (2) became a successor or assignee of an
16 incumbent local exchange carrier;

17 J. "incumbent rural telecommunications carrier"
18 means a local exchange carrier that serves fewer than fifty
19 thousand access lines within the state and was designated as
20 an eligible telecommunications carrier by the state
21 corporation commission on or before November 1, 1997,
22 including any successor in interest;

23 [~~G.~~] K. "local exchange area" means a geographic
24 area encompassing one or more local communities, as described
25 in maps, tariffs or rate schedules filed with the commission,

1 where local exchange rates apply;

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

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

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

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

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1 public telecommunications service;

2 ~~[L-]~~ 0. "public telecommunications service" means
3 the transmission of signs, signals, writings, images, sounds,
4 messages, data or other information of any nature by wire,
5 radio, lightwaves or other electromagnetic means originating
6 and terminating in this state regardless of actual call
7 routing. "Public telecommunications service" does not include
8 the provision of terminal equipment used to originate or
9 terminate ~~[such]~~ the service; private telecommunications
10 service; broadcast transmissions by radio, television and
11 satellite broadcast stations regulated by the federal
12 communications commission; radio common carrier services,
13 including mobile telephone service and radio paging; or one-
14 way cable television service; and

15 ~~[M-]~~ P. "telecommunications ~~[company]~~ carrier" means
16 a person that provides public telecommunications service. "

17 Section 3. Section 63-9A-5 NMSA 1978 (being Laws 1985,
18 Chapter 242, Section 5) is amended to read:

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

1 Section 4. Section 63-9A-6 NMSA 1978 (being Laws 1985,
2 Chapter 242, Section 6, as amended) is amended to read:

3 "63-9A-6. CERTIFICATE REQUIRED. --

4 A. No public telecommunications service shall be
5 offered in this state except in accordance with the provisions
6 of the New Mexico Telecommunications Act.

7 B. No public telecommunications service shall be
8 offered within this state without the telecommunications
9 [~~company~~] carrier first having obtained from the commission a
10 certificate declaring that the operation is in the present or
11 future public convenience and necessity, unless the operation
12 is otherwise authorized by the New Mexico Telecommunications
13 Act.

14 C. The commission [~~shall have~~] has full power and
15 authority to determine matters of public convenience and
16 necessity relating to the issuance of a certificate of public
17 convenience and necessity to a provider of public
18 telecommunications service [~~provided, however, that~~] but in
19 keeping with the purposes of the New Mexico Telecommunications
20 Act and the federal act, the commission shall not deny an
21 applicant a certificate on the grounds of need if it is shown
22 that the applicant possesses adequate financial resources and
23 technical competency to provide the service. [~~It shall be~~
24 ~~within the discretion of the commission to determine when and~~
25 ~~upon what conditions plant, equipment or services may be~~

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1 ~~provided under certificates of public convenience and~~
2 ~~necessity, by more than one person, and the commission may~~
3 ~~attach to the exercise of rights granted by the certificate~~
4 ~~such terms and conditions as, in its judgment, the public~~
5 ~~convenience and necessity may require or as otherwise~~
6 ~~authorized.~~

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

22 D. For purposes of considering and acting upon
23 applications for certificates pursuant to this section, the
24 commission may adopt rules on a competitively neutral basis
25 and consistent with the provisions of the New Mexico

1 Telecommunications Act and the federal act, necessary to
 2 preserve and advance universal service, protect the public
 3 safety and welfare, ensure the continued quality of public
 4 telecommunications services and safeguard the rights of the
 5 consumers.

6 E. In determining whether [~~public convenience and~~
 7 ~~necessity require an additional~~] to issue a certificate to
 8 provide [~~local exchange~~] telecommunications service [~~in a~~
 9 ~~certificated service territory~~], the commission shall [~~in a~~
 10 ~~proceeding in which the telecommunications company~~
 11 ~~certificated in the affected area is a party~~] consider [~~and~~
 12 ~~determine upon substantial evidence that~~] the following:
 13 [~~conditions exist:-~~

14 (1) ~~the existing telecommunications company is~~
 15 ~~inadequate to meet the reasonable needs and convenience of the~~
 16 ~~public;-~~

17 (2) ~~the proposed second plant or equipment~~
 18 ~~would eliminate such inadequacy;-~~

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

22 (4) (1) whether the applicant [~~for the second~~
 23 ~~plant or equipment~~] has sufficient financial resources to
 24 provide the proposed local exchange service properly and
 25 continuously;

1 ~~[(5)]~~ (2) whether the applicant ~~[for the second~~
2 ~~plant or equipment]~~ has competent and experienced management
3 and personnel to provide the proposed local exchange service;

4 ~~[(6)]~~ (3) whether the applicant ~~[for the second~~
5 ~~plant or equipment]~~ is willing and able to conform to ~~[the~~
6 ~~constitution of New Mexico and]~~ all applicable laws ~~[of New~~
7 ~~Mexico]~~ and the rules ~~[and regulations]~~ of the commission

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

11 ~~(8) granting the additional certificate to the~~
12 ~~applicant shall not have a significant adverse impact on the~~
13 ~~existing telecommunications company]~~ applicable generally to
14 providers of telecommunications; and

15 (4) if any exemption, suspension or
16 modification is available to any provider of the subject
17 service in the subject area.

18 F. All certificates of public convenience and
19 necessity shall:

20 (1) continue in force, notwithstanding the
21 provisions of this section ~~[63-9A-2 NMSA 1978]~~; and

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

1 Section 5. Section 63-9A-6.1 NMSA 1978 (being Laws 1987,
2 Chapter 21, Section 4, as amended) is amended to read:

3 "63-9A-6.1. [~~NEW MEXICO~~] STATE UNIVERSAL SERVICE FUND--
4 ESTABLISHMENT-- BOARD. --

5 A. The commission shall [~~establish~~] implement no
6 later than January 1, 2000 a "[~~New Mexico~~] state universal
7 service fund" to maintain [~~existing residential local exchange~~
8 service] and support at affordable rates those public
9 telecommunications services as are determined by the
10 commission. On July 1, 1999, balances in the existing New
11 Mexico universal service fund shall be transferred into the
12 state universal service fund, and the New Mexico universal
13 service fund shall cease to exist.

