

1 SENATE BILL 24

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Michael Padilla

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9  
10 AN ACT

11 RELATING TO TELECOMMUNICATIONS; REQUIRING THE ADOPTION OF RULES  
12 TO REDUCE AND PROMOTE THE PARITY OF REGULATION FOR THE  
13 TELECOMMUNICATIONS INDUSTRY AND ENCOURAGE A BROADBAND-FOCUSED  
14 COMPETITIVE TELECOMMUNICATIONS MARKET; PROHIBITING INDIVIDUAL  
15 CONTRACTS FOR TELECOMMUNICATIONS SERVICES TO BE OFFERED ON  
16 MATERIALLY DIFFERENT TERMS TO SIMILARLY SITUATED CUSTOMERS  
17 WITHOUT CERTAIN PERMISSIONS; CHANGING A MEASURE FOR THE  
18 CALCULATION OF A PRESUMPTION OF EFFECTIVE COMPETITION FOR  
19 REGULATED TELECOMMUNICATION SERVICES; REPLACING THE APPLICATION  
20 PROCESS FOR INDIVIDUAL SERVICE CONTRACTING WITH A TWO-YEAR  
21 REQUIREMENT TO RETAIN SUCH CONTRACTS ON FILE; ADDING  
22 INFORMATION TO BE INCLUDED IN THE TRIENNIAL REPORTING BY THE  
23 PUBLIC REGULATION COMMISSION; REPEALING SECTION 63-9A-2 NMSA  
24 1978 (BEING LAWS 1985, CHAPTER 242, SECTION 2, AS AMENDED BY  
25 LAWS 2000, CHAPTER 100, SECTION 3 AND BY LAWS 2000, CHAPTER

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1 102, SECTION 3).

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

4 SECTION 1. Section 63-9A-5 NMSA 1978 (being Laws 1985,  
5 Chapter 242, Section 5, as amended) is amended to read:

6 "63-9A-5. REGULATION BY COMMISSION.--

7 A. Except as otherwise provided in the New Mexico  
8 Telecommunications Act, each public telecommunications service  
9 is declared to be affected with the public interest and, as  
10 such, subject to the provisions of that act, including the  
11 regulation thereof as provided in that act.

12 B. The commission has exclusive jurisdiction to  
13 regulate incumbent local exchange carriers that serve fifty  
14 thousand or more access lines within the state only in the  
15 manner and to the extent authorized by the New Mexico  
16 Telecommunications Act, and Subsection B of Section 63-7-1.1  
17 NMSA 1978 does not apply; provided, however, that the  
18 commission's jurisdiction includes the regulation of wholesale  
19 rates, including access charges and interconnection agreements  
20 consistent with federal law and its enforcement and  
21 determinations of participation in low-income telephone service  
22 assistance programs pursuant to the Low Income Telephone  
23 Service Assistance Act. [~~The New Mexico Telecommunications Act~~  
24 ~~expressly preserves and does]~~

25 C. On or before December 31, 2021, the commission

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1 shall adopt rules to accelerate a transition away from a  
2 regulated telecommunications industry and encourage a  
3 broadband-focused competitive market; provided that the adopted  
4 rules preserve and do not diminish or expand:

5 (1) the rights and obligations of any entity,  
6 including the commission, established pursuant to federal law,  
7 including 47 U.S.C. Sections 251 and 252, or established  
8 pursuant to any state law, rule, procedure, regulation or order  
9 related to interconnection, intercarrier compensation,  
10 intercarrier complaints, wholesale rights and obligations or  
11 any wholesale rate or schedule that is filed with and  
12 maintained by the commission;

13 (2) the rights and obligations of any  
14 competitive telecommunications service provider holding a  
15 certificate of public convenience and necessity, or the rights  
16 and obligations of any competitive local exchange carrier to  
17 obtain such a certificate;