14 B. The fund shall be financed by a [~~uniform~~]
15 surcharge on all [~~local exchange service customers at a rate~~
16 ~~to be determined by the commission~~] intrastate retail public
17 telecommunications services revenue, excluding revenue from
18 services provided pursuant to a low-income telephone
19 assistance plan billed to end-user customers by a
20 telecommunications carrier, and excluding from revenue all
21 amounts from surcharges, gross receipts taxes, excise taxes,
22 franchise fees and similar charges. For the purpose of
23 funding the fund, the commission has the authority to apply
24 the surcharge on all end-user retail public telecommunications
25 services provided in the state by telecommunications carriers

1 and to comparable retail alternative services provided by
2 telecommunications carriers and non-telecommunications
3 carriers, including commercial mobile radio services, operator
4 services and aggregator services, offered by providers other
5 than telecommunications carriers, at a competitively and
6 technologically neutral rate or rates to be determined by the
7 commission. In prescribing competitively and technologically
8 neutral surcharge rates, the commission may make distinctions
9 between services subject to a surcharge, but it shall require
10 telecommunications carriers and non-telecommunications
11 carriers to apply uniform surcharge rates for the same or
12 comparable services. Money deposited in the fund is not
13 public money, and the administration of the fund is not
14 subject to the provisions of law regulating public funds. The
15 commission shall not apply surcharges to a private
16 telecommunications network.

17 C. The fund shall be competitively and
18 technologically neutral, equitable and nondiscriminatory in
19 its collection and distribution of funds, portable between
20 eligible telecommunications carriers, targeted to high-cost
21 rural areas, and additionally shall provide a specific,
22 predictable and sufficient support mechanism as determined by
23 the commission that reduces implicit subsidies, including
24 access charges and ensures universal service in the state.

25 [~~C.~~] D. The commission shall:

1 (1) establish eligibility criteria for
 2 participation in the fund [~~which assure the availability of~~
 3 ~~service at affordable rates without unreasonably increasing~~
 4 ~~rates to local exchange service and message telecommunications~~
 5 ~~service customers] consistent with federal law that ensure the
 6 availability of service at affordable rates without
 7 unreasonably increasing rates for basic service while still
 8 granting eligible telecommunications carriers a reasonable
 9 profit on supported services in geographic areas requiring
 10 support from the fund, but the eligibility criteria shall not
 11 require any investigations of the costs or rates of a
 12 telecommunications carrier receiving support from the fund
 13 other than that provided for in Subsection E of this section.
 14 The eligibility criteria shall not restrict or limit an
 15 eligible telecommunications carrier from receiving federal
 16 universal service support;~~

17 (2) [~~determine which companies meet the~~
 18 ~~eligibility criteria; and~~

19 (3)] provide for the collection of the
 20 surcharge on a competitively neutral basis and for the
 21 administration and disbursement of money from the fund;

22 (3) determine those geographic areas and local
 23 exchange services requiring support from the fund; and

24 (4) provide for the separate administration and
 25 disbursement of federal universal service funds consistent

1 with federal law.

2 ~~[D.]~~ E. The commission shall adopt rules ~~[and~~
3 ~~regulations]~~ for the implementation and administration of the
4 fund in accordance with the provisions of this section. The
5 cost basis for establishing the fund and determining the rate
6 of distribution of the new fund for areas served by an
7 incumbent rural telecommunications carrier with fewer than
8 fifty thousand access lines shall be the same cost of and
9 shall be consistent with the federal support mechanisms for
10 providing the supported service by geographic area, determined
11 by the federal communications commission. The cost basis
12 established by the commission for areas served by
13 telecommunications carriers with fewer than fifty thousand
14 access lines shall include the same return authorized by the
15 federal communications commission for use in rates filed by
16 the national exchange carriers association at the federal
17 communications commission for member carriers. The revenue
18 basis for rural telecommunications carriers with fewer than
19 fifty thousand access lines shall include only revenues from
20 public telecommunications services provided by the eligible
21 telecommunications carrier. The cost basis for establishing
22 the fund and determining the rate of distribution of the fund
23 for areas served by incumbent local exchange carriers with
24 fifty thousand or more access lines shall be the forward
25 looking economic cost of providing the supported service in

1 the geographic area as determined by the commission.

2 ~~[E.]~~ F. The commission shall [establish a board
3 ~~composed of representatives from the providers of local~~
4 ~~exchange service], upon implementation of the fund, select a~~
5 neutral third party administrator to collect, administer and
6 disburse money from the fund under the supervision and control
7 of the commission pursuant to the established criteria and the
8 rules [and regulations] promulgated by the commission. The
9 administrator may be reasonably compensated for the specified
10 services from the surcharge proceeds to be received by the
11 fund pursuant to Subsection C of this section. The
12 administrator shall consult with an advisory board established
13 by the commission composed of representatives from all
14 participating providers. For purposes of this subsection, the
15 commission shall not be a neutral third party administrator.

16 G. The fund established by the commission shall
17 ensure the availability of local exchange service as
18 determined by the commission at affordable rates in rural high
19 cost areas of the state.

20 H. To ensure that providers of intrastate message
21 telecommunications service contribute to the fund and to
22 further ensure that the surcharge to be paid by the end-user
23 customer will be held to a minimum, no later than December 31,
24 1999, the commission shall adopt rules, or take other
25 appropriate action, to require all such providers to

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1 participate in a plan to ensure accurate reporting of
2 intrastate retail long distance revenues.

3 I. Access charges and other intrastate
4 telecommunications services, other than basic local exchange
5 service, may be considered for reductions as an offset to
6 payments received by a telecommunications carrier from the
7 fund. Any reductions in charges for access services resulting
8 from compliance with this section shall be passed on for the
9 benefit of consumers in New Mexico."