18 (3) the authority of the commission to resolve  
19 consumer complaints regarding basic local exchange service;  
20 provided, however, that the commission's authority to resolve  
21 such complaints shall be limited to resolving issues of  
22 consumer protection and shall not include the authority to  
23 determine or fix rates, provider of last resort obligations or  
24 service quality standards except as expressly set forth in the  
25 New Mexico Telecommunications Act;

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1 (4) the authority of the commission to  
2 establish reasonable and competitively neutral quality of  
3 service standards for local exchange service; provided,  
4 however, that the enforcement of such standards shall be  
5 limited to the commission's fining authority set forth in  
6 Section 63-7-23 NMSA 1978 and the authority to seek an  
7 injunction set forth in Section 63-9-19 NMSA 1978;

8 (5) the rights and obligations of any entity,  
9 including the commission, regarding the fund;

10 (6) the rights and obligations of any entity,  
11 including the commission, regarding access to emergency service  
12 to the extent consistent with the Enhanced 911 Act; or

13 (7) the rights and obligations of any entity,  
14 including the commission, regarding the administration of  
15 slamming and cramming rules, telecommunications relay service  
16 and numbering resources to the extent permitted by and  
17 consistent with federal law.

18 [~~G.~~] D. For incumbent local exchange carriers that  
19 serve fifty thousand or more access lines within the state, the  
20 commission shall adopt relaxed [~~regulations~~] rules that provide  
21 for:

22 (1) reduced regulation compared to the level  
23 of regulation that applied to that carrier as of January 1,  
24 2017;

25 (2) reduced filing requirements for applicants

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1 in rate increase proceedings under the New Mexico  
2 Telecommunications Act; and

3 [~~(2)~~] (3) expedited consideration in all  
4 proceedings initiated pursuant to the New Mexico  
5 Telecommunications Act in order to reduce the cost and burden  
6 for incumbent local exchange carriers and other applicants.

7 [~~D. The regulatory requirements and the~~  
8 ~~commission's regulation of competitive]~~

9 E. Except for the regulation of rates pursuant to  
10 rules adopted in accordance with Section 63-9A-8.1 NMSA 1978  
11 and rules adopted pursuant to the Rural Telecommunications Act  
12 of New Mexico, no local exchange [~~carriers, competitive access~~  
13 providers and interexchange carriers shall be no greater than,  
14 and no more extensive than, that of incumbent] carrier shall be  
15 placed under greater or more extensive regulatory requirements  
16 than any other local exchange [~~carriers that serve fifty~~  
17 thousand or more access lines] carrier.

18 [~~E.~~] F. The provisions of the New Mexico  
19 Telecommunications Act do not apply to incumbent rural  
20 telecommunications carriers."

21 **SECTION 2.** Section 63-9A-8 NMSA 1978 (being Laws 1985,  
22 Chapter 242, Section 8, as amended) is amended to read:

23 "63-9A-8. REGULATION OF RATES AND CHARGES--EFFECTIVE  
24 COMPETITION.--

25 A. In accordance with the policy established in the

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1 New Mexico Telecommunications Act, the commission shall, by its  
2 own motion or upon petition by any interested party, hold  
3 hearings to determine if any public telecommunications service  
4 is subject to effective competition in the relevant market  
5 area. When the commission has made a determination that a  
6 service or part of a service is subject to effective  
7 competition, the commission shall, consistent with the purposes  
8 of the New Mexico Telecommunications Act [~~modify~~], reduce or  
9 eliminate rules, regulations and other requirements applicable  
10 to the provision of each such service, including the fixing and  
11 determining of specific rates, tariffs or fares for the  
12 service. The commission's action may include the detariffing  
13 of service or the establishment of minimum rates that will  
14 cover the costs for the service. Such modification shall be  
15 consistent with the maintenance of the availability of access  
16 to local exchange service at affordable rates and comparable  
17 message telecommunications service rates, as established by the  
18 commission, for comparable markets or market areas, except that  
19 volume discounts or other discounts based on reasonable  
20 business purposes shall be permitted. [~~Upon petition or~~  
21 ~~request of an affected telecommunications company~~] The  
22 commission [~~upon a finding that the requirements of Subsection~~  
23 ~~B of this section are met~~] shall also modify the same or  
24 similar retail regulatory requirements for [~~those~~] all  
25 providers of comparable public telecommunications services in

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1 the same relevant markets so that there shall be parity of  
2 retail regulatory standards and requirements for all such  
3 providers; provided, however, that this subsection shall not be  
4 construed to permit the adoption of any new regulatory  
5 requirements or standards for providers of comparable  
6 telecommunications services.