10 Section 6. Section 63-9A-8 NMSA 1978 (being Laws 1985,
11 Chapter 242, Section 8, as amended) is amended to read:

12 "63-9A-8. REGULATION OF RATES AND CHARGES. --

13 A. In accordance with the policy established in the
14 New Mexico Telecommunications Act, the commission shall, by
15 its own motion or upon petition by any interested party, hold
16 hearings to determine if any public telecommunications service
17 is subject to effective competition in the relevant market
18 area. When the commission has made a determination that a
19 service or part of a service is subject to effective
20 competition, the commission shall, consistent with the
21 purposes of the New Mexico Telecommunications Act, modify,
22 reduce or eliminate rules [~~regulations~~] and other requirements
23 applicable to the provision of [~~such~~] the service, including
24 the fixing and determining of specific rates, tariffs or fares
25 for the service. The commission's action may include the

1 detariffing of service or the establishment of minimum rates
2 which will cover the costs for the service. [~~Such~~] The
3 modification shall be consistent with the maintenance of the
4 availability of access to [~~local exchange~~] basic service at
5 affordable rates [~~and comparable message telecommunication~~
6 ~~service rates~~] as established by the commission for comparable
7 markets or market areas, except that volume discounts or other
8 discounts based on reasonable business purposes shall be
9 permitted. Upon petition or request of an affected
10 telecommunications [~~company~~] carrier, the commission, upon a
11 finding that the requirements of Subsection C of this section
12 are met, shall modify the same or similar regulatory
13 requirements for those providers of comparable public
14 telecommunications services in the same relevant markets so
15 that there shall be parity of regulatory standards and
16 requirements for all such providers.

17 B. In determining whether a service is subject to
18 effective competition, the commission shall consider the
19 following:

20 (1) the extent to which services are reasonably
21 available from alternate providers in the relevant market
22 area;

23 (2) the ability of alternate providers to make
24 functionally equivalent or substitute services readily
25 available at competitive rates, terms and conditions; and

1 (3) existing economic or regulatory barriers.

2 C. No provider of public telecommunications service
3 may use current revenues earned or expenses incurred in
4 conjunction with any noncompetitive service to subsidize
5 competitive public telecommunications services. In order to
6 avoid cross-subsidization of competitive services by
7 noncompetitive telecommunications services, prices or rates
8 charged for a competitive telecommunications service shall
9 cover the cost for the provision of the service. In any
10 proceeding held pursuant to this section, the party providing
11 the service shall bear the burden of proving that the prices
12 charged for competitive telecommunications services cover
13 cost.

14 D. The commission may, upon its own motion or on the
15 petition of an interested party and after notice to all
16 interested parties and customers and a hearing, reclassify any
17 service previously determined to be a competitive
18 telecommunications service if after a hearing the commission
19 finds that a service is not subject to effective competition."

20 Section 7. Section 63-9A-8.1 NMSA 1978 (being Laws 1998,
21 Chapter 108, Section 61) is amended to read:

22 "63-9A-8.1. CHANGE IN RATES. --

23 A. At a hearing involving an increase in rates or
24 charges sought by a telecommunications [company] carrier, the
25 burden of proof to show that the increased rate or charge is

1 just and reasonable shall be upon the [~~company~~] carrier.

2 B. Unless the commission otherwise orders, no
3 telecommunications [~~company~~] carrier shall make a change in an
4 established rate except after thirty days' notice to the
5 commission, which notice shall plainly state the changes
6 proposed to be made in the rates then in force, the time when
7 the changed rates will go into effect and other information as
8 the commission by rule requires. The telecommunications
9 [~~company~~] carrier shall also give notice of the proposed
10 changes to other interested persons as the commission may
11 direct. All proposed changes shall be shown by filing new
12 schedules that shall be kept open to public inspection. The
13 commission for good cause shown may allow changes in rates
14 without requiring the thirty days' notice, under conditions
15 that it may prescribe.

16 C. Whenever a telecommunications [~~company~~] carrier
17 files a complete application proposing new rates, the
18 commission may, upon complaint or upon its own initiative,
19 except as otherwise provided by law, upon reasonable notice,
20 enter upon a hearing concerning the reasonableness of the
21 proposed rates. If the commission determines a hearing is
22 necessary, it shall suspend the operation of the proposed
23 rates before they become effective but not for a longer
24 initial period than nine months beyond the time when the rates
25 would otherwise go into effect, unless the commission finds

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1 that a longer time will be required, in which case the
2 commission may extend the period for an additional three
3 months. The commission shall hear and decide cases with
4 reasonable promptness. The commission shall adopt rules
5 identifying criteria for various rate and tariff filings to be
6 eligible for suspension periods shorter than [~~what is~~] the
7 times allowed by this subsection and to be eligible for
8 summary approval without hearing.

9 D. If after a hearing the commission finds the
10 proposed rates to be unjust, unreasonable or in any way in
11 violation of law, the commission shall determine the just and
12 reasonable rates to be charged or applied by the
13 telecommunications [~~company~~] carrier for the service in
14 question and shall fix the rates by order to be served upon
15 the telecommunications [~~company~~] carrier; or the commission by
16 its order shall direct the telecommunications [~~company~~]
17 carrier to file new rates respecting such service that are
18 just and reasonable. Those rates shall thereafter be observed
19 until changed as provided by the New Mexico Telecommunications
20 Act. "

21 Section 8. A new Section 63-9A-8.2 NMSA 1978 is enacted
22 to read:

23 "63-9A-8.2. [NEW MATERIAL] REGULATION OF RETAIL RATES OF
24 INCUMBENT RURAL TELECOMMUNICATIONS CARRIER. - -

25 A. Rates for retail public telecommunications

1 services provided by an incumbent rural telecommunications
2 carrier shall be subject to regulation by the commission only
3 in the manner and to the extent authorized by this section.

4 B. An incumbent rural telecommunications carrier
5 shall file tariffs for all retail public telecommunications
6 services, other than residential local exchange service, that
7 shall be effective after ten days' notice to the commission
8 and publication in a local newspaper in the incumbent serving
9 area.

10 C. Rates for residential local exchange service may
11 be increased by an incumbent rural telecommunications carrier
12 only after sixty days' notice to all affected subscribers.

13 The notice of increase shall include:

14 (1) the reasons for the rate increase;
15 (2) a description of the affected service;
16 (3) an explanation of the right of the
17 subscriber to petition the commission for a public hearing on
18 the rate increase;

19 (4) a list of local exchange areas that are
20 affected by the proposed rate increase; and

21 (5) the dates, times and places for the public
22 informational meetings required by this section.

23 D. An incumbent rural telecommunications carrier may
24 increase its rates for residential local exchange service in
25 the manner otherwise provided in this section as necessary to

1 recover a reasonable allocation of costs incurred due to
2 requirements imposed by any federal or state law or rule or
3 regulation. An incumbent rural telecommunications carrier
4 that proposes to increase its rates for residential local
5 exchange service shall hold at least one public informational
6 meeting in each public regulation commissioner's district as
7 established by the Public Regulation Commission Apportionment
8 Act in which there is a local exchange area affected by the
9 rate change.

10 E. Residential local exchange service rates
11 increased by a rural telecommunications carrier pursuant to
12 Subsection C of this section shall be reviewed by the
13 commission only upon written protest signed by two and one-
14 half percent of all affected subscribers or upon the
15 commission staff's own motion for good cause. The protest
16 shall specifically set forth the particular rate or charge as
17 to which review is requested, the reasons for the requested
18 review and the relief that the persons protesting desire. If
19 a proper protest is presented to the commission within sixty
20 days after the date the notice of the rate change was sent to
21 affected subscribers of an incumbent rural telephone carrier,
22 the commission may accept and file the complaint and, upon
23 proper notice, may suspend the rates at issue during the
24 pendency of the proceedings and reinstate the rates previously
25 in effect and shall hold and complete a hearing thereon within

1 ninety days after filing to determine if the rates as proposed
2 are fair, just and reasonable. The commission may, within
3 sixty days after close of the hearing, enter an order
4 adjusting the rates at issue, except that the commission shall
5 not set any rate below the intrastate cost of providing the
6 service that will include cost and rate of return in
7 accordance with Subsection E of Section 63-9A-6.1 NMSA 1978.
8 In the order the commission may order a refund of amounts
9 collected in excess of the rates and charges as approved at
10 the hearing, which may be paid as a credit against billings
11 for future services. If the complaint is denied, the
12 commission shall enter an order denying the complaint within
13 sixty days after the close of the hearing, and the rates shall
14 be deemed approved. For purposes of this section, cost shall
15 also include a reasonable amount of joint and common costs
16 incurred by the telecommunications carrier in its operations
17 and may include other accounting adjustments authorized by the
18 commission.

19 F. A rural telecommunications carrier that serves
20 less than five percent of the state's aggregate, statewide
21 subscriber lines may at any time elect to file an application
22 with the commission requesting the commission to prescribe
23 fair, just and reasonable rates for the carrier based on the
24 carrier's revenue, expenses and investment in accordance with
25 traditional rate-making principles.

1 G. Rates for local exchange, vertical and message
2 telecommunications services to retail end-user customers may
3 be reduced to a level equal to, but not below, the intrastate
4 cost, which will include cost and rate of return, pursuant to
5 Subsection E of Section 63-9A-6.1 NMSA 1978, of providing the
6 retail service. If a rural telecommunications carrier loses
7 its exemption under Section 251 of the federal act, the rate
8 for a service, excluding basic service, must cover the cost of
9 the service, including the imputed rate of wholesale service
10 elements as may be required by the commission. The cost of
11 message telecommunications service must also include any
12 interexchange access rates charged to another
13 telecommunications carrier for the service.

14 H. An incumbent rural telecommunications carrier
15 operating pursuant to this section shall have the ability to
16 offer or discontinue offering special incentives, discounts,
17 packaged offerings, temporary rate waivers or other
18 promotions, or to offer individual contracts."

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

21 "63-9A-9. REGULATION OF INDIVIDUAL CONTRACTS TO
22 FACILITATE COMPETITION. --

23 A. In accordance with the provisions of this
24 section, the commission shall regulate the rates, charges and
25 service conditions for individual contracts for public

1 telecommunications services in a manner [~~which~~] that
2 facilitates effective competition and shall authorize the
3 provision of all or any portion of a public telecommunications
4 service under stated or negotiated terms to any person or
5 entity that has acquired or is preparing to acquire, through
6 construction, lease or any other form of acquisition, similar
7 public telecommunications services from an alternate source.

8 B. At any time, the provider of public
9 telecommunications services may file a verified application
10 with the commission for authorization to provide a public
11 telecommunications service on an individual contract basis.
12 The application shall describe the telecommunications services
13 to be offered, the party to be served and the parties offering
14 the service, together with [~~such~~] other information and in
15 [~~such~~] a form [as] that the commission may prescribe. Such
16 additional information shall be reasonably related to the
17 determination of the existence of a competitive offer. A
18 determination of effective competition pursuant to Section
19 63-9A-8 NMSA 1978 shall not be necessary to file an
20 application or to have an application granted by the
21 commission pursuant to this section.

22 C. An application is deemed approved when filed
23 unless the commission denies it. The commission shall approve
24 or deny any such application within ten days after filing or
25 [~~such other~~] a different period [~~as shall be~~] established by

1 the commission, not to exceed sixty days, giving consideration
2 to the requirements of any contract negotiations. If the
3 commission has not acted on any application within the time
4 period established, the application [~~shall be~~] is deemed
5 granted. The commission shall deny the application only upon
6 a finding that the application fails to set forth prescribed
7 information or that the subject or comparable services are not
8 being offered to the customer by parties other than the
9 applicant or that the contract fails to cover the costs of the
10 service.

11 D. Within ten days after the conclusion of
12 negotiations, the provider of public telecommunications
13 services shall file with the commission the final contract or
14 other evidence of the service to be provided, together with
15 the charges and other conditions of the service, which shall
16 be maintained by the commission on a confidential basis
17 subject to an appropriate protective order. "

18 Section 10. EFFECTIVE DATE. --The effective date of the
19 provisions of this act is July 1, 1999.

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

March 8, 1999

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred
SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE
SUBSTITUTE FOR SENATE BILL 680

has had it under consideration and reports same with
recommendation that it DO NOT PASS, but that

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR SENATE
CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE
FOR SENATE BILL 680

be reported WITHOUT RECOMMENDATION.