7 B. In determining whether a service is subject to  
8 effective competition, the commission shall consider the  
9 following on a wire center serving area basis for each wire  
10 center serving area and service for which such a determination  
11 [~~of effective competition~~] is requested [~~and separate~~  
12 ~~determinations shall be made for residential and business~~  
13 ~~services in each wire center serving area~~]:

14 (1) the extent to which services are  
15 reasonably available from alternate providers;

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

19 (3) existing economic, technological,  
20 regulatory or other barriers to market entry and exit;

21 (4) the number of other providers offering the  
22 same or reasonably comparable services;

23 (5) the presence of at least two facilities-  
24 based competitors, including without limitation facilities-  
25 based providers of wireless or voice over internet protocol

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1 services, operating in all or part of the wire center servicing  
2 area for which a determination of effective competition is  
3 requested that are unaffiliated with the petitioning carrier  
4 and provide the same or reasonably comparable service of the  
5 type for which the finding of effective competition is sought;

6 (6) the ability of the petitioning provider to  
7 affect prices or deter competition; and

8 (7) such other factors as the commission deems  
9 appropriate.

10 C. [~~If, in the~~] In a proceeding pursuant to  
11 Subsection B of this section for a wire center serving area for  
12 which a determination of effective competition is requested and  
13 where the incumbent local exchange carrier provides basic local  
14 exchange service either separately or bundled to less than one-  
15 half of the [~~customer locations where such service is available~~  
16 ~~at the time the petition is filed~~] housing units and business  
17 firms as determined by the latest federal decennial census,  
18 using a centroid method where a given census block is allocated  
19 to the wire center serving area in which the geographic center  
20 of the census block is located, the public interest requires  
21 that effective competition be presumed for all regulated  
22 telecommunications services provided by the incumbent provider  
23 in that wire center serving area; provided, however, that  
24 findings and presumptions applied pursuant to this section  
25 shall be made [~~separately~~] in the aggregate for residential and

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1 business services and customer locations combined.

2 D. 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 consistent with  
10 the provisions of Subsection G of Section 63-9A-8.1 NMSA 1978.  
11 In any proceeding held pursuant to this section, the party  
12 claiming that the price for a competitive telecommunications  
13 service does not cover the cost shall bear the burden of  
14 proving that the prices charged for competitive  
15 telecommunications services do not cover cost; provided,  
16 however, that the commission may require the telecommunications  
17 company against whom the complaint is filed to submit a cost  
18 study for the service that is the subject of the complaint as  
19 part of its examination and determination of the complaint.

20 E. The commission may, upon its own motion or on  
21 the petition of an interested party and after notice to all  
22 interested parties and customers and a hearing, reclassify any  
23 service previously determined to be a competitive  
24 telecommunications service if after a hearing the commission  
25 finds that a service is not subject to effective competition.

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1 F. If a wire center [~~service~~] servicing area is  
2 deregulated pursuant to a determination of effective  
3 competition, for those wire center [~~service~~] servicing areas  
4 where that service is deregulated, the petitioning  
5 telecommunications company shall no longer be eligible to claim  
6 an exemption from the application of the Unfair Practices Act  
7 or the Antitrust Act."