Respectfully submitted,

underscored material = new
[bracketed material] = delete

SCORC/SB 680

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Michael S. Sanchez, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Aragon, Davis

Absent: None

S0680JU1

underscored material = new
[bracketed material] = delete

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR SENATE CORPORATIONS

AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 680

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

AN ACT

RELATING TO TELECOMMUNICATIONS; MAKING CHANGES TO THE
OPERATION OF RURAL TELECOMMUNICATIONS CARRIERS IN NEW MEXICO;
ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. SHORT TITLE. -- This act may be cited as the
"Rural Telecommunications Act of New Mexico".

Section 2. PURPOSE. -- The legislature declares that it
remains the policy of the state of New Mexico to maintain for
rural customers availability of access to telecommunications
services at affordable rates. Furthermore, it is the policy
of this state to have comparable long distance service rates,
as established by the commission, for comparable markets or
market areas. To the extent that it is consistent with
maintaining availability of access to service at affordable

1 rates for rural customers, it is further the policy of this
2 state to encourage competition and reduce regulation in the
3 telecommunications industry, thereby allowing access by the
4 public to resulting rapid advances in telecommunications
5 technology. It is the purpose of the Rural Telecommunications
6 Act of New Mexico to permit a regulatory framework that will
7 allow an orderly transition for rural telephone carriers from
8 a regulated telecommunications industry to a competitive
9 market environment consistent with the federal act. Further,
10 the legislature finds that as part of such regulatory
11 framework, it is necessary to provide disparate regulatory
12 treatment between rural telephone carriers and non-rural
13 telephone carriers in order to assist with accomplishing the
14 goals established by the above declared policies. Disparate
15 regulatory treatment is particularly necessary for those
16 citizens who reside in rural New Mexico, because those rural
17 areas constitute the bulk of the surface area within the
18 boundaries of the state. Disparate regulatory treatment for
19 rural telephone carriers requires relaxed regulation for rural
20 telephone carriers with the objective of reducing the cost of
21 regulation as well as the regulatory burden, permitting
22 pricing flexibility and expediting required rate approvals,
23 all in a manner consistent with both the purpose of an orderly
24 transition from regulation to a competitive market environment
25 and the federal act.

1 Section 3. DEFINITIONS. --As used in the Rural
2 Telecommunications Act of New Mexico:

3 A. "affordable rates" means rates for basic service
4 that promote universal service within a local exchange service
5 area, giving consideration to the economic conditions and
6 costs to provide service in the area in which service is
7 provided;

8 B. "basic service" means service that is provided to
9 a rural end-user customer that is consistent with the federal
10 act;

11 C. "cable television service" means the one-way
12 transmission to subscribers of video programming or other
13 programming service and subscriber interaction, if any, that
14 is required for the selection of the video programming or
15 other programming service;

16 D. "commission" means the public regulation
17 commi ssi on;

18 E. "eligible telecommunications carrier" means an
19 eligible telecommunications carrier as defined in the federal
20 act;

21 F. "federal act" means the federal
22 Telecommunications Act of 1996;

23 G. "fund" means the state rural universal service
24 fund;

25 H. "incumbent local exchange carrier" means a person

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1 that:

2 (1) was designated as an eligible
3 telecommunications carrier by the state corporation commission
4 in Docket #97-93-TC by order dated October 23, 1997, or that
5 provided local exchange service in this state on February 8,
6 1996; or

7 (2) became a successor or assignee of an
8 incumbent local exchange carrier;

9 I. "incumbent rural telecommunications carrier"
10 means a local exchange carrier that serves fewer than fifty
11 thousand access lines within the state and was designated as
12 an eligible telecommunications carrier by the state
13 corporation commission on or before November 1, 1997,
14 including any successor in interest thereto;

15 J. "local exchange area" means a geographic area
16 encompassing one or more local communities, as described in
17 maps, tariffs or rate schedules filed with the commission,
18 where local exchange rates apply;

19 K. "local exchange service" means the transmission
20 of two-way interactive switched voice communications furnished
21 by a telecommunications carrier within a local exchange area;

22 L. "long distance service" means telecommunications
23 service between local exchange areas that originate and
24 terminate within the state;

25 M "private telecommunications service" means a

1 system, including its construction, maintenance or operation
2 for the provision of telecommunications service, or any
3 portion of that service, by a person for the sole and
4 exclusive use of that person and not for resale, directly or
5 indirectly. For purposes of this definition, the person that
6 may use the service includes any affiliates of the person if
7 at least eighty percent of the assets or voting stock of the
8 affiliates is owned by the person. If any other person uses
9 the telecommunications service, whether for hire or not, the
10 private telecommunications service is a public
11 telecommunications service;

12 N. "public telecommunications service" means the
13 transmission of signs, signals, writings, images, sounds,
14 messages, data or other information of any nature by wire,
15 radio, lightwaves or other electromagnetic means originating
16 and terminating in this state regardless of actual call
17 routing. "Public telecommunications service" does not include
18 the provision of terminal equipment used to originate or
19 terminate the service; private telecommunications service;
20 broadcast transmissions by radio, television and satellite
21 broadcast stations regulated by the federal communications
22 commission; radio common carrier services, including mobile
23 telephone service and radio paging; or one-way cable
24 television service; and

25 O. "telecommunications carrier" means a person that

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1 provides public telecommunications service.

2 Section 4. REGULATION BY COMMISSION. --

3 A. Except as otherwise provided in the Rural
4 Telecommunications Act of New Mexico or the federal act, each
5 public telecommunications service is declared to be affected
6 with the public interest and, as such, subject to the
7 provisions of those acts, including the regulation thereof as
8 provided in those acts.

9 B. The commission has exclusive jurisdiction to
10 regulate rural telecommunications carriers only in the manner
11 and to the extent authorized by the Rural Telecommunications
12 Act of New Mexico, and Section 63-7-1.1 NMSA 1978 does not
13 apply.

14 Section 5. CERTIFICATE REQUIRED. --

15 A. No rural public telecommunications service shall
16 be offered in this state except in accordance with the
17 provisions of the Rural Telecommunications Act of New Mexico.

18 B. No rural public telecommunications service shall
19 be offered within this state without the telecommunications
20 carrier first having obtained from the commission a
21 certificate declaring that the operation is in the present or
22 future public convenience and necessity, unless the operation
23 is otherwise authorized by the Rural Telecommunications Act of
24 New Mexico.

25 C. The commission has full power and authority to

1 determine matters of public convenience and necessity relating
2 to the issuance of a certificate of public convenience and
3 necessity to a provider of rural public telecommunications
4 service, but in keeping with the purposes of the Rural
5 Telecommunications Act of New Mexico and the federal act, the
6 commission shall not deny an applicant a certificate on the
7 grounds of need if it is shown that the applicant possesses
8 adequate financial resources and technical competency to
9 provide the service.

10 D. For purposes of considering and acting upon
11 applications for certificates pursuant to this section, the
12 commission may adopt rules on a competitively neutral basis
13 and consistent with the provisions of the Rural
14 Telecommunications Act of New Mexico and the federal act,
15 necessary to preserve and advance universal service, protect
16 the public safety and welfare, ensure the continued quality of
17 rural public telecommunications services and safeguard the
18 rights of the consumers.

19 E. In determining whether to issue a certificate to
20 provide rural public telecommunications service, the
21 commission shall consider the following:

22 (1) whether the applicant has sufficient
23 financial resources to provide the proposed telecommunications
24 service properly and continuously;

25 (2) whether the applicant has competent and

1 experienced management and personnel to provide the proposed
2 telecommunications service;

3 (3) whether the applicant is willing and able
4 to conform to all applicable laws and the rules of the
5 commission applicable generally to providers of
6 telecommunications; and

7 (4) if any exemption, suspension or
8 modification is available to any provider of the subject
9 service in the subject area.

10 F. All certificates of public convenience and
11 necessity shall:

12 (1) continue in force, notwithstanding the
13 provisions of this section; and

14 (2) remain subject to all terms and conditions
15 imposed by statute or commission order at the time of issuance
16 or in connection with any subsequent amendment,
17 notwithstanding the provisions of this section.

18 Section 6. STATE RURAL UNIVERSAL SERVICE FUND--
19 ESTABLISHMENT-- BOARD. --

20 A. No later than January 1, 2000, the commission
21 shall implement a "state rural universal service fund" to
22 maintain and support at affordable rates those public
23 telecommunications services as are determined by the
24 commission. All of the balances in the existing New Mexico
25 universal service fund as of July 1, 1999 shall be transferred

1 into the state rural universal service fund.

2 B. The fund shall be financed by a surcharge on all
3 intrastate retail public telecommunications services revenue,
4 excluding revenue from services provided pursuant to a low-
5 income telephone assistance plan billed to end-user customers
6 by a telecommunications carrier, and excluding from revenue
7 all amounts from surcharges, gross receipts taxes, excise
8 taxes, franchise fees and similar charges. For the purpose of
9 funding the fund, the commission has the authority to apply
10 the surcharge on all end-user retail public telecommunications
11 services provided in the state by telecommunications carriers
12 and to comparable retail alternative services provided by
13 telecommunications carriers and non-telecommunications
14 carriers, including commercial mobile radio services, operator
15 services and aggregator services, offered by providers other
16 than telecommunications carriers, at a competitively and
17 technologically neutral rate or rates to be determined by the
18 commission. In prescribing competitively and technologically
19 neutral surcharge rates, the commission may make distinctions
20 between services subject to a surcharge, but it shall require
21 telecommunications carriers and non-telecommunications
22 carriers to apply uniform surcharge rates for the same or
23 comparable services. Money deposited in the fund is not
24 public money, and the administration of the fund is not
25 subject to the provisions of law regulating public funds. The

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1 commission shall not apply surcharges to a private
2 telecommunications network.

3 C. The fund shall be competitively and
4 technologically neutral, equitable and nondiscriminatory in
5 its collection and distribution of funds, portable between
6 eligible telecommunications carriers, targeted to high-cost
7 rural areas, and additionally shall provide a specific,
8 predictable and sufficient support mechanism as determined by
9 the commission that reduces implicit subsidies, including
10 access charges and ensures universal service in the state.

11 D. The commission shall:

12 (1) establish eligibility criteria for
13 participation in the fund consistent with federal law that
14 ensure the availability of service at affordable rates without
15 unreasonably increasing rates for basic service while still
16 granting eligible telecommunications carriers a reasonable
17 profit on supported services in geographic areas requiring
18 support from the fund, but the eligibility criteria shall not
19 require any investigations of the costs or rates of a
20 telecommunications carrier receiving support from the fund
21 other than that provided for in Subsection E of this section.
22 The eligibility criteria shall not restrict or limit an
23 eligible telecommunications carrier from receiving federal
24 universal service support;

25 (2) provide for the collection of the surcharge

1 on a competitively neutral basis and for the administration
2 and disbursement of money from the fund;

3 (3) determine those geographic areas and local
4 exchange services requiring support from the fund; and

5 (4) provide for the separate administration and
6 disbursement of federal universal service funds consistent
7 with federal law.

8 E. The commission shall adopt rules for the
9 implementation and administration of the fund in accordance
10 with the provisions of this section. The cost basis for
11 establishing the fund and determining the rate of distribution
12 of the fund for areas served by an incumbent rural
13 telecommunications carrier shall be the same cost of and shall
14 be consistent with the federal support mechanisms for
15 providing the supported service by geographic area, determined
16 by the federal communications commission. The cost basis
17 established by the commission for areas served by incumbent
18 rural telecommunications carriers shall include the same
19 return authorized by the federal communications commission for
20 use in rates filed by the national exchange carriers
21 association, or its successor, at the federal communications
22 commission for member carriers. The revenue basis for rural
23 telecommunications carriers with fewer than fifty thousand
24 access lines shall include only revenues from public
25 telecommunications services provided by the eligible

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1 telecommunications carrier.