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

10 "63-9A-9. REGULATION OF INDIVIDUAL CONTRACTS TO  
11 FACILITATE COMPETITION.--

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

22 B. [~~At any time, the~~] A provider of public  
23 telecommunications services [~~may file a verified application~~  
24 ~~with the commission for authorization~~] shall retain a copy of  
25 any contract or agreement permitted pursuant to this section to

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1 provide a public telecommunications service on an individual  
2 contract basis [~~The application shall describe the~~  
3 ~~telecommunications services to be offered, the party to be~~  
4 ~~served and the parties offering the service, together with such~~  
5 ~~other information and in such form as the commission may~~  
6 ~~prescribe. Such additional information shall be reasonably~~  
7 ~~related to the determination of the existence of a competitive~~  
8 ~~offer. A determination of effective competition pursuant to~~  
9 ~~Section 63-9A-8 NMSA 1978 shall not be necessary to file an~~  
10 ~~application or to have an application granted by the commission~~  
11 ~~pursuant to this section.~~

12 G. ~~The commission shall approve or deny any such~~  
13 ~~application within ten days or such other period as shall be~~  
14 ~~established by the commission, not to exceed sixty days, giving~~  
15 ~~consideration to the requirements of any contract negotiations.~~  
16 ~~If the commission has not acted on any application within the~~  
17 ~~time period established, the application shall be deemed~~  
18 ~~granted] for a minimum of two years after the contract or~~  
19 ~~agreement is expired or terminated.~~

20 C. The commission shall deny [~~the application~~] an  
21 individual contract only upon a finding that [~~the application~~  
22 ~~fails to set forth prescribed information or that~~] the subject  
23 or comparable services are not being offered to the customer by  
24 other parties [~~other than the applicant~~] or that the contract  
25 fails to cover the costs of the service, as provided in

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1 Subsection G of Section 63-9A-8.1 NMSA 1978.

2 D. No provider of telecommunications services shall  
3 use individual contracts permitted pursuant to this section to  
4 offer services on materially different terms and conditions  
5 than the provider would make available to other similarly  
6 situated customers, unless otherwise permitted by law or the  
7 commission.

8 [~~D.—The~~] E. Upon a request by the commission, a  
9 telecommunications company shall file with the commission the  
10 final contract or other evidence of the service to be provided,  
11 together with the charges and other conditions of service [~~upon~~  
12 ~~request by the commission~~]. If such contract or evidence is  
13 requested, it shall be maintained by the commission on a  
14 confidential basis subject to an appropriate protective order.  
15 Any interested party may receive copies of filings made  
16 pursuant to this section upon request to the commission and  
17 execution of an appropriate confidentiality agreement, if  
18 applicable."

19 **SECTION 4.** Section 63-9A-21 NMSA 1978 (being Laws 2017,  
20 Chapter 71, Section 7) is amended to read:

21 "63-9A-21. COMMISSION REVIEW OF IMPACTS.--

22 A. The commission shall review the impact of  
23 provisions of the New Mexico Telecommunications Act on  
24 residential and business consumers in urban and rural areas of  
25 the state every three years, the first review to be completed

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1 by July 31, 2019, and shall report its findings to the  
2 legislature. The review shall investigate the impact on rates,  
3 service quality, incumbent local exchange carrier employment,  
4 investment in telecommunications infrastructure and the  
5 availability and deployment of high speed data services. The  
6 review shall also include a report on:

7 (1) the steps the commission has taken to  
8 implement parity of regulation among local exchange carriers  
9 consistent with the purposes of the New Mexico  
10 Telecommunications Act;

11 (2) those wire center serving areas that have  
12 been deemed to have effective competition; and

13 (3) any wire centers no longer subject to  
14 carrier of last resort obligations.

15 B. For any wire center serving an area deregulated  
16 pursuant to the provisions of Section 63-9A-8 NMSA 1978, if the  
17 commission finds that reregulation of basic local exchange  
18 service is necessary to protect the public interest following a  
19 hearing and findings of fact and conclusions of law, after July  
20 31, 2021, the commission shall regulate basic local exchange  
21 service pursuant to the New Mexico Telecommunications Act."

22 **SECTION 5. REPEAL.--**Section 63-9A-2 NMSA 1978 (being Laws  
23 1985, Chapter 242, Section 2, as amended by Laws 2000, Chapter  
24 100, Section 3 and by Laws 2000, Chapter 102, Section 3) is  
25 repealed.

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