2 F. The commission shall, upon implementation of the
3 fund, select a neutral third party administrator to collect,
4 administer and disburse money from the fund under the
5 supervision and control of the commission pursuant to
6 established criteria and rules promulgated by the commission.
7 The administrator may be reasonably compensated for the
8 specified services from the surcharge proceeds to be received
9 by the fund pursuant to Subsection B of this section. The
10 administrator shall consult with an advisory board established
11 by the commission composed of representatives from all
12 participating providers. For purposes of this subsection, the
13 commission shall not be a neutral third party administrator.

14 G. The fund established by the commission shall
15 ensure the availability of local exchange service as
16 determined by the commission at affordable rates in rural high
17 cost areas of the state.

18 H. To ensure that providers of intrastate long
19 distance service contribute to the fund and to further ensure
20 that the surcharge to be paid by the end-user customer will be
21 held to a minimum, no later than December 31, 1999, the
22 commission shall adopt rules, or take other appropriate
23 action, to require all such providers to participate in a plan
24 to ensure accurate reporting of intrastate retail long
25 distance revenues.

1 I. Access charges and other intrastate
2 telecommunications services, other than basic local exchange
3 service, may be considered for reductions as an offset to
4 payments received by a rural telecommunications carrier from
5 the fund. Any reductions in charges for access services
6 resulting from compliance with this section shall be passed on
7 for the benefit of consumers in New Mexico.

8 Section 7. REGULATION OF RETAIL RATES OF INCUMBENT RURAL
9 TELECOMMUNICATIONS CARRIER. --

10 A. Rates for retail rural public telecommunications
11 services provided by an incumbent rural telecommunications
12 carrier shall be subject to regulation by the commission only
13 in the manner and to the extent authorized by this section.

14 B. An incumbent rural telecommunications carrier
15 shall file tariffs for all retail public telecommunications
16 services, other than residential local exchange service, which
17 shall be effective after ten days' notice to the commission
18 and publication in a local newspaper in the incumbent service
19 area.

20 C. Rates for residential local exchange service may
21 be increased by an incumbent rural telecommunications carrier
22 only after sixty days notice to all affected subscribers. The
23 notice of increase shall include:

- 24 (1) the reasons for the rate increase;
25 (2) a description of the affected service;

1 (3) an explanation of the right of the
2 subscriber to petition the commission for a public hearing on
3 the rate increase;

4 (4) a list of local exchange areas that are
5 affected by the proposed rate increase; and

6 (5) the dates, times and places for the public
7 informational meetings required by this section.

8 D. An incumbent rural telecommunications carrier may
9 increase its rates for residential local exchange service in
10 the manner otherwise provided in this section as necessary to
11 recover a reasonable allocation of costs incurred due to
12 requirements imposed by any federal or state law or rule. An
13 incumbent rural telecommunications carrier that proposes to
14 increase its rates for residential local exchange service
15 shall hold at least one public informational meeting in each
16 public regulation commissioner's district as established by
17 the Public Regulation Commission Apportionment Act in which
18 there is a local exchange area affected by the rate change.

19 E. Residential local exchange service rates
20 increased by a rural telecommunications carrier pursuant to
21 Subsection D of this section shall be reviewed by the
22 commission only upon written protest signed by two and one-
23 half percent of all affected subscribers or upon the
24 commission staff's own motion for good cause. The protest
25 shall specifically set forth the particular rate or charge as

1 to which review is requested, the reasons for the requested
2 review and the relief that the persons protesting desire. If
3 a proper protest is presented to the commission within sixty
4 days from the date notice of the rate change was sent to
5 affected subscribers of an incumbent rural telecommunications
6 carrier, the commission may accept and file the complaint and,
7 upon proper notice, may suspend the rates at issue during the
8 pendency of the proceedings and reinstate the rates previously
9 in effect and shall hold and complete a hearing thereon within
10 ninety days after filing to determine if the rates as proposed
11 are fair, just and reasonable. The commission may, within
12 sixty days after close of the hearing, enter an order
13 adjusting the rates at issue, except that the commission shall
14 not set any rate below the intrastate cost of providing the
15 service, that will include cost and rate of return in
16 accordance with Subsection E of Section 6 of the Rural
17 Telecommunications Act of New Mexico. In the order, the
18 commission may order a refund of amounts collected in excess
19 of the rates and charges as approved at the hearing, which may
20 be paid as a credit against billings for future services. If
21 the complaint is denied, the commission shall enter an order
22 denying the complaint within sixty days after the close of the
23 hearing, and the rates shall be deemed approved. For purposes
24 of this section, cost shall also include a reasonable amount
25 of joint and common costs incurred by the telecommunications

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1 carrier in its operations and may include other accounting
2 adjustments authorized by the commission.

3 F. A rural telecommunications carrier that serves
4 less than five percent of the state's aggregate, statewide
5 subscriber lines may at any time elect to file an application
6 with the commission requesting the commission to prescribe
7 fair, just and reasonable rates for the carrier based on the
8 carrier's revenue, expenses and investment in accordance with
9 traditional rate-making principles.

10 G. Rates for local exchange, vertical and long
11 distance service to retail end-user customers may be reduced
12 to a level equal to, but not below, the intrastate cost, which
13 shall include cost and rate of return pursuant to Subsection E
14 of Section 6 of the Rural Telecommunications Act of New
15 Mexico. If an incumbent rural telecommunications carrier
16 loses its exemption pursuant to Section 251 of the federal
17 act, the rate for a service, excluding basic service, must
18 cover the cost of the service, including the imputed rate of
19 wholesale service elements as may be required by the
20 commission. The cost of long distance service must also
21 include any interexchange access rates charged to another
22 telecommunications carrier for the service.

23 H. An incumbent rural telecommunications carrier
24 operating pursuant to this section shall have the ability to
25 offer or discontinue offering special incentives, discounts,

1 packaged offerings, temporary rate waivers or other
2 promotions, or to offer individual contracts.

3 Section 8. EXEMPTION FOR PRIVATE SERVICE. -- Construction,
4 maintenance or operation of a private telecommunications
5 service does not constitute the provision of rural public
6 telecommunications service, and a private telecommunications
7 service shall not be subject to regulation by the commission
8 pursuant to the Rural Telecommunications Act of New Mexico.

9 Section 9. REGULATION OF INDIVIDUAL CONTRACTS TO
10 FACILITATE COMPETITION. --

11 A. In accordance with the provisions of this
12 section, the commission shall regulate the rates, charges and
13 service conditions for individual contracts for rural public
14 telecommunications services in a manner that authorizes the
15 provision of all or any portion of a public telecommunications
16 service under stated or negotiated terms to any person or
17 entity that has acquired or is preparing to acquire, through
18 construction, lease or any other form of acquisition, similar
19 public telecommunications services from an alternate source.

20 B. At any time, the provider of rural public
21 telecommunications services may file a verified application
22 with the commission for authorization to provide a public
23 telecommunications service on an individual contract basis.
24 The application shall describe the telecommunications services
25 to be offered, the party to be served and the parties offering

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1 the service, together with other information and in a form
2 that the commission may prescribe. Such additional
3 information shall be reasonably related to the determination
4 of the existence of a competitive offer.

5 C. An application is deemed approved when filed
6 unless the commission denies it. The commission shall approve
7 or deny any such application within ten days after filing or a
8 different period established by the commission, not to exceed
9 sixty days, giving consideration to the requirements of any
10 contract negotiations. If the commission has not acted on any
11 application within the time period established, the
12 application is deemed granted. The commission shall deny the
13 application only upon a finding that the application fails to
14 set forth prescribed information or that the subject or
15 comparable services are not being offered to the customer by
16 parties other than the applicant or that the contract fails to
17 cover the costs of the service.

18 D. Within ten days after the conclusion of
19 negotiations, the provider of rural public telecommunications
20 services shall file with the commission the final contract or
21 other evidence of the service to be provided, together with
22 the charges and other conditions of the service, which shall
23 be maintained by the commission on a confidential basis
24 subject to an appropriate protective order.

25 Section 10. COMPLAINT ALLEGING VIOLATION BY PROVIDER OF

1 RURAL PUBLIC TELECOMMUNICATIONS SERVICES. --

2 A. Complaint may be made by any interested party
3 setting forth any act or omission by a provider of rural
4 public telecommunications services alleged to be in violation
5 of any provision of the Rural Telecommunications Act of New
6 Mexico or any order or rule of the commission issued pursuant
7 to that act.

8 B. Upon filing of the complaint, the commission
9 shall set the time and place of hearing and at least ten days'
10 notice of the hearing shall be given to the party complained
11 of. Service of notice of the hearing shall be made in any
12 manner giving actual notice.

13 C. All matters upon which complaint may be founded
14 may be joined in one hearing and a complaint is not defective
15 for misjoinder or nonjoinder of parties or causes, either
16 before the commission or on review by the courts. The persons
17 the commission allows to intervene shall be joined and heard,
18 along with the complainant and the party complained of.

19 D. The burden shall be on the party complaining to
20 show a violation of a provision of the Rural
21 Telecommunications Act of New Mexico or an order or rule of
22 the commission issued pursuant to that act.

23 E. After conclusion of the hearing, the commission
24 shall make and file an order containing its findings of fact
25 and decision. A copy of the order shall be served upon the

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1 party complained of or his attorney.

2 F. Conduct of the hearings and rendering of
3 decisions shall be governed by the rules of practice and
4 procedure promulgated by the commission.

5 Section 11. VALIDITY OF ORDERS--SUBSTANTIAL COMPLIANCE
6 WITH ACT SUFFICIENT.--A substantial compliance by the
7 commission with the requirements of the Rural
8 Telecommunications Act of New Mexico shall be sufficient to
9 give effect to all rules, orders and acts of the commission,
10 and they shall not be declared inoperative, illegal or void
11 for any omission of a technical nature, in respect thereto.

12 Section 12. APPEAL OF ORDERS OF THE COMMISSION.--Any
13 provider of rural public telecommunications services and any
14 other person in interest being aggrieved by a final order or
15 determination of the commission under the Rural
16 Telecommunications Act of New Mexico may file a notice of
17 appeal in the supreme court asking for a review of the
18 commission's final orders. A notice of appeal shall be filed
19 within thirty days after the entry of the commission's final
20 order. Every notice of appeal shall name the commission as
21 appellee and shall identify the order from which the appeal is
22 taken. Any person whose rights may be directly affected by
23 the appeal may appear and become a party, or the supreme court
24 may upon proper notice order any person to be joined as a
25 party.

1 Section 13. APPEAL ON THE RECORD. --

2 A. An appeal shall be on the record made before the
3 commission and shall be governed by the appellate rules
4 applicable to administrative appeals.

5 B. The supreme court shall affirm the commission's
6 order unless it is:

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

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

11 (3) otherwise not in accordance with law.

12 Section 14. INJUNCTIONS-- CONTEMPT. --The commission may
13 apply to the district court for injunctions to prevent
14 violations of any provision of the Rural Telecommunications
15 Act of New Mexico or of any rule or order of the commission
16 issued pursuant to that act, and the court has the power to
17 grant such injunctions and to enforce such injunctions by
18 contempt procedure.

19 Section 15. DELAYED REPEAL. --Section 63-9A-6.1 NMSA 1978
20 (being Laws 1987, Chapter 21, Section 4, as amended) is
21 repealed effective July 1, 2000.

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

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2 **SJC/SCORC/SB 680**

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4 **FORTY- FOURTH LEGISLATURE**
5 **FIRST SESSION, 1999**
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9 **March 14, 1999**

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12 **Mr. Speaker:**

13 **Your JUDICIARY COMMITTEE, to whom has been referred**

14
15 **SENATE JUDICIARY COMMITTEE**
16 **SUBSTITUTE FOR SENATE CORPORATIONS**
17 **AND TRANSPORTATION COMMITTEE SUBSTITUTE**
18 **FOR SENATE BILL 680, as amended**

19 **has had it under consideration and reports same with**
20 **recommendation that it DO PASS.**
21

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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Respectfully submitted,

R. David Pederson, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Luna, Sanchez

Absent: None

J: \99BillSWP\s0